A

DIGEST OF INDIAN LAW CASES

CONTAINING

HIGH COURT REPORTS, 1862—1909;

AND

PRIVY COUNCIL REPORTS OF APPEALS FROM INDIA, 1836—1909,

WITH AN INDEX OF CASES,

COMPILED UNDER THE ORDERS OF THE GOVERNMENT OF INDIA

BY

B. D. BOSE

OF THE INNER TEMPLE, BARRISTER-AT-LAW; ADVOCATE OF THE HIGH COURT, CALCUTTA; AND EDITOR OF THE INDIAN LAW REPORTS, CALCUTTA SERIES.

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TABLE

OF

HEADINGS, SUB-HEADINGS, AND CROSS REFERENCES.

The headings and sub-headings under which the cases are arranged are printed in this table in capitals, the headings in black type and the sub-headings in small capitals. The cross references are printed in ordinary type.

1

A DIGEST

OF

THE HIGH COURT REPORTS,

1862-1909,

AND OF

THE PRIVY COUNCIL REPORTS OF APPEALS FROM INDIA,

1836-1909.

J

JAGHIR.

See Chota Nagpur Landlord and Tenant Procedure Act, 1879.
I. L. R. 25 Calc. 396, 399

See Ghatwali Tenure.
I. L. R. 5 Calc. 389
I. L. R. 9 Calc. 187
L. R. 9 I. A. 104

See Grant—Construction of Grants.
I. L. R. 9 Bom. 561
I. L. R. 15 Bom. 222
L. R. 18 I. A. 22

See Grant—Power to Grant.
6 W. R. 121
18 W. R. 321

See Inam.

See "Malikana and Dusturat" Grant.
11 C. W. N. 448

See Resumption—Miscellaneous Cases.
12 B. L. R. 120
L. R. I. A. Sup Vol. 10

See Resumption—Right to resume.
1 B. L. R. A. C. 170

1. ———— **Nature of jaghir**—*Estate for life—Hereditary grant.* A jaghir must be taken, *primâ facie*, to be an estate only for life, although it may possibly be granted in such terms as to make it hereditary. Gulabdas Jugjivandas *v.* Collector of Surat . . I. L. R. 3 Bom. 186

2. ———— **Rights and interest of jaghirdar**—*Liability of, to sale in execution of decree—Bom. Reg XII of 1805, s. 34.* The rights and

JAGHIR—*concld.*

interest of a judgment-debtor in a jaghir granted under s. 34, Regulation XII of 1805, cannot be sold in execution of a decree. The Court should [illegible]

[illegible]

Addy . . . . . [illegible]

JAILOR.

See Civil Procedure Code, 1882, s. 87.
4 B. L. R. O. C. 51

———— **in Native States.**

See Confession—Confessions to Police-officers . I. L. R. 20 Bom. 795

JAINS.

See Hindu Law.

See Hindu Law—Adoption—Who may or may not adopt . 10 Bom. 241
I. L. R. 1 All. 688
I. L. R. 16 Mad. 182
I. L. R. 22 Bom. 416
I. L. R. 17 Calc. 518
I. L. R. 29 All. 495

See Hindu Law—Adoption—Who may or may not be adopted.
I. L. R. 1 All. 288
I. L. R. 29 All. 495
I. L. R. 33 Bom. 669

See Hindu Law—Adoption—Second Simultaneous, and Conditional Adoptions . I. L. R. 8 All. 319

A DIGEST

OF

THE HIGH COURT REPORTS,

1862-1909,

AND OF

THE PRIVY COUNCIL REPORTS OF APPEALS FROM INDIA,

1836-1909.

J

JAGHIR.

See CHOTA NAGPUR LANDLORD AND TENANT PROCEDURE ACT, 1879
I. L. R. 25 Calc. 390, 399

See GHATWALI TENURE.
I. L. R. 5 Calc. 389
I. L. R. 9 Calc. 187
L. R. 9 I. A. 104

See GRANT—CONSTRUCTION OF GRANTS.
I. L. R. 9 Bom. 501
I. L. R. 15 Bom. 222
L. R. 18 I. A. 22

See GRANT—POWER TO GRANT.
6 W. R. 121
18 W. R. 321

See INAM.

See "MALIKANA AND DUSTURAT" GRANT.
11 C. W. N. 448

See RESUMPTION—MISCELLANEOUS CASES.
12 B. L. R. 120
L. R. I. A. Sup Vol. 10

See RESUMPTION—RIGHT TO RESUME.
1 B. L. R. A. C. 170

1. ———— Nature of jaghir—*Estate for life—Hereditary grant.* A jaghir must be taken, [illegible]

2. ———— Rights and interest of jaghirdar—*Liability of, to sale in execution of decree—Bom. Reg XII of 1805, s. 34.* The rights and interest of a judgment-debtor in a jaghir granted under s 34, Regulation XII of 1805, cannot be sold in execution of a decree. The Court should [illegible]
ADDY . . . . . W. R. F. B. 85

JAILOR.

See CIVIL PROCEDURE CODE, 1882, s. 87.
4 B. L. R. O. C. 51

———— in Native States.

See CONFESSION—CONFESSIONS TO POLICE-OFFICERS . I. L. R. 20 Bom. 795

JAINS.

See HINDU LAW.

See HINDU LAW—ADOPTION—WHO MAY OR MAY NOT ADOPT . 10 Bom. 241
I. L. R. 1 All. 688
I. L. R. 16 Mad. 182
I. L. R. 22 Bom. 416
I. L. R. 17 Calc. 518
I. L. R. 29 All. 495

See HINDU LAW—ADOPTION—WHO MAY OR MAY NOT BE ADOPTED.
I. L. R. 1 All. 288
I. L. R. 29 All. 495
I. L. R. 33 Bom. 669

See HINDU LAW—ADOPTION—SECOND SIMULTANEOUS, AND CONDITIONAL ADOPTIONS . I. L. R. 8 All. 319

JAINS—*concld.*

See Hindu Law—Alienation—Alienation by Widow—Alienation for Legal Necessity or with Consent of Heirs, etc I. L. R. 3 All. 55

See Hindu Law—Custom—Generally. 10 Bom. 241
I. L. R. 16 All. 379

See Hindu Law—Inheritance—Special Laws—Jains.

See Succession Act, s 331
I. L. R. 3 All 55

JALKAR.

See Fishery.

See Fisher, right of
10 C W. N. 1349

See Forest Act, s 45
I. L. R 24 Calc. 504
L R. 24 I. A. 33

——— **in non-tidal and non-navigable river.**

See Fishery . . 10 C. W. N. 540

1. ——— **Fishery, right of**—*Change in course of river.* Where it was found that a piece of water in dispute, which was at one time a part of the bed of the river Ganges, was still connected with it, although the connection might dry up in the hot weather:—*Held*, following earlier authorities, that the disputed water having been part of the bed of the Ganges and the two being connected, th[illegible]
adjacent [illegible]
in the s[illegible]
v Crawf[illegible]

2. ——————— *Fishery, right of—Dobas—Change in course of river—Open Channel's—Interference with right—Decree, form of.* If a [illegible]

seasons of the year. On proof of the existence of such communication and on proof that the defendant has prevented the grantee from exercising his right of fishery in such *doba*, the latter would be entitled to a decree for recovery of possession without any reference to what may or may not be the rights of the parties, if the communication should cease in future. *J. J. Grey* v. *Anund Mohun Moitro, W. R 1864, 108*; *Krishnendro Roy Chowdhry* v. *Surno Moyee, 21 W. R 27*, and *Tarini Charan Sinha* v. *Watson & Co, I. L. R. 17 Calc 963*, referred to. Bhaba Prasad v. Jagadindra Nath Rai (1905) . . I. L. R. 33 Calc. 15

JAMABANDI.

See Evidence Act, 1872, s. 74.
I. L. R. 4 Calc. 76

JAMABANDI PAPERS.

See Evidence—Civil Cases—Jamabandi and Jama-wasil-baki Papers.

JAMA-WASIL-BAKI PAPERS.

See Evidence—Civil Cases—Jamabandi and Jama-wasil-baki Papers.

JETTISON.

See Shipping Law.
I. L. R. 17 Calc. 362
L. R 16 I. A. 240

JEWS.

See Religious Community.
I L. R. 11 Bom. 165

JHANSI AND MORAR ACT (XVII OF 1886).

See High Court, jurisdiction of—N.-W. P.—Civil. I L. R. 11 All. 490

——— **s. 8.**

See Res Judicata—Causes of Action.
I. L. R. 10 All. 517

JHANSI INCUMBERED ESTATES ACT (XVI OF 1882).

——— **ss. 8 and 28**—*Mortgage—Unlawful consideration—Contract Act (IX of 1872), s. 23—Transfer of Property Act (IV of 1882), s 430 Held*, that a mortgage executed by a mortgagor who was at the time disqualified under s 8 of the Jhansi Incumbered Estates Act (XVI of 1882) was a contract entered into for an unlawful consideration within the meaning of s 23 of the Contract Act, and s. 43 of the Transfer of Property Act, could not be prayed in aid to empower the mortgagee to bring a suit for foreclosure after the mortgagor's disability had ceased Radha Bai v Kamod Singh (1907). . I. L. R. 30 All. 38

JHUM CULTIVATION.

See Regulation III of 1891
I. L. R. 38 Calc 1
12 C. W. N 1095
L. R. 35 I. A. 195

JOINDER OF CAUSES OF ACTION.

See Bengal Tenancy Act, ss. 30, 52.
11 C. W. N. 1154

See Causes of Action.

See Ejectment, suit for.
I. L. R. 29 Calc. 871

See Jurisdiction—Suits for Land—Property in Different Districts.
12 W. R. 114
I. L. R. 16 All. 359

See Misjoinder.

See Multifariousness.

See Relinquishment of, or Omission to sue for, Portion of Claim.
I. L. R. 19 Calc. 615

JOINDER OF CAUSES OF ACTION—*contd.*

See Rent, suit for . 5 C. W. N 880

See Specific Relief Act, s. 27.
I. L. R. 1 All. 555

[The sections of the old Code of 1859, relating to joinder of causes of action (ss. 8 and 9), have not been re-enacted in the later Codes.]

1. ——— **Nature and value of suit as affecting joinder of causes of action**—*Civil Procedure Code, 1859, s. 8.* Under s. 8 of the Code of 1859 it was decided that the words "cognizable by the same Court" referred to the nature of the suit and not to its value, therefore a Principal Sudder Ameen was *held* to have jurisdiction under that section to try a suit for land and for mesne profits, the entire claim not exceeding his jurisdiction, although *the value of the suit, so far as the claim was for land,* was below the value cognizable by him. Luchmee Pershad Doobey v. Kallasoo
B. L. R. Sup. Vol. 620
2 Ind. Jur. N. S. 89 : 7 W. R. 175

Overruling Dhurum Rawoot v. Ramnath Sahoo . . 2 Hay 585

See Haro Chunder Tulkoshoorambonee v. Issur Chunder Roy . . . 6 W. R. 296

2. ——— **Instalments of rent**—*Distinct causes of action.* *Instalments of rent were held to* form different causes of action. Ram Soondur Sein v. Krishno Chunder Goopto
17 W. R. 380

Sutto Churn Ghosal v. Obhoy Nund Doss
2 W. R. Act X, 31

In a case, however, where the plaintiff was the lessor, and the defendant the lessee, of certain land under an agreement whereby the defendant agreed to occupy the land for two years, and to deliver a certain quantity of paddy at four specified periods, defendant failed to deliver the paddy. In a suit for rent.—*Held,* that, although the plaintiff might have sued for each instalment of rent as it fell due, the aggregate of such unpaid instalments should be deemed one cause of action. Chockalinga Pillai v. Kumara Viruthalam . . 4 Mad. 334

3. ——— **Suit for possession and for rent of a house.**—A suit for possession of his house and for rent were held to be causes of action properly joined by a plaintiff in one suit. Jaggomohan Sahu v. Mani Lal Chowdhry
3 B. L. R. Ap. 77

s.c. Jugo Mohun Sahoo v. Monee Lall Chowdhry . . . . . 11 W. R. 542

4. ——— **Claims for a hundi and for money paid in excess of rent** It was held that a claim for a hundi may be joined in one suit with a claim for the return of money paid in excess of rent due. Brojokishore Chowdhrain v. Khema Soonduree Dossee . 7 W. R. 409

Kinnoo Monee Debia v. Shoboram Sirkar
3 W. R. 128

5. ——— **Separate suits relying on same title**—*Infringement of title.* It is not the title, but the infringement of it, which constitutes the cause of action; and two suits are not necessarily brought upon the same cause of action merely because the title relied upon in both cases is one and the same. Jardine, Skinner & Co. v. Shama Soonduree Debia . . . 13 W. R. 196

6. ——— **Suit for rent of two different portions of land.** In a suit for rent as of a single howalah, where the defendants pleaded, and the Court found, that the lands constituted two howalahs it was *held* not to be necessary to dismiss the suit, if justice could be done between the parties on the other issues. Suroop Chunder Chowdhry v. Nimchand Chuckerbutty
13 W. R. 284

7. ——— **Different suits brought against divers persons**—*Civil Procedure Code, 1859, s. 8.* S. 8 of the old Code of 1859 prohibited by implication the joinder of divers causes of action against divers persons. Prahlad Sen v. Gopee Bebee . . 4 N. W. 40

Tara Prosunno Sircar v. Koomaree Beebee
23 W. R. 389

8. ——— **Suit to set aside survey award**—*Different independent proprietors dispossessed under same survey award.* A village had [illegible]

estate. *Held,* that the four parties could sue jointly. Anund Chunder Ghose v. Komul Narain Singh . . . . . 2 W. R. 219

9. ——— **Suit for possession, for damages for refusal to register, and to enforce** [illegible]

10. ——— **Suit for possession of portion of property, and to set aside deeds relating to another portion**—*Misjoinder of causes of action.* One of three widows of a Mahomedan sued the other two, together with her deceased husband's sons and other heirs, for possession of 18 out of 96 sehams of property left by the deceased, to which she was entitled by right of inheritance under the Mahomedan law; and to set aside two deeds of bai-mukasa, or gift in lieu of dower, one dated 28th July 1842, granted in favour of one widow over a part of the property in suit, and the other dated 14th March 1847, in favour of the other widow, over other portions of the same pro-

JOINDER OF CAUSES OF ACTION—*contd.*

perty The lower Appellate Court dismissed the suit on the ground of a misjoinder of causes of action, and that there were two causes of action which could not be tried together under Act VIII of 1859, s. 8 *Held per* KEMP, *J.* (whose opinion as senior Judge prevailed), that there was no misjoinder of causes of action; that the case must be remanded to the Judge for trial on the merits AMIRAN *v.* ASHUN 3 B. L. R. A. C 190
s.c. AMEERUN *v.* WUSSFHUN 12 W. R. 11

11. ——— Suits relating to different

12. ——— Distinct causes of action against distinct defendants. S 9 applied to a suit of the nature described in s. 8, and not to a suit in which distinct causes of action against distinct defendants were improperly joined. PRAHLAD SEN *v.* GOPEE BEBEE . . . . 4 N. W. 40

KOSELLA KOER *v.* BEHARY PATUCK 12 W. R. 70

13. ——— Direction to file separate plaints instead of one—*Procedure—Civil Procedure Code, 1859, s. 9.* Where a plaintiff originally filed a plaint against the defendant and other persons, to invalidate a number of conveyances and sales, of which some had been confirmed by decrees, or had been made in execution of decrees, and which related to land in two separate zillahs, and the Subordinate Judge passed an order, purporting to be an order under s. 9 of the Civil Procedure Code, for the trial of the several causes of action

... case to file separate plaints was not within the scope of s. 9 of the Civil Procedure Code That section did not require the plaintiff to file separate plaints but provided for the separate trial of the several causes of action contained in the one plaint filed on the institution of a suit. RUTTA BEBEE *v.* DUMRU LALL . . . . 2 N. W. 153

14. — Requisites to give right to join—*Jurisdiction of Court over both causes of action.* The right to join in one suit two causes of action against a defendant cannot be exercised unless the Court to which the plaint is presented has jurisdiction over both causes of action. KHIMJI JIVRAJU SHETTU *v.* PURUSHOTUM JUTANI I. L. R. 7 Mad. 171

15. ——— Joinder of other suits with suits for recovery of immoveable property —*Civil Procedure Code, 1882, s 44* S 44 of the Code of Civil Procedure, 1877, does not forbid the joinder of several causes of action entitling the plaintiff to the recovery of immoveable property, but a joinder with such causes of action or other causes of action of a different character except in the cases therein specified CHIDAMBARA PILLAI *v.* RAMASAMI PILLAI . . I. L. R. 5 Mad 161

16. — Suit for specific performance and return of money advanced on agreement—*Civil Procedure Code, 1877, s 44—Misjoinder* The plaintiffs sued for specific performance of an agreement in writing which set forth, *inter alia*, that the defendants had agreed to sell, etc, under "certain conditions as agreed upon." Part of the purchase-money had been advanced by the plaintiffs to the defendants, for which the defendants had given their promissory notes; and the plaint contained a prayer that the defendants be ordered to pay over the amount of the notes *Held* (affirming the decision of WILSON, *J*), that there was no misjoinder of causes of action within the meaning of s 44, rule (*a*), of the Code of Civil Procedure (Act X of 1877) CUTTS *v.* BROWN I. L. R 6 Calc. 328
5 C. L. R. 487: 7 C. L. R. 171

17. ——— Suit for administration and accounts of separate estate—*Civil Procedure Code, 1882, s. 44.* The plaintiffs who were the widow and daughter of *A*, sued the executors of the will of *A's* father (*B*) for administration and account. There were four distinct subjects of claim in the plaint, *viz.*, (*1*) the estate of *A's* great-grandfather, (*2*) the estate of *A's* grandfather, (*3*) the jewels and ornaments which formed the stridhan of *A's* mother which were in *A's* posses-

claimed the jewels and ornaments, which formed

ants had been ancestral property in *B's* hands, (ii) for an account and administration, (iii) that the jewels and ornaments should be delivered up.

JOINDER OF CAUSES OF ACTION—*contd.*

Held, that there was a misjoinder of causes of action, having regard to the provisions of rule (*b*), s. 44 of the Civil Procedure Code (Act X of 1877). Part of the claim in the plaint was for a portion of *A's* estate, and was founded upon the plaintiff's alleged right as heir of *A*. The other portion of the claim in the plaint—*viz.*, that relating to the ornaments—had no reference to *A's* estate, and was personal to the first plaintiff herself. ASHABAI *v.* TYEB HAJI RAHIMTULLA . . . I. L. R. 6 Bom. 390

18. ——— **Suit for moveable and immoveable property**—*Civil Procedure Code, 1882, s. 44.* There is nothing irregular in seeking to recover moveable and immoveable property in the same suit if the cause of action is the same in respect of both. GIYANA SAMBANDHA PANDARA SANNADHI *v.* KANDASAMI TAMBIRAN I. L. R. 10 Mad. 375

19. ——— **Suit for mortgage-debt with alternative prayer for sale**—*Civil Procedure Code, s. 44.* A suit for recovery of a mortgage-debt with an alternative prayer for sale of the mortgaged property, is not a suit for recovery of immoveable property within the meaning of s. 44 of the Civil Procedure Code. A claim for arrears of rent therefore can be joined with a claim for recovery of a mortgage-debt with such an alternative prayer without leave of the Court first obtained. GOVINDA *v.* MANA VIKRAMAN. MANA VIKRAMAN *v.* GOVINDA . . . I. L. R. 14 Mad. 284

20. ——— **Administration suit**—*Acts of maladministration regarding immoveable property outside jurisdiction—Civil Procedure Code (1882), s. 44, rule (a).* In an administration action the fact that amongst other things leases of immoveable property granted by the executors to themselves are sought to be set aside on the ground that such leases are acts of maladministration does not make the action one for the recovery of immoveable property, and leave under s. 44, rule (*a*), is not necessary. NISTARINI DASSI *v.* NUNDO LALL BOSE I. L. R. 26 Calc. 891
3 C. W. N. 670

21. ——— **Misjoinder of causes of action**—*Civil Procedure Code (1882), s. 44—Zamindari and appurtenant sir land sold by separate deeds—Suit for pre-emption of both zamindari and sir.* Where a zamindari share and the *sir* land held with it were sold to the same vendee by two separate deeds of sale executed on the same day, it was *held* that a suit to pre-empt both the zamindari share and the *sir* land was not liable to be defeated on the ground of misjoinder of causes of action. AMBIKA DAT *v.* RAM UDIT PANDE
I. L. R. 17 All. 274

22. ——— *Civil Procedure Code, 1882, s. 44—Suit by assignee of Mahomedan widow for part of her dower and for part of the estate of the widow's deceased husband. Held*, that a suit by the assignee of a Mahomedan widow for the recovery of part of the assignor's dower, and of part of the estate of the assignor's late husband, did not contravene the provisions of s. 44, rule (*b*), of the Code of Civil Procedure. *Ashabai* v. *Tyeb Haji Rahimtulla, I. L. R. 6 Bom. 390*, dissented from. AHMAD-UD-DIN KHAN *v.* SIKANDAR BEGAM
I. L. R. 18 All. 256

23. ——— *Civil Procedure Code, ss. 31, 44—Misjoinder of defendants and causes of action—Suit by transferee from heir of deceased Mahomedan against another heir and transferee from such other heir.* A plaintiff came into Court claiming a portion of the inheritance of a deceased Mahomedan on the allegation that he had, by two separate sale-deeds of different dates, purchased the property from two of the heirs of the deceased, and that the said property was withheld from him by another of the heirs of the deceased, who was in possession of some of it, and by certain transferees of other portions from the said heir. Both the remaining heir and the transferees from him were made defendants. *Held*, that there was no misjoinder of parties or of causes of action in such a suit. *Indar Kuar* v. *Gur Prasad I. L. R. 11 All. 33*, followed. With reference to the objection that the claim included both moveable and immoveable property, and that the leave of the Court for the joinder of the two claims had not been obtained, it was *held* that s. 44 of the Code of Civil Procedure did not apply to such a case. *Giyana Sambandha Pandara Sannadhi* v. *Kundasami Tambiran, I. L. R. 10 Mad. 375, 506*, referred to. MAZHAR ALI KHAN *v.* SAJJAD HUSAIN KHAN (1902) . . I. L. R. 24 All. 358

24. ——— *Misjoinder of causes of action—Suit including claims under two separate mortgage-deeds. Held*, that s. 44 of the [illegible]

sami Pillai, I. L. R. 5 Mad. 161, and *Ambica Dat* v. *Ram Udit Pande, I. L. R. 17 All. 274*, referred to. RAGHUBAR DAYAL *v.* JWALA SINGH (1903) . . . I. L. R. 25 All. 229

25. ——— **Civil Procedure Code, 1882, s. 44.** S. 44 of the Civil Procedure Code is not applicable to a suit unless it is for the recovery of immoveable property or for declaration of title to immoveable property. Even in these cases the defect of multifariousness is cured if leave of the Court is obtained previous to the bringing of the suit. NUNDA LAL BOSE *v.* NISTARINI DASSEE (1902) 7 C. W. N. 353

2[illegible] [illegible]
s. [illegible]
Be[illegible]
Civ[illegible]
tra[illegible]
a fishery, which they claimed as a right appurtenant to the holding, is, by virtue of s. 45 of the Civil Procedure Code, maintainable. A suit for the rent of a fishery is entertainable in ordinary

JOINDER OF CAUSES OF ACTION—*concld.*

Civil Courts, which have jurisdiction in rent suits. SHIB PROSAD CHAUDHURI *v.* VAKAI PALI (1906)
I. L. R. 33 Calc. 601

JOINDER OF CHARGES.

See CHARGE.

See CONTEMPT OF COURT—PENAL CODE, s 174 . . . **5 C. W. N. 131**

See CRIMINAL PROCEDURE CODE, 1898, ss. 222, 239 . . **I. L. R. 30 Bom. 49**
I. L. R. 33 Bom. 221

See CRIMINAL PROCEDURE CODE, ss. 225 TO 237 . **I. L. R. 33 Bom. 77**

See CRIMINAL PROCEDURE CODE, 1898, ss 233 TO 239.

See CRIMINAL PROCEDURE CODE, s 235.
13 C. W. N. 1062

See CRIMINAL PROCEEDINGS
B. L. R. Sup. Vol. 750
I. L. R. 6 Calc. 96
I. L. R. 5 Mad. 20
I. L. R. 14 Calc. 128, 358, 395
I. L. R. 9 All. 452
I. L. R. 11 Mad. 441
I. L. R. 12 Mad. 273
I. L. R. 20 Calc. 537
1 C. W. N. 35

1. ——— **Charges for distinct offences**—*Separate charges and trials—Several offences under one section of Penal Code.* In a case of several offences under one section of the Penal Code, the proper way is to try the accused (under separate charges) for each of the several distinct offences under the section. QUEEN *v* SOBRAI GOWALLAH
20 W. R. Cr. 70

2. ——— *Criminal Procedure Code, 1872, s 453—Practice.* S. 453 of the Criminal Procedure Code simply placed a statutory limit on the number of charges which may legally form part of a single trial. There was nothing in the section, however, to prevent an accused from being separately charged and tried on the same day for any number of distinct offences of the same kind committed within the year. EMPRESS *v.* DHONONJOY BARAJ
I. L. R. 3 Calc. 540 : 1 C. L. R. 478

3. ——— **Dacoity and receiving stolen property**—*Distinct offences—Penal Code, ss. 395, 412.* The practice of dividing the facts which constitute parts of one offence into several minor offences condemned ...

is no evidence of the commission of more than one offence. QUEEN *v.* SHAHABUT SHEIKH
13 W. R. Cr. 42

4. ——— **Robbery on same night in several different places**—*Criminal Procedure*

JOINDER OF CHARGES—*contd.*

Code, 1872, s 453—Separate and distinct offences of same kind. Where persons are committed on three separate and distinct charges for three separate and distinct robberies committed on the same night in three different houses, they must be tried separately on each of the three charges. QUEEN *v.* ITWAREE DOME . . . . . . **6 W. R. Cr. 83**

5. ——— **Theft and house-breaking by night**—*Criminal Procedure Code, 1872, s. 453.*

trate of the first class at the same time for such offences, and sentenced to rigorous imprisonment for two years for each of such offences *Held,* that the joinder of the charges was regular under s. 453 of Act X of 1872, and the punishment was within the limits prescribed by s 314 *Empress v. Umeda, unreported,* observed on by STRAIGHT, J *In the matter of* DAULATIA . **I. L. R. 3 All. 305**

6. ——— *Offences of the same kind committed in respect of different persons—Criminal Procedure Code (Act X of 1872), ss. 452, 453.* Where an accused was charged under one charge including four counts, *viz*, (i) house-breaking by night with intent to commit theft in the house of *A*; (ii) theft from the same house; (iii) house-breaking by night with a like intent in the house of *B*; (iv) theft from that house; and where he pleaded guilty to the first and third charges:—*Held,* that the case was within the terms of s. 453, and that the words "offences of the same kind" are not to be limited by the explanation to ...

and the Court should at all times be anxious to lend a willing ear to any application upon their behalf for separation of charges and for separate trials upon separate charges. *Empress v. Murari, I. L. R. 4 All 147,* dissented from. MANU MIYA *v.* EMPRESS
I. L. R 9 Calc. 371 : 11 C. L. R. 52

7. ——— **Theft, receiving stolen property, giving and receiving illegal gratification, and false evidence**—*Criminal Procedure Code, 1872, s. 452—Separate charges—Distinct offences.* The accused persons were tried on 27 charges, comprising the offences of theft, abetment of theft, and receiving stolen property, in 1872-73; similar offences in 1873-74; similar offences in 1874-75 ...

JOINDER OF CHARGES—*contd.*

convicted on two heads of charge, and the rest acquitted. The convicted appealed against his conviction and sentence; and the Government appealed against his acquittal on the other heads as well as against the acquittal of the rest. *Held*, that the trial was irregular under s. 452 of the Code of Criminal Procedure, and so would be the hearing of the appeal. The High Court, however, heard the appeal in respect of offences in 1874-75 only, it appearing that this course did not prejudice the accused persons who had been fully and fairly tried for those offences. QUEEN *v.* HANMANTA

I. L. R. 1 Bom. 610

8. ——— **Receiving, retaining, and dealing in stolen property**—*Criminal Procedure Code, 1872, s. 453—Penal Code, ss. 411, 413, Offences of different kinds—Procedure.* A prisoner cannot be tried at the same trial for receiving or retaining (s. 411, Penal Code) and habitually receiving or dealing in (s. 413) stolen property. The proper course is to try the accused first for the offences under s. 411, and if he is convicted, to try him under s. 413, putting in evidence the previous convictions under s. 411, and proving the finding of the rest of the property in respect of which no separate charge under s. 411 could be made or tried by reason of the provisions of s. 453 of the Criminal Procedure Code. *In the matter of the petition of* UTTOM KOONDOO. EMPRESS *v.* UTTOM KOONDOO

I. L. R. 8 Calc. 634; 10 C. L. R. 406

9. ——— **Rioting and hurt**—*Penal Code, ss. 147, 323—Offences made up of several offences.* Rioting and hurt in the course of such rioting are distinct offences, and each offence is separately punishable. EMPRESS OF INDIA *v.* RAM ADHIN

I. L. R. 2 All. 139

10. ——— *Criminal Procedure Code, s. 454—Committal on two separate charges—Trial as for one offence—Separate trial.* Where persons are charged with rioting and also with causing hurt, although they may be tried as for one offence under s. 454 of the Criminal Procedure Code, it is not illegal to try them for both offences separately. *In the matter of the petition of* AMIRUDDIN. AMIRUDDIN *v.* FARID SARKAR

I. L. R. 8 Calc. 481

11. [illegible]

12. ——— **Cheating different persons**—*Criminal Procedure Code, 1872, s. 453—Joinder of charges—Offences of the same kind committed in respect of different persons.* *M* was accused of cheating *G* on two different occasions, and also of cheating *K* on a third occasion. The three offences were committed within one year of each other, and *M* was charged and tried at the same time for the three offences. *Held*, that such joinder of charges was irregular, inasmuch as the combination of three offences of the same kind for the purpose of one trial can only be where such offences have been committed in respect of one and the same person, and not against different prosecutors, within the period of one year, as provided in the Criminal Procedure Code. EMPRESS OF INDIA *v.* MURARI

I. L. R. 4 All. 147

13. ——— **Misappropriation of money at different times**—*Postmaster—Criminal Procedure Code, ss. 233, 234—Offences of the same kind committed in respect of the same person.* Where a postmaster was accused of having, on three different occasions within a year, dishonestly misappropriated moneys paid to him by different persons for money orders:—*Held*, that, the offences of which such person was accused being the dishonest misappropriations by a public servant of public moneys (for, as soon as they were paid, they ceased to be the property of the remitters), such offences were "of the same kind" within the meaning of s. 234 of the Criminal Procedure Code, and such person might therefore, under that section, be charged with and tried at one trial for all three offences. *Empress* v. *Murari, I. L. R. 4 All. 147*, observed on. QUEEN-EMPRESS *v.* JUALA PRASAD

I. L. R. 7 All. 174

14. ——— **Charge of three offences of the same kind**—*Criminal Procedure Code (Act X of 1882), s. 234.* An accused was charged with criminal breach of trust as a public servant in respect of three separate sums of money deposited in the savings bank under three separate accounts. The third of these charges related to the misappropriation of R195 composed of two separate sums of R150 and R45 alleged to have been misappropriated on the 16th and 25th November, respectively. These sums the accused in his statement at the trial stated he had paid over on those dates to the depositors, and produced an account book showing entries of such payments on those dates. This statement was proved to be untrue, and the [illegible]

or consisted of two transactions, the entries having been made for the purpose of concealing the criminal breach of trust; and that, under the circumstances, the criminal breach of trust with regard to the R195 was really one offence and could be included in one charge. *In the matter of* LUCHMINARAIN . . . **I. L. R. 14 Calc. 128**

15. ——— **Framing incorrect record, forgery and using forged document**—*Penal Code (Act XLV of 1860), ss. 167, 466, 471—Separate trials—Offences of the same kind—Amendment of charge.* The prisoner was committed for trial on

JOINDER OF CHARGES—*contd.*

fifty-five charges, including three charges under ss. 167, 466, and 471 of the Penal Code. At the trial before the District Judge sitting with assessors, the Court informed the prisoner that the trial would be confined to the three charges last mentioned. The prisoner was convicted on these, but the Court allowed evidence to be adduced by the prosecution on all the remaining charges, and in respect of these the prisoner was acquitted. On appeal to the High Court;—*Held*, that the District Judge should have exercised the powers conferred on him by ss. 445 and 446 of the Code of Criminal Procedure, and then have proceeded to hold separate trials; that

not appear that the prisoner had been prejudiced by the mode of trial adopted. *In the matter of the petition of* SREENATH KUR. EMPRESS v. SREENATH KUR

I. L. R. 8 Calc. 450 : 10 C. L. R. 421

16. ———— **Offences one of which is a summons and the other a warrant case**—*Summons and warrant cases—Criminal Procedure Code, ss 247 and 253—Procedure.* In the investigation of a complaint, which forms the subject of two distinct charges arising out of the same transaction, one of which is a summons and the other a warrant case, the procedure should be that prescribed for warrant cases. RAJNARAIN KOONWAR v. LALA TAMOLI RAUT . **I. L. R. 11 Calc., 91**

17. ———— **Obtaining minor for prostitution**—*Criminal Procedure Code, ss. 234 and 537—Penal Code, ss. 372, 373—Misjoinder of charges—Immaterial irregularity.* A woman, being a member of the dancing girl caste, obtained possession of a minor girl and employed her for the purpose of prostitution; she subsequently obtained in adoption another minor girl from her parents who belonged to the same caste. She and the parents of the second girl were charged together under ss 372, 373 of the Penal Code. The charges related to both girls. ... not have been committed in ... re of justice.

I. L. R. 12 Mad. 273

18. ———— **Rioting and criminal trespass**—*Criminal Procedure Code (Act X of 1882), ss. 233, 234, 537—Separate charges for distinct offences* Five persons were charged with having committed the offence of rioting on the 5th December; four out of those persons and one *F* were charged with having committed the offence of criminal trespass on the 9th December. These two cases were taken up and tried together in one trial and were decided by one judgment. *Held*, that the trial was illegal, and the defect was not cured by s. 537 of the Criminal Procedure Code. *In the*

JOINDER OF CHARGES—*contd.*

matter of the petition of CHANDI SINGH. QUEEN-EMPRESS v. CHANDI SINGH

I. L. R. 14 Calc. 395

19. ———— **Receiving stolen property and theft**—*Criminal Procedure Code, 1882, ss. 233, 239—Joint trial. B, M, K,* and *R* were jointly tried, *B* for receiving stolen property under s. 411 of the Penal Code and the others for theft under s. 380, and were convicted *Held*, that the joinder of the above charges was illegal, and was a ground for setting aside the conviction and ordering a new trial, but not for discharging the accused. *In the matter of David, 6 C L R. 245,* distinguished. BISHNU BANWAR v EMPRESS . **1 C. W. N. 35**

20. ———— **Offences committed by different accused against different persons at different times**—*Criminal Procedure Code, 1882, ss 235 and 239—Joint trial* If, in any case, either the accused are likely to be bewildered in their defence by having to meet many disconnected charges, or the prospect of a fair trial is likely to be endangered by the production of a mass of evidence directed to many different matters and tending by its mere accumulation to induce an undue suspicion against the accused, then the propriety of combining the charges may well be questioned. The four accused who were members of the Dharwar police force were charged with ill-treating the complainant *H*, his wife *R*, and his son-in-law *Y*, during the course of a police investigation into a case of theft. They were committed for trial for the following offences: (i) All the accused for an offence under s. 330, Penal Code, the charge covering several acts of violence alleged to have been committed against *H* during his confinement, which forms the subject of the second head of the charge (ii) All the accused for an offence under s 348, Penal Code, committed against *H* between the 5th and the 18th January 1889 (iii) Accused Nos 1 and 3 for an

between 8th February and 9th March 1889 The accused were committed to the Court of Session in two separate cases ...

... a police investigation into an alleged theft " The accused were convicted of the offences charged and sentenced to various terms of imprisonment. *Held*, reversing the convictions and sentences, that the combination of the two cases necessarily prejudiced the accused by making it possible for the prosecu-

JOINDER OF CHARGES—*contd.*

tion to bring forward a mass of evidence at the trial relating to many matters, some only remotely connected with relevant questions which must to some extent have had the effect of embarrassing and confusing the accused. *Held*, also, that all the several acts of violence alleged to have been committed against *H* during his illegal confinement could be rightly regarded as constituting a single transaction. But the act of violence said to have been committed against *R* at a different place could not be regarded as a part of that transaction. Nor was the wrongful confinement of *R* by accused Nos. 1 and 3 on the 15th January a part of the transaction constituted by the hurt caused to her by accused No. 3 on the previous day. In the same way all acts of hurt caused to *Y* during his first period of wrongful confinement would with the confinement form a part of the same transaction; but the second period of confinement, which was said to have commenced some time after the termination of the first period of confinement, would be a separate transaction. QUEEN-EMPRESS *v.* FAKIRAPA . . . I. L. R. 15 Bom. 491

21. ——— **Trial of separate offences and accused together**—*Criminal Procedure Code, ss. 233, 234, and 537—Irregularity in criminal trial.* Where four accused were at one and the same trial tried for offences of murder and robbery committed in the course of one transaction, and for another robbery committed two or three hours previously and at a place close to the scene of the robbery and murder: *Held*, that the trial of these separate offences together, though an error or irregularity within the meaning of s. 537 of the Code of Criminal Procedure, would not necessarily render the whole trial void. QUEEN-EMPRESS *v.* MULUA

I. L. R. 14 All. 502

22. ——— **Separate charges for distinct offences**—*Criminal Procedure Code (Act X of 1882), ss. 233, 234, 237, and 537—Using forged documents—Charges for using eleven forged documents in three sets on three separate occasions—Irregularity in criminal trial.* The accused was charged with using as genuine eleven forged receipts which were put in by him in sets on three separate occasions, each set with a written statement in three suits pending against him. A charge was framed against him in respect of the using of each set of receipts, and he was tried on these three charges and convicted and sentenced. On appeal it was [illegible]

having been tried for more than three offences in one and the same trial. *Held*, that, as the "using" [illegible]

ground for questioning the conviction. QUEEN-EMPRESS *v.* RAGHU NATH DAS

I. L. R. 20 Calc. 413

23. ——— **Offences of same kind not within year**—*Failure of justice—Application of s. 537 of the Code of Criminal Procedure—Code of Criminal Procedure (Act V of 1898), ss. 233, 234, and 537.* *Held*, that s. 537 of the Code of Criminal [illegible]

v. Chandi Singh, I. L. R. 14 Calc. 395; and *Raj Chunder Mozumder v. Gour Chunder Mozumdar, I. L. R. 22 Calc. 176*, overruled. *In the matter of* ABDUR RAHMAN . I. L. R. 27 Calc. 839

4 C. W. N. 656

24. ——— **Distinct offences**—*Possession of forged or counterfeit currency notes—Distinct offences—Separate trial—Penal Code (Act XLV of* [illegible]

[illegible] and cri- [illegible] *Code (Act* [illegible] *h of trust—* [illegible] *2 and 234.* Where an accused person is charged with having misappropriated or committed criminal breach of trust in respect of an aggregate sum of money, the whole sum being alleged to have been wrongfully dealt with by the accused within a period not exceeding one year, the mere fact that the items composing such aggregate sum are specified and may be more than three in number will not render the charge obnoxious to the prohibition implied by s. 234 of the Code of Criminal Procedure. *Subrahmania Ayyar v. King-Emperor, I. L. R. 25 Mad., 61*, distinguished. EMPEROR *v.* GULZARI LAL (1902) . I. L. R. 24 All. 254

26. ——— **Multitude of charges**—*Code of Criminal Procedure (Act V of 1898), ss. 234,* [illegible] *Irregularity* [illegible] *to* [illegible] *only to what is legal—Functions of Judge and jury.* Disobedience to the express provision of the law as to the mode of a trial cannot be regarded as a mere irregularity, and as such is not curable under s. 537 of the Code of Criminal Procedure. The joinder at one trial, of more charges than three for offences of the same kind, and extending over a period [illegible]

JOINDER OF CHARGES—*contd*

... irregu- [*1894*] ... *The* ... SUBRA- ...

I. L. R., 25 Mad. 61
s.c. 5 C. W. N. 866
L. R. 28 I. A. 257

27. ———— **Offences falling under two** ... was ... on a charge of abetment of dacoity, under s 116 of the Indian Penal Code (Act XLV of 1860) In the course of the trial the Assistant Sessions Judge added an alternative charge under s. 511 of the Code, and sentenced the accused under ss. 395, 116 and 511 of the Indian Penal Code (Act XLV of 1860) In appeal the Sessions Judge *held* that the evidence disclosed the offence of an attempt to commit the offence of collecting arms, etc., with the intention of waging war against the Queen, under s 122; and, as no charge under that section could be framed for want of the sanction of Government under s 196 of the Criminal Procedure Code (Act V of 1898), the accused could not be brought to trial at all He therefore reversed the conviction and acquitted the accused. *Held* (reversing the order of acquittal), that the mere fact that no charge for the graver offence under s 122 of the Indian Penal Code (Act XLV of 1860) could be ...

... the accused abetted an offence under s 122 of the Penal Code, and by the same speech also attempted or abetted the offence of dacoity, he could be tried for each of these offences; but, as that section is controlled, as regards the offence against the State, by the provisions of s 196 of the Criminal Procedure Code, its operation in this case is restricted to the minor offence, for which the accused could legally be charged and tried. *Queen-Empress v.* ...

28. ———— **Offences unconnected with each other**—*Criminal Procedure Code (Act V of 1898), ss 233, 234, 235 and 537—Joinder of separate and distinct charges—Confession of co-accused pleading guilty—Corroboration—Irregularity—Admissibility of confession of one accused against another on a different charge—Prejudice.* *A* was charged with ...

... upon an alternative charge under ss. 411 and 380, Indian Penal Code, in respect of a document found in his house and entirely unconnected with the acts in respect of which *A* was charged. Both were tried together, and *A* was convicted and sentenced on his plea of guilt, and a confession made by *A* implicating *B* was used against *B*; *B* was convicted and sentenced separately for abetment of the criminal breach of trust by *A*, as also on the alternative charge under ss. 411 and 380, Indian Penal Code. *Held*, that, in the absence of any corroboration of the confession of *A* relating to the specific acts of criminal breach of trust, *B* could not be convicted of abetment of those acts by *A*. Also, that the finding of the document in the house of *B* could not by itself form any such corroboration. Also, that the joint trial of *B* for the abetment of criminal breach of trust and for offences under ss. 411 and 380, Indian Penal Code, which were quite unconnected with the acts of criminal breach of trust, was improper, and that *B* was prejudiced by such joint trial by reason of the confession of *A* ...

29. ———— **"Same transaction"**—*Joint trial—Several persons—Offences not committed in same transaction—Irregularity—Illegality—Crimi-* ...

... on a railway line. While being taken away by them, Gobind Koeri was shortly afterwards rescued by Hira Mander and Manger Koeri. Gobind Koeri was charged under s 128 of the Railways Act for placing clods on the line. Hira Mander and Manger Koeri were charged under s. 225 of the Penal Code with rescuing Gobind Koeri from lawful custody. All three persons were tried jointly in one trial, and were convicted *Held*, that, the offences not having been committed in the same transaction, the persons accused of each of these offences should have been tried separately, and that the Court had no jurisdiction to try them in the same trial. *Subramania Iyer v. King-Emperor I. L. R 25 Mad. 61*, followed. GOBIND KOERI v. EMPEROR (1902)

I. L. R. 29 Calc. 385; s.c. 6 C. W. N. 468

30. ———— *Criminal Procedure Code (Act V of 1898), ss. 234 and 235—Number of charges.* The fact that offences are committed at different times does not necessarily show that they may not be so connected as to fall within s. 235 of the Criminal Procedure Code (Act V of 1898). The occasions may be different, but there may be a continuity and a community of purpose. The real and substantial test by which to determine whether several offences are so connected as to form the same transaction depends on whether they are so related to one another, in point of purpose, or as cause and effect, or as principal and subsidiary acts, as to constitute one continuous action The accused was tried at one trial for three offences; (i) for

JOINDER OF CHARGES—*contd.*

having in his possession on the 9th October 1902, certain stencil plates for the purpose of counterfeiting Hubbock and Company's trade-mark on two kegs of paint (s. 485 of the Indian Penal Code), (ii) for having, on or about the 7th October, 1902, sold 12 kegs of paint to which a counterfeit trade-mark was affixed (under s. 486 of the Indian Penal Code), and (iii) for having in his possession for sale on or about the 9th October, 1902, certain kegs of paint purporting to be Hubbock's paint, having a counterfeit trade mark (under s. 486). He was convicted and separately sentenced for these offences. He appealed, contending that the trial was illegal, inasmuch as he had been charged at one trial with offences which were not connected together so as to form the same transaction under s. 235 (1) of the Criminal Procedure Code (Act V of 1898). *Held*, dismissing the appeal, that the trial was not illegal. There was a community and also a continuity of purpose in the possession and the sale—the possession of the instruments was the cause, the possession of the kegs and their sale the effect, and both the possession and the sale had one intention and aimed at one result, namely, that of deceiving buyers into purchasing what was not the genuine article of Hubbock and Company. EMPEROR *v.* SHEPTUALLI ALLIBHOY (1902)

I. L. R. 27 Bom. 135

31. ——————— *Criminal Procedure Code, ss. 222, 233, 234, 235—Three distinct offences of criminal breach of trust and three distinct offences of falsifying accounts cannot be tried together.* It is illegal to try a person on a charge which alleges three distinct acts of criminal breach of trust and three distinct acts of falsifying accounts. S. 234 of the Code of Criminal Procedure will not apply, as the offences of criminal breach of trust and falsification of accounts are not of the same kind; neither will s. 235 cover the case, as the several offences cannot be said to form part of the same transaction. *King-Emperor v. Nathlal Bapuji, 4 Bom. L. R. 433,* referred to. Although, under s. 222 of the Code of Criminal Procedure, a charge for the gross amount misappropriated within a period of twelve months shall be deemed to be a charge of one offence within s. 234; it does not follow that the acts so charged should be considered to be one transaction within the meaning of s. 235. KASI VISVANATHAN *v.* EMPEROR (1907)

I. L. R. 30 Mad. 328

32. ——————— *Criminal Procedure Code (Act V of 1898), ss. 233, 235, 537—Mis-joinder* [illegible]

ground of misjoinder being taken before the Sessions Judge. The only manner in which the alleged falsification and destruction were connected was that the account book and the documents were both in the custody of the accused, who thus had opportunity to falsify the one and to destroy the other. It was not suggested that the account book was falsified in order to conceal the fact that documents had been destroyed, or that documents had been destroyed in order to prevent the particular falsification from being detected. *Held*, that the offences charged did not constitute one series of acts so connected together as to form the same transaction within the meaning of s. 235 of the Code of Criminal Procedure. *Held*, also, that the misjoinder could not be treated as an irregularity curable under s. 537, and that the conviction must be set aside. *Subramania Iyer v. King-Emperor, I. L. R. 25 Mad. 61,* followed. KRISHNASAMI PILLAI *v.* EMPEROR (1902) **I. L. R. 26 Mad. 125**

33. ——————— *Criminal Procedure Code (Act V of 1898), s. 235—Kidnapping of child, and assault, at a later date, on mother—Conviction—Validity.* An accused was charged and tried at one trial with the offences of kidnapping, wrongful confinement, and assault, and was convicted. The case for the prosecution was that the accused had kidnapped and wrongfully confined a boy, and that, when the boy's mother, a day or two afterwards, went to the house of the accused and asked that the boy might be allowed to return to her, the accused assaulted the mother. The conviction was upheld by the Sessions Court. On a revision petition being preferred in the High Court: *Held*, that the charge of assault ought to [illegible]

is complete when the minor is actually taken from lawful guardianship, and it is not an offence continuing as long as the minor is kept out of such guardianship. Even assuming that on the facts of this case the process of "taking" or "enticing" was going on at the time of the alleged assault on the mother, it was doubtful whether the assault was one of a series of acts so connected together as to form the same transaction, and the charge of assault should have been brought and tried separately. CHERUTTY *v.* EMPEROR (1902)

I. L. R. 26 Mad. 454

34. ——————— *Joinder of charges—Criminal Procedure Code (Act V of 1898), ss. 235, 307—One transaction—Criminal Procedure Code—Reference against verdict of jury—High Court's power and duty.* In a reference under s. 307, [illegible] Court [illegible] it to [illegible] rdict [illegible] stion [illegible] the accused was tried on seven charges—three of cheating, under s. 420, Indian Penal Code: two of forgery under ss. 466 and 468, Indian Penal Code, one of using as genuine a forged document under s. 471, Indian Penal Code, and one of cheating by personation under s. 419, Indian Penal Code: *Held*, that

JOINT FAMILY—*contd.*

——— purchase on behalf of—

See CIVIL PROCEDURE CODE, 1882, s. 317
I. L. R. 31 All. 282

——— representative of, for voting purposes

See CALCUTTA MUNICIPAL CONSOLIDATION ACT, s. 11 [illegible]
I. L. R. 10 Calc. 102, 105 note, 198

——— suit for share of—

See [illegible] DECREE—POSSESSION
I. L. R. 1 Bom. 95
I. L. R. 6 Bom. 403, 408, 499
3 Mad. 177

See LIMITATION ACT, 1877, S. S. II, ART. [illegible]

See [illegible] JOINT FAMILY

JOINT [illegible]

See [illegible] I. L. R. [illegible] 189

See [illegible]
I. L. R. [illegible] 919

[illegible] 7 C. W. N. [illegible]

[illegible] I. L. R. 33 Calc. [illegible]

[illegible] I. L. R. [illegible] Calc. [illegible], 753

JOINT [illegible]

[illegible]
I. L. R. 8 All. [illegible]
I. L. R. [illegible] All. 121
I. L. R. [illegible]

JOINT [illegible]

[illegible] I. L. R. 33 Calc. 117

JOINT [illegible]

[illegible] I. L. R. 33 Calc. 1201

[illegible] severally [illegible] of each [illegible] having [illegible] that the land [illegible] his lessor [illegible] and was [illegible] sued by the other for joint [illegible] *Held*, that it would be inequitable [illegible] the plaintiff the relief he [illegible] for and [illegible]

JOINT POSSESSION—*contd.*

being a suit for partition. SYED ALI *v.* NAJAB ALI (1906) . . . . . 11 C. W. N. 143

JOINT PROPERTY.

See CERTIFICATE OF ADMINISTRATION—RIGHT TO SUE OR EXECUTE DECREE WITHOUT CERTIFICATE.
I. L. R. 19 Bom. 338
I. L. R. 17 All. 578
I. L. R. 23 Calc. 912
I. L. R. 20 Mad. 232
I. L. R. 22 Mad. 380
1 C. W. N. 32

See CO-SHARERS. I. L. R. 33 Calc. 1201

See COURT FEES ACT (VII of 1870), s. 19 D. . . I. L. R. 29 Bom. 161

See CRIMINAL PROCEDURE CODE, s. 145.
11 C. W. N. 512

See EXECUTION OF DECREE—MODE OF EXECUTION—JOINT PROPERTY.

See HINDU LAW—INHERITANCE—JOINT PROPERTY AND SURVIVORSHIP.

See HINDU LAW, LIMITATION, PARTITION.

See INJUNCTION—SPECIAL CASES—POSSESSION OF JOINT PROPERTY.

See INTEREST—MISCELLANEOUS CASES—ARREARS OF RENT
I. L. R. 23 Calc. 227

See JOINT FAMILY—PROPERTY.

See POSSESSION, ORDERS AS TO, CRIMINAL COURT AS TO—CASES IN WHICH MAGISTRATE CAN [illegible]
7 C. W. N. 462

See SALE IN EXECUTION OF DECREE—JOINT PROPERTY.

1. ——— Illegal ouster of joint owner [illegible] [illegible] a plaintiff has been [illegible] property and has been [illegible] joint possession of any [illegible] that property by a co-owner, he is [illegible] to such joint possession. [illegible] Calcutta [illegible] BEHARI RAM [illegible] (1901) I. L. R. 23 All. 388

2. ——— Dispossession—*Dispossession* [illegible]—*Suit for recovery* [illegible] *decree*. Where certain of the co-owners of immoveable property had been [illegible] by some of the other co-owners from [illegible] their lawful rights in respect of the joint property: *Held*, that the dispossessed co-owners were entitled to a decree that they should be restored to joint possession of the joint property, and not merely to a decree declaring their right to joint possession. *Bhairon Rai v. Sarju Rai*, All. *Wy. Notes* (1904) 100, followed. [illegible] *v.* [illegible] *Dutt*, I. L. R. 15 Calc.

JOINT PROPERTY—*concld.*

10, and *Rahman Chaudhuri* v. *Salamat Chaudhuri, All. Weekly Notes (1901) 48*, referred to. RAM CHARAN RAI *v.* KATLESHAR RAI (1905)

I. L. R. 27 All 15

3. ———— Exclusive dealing with joint property by one of the co-owners—*Remedy of the other co-owners—Form of decree.* Upon the death of the tenant of land, which was the property of four persons jointly, one of the co-sharers took possession of the tenant's holding and commenced to cultivate it himself. The remaining co-sharers brought a suit to recover possession—apparently actual physical possession—of three quarters of the tenant's holding thus occupied by the defendants. *Held*, that the decree to which the plaintiffs were entitled was a decree declaring that they and the defendant were *joint owners of the land in dispute, and that the* plaintiffs were, as such joint owners, entitled to an account of the profits of the land. *Bhola Nath v. Baskin, All. Weekly Notes (1894) 127, Ram Jatan Shukul v. Jaisri Shukul, All. Weekly Notes (1894) 165*, and *Rahman Chaudhri v. Salamat Chaudhri, All. Weekly Notes (1901) 48*, referred to. *Bhairon Rai v. Saran Rai, I. L. R. 26 All 588*, distinguished. JAGAR NATH SINGH *v.* JAI NATH SINGH (1905)

I. L. R. 27 All 88

4. ———— *Exclusive dealing with joint property by one of the co-owners—Remedy of the other co-owners—Form of decree.* On the death of a tenant of land, which belonged to several joint owners, one of the co-owners obtained exclusive possession of the tenant's holding and had his name recorded in the mutation department as owner. The other co-owners sued for joint possession to the extent of their interest in the land, and they asked also for interest *pendente lite* and future interest and costs of suit and for no further relief. *Held*, that the decree to which the plaintiffs were entitled was a decree declaring that they and the defendant were joint owners of the land, and that the plaintiffs were, as such joint owners, entitled to an account of [illegible]

[illegible]

Notes (1905) 119, in part overruled. PHANI SINGH *v.* NAWAB SINGH (1905)

I. L. R. 28 All. 161

JOINT TENANCY.

See HINDU LAW—INHERITANCE—JOINT PROPERTY AND SURVIVORSHIP.

I. L. R. 3 Bom. 151
I. L. R. 26 Bom. 445

JOINT TENANCY—*concld.*

See HINDU LAW—INHERITANCE—SPECIAL HEIRS—FEMALES—WIDOW

1 Bom 66
3 Mad. 268, 424
I. L. R. 1 Mad. 290
L. R. 4 I. A. 212
I. L. R. 2 Mad. 194
I. L. R. 7 All. 114

See HINDU LAW—WILL—CONSTRUCTION OF WILLS—VESTED AND CONTINGENT INTERESTS. I. L. R. 11 Bom. 69, 573

I. L. R. 11 Mad. 258
I. L. R. 23 Calc. 670
L. R. 23 I. A. 37

See LANDLORD AND TENANT—RENT.

11 C. W. N. 1026

See PUBLIC DEMANDS RECOVERY ACT.

6 C. W. N. 302

See SURVIVORSHIP.

2 Bom. 55 : 2nd Ed. 53

See WILL—CONSTRUCTION.

I. L. R. 21 Calc. 488
I. L. R. 23 Bom. 80

———— *Landlord and tenant—Kabuliyat by one of several joint tenants—Liability of such tenant for his share only.* Where one of several joint tenants executed a *kabuliyat* in favour of the landlord for the entire tenure, and it was proved that the other tenants did not acquiesce in this, and where in a separate suit by the other tenants it was found that they were not bound by the *kabuliyat* : *Held*, that the tenant executing the *kabuliyat* for the entire tenure was not bound in excess of his share, and was not liable for the whole rent. *Burhunuddi Howladar* v. *Mohun Chunder Guha, 8 C. L. R. 511*, relied upon. RAM TARAN CHATTERJEE *v.* ASMATULLAH SHEIKH (1900)

6 C. W. N. 111

JOINT TRIAL

See CONFESSION—CONFESSION OF PRISONERS TRIED JOINTLY.

See CRIMINAL PROCEDURE CODE, ss. 235 to 239.

See CRIMINAL PROCEDURE CODE

I. L. R. 30 Bom. 49

See JOINDER OF CHARGES.

I. L. R. 29 Clc. 385

See RES JUDICATA.

I. L. R. 33 Calc. 1101

1. ———— Same transaction—*Previous conviction—Counterfeit coin—Possession, delivery of—Criminal Procedure Code (Act V of 1898), ss 235, 239, 403—Penal Code (Act XLV of 1860), ss. 240, 243.* C gave the appellant 50 counterfeit rupees to pass for him. These rupees were stolen and the appellant on the discovery of the theft gave certain information to the police, which led to the discovery of 64 other

JOINT TRIAL—*contd.*

counterfeit coins in *C's* house. *C* was separately tried and convicted under s. 243 of the Penal Code of being in possession of the latter coins. *C* and the appellant were also tried jointly and were convicted; *C* under s 240 of the Penal Code with reference to the 50 counterfeit rupees he had made over to the appellant and the appellant under s 243 of the Code of being in possession of the said rupees. On appeal it was contended that *C* could not be tried for an offence under s. 240

that the joint trial was valid, that the trial of *C* under s. 240 of the Penal Code was legal, it being for an offence distinct to that for which he had been previously convicted. EMPEROR *v.* PROSANNA KUMAR DAS (1904) . I. L. R. 31 Calc. 1007

2. ———— Different transactions—*New trial—Criminal Procedure Code (Act V. of 1898), ss. 235, 239—Penal Code (Act XLV of 1860), ss.* $\frac{403}{109}$, *414, 420, 471.* On the 23rd August 1903, the appellant obtained a payment from the firm of S. R. R D. of R5,000 in currency notes of R500 each on a hundi by falsely representing himself to be a darwan of the firm of H. R R. C. On the 22nd January 1904 the appellant, accompanied by *S T.*, went to a shop and purchased some silk, and in payment *S. T.* gave a note of R500, which was one of the notes received by the appellant on the 23rd of August. The appellant and *S. T.* were tried jointly and were convicted,—the appellant under ss 240, 471 and 403 of the Penal Code, with regard to the occurrence of the 23rd August, and *S. T.* under ss $\frac{403}{109}$ and 414 of the Penal Code with regard to the occurrence of the 22nd January. *Held,* that the joint trial was bad in law, and that a new trial should be held by a different Magistrate. HIRA LAL THAKUR *v.* EMPEROR (1904) I. L. R. 31 Calc. 1053

3. ———————— *Criminal Procedure Code (Act V of 1898), ss. 239 and 537—Separate retainer of stolen properties—Offences committed in the same transaction—Charge. Per* HARINGTON and STEPHEN, JJ. (BRETT, J., dissenting). Different persons charged with separately retaining different articles of stolen properties, which are proceeds of the same theft, cannot be tried together, as the offences charged

Procedure Code. *Subrahmania Ayyar* v. *King-Emperor, I. L R 25 Mad 61, 5 C. W. N. 866,* followed. *In re A David, 5 C. L. R. 574,* and *Bishnu Banwar* v. *Empress, 1 C. W. N. 35,* referred to. ABDUL MAJID *v.* EMPEROR (1906). I. L. R. 33 Calc. 1256

4. ———————— *Offences of the* ... *fferent dates* ... *of persons—* ... *f 1898), ss.* ... and others

JOINT TRIAL—*contd.*

entered upon a plot of land belonging to the complainant on the 22nd February and looted his linseed crop, and on the next day the same persons entered upon another plot and looted his tobacco They were tried jointly, under the summary procedure, and convicted under ss 143, 379 of the Penal Code in respect of ...

I. L. R. 33 Calc. 292

5. ———————— *Joint trial of several distinct complaints—Illegality—Omission to take objection—Criminal Procedure Code (Act V of 1898), ss. 233 and 234—Proprietor of a market, rights of—Itinerant stall keepers, rights of—Ijaradar of a market, his right to prevent the sale of foreign goods.—Binding ijaradar down for exceeding his rights.* Where three persons laid three separate complaints against the accused alleging that they (the accused) committed rioting and individually caused hurt to each of the complainants and threw away and spoilt their foreign salts and other articles · *Held,* that though the origin

with each other that they may in law be taken to be

commit an offence punishable by law. The proprietor has the right to prevent itinerant stall

owner of the market These rights of the proprietor can be exercised by the *ijaradar* of the market during the term of his *ijarah.* Where the *ijaradar* of a market with a view to prevent the sale of foreign articles used force and caused hurt to certain itinerant stall-keepers: *Held,* that the *ijaradar*

JOINT TRIAL—*concld.*

exceeded his right under the law and was punishable. But he could not be bound down to keep the peace as an order under s. 106, Criminal Procedure Code, would practically prevent him from exercising his legal rights. NANDA KUMAR SIRKAR *v.* THE EMPEROR (1907) . . **11 C. W. N. 1128**

JOINT WRONG-DOERS.

See CONTRIBUTION, SUIT FOR—JOINT WRONG-DOERS.

See RES JUDICATA—PARTIES—SAME PARTIES OR THEIR REPRESENTATIVES.
I. L. R. 14 Bom. 408

JOTE

See BENGAL TENANCY ACT, s. 5.
8 C. W. N. 117

See MORTGAGE . . **8 C. W. N. 365**

JUDDINS.

1. ——— *Conversion among*

[illegible]

being customary or usual for it to convert a Juddin, the Zoroastrian community of India has

[illegible]

institutions under the defendants' management and control; these were founded and endowed only for the members of the Parsi community; and the Parsi community consists of Parsis who are descended

[illegible]

does admit and enjoin conversion. The Indian Zoroastrians while theoretically adhering to their

[illegible]

with Parsi, which now seems to have as distinctly a caste meaning and as essentially a caste connotation as that used to denominate any other great Indian caste. In the Zoroastrian community,

[illegible]

JUDDINS—*concld.*

practically identical. It is therefore fairly accurate to describe the Indian Zoroastrians as Parsis—thereby implying a caste, or communal, or tribal organization. Conversion—in the abstract at any rate, and as a theoretical religious tenet—was perfectly familiar to the Parsi community, not only in the remote past but in our own time. It was not the intention of the founders of the trusts in question to extend their benefits to any one who was not in the most rigid caste sense Parsi, that is, born into the community of the Indian Zoroastrians and born of an Indian Zoroastrian father. DINSHA MANEKJI PETIT *v.* JAMSETJI JIJIBHAI (1908) . . **I. L. R. 33 Bom. 509**

JUDGE.

See DISTRICT JUDGE.

See JUDGE OF HIGH COURT.

See JUDGE OF THE SUPREME COURT.

See JUDGES, DIFFERENCE OF OPINION BETWEEN.

See JURY . **I. L. R. 28 Bom. 412**

See LAND ACQUISITION ACT, 1870, ss. 15 AND 39.

See REFERENCES UNDER SPECIAL JUDGE.

See SANCTION TO PROSECUTE.
I. L. R. 33 Calc. 1393

See SESSIONS JUDGE

See SUBORDINATE JUDGE

See SPECIAL SECOND APPEAL—OTHER ERRORS OF LAW OR PROCEDURE—DISCRETION, EXERCISE OF

See WITNESS—CIVIL CASES—PERSONS COMPETENT OR NOT TO BE WITNESSES.
I. L. R. 19 Mad. 263

See WITNESS—CRIMINAL CASES—PERSON COMPETENT OR NOT TO BE WITNESS
7 W. R. 190
20 W. R. Cr. 76
I. L. R. 3 All. 573
4 B. L. R. A. Cr. 1

——— **discretion of—**

See APPELLATE COURT—EXERCISE OF POWERS IN VARIOUS CASES—GENERAL CASES . . **I. L. R. 6 Bom. 304**

See CERTIFICATE OF ADMINISTRATION—CANCELMENT OR RECALL OF CERTIFICATE . **8 B. L. R. Ap. 14 note**

JUDGE—*contd.*

———— discretion of—*contd.*

See CERTIFICATE OF ADMINISTRATION—NATURE AND FORM OF CERTIFICATE **4 B. L. R. A. C. 149**

See CONFESSION OF JUDGMENT. **3 B. L. R. A. C 396**

See HINDU LAW—CUSTOM—MAHOMEDANS. **I. L. R. 3 Calc. 694**

See LOCAL INVESTIGATION **12 W. R. 76** **1 W. R. 141**

See SPECIAL OR SECOND APPEAL—OTHER ERRORS OF LAW OR PROCEDURE—DISCRETION, EXERCISE OF, IN VARIOUS CASES

See SUMMONS . **15 B. L. R. Ap. 12**

———— disqualification of—

See MAGISTRATE, JURISDICTION OF—GENERAL JURISDICTION **I. L. R. 15 Mad 83** **I. L. R. 18 Bom. 442**

———— expression of opinion on facts by—

See JURY, TRIAL BY **I. L. R. 34 Calc. 698**

———— is, in India, judge of both law and facts—

See MALICIOUS PROSECUTION. **I. L. R. 28 Calc. 591**

———— on Original Side—

See CRIMINAL PROCEDURE CODE, S 195. **8 C. W. N. 797**

———— privilege of—

See DEFAMATION **I. L. R. 17 Mad. 87**

———— prosecution of—

See SANCTION FOR PROSECUTION—WHERE SANCTION IS NECESSARY OR OTHERWISE **I. L. R. 26 Calc. 869**

1 APPOINTMENT OF JUDGE.

1. ———— Consent of Governor General—*Act XXIX of 1845—Ratification.* The consent of the Governor General in Council, as, required by s 5 of Act XXIX of 1845, to the

[illegible]

2. DUTY OF JUDGE

1. ———— Trial of question of fact—*Ground for decision—Private knowledge or information—Public rumour.* In trying a question of fact, no Judge is justified in acting principally on his own knowledge and belief, or public rumour, and without sufficient legal evidence MEETHUN BIBEE *v.* BUSHEER KHAN **7 W. R. P. C. 27 : 11 Moo. I. A. 213**

2. ———— *Private knowledge or information* A Judge ought not to import his own private knowledge or opinion into a case, but ought simply to decide the issues before him and on the evidence before him MEHEROONISSA *v.* BHASHAYE MERDHA . **2 W. R., Act X, 29**

REG. *v* VYANKATRAV SHRINIVAS **7 Bom. Cr. 50**

LALLA MEWA LALL *v.* SREE MAHATO **25 W. R. 152**

3 ———— *Knowledge of facts—Judge as a witness.* A Judge cannot, without giving evidence as a witness, import into a case his own knowledge of particular facts HURPURSHAD *v* SHEO DYAL. RAM SAHOY *v* SHEO DYAL. BALMOKUND *v* SHEO DYAL. RAM SAHOY *v* BALMOKUND . **L. R. 3 I. A. 259 : 26 W. R. 55**

4. ———— Judicial notice—*Judgment of proper Court.* It is within the province of a District Judge to know, and it is his business to declare if he knows, whether a decree, produced before him, of a Court within his district was obtained in a proper Court, and is such as he can take judicial notice of. BUKSHOOLLAH CHOWDRY *v.* HUR CHUNDER CHUND . . **16 W. R. 248**

5. ———— Opinion of assessor—*Personal knowledge* A Sessions Judge should not import into his judgment the opinion of an assessor derived from personal knowledge and unsupported by evidence on the record QUEEN *v* RAM CHURN KURMOKAR . **24 W. R. Cr. 28**

6. ———— Propriety of consultation with another Judge. Judges who have heard the arguments and who are responsible for the decision can hardly with propriety rest it on the authority of one who has not heard the arguments and is not responsible for the decision, though he also may be a Judge of the High Court. HARRISS *v* BROWN (1901) . **I. L. R 28 Calc. 621** **s.c. 5 C. W. N. 729** **L. R. 28 I. A. 159**

3. POWER OF JUDGE.

1. ———— Power of, to delegate to assessors examination of witnesses. In a [illegible]

2. ———— Pronouncing judgment out of Court—*Irregularity in criminal case* Where a Magistrate conducted and closed the trial in the established Court-house, but could not by reason of illness pronounce judgment which he did at his

JUDGE—*contd.*

3. POWER OF JUDGE—*contd.*

private house, *Held*, that the Judge was not competent to quash the sentence on this ground and to order a new trial by the Magistrate, his power being limited to refer the case for consideration of the High Court under s 434, Criminal Procedure Code, 1861. GOVERNMENT v HOLASEE SINGH

1 Agra Cr. 17

3. ——— **Holding cutcherry in Munsif's Court**—*Irregularity in trial of civil case—Consent of parties* Where a District Judge took advantage of his presence in the locality, and heard and decided a suit in the Munsif's Court, which had originally been instituted in that Court, but subsequently transferred to the Judge's Court for trial, and it appeared that the course taken was with the consent, implied, if not express, of both parties, who were represented at the hearing, *Held*, that the District Judge was justified in taking the course he had done MADHARY v GOBURDHUN HULWAI

I. L. R. 7 Calc. 694 : 9 C. L. R. 303

4. ——— **Deciding case on evidence taken by his predecessor**—*Irregularity in criminal case* In the case of several prisoners who were tried by a Sessions Court consisting of a Judge and assessors, the latter convicted them, which finding was recorded by the Judge The Judge, however, postponed giving judgment and left the district, without recording his finding or his judgment, and the Judge's successor, after considering the evidence which had been taken before his predecessor, convicted and passed sentence on the prisoners *Held*, that the conviction was not valid and the trial had not been completed. The High Court accordingly set aside the conviction and ordered the re-trial of the prisoners upon the charges upon which they were committed for trial. QUEEN v GOPI NOSHYO

21 W. R. Cr. 47

See TARADA BALADU v QUEEN

I. L R. 3 Mad. 112

QUEEN v. RUGHOONATH DOSS

23 W. R. Cr. 59

5. ——— **Power of Judge to deal with evidence taken by his predecessor**—

Subordinate Judge, when the case was called on before him

JUDGE—*contd.*

POWER OF JUDGE—*contd.*

parties would be allowed, under s. 191 of the Civil Procedure Code, to prove their allegations in a different manner *Jairam Das* v *Narain Lal*, *I L. R 7 All 857*, referred to AFZAL-UN-NISSA BEGAM v AL ALI . . **I. L. R. 8 All. 35**

6 ——————— *Civil Procedure Code, 1882, s 191—Hearing of suit—Trial—Death or removal of Judge during suit—Procedure to be followed by new Judge.* The trial of a suit

reference to the ground of appeal and under the

Al Ali, I. L R 8 All 35, discussed. *Per* STRAIGHT,

himself had taken it down, he must deal with it

"a trial must be one, and must be held before one Court only," the identity of the Court is not altered by a new Judge being appointed to preside in

JUDGE—*contd*

3. POWER OF JUDGE—*contd.*

to continue it from the point at which his predecessor left off; that where the Judge who has partly heard a case dies or is removed, the trial, so far as it

not bound to fix a new day for commencing the trial *de novo* nor should the trial proceed before the new Judge as if the day were the first on which the

depositions must be dealt with as materials of evidence before the new Judge; that a judgment and decree upon such evidence are neither illegal nor absolute nullities, there being no want of jurisdiction; that when such judgment and decree are passed, the Court of first appeal is prohibited by s

I. L. R. 8 All 576

7. ———— Power of Judge to try case irregularly by consent of parties—*Determination of case by Judge who has not taken evidence in it* The parties to a suit which is being tried in a Court of first instance have a right to insist upon having all the advantages which attach

JUDGE—*contd.*

3 POWER OF JUDGE—*concld.*

to a public hearing of the whole case and the examination of all the witnesses in open Court before the Judge who is judicially to determine the matter in dispute between them, although they may, either expressly or impliedly, consent to the suit being determined by a Judge who has not been present throughout the trial, and to his taking into consideration evidence which has not been given before him SOORENDRO PERSHAD DOBEY *v.* NUNDUN MISSER . 21 W. R. 198

8. ———— Local Inspection—*Local inspection without notice to parties* A Judge with a view to a better understanding of the evidence in a case and to clear up some doubtful points, made a local inspection without giving any notice to the parties The result of the investigation he did not place upon the record, but he did so in his judgment *Held*, that a Judge is at liberty himself to inspect the property in dispute and inform himself by the observation of his senses of matter

9 Calc 263, and *Dwarkanath Sardar v Prosunno Kumar Hajra, 1 C W. N 682*, referred to *Held*, also that

I. L R. 33 Calc. 133

4 QUALIFICATIONS AND DISQUALIFICATIONS

1. ———— Disqualifications—*Interest in case* Judges should not try cases in which they have any personal interest. CALCUTTA STEAM TUG Co *v.* HOSSEIN IBRAHIM BIN JOHUR

Bourke O. C. 273

QUEEN *v.* BOIDONATH SINGH . 3 W. R Cr. 29

2 ———— Form of memorandum of appeal—*Alleged bias of Judge. Per* SUBRAMANIA AYYAR, *J* — "It is open to an appellant to set up any circumstance showing that a Judge whose decision is appealed against was disqualified from trying and deciding the case . . . When a Judge is shown . . . to stand in such a position that he might be reasonably suspected of being biased, he must be held to have been disqualified . . . . In cases where any bias can be presumed, the party is entitled to show the grounds which raise the presumption . . . But where there is
must not be all
of the Judge."

3. ———— Interest in case —*Municipal cases—Magistrate also Vice-Chair-*

JUDGE—*contd*

4. QUALIFICATIONS AND DISQUALIFICATIONS—*contd.*

man of Municipality Where a Magistrate was also Vice-Chairman of a Municipal Committee, it was *held* he could impose fines under Bengal Act III of 1864. ANONYMOUS . . . 3 W. R. Cr. 33

4. ——————— *Interest in case —Judge as a witness* —The jailor of a district jail

[illegible]

the trial, on being questioned, that they had no objection to the composition of the Bench, but after the charges had been framed, the prisoner's counsel objected to the Bench as formed The District Magistrate directed the Government pleader to prosecute, and both the District Magistrate and *L* gave evidence for the prosecution After the case for the prosecution was closed, two formal charges were drawn up, namely, that the prisoner had debited Government with the price of more oil-seed than he actually purchased, and that he had received payment for certain oil at a higher rate than he

[illegible]

credited to Government Upon the prisoner's

[illegible]

victed. On a motion to quash the conviction, *Held* that

[illegible]

Magistrate ought not to act judicially in a case where there is no necessity for his doing so, and where he himself discovered the offence and initiated the prosecution, and where he is one of the principal witnesses for the prosecution. QUEEN *v.* BHOLANATH SEN

I. L. R. 2 Calc 23: 25 W. R. Cr. 57

5. ——————— *Disqualification of servant of Corporation of Calcutta to adjudicate on summons at instance of Corporation A*, alleged to have carried on business in Calcutta without having taken out a license under Bengal Act IV of 1876, was summoned at the instance of the Corporation by *B*, a servant of the Corporation and also a Justice of the Peace The case was subsequently

[illegible]

See QUEEN *v* TARINEE CHURN BOSE

21 W. R. Cr. 31

where it was *held* that there was nothing absolutely illegal in a Municipal Commissioner, also editor of a newspaper, trying a case of which he had expressed a strong opinion in his paper

6. ——————— *Transfer of suits —Judge exercising executive functions—Bengal Civil Courts Act (VI of 1871) s 25—Act XIV of 1882, s 25.* An officer who exercises executive

[illegible]

this view, is in consequence disqualified from dealing as a Judge with this same question when it comes into Court and has to be dealt with judicially. LOBURI DOMINI *v.* ASSAM RAILWAY AND TRADING Co. . . . . I. L. R. 10 Calc. 915

7. ——————— *Expression of opinion by a Judge in a counter case—Competence to try—Grounds of transfer—Criminal Procedure Code, 1882, s. 555.* A Judge is not incompetent to

[illegible]

formed in the other case, but ought to deal with it on its own merits, and on the evidence adduced

[illegible]

385, *Hossain Bux* v. *Empress, I. L. R. 6 Calc. 96*, referred to *Chakowri Lal* v. *Moti Kurmi, 13 C L R 275*, distinguished. ASIMUDDI *v* GOVINDA BAIDYA . . . 1 C. W. N. 426

8. ——————— *Jurisdiction — Bias—Magistrate's jurisdiction where complainant is his private servant—Legality of conviction and sentence passed by such Magistrate in such a case* The mere circumstance that a trying Magistrate is the master of the complainant does not deprive the Magistrate of his jurisdiction, though it is expedient that such a complaint should be referred to another Magistrate. *In re the petition of* BASAPA

I. L. R. 9 Bom. 172

JUDGE—*contd.*

4. QUALIFICATIONS AND DISQUALIFICATIONS—*concld.*

9. ———————— *Disqualification for trying case—Bias—Mamlatdar acting in the management of property under the orders of the Talukhdari Settlement Officer—Possessory suit—Interest disqualifying Judge from trying case.* No Judge can act in any matter in which he has any pecuniary interest, nor where he has any interest, though not a pecuniary one, sufficient to create a real bias. A Mamlatdar, who under the

the case. Where an officer of Government has in the course of his executive duties "formed an opinion upon a matter and has acted upon that

ALOO NATHU *v.* GAGUBHA DIPSANGJI
I. L. R. 19 Bom. 608

10. ———————— *Criminal Procedure Code (Act X of 1882), s. 555—Jurisdiction of*

an Appellate Court from giving the permission contemplated by that section QUEEN-EMPRESS *v.* FATEH BAHADUR . . I. L. R. 20 All. 181

11. ———— **Qualification as witness—** *Judge giving evidence in case.* A Judge cannot give evidence in a case merely by making statement of fact in his judgment. If he intends the Courts to act upon his statement, he is bound to make that statement in the same manner as any other witness. ROUSSEAU *v.* PINTO . 7 W. R. 189

KISHORE SINGH *v* GUNNESH MOOKERJEE
9 W. R. 252

See In the matter of the petition of HURRO CHUNDER PAUL . . . 20 W. R. Cr. 76

KALLONAS *v.* GUNGA GOBIND ROY CHOWDHRY
25 W. R. 121

12. ———————— *Competent witness in trial of case instituted by himself.* A Judge

subject of the charge, and he is not precluded thereby from dealing judicially with the evidence of which his own forms a part. QUEEN *v.* MUKTA SINGH 6 B. L. R. A. Cr. 7 : 13 W. R. Cr. 60

5 DEATH OF JUDGE BEFORE JUDGMENT.

1. ———— **Re-hearing of case.** When a Judge dies after hearing and deciding a case, the

JUDGE—*concld.*

5. DEATH OF JUDGE BEFORE JUDGMENT—*concld.*

only record of his decision being an entry in the Court order-book, it is not competent to any co-ordinate Court to take up and re-hear the case;

See NOBO CHUNDER BANERJEE *v.* ISHUR CHUNDER MITTER . . . . . 12 W. R. 254

2. ———————— In a case where

to the Re-
and then
ronounced
Bench that

such opinions were not judgments, but merely memoranda of the opinions and arguments of such Judges in the case MAHOMED AKIL *v.* ASADUNNISSA BIBEE. MUTTY LALL SEN GURJAL *v.* DESKHAI ROY

B. L. R. Sup. Vol. 774 : 9 W. R. 1

JUDGE OF HIGH COURT.

See PRACTICE—CIVIL CASES—APPLICATION AFTER REFUSAL
I. L. R. 16 Bom. 511

See REFERENCE TO FULL BENCH
I. L. R. 28 Calc. 211

———— **acting in English Department of High Court.**

See TRANSFER OF CRIMINAL CASE—GENERAL CASES. I. L. R. 1 Calc. 219

———— **order of—**

See LETTERS PATENT, HIGH COURTS, 1865, CL. 15.

———— **power of—**

See APPEAL IN CRIMINAL CASES—PRACTICE AND PROCEDURE. 9 B. L. R. A. P. 6

See BENG. REG. V OF 1812, s 26.
B. L. R. Sup. Vol. 655

See CERTIFICATE OF ADMINISTRATION—CANCELMENT OR RECALL OF CERTIFICATE . . . 5 B. L. R. Ap. 21

See GUARDIAN—APPOINTMENT.
I. L. R. 26 Calc. 133

See LETTERS PATENT, HIGH COURT, CL 15 . I. L. R. 20 Mad. 152

See REFERENCE TO FULL BENCH.
B. L. R. Sup. Vol. Ap. 43
I. L. R. 25 Calc. 896

See REVIEW—POWER TO REVIEW.
I. L. R. 23 Calc. 339

See SUPERINTENDENCE OF HIGH COURT.

1. ———— **Appointment of Judge**—*High Court's Charter Act (24 & 25 Vict., c. 104), ss 7 and*

JUDGE OF HIGH COURT—*contd.*]

16—Interpretation of statute—" On the happening of a vacancy "—Nature of power conferred by s. 7, discussed—Evidence—Presumption of law arising from the exercise de facto of the functions of a Judge of a High Court. The words " upon the happening of a vacancy in the office of any other Judge " in s. 7 of the 24 & 25 Vict., c. 104, mean upon the happening of a vacancy in the office of a Judge appointed to his office by Her Majesty. They are not applicable to the case of a vacancy caused by a

reasonable time, that is to say, a practicable time after the happening of a vacancy It cannot be held that the power conferred by the abovementioned section can be held in suspense for several years and then be legally exercised Where a person had in fact for a period of more than a year been exercising all the functions of a Judge of the High Court in virtue of an appointment purporting to be made by the Lieutenant-Governor of the North-Western Provinces and Chief Commissioner of Oudh, under sanction of Her Majesty's Secretary of State for India · *Held*, that though, so far as the validity of the appointment depended upon the provisions of ss 7 and 16 of the 24 & 25 Vict, c. 104,

India QUEEN-EMPRESS *v* GANGA RAM
I. L. R. 16 All. 136

2 ———— *High Courts' Charter Act (24 & 25 Vict, c. 104), ss 7 and 16—Unreasonable delay in making appointment, effect of*

RAO BALWANT SINGH *v.* RAMKISHORE
2 C. W. N. 273

3. ———— **Judge sitting in ordinary original criminal jurisdiction of the High Court**—*Trial commenced and evidence partly gone into before one Judge—Retirement of Judge from the case under s 555, Criminal Procedure Code, without discharging the jury—Replacement by new Judge appointed by the Chief Justice—Powers of Chief Justice over other Judges of the High Court—Jurisdiction of the new Judge to try case pending before another properly constituted Court—Discharge of jury before verdict, how effected—Concurrent trials on the same indictment and on the same facts—Nolle prosequi—Criminal Procedure*

JUDGE OF HIGH COURT—*concld.*

Code, 1882, ss. 282, 283, 323, 555. At the Criminal Sessions of the High Court the trial of the accused had commenced before RAMPINI, J., and evidence partly had been gone into when His Lordship retired from the case under s. 555 of the Criminal Procedure Code and the case was adjourned without the jury being discharged. The Chief Justice, purporting to act under cl 13 of the Charter, appointed STEVENS, J., to preside at the trial of the accused In answer to a question by STEVENS, J, the standing counsel intimated that he intended proceeding with the trial from the point where it had been left. Whereupon it was contended on behalf of the accused that STEVENS, J, could not proceed with the trial as RAMPINI, J., and the jury empannelled before him had still the seisin of the case. The Advocate General preferred a *nolle prosequi*, and the accused was discharged. QUEEN-EMPRESS *v.* KHAGENDRA NATH BANERJEE
2 C. W. N. 481

4 ———— **Grant of application for leave to institute suit which had been refused by another Judge.** Leave to institute a suit relating to property out of the jurisdiction, as well as to property within such jurisdiction, was refused by one Judge on the 30th June 1874. The same application, in the same suit, between the same parties, relating to the same property, and founded on the same cause of action, was made before another Judge on the 15th December 1874, and the leave prayed for was granted. *Held*, that the order should not have been made, and that it should be discharged VYTHELINGA MUDELLY *v.* CUNDASAWMY MUDELLY . . . **8 Mad. 21**

JUDGE OF THE SUPREME COURT IN INDIA.

———— **Power of acting as Judge and jury.** By the constitution of the Supreme Courts

6 Moo. I. A. 27

JUDGES, DIFFERENCE OF OPINION BETWEEN.

See APPEAL IN CRIMINAL CASE—PRACTICE AND PROCEDURE
2 B. L. R. F. B. 25

See CIVIL PROCEDURE CODE, 1882, s 575

LETTERS PATENT, HIGH COURT, CL. 15.
4 B. L. R. A. C. 10, 181
B. L. R. Sup. Vol. 694
13 W. R. 310
14 W. R. 298
I. L. R. 10 Calc. 108

See LETTERS PATENT, HIGH COURT, CL. 36. . . **I. L. R. 3 Bom. 204**
14 Moo. I. A. 209
I. L. R. 15 Bom. 452

JUDGES, DIFFERENCE OF OPINION BETWEEN—*concld.*

See LETTERS PATENT, HIGH COURT, N.-W. P., CL. 10 I. L. R. 1 All. 181
I. L. R. 9 All. 655

See LETTERS PATENT, HIGH COURT, N.-W. P., CL. 27 . . 2 N. W. 117
I. L. R. 11 All. 176

See REFERENCE TO FULL BENCH
I. L. R. 3 Calc. 20

See REFERENCE TO HIGH COURT—CIVIL CASES . . 4 C. W. N. 389

JUDGMENT.

See APPEAL . I. L. R. 33 Calc. 1323

See AWARD . I. L. R. 33 Calc. 789

See CIVIL PROCEDURE CODE (ACT XIV OF 1882), s. 199 I. L. R. 35 Calc. 756

See CIVIL PROCEDURE CODE, 1882, ss. 206, 622 . . I. L. R. 31 Bom. 447

See CIVIL PROCEDURE CODE, 1882, s. 202.
I. L. R. 31 All. 153

See CRIMINAL PROCEDURE CODE, ss. 366, 367, 370.

See DECREE . . 8 C. W. N. 473

See FOREIGN COURT, JUDGMENT OF.

See JUDGMENT IN REM.

See JUDGMENT DEBT.

See JUDGMENT-DEBTOR.

See LANDLORD AND TENANT.
13 C. W. N. 949

See LETTERS PATENT, HIGH COURTS, 1865, CL. 15.

See LETTERS PATENT, HIGH COURT, N.-W. P., CL. 10 . I. L. R. 1 All. 81
I. L. R. 9 All. 655
I. L. R. 11 All. 375
I. L. R. 17 All. 438

See LETTERS PATENT APPEAL.
I. L. R. 35 Calc. 1096

See LIMITATION ACT, 1877, s. 12.

See LIMITATION ACT, 1877, s. 19.
10 C. W. N. 874

See PRACTICE I. L. R. 32 Bom. 432

JUDGMENT—*contd.*

See PRESIDENCY MAGISTRATE
8 C. W. N. 587

See PRIVY COUNCIL . 8 C. W. N. 296

See PRIVY COUNCIL, PRACTICE OF—CONCURRENT JUDGMENTS ON FACTS

See SPECIAL OR SECOND APPEAL—OTHER ERRORS OF LAW OR PROCEDURE—JUDGMENTS

———— copy of—

See REVIEW—FORM OF, AND PROCEDURE ON, APPLICATION. I. L. R. 17 All. 213

———— copy of, deduction of time necessary for obtaining—

See LIMITATION ACT, 1877, ss. 12 AND 5.

See LIMITATION ACT, 1877, SCH. II, ART. 177. . . I. L. R. 1 All. 644
I. L. R. 19 Bom. 301

———— in civil suit, admissibility in evidence of—

See EVIDENCE—CRIMINAL CASES—JUDGMENT IN CIVIL SUIT.
I. L. R. 6 Calc. 247
I. L. R. 23 Calc. 610

———— in criminal cases—

See DISCHARGE OF ACCUSED—EFFECT OF DISCHARGE . I. L. R. 29 Calc. 726

———— in former suit, admissibility in evidence of—

See ESTOPPEL—ESTOPPEL BY JUDGMENT.
See EVIDENCE, CIVIL CASES—DECREES.
See RES JUDICATA—ESTOPPEL BY JUDGMENT.

———— in rem—

See JUDGMENT IN REM.

See RES JUDICATA—ESTOPPEL BY JUDGMENT . I. L. R. 6 Calc. 171
I. L. R. 16 Mad. 380
I. L. R. 20 Calc. 888
I. L. R. 25 Calc. 522

———— not inter partes—

See EVIDENCE ACT.
I. L. R. 31 Bom. 143

———— not in accordance with law—

See CIVIL PROCEDURE CODE, 1882, ss. 551, 574 . 13 C. W. N. 177 : 1031

———— notes of, to explain decree—

See DECREE—CONSTRUCTION OF DECREE—GENERAL CASES
I. L. R. 1 Bom. 158

———— reasons for—

See PROVINCIAL SMALL CAUSE COURTS ACT . . I. L. R. 31 Bom. 314

JUDGMENT—*contd.*

——— **reversal of—**

See APPELLATE COURT—INTERFERENCE WITH, AND POWER TO VARY, ORDER OF LOWER COURT.

——— **variation of, addition to—**

See CRIMINAL PROCEDURE CODE, s 367 (1872, s. 464) . **I. L. R. 3 Mad. 48**
23 W. R. Cr 49

I CIVIL CASES

(a) WHAT AMOUNTS TO.

1. ——— **Record of impression or opinion on partial evidence.** Where a District Judge on appeal made an order of remand under *Act VIII of 1859, s. 356, that evidence might be* taken on one of the points raised, and at the same time recorded the impression which his mind had received on the other parts of the case, it was *held* that the opinion so recorded was not a judgment on appeal. BULORAM BABOO *v* ISSUR CHUNDER BABOO . . . . . . **23 W. R. 77**

2. ——— **Memoranda of opinions—** *Resignation or death of Judge before judgment. Held, per totam Curiam,* that written opinions sent to the Registrar by Judges who had retired or died before the judgment in the case was pronounced in open Court are not judgments, but merely memoranda of the opinions and arguments of such Judges MAHOMED AKIL *v* ASADUNNISSA BIBEE. MUTTY LALL SEN *v* DESKHAR ROY
B. L. R. Sup. Vol. 774: 9 W. R. 1

3. ——— **Judgment written by Judge, and pronounced in Court by his successor.** —A *Subordinate Judge wrote out his judgment in* a case which had been heard before him after he

read out by ... was
not a judgn ... 59.
Held, that ... *v*
BHIRUN . . . ... Ap. 98

s c. PARBUTTY *v.* HIGGIN **17 W. R. 475**

3a. ——— *Judgment*

ment was written by him after he had taken leave or left the post which he was occupying, when he heard the case. *Mussamut Parbutty* v. *Mussamut Higgin, 17 W. R. 475,* referred to. SUNDAR KUAR *v.* CHANDRESHWAR PRASAD NARAIN SINGH (1907)
I. L. R. 34 Calc. 293

JUDGMENT—*contd.*

1. CIVIL CASES—*contd.*

(a) WHAT AMOUNTS TO—*concld*

4. ——— **Judgment given by successor on Judge getting promotion.** Remarks on the impropriety of a Principal Sudder Ameen, who, after hearing the evidence in a suit, was promoted in the same district from the second to the first grade and refrained from giving judgment, but left it to his successor for decision. *Quære Per* MARKBY, *J* —Whether such decision is legal RADHA NATH BANERJEE *v* JODOO NATH SINGH
7 W. R. 441

5. ——— **Death of plaintiff after hearing, but before judgment**—*Judgment given by Court in ignorance of plaintiff's death—Judgment and decree, validity of—Doctrine of nunc pro tunc.* The successful plaintiff in a suit died a few days after the hearing of the suit had been concluded and judgment reserved. Unaware of the death of

served, the judgment should read as from that date, and the decree was a valid decree. *Cumber* v. *Wane,* 1 Smith's *L C. 10th Ed 325; Ramacharya* v *Anantacharya, I. L R 21 Bom. 314;* and *Surendro Keshub Roy* v *Doorgasoondery Dossee, I. L R 19 Calc 513,* followed CHETAN CHARAN DAS *v* BALBHADRA DAS **I. L. R. 21 All. 314**

(b) LANGUAGE OF.

6. ——— **Proper language for judgment**—*Judge whose vernacular is English.* A Judge whose vernacular language is English ought to write his decision in his own language, though to do otherwise does not affect its validity HURO SOONDURY DABEE *v.* SREEDHUR BHUTTACHARJEE
17 W.R. 352

(c) FORM AND CONTENTS OF JUDGMENT.

7. ———
of intended
of the hea
judgment
ANONYMOU

8. ——— **Materials on which judgment should be founded.** *Civil Procedure Code, 1859, ss. 172, 183—Examination of witnesses in lower Court—Perusal of depositions.* The

JUDGES, DIFFERENCE OF OPINION BETWEEN—*contd*

See LETTERS PATENT, HIGH COURT, N.-W. P., CL. 10 **I. L. R. 1 All. 181**
I. L. R. 9 All. 655

See LETTERS PATENT, HIGH COURT, N.-W. P., CL. 27 . . **2 N. W. 117**
I. L. R. 11 All 176

See REFERENCE TO FULL BENCH.
I. L. R. 3 Calc. 20

See REFERENCE TO HIGH COURT—CIVIL CASES . . **4 C. W. N. 389**

JUDGMENT.

See APPEAL . **I. L. R. 33 Calc. 1323**

See AWARD . **I. L. R. 33 Calc. 789**

See CIVIL PROCEDURE CODE (ACT XIV OF 1882), s. 199 **I. L. R. 35 Calc. 756**

See CIVIL PROCEDURE CODE, 1882, ss. 206, 622 . . **I. L. R. 31 Bom. 447**

See CIVIL PROCEDURE CODE, 1882, s 202
I. L. R. 31 All. 153

See CRIMINAL PROCEDURE CODE, ss. 366, 367, 370.

See DECREE . . **8 C. W. N. 473**

See FOREIGN COURT, JUDGMENT OF.

See JUDGMENT IN REM.

See JUDGMENT DEBT.

See JUDGMENT-DEBTOR.

See LANDLORD AND TENANT.
13 C. W. N. 949

See LETTERS PATENT, HIGH COURTS, 1865, CL. 15.

See LETTERS PATENT, HIGH COURT, N.-W. P., CL. 10 . **I. L. R. 1 All. 81**
I. L. R. 9 All. 655
I. L. R. 11 All. 375
I. L. R. 17 All. 438

See LETTERS PATENT APPEAL.
I. L. R. 35 Calc. 1096

See LIMITATION ACT, 1877, s. 12.

See LIMITATION ACT, 1877, s. 19.
10 C. W. N. 874

See PRACTICE **I. L. R. 32 Bom. 432**

JUDGMENT—*contd.*

See PRESIDENCY MAGISTRATE
8 C. W. N. 587

See PRIVY COUNCIL . **8 C. W. N. 286**

See PRIVY COUNCIL, PRACTICE OF—CONCURRENT JUDGMENTS ON FACTS.

See SPECIAL OR SECOND APPEAL—OTHER ERRORS OF LAW OR PROCEDURE—JUDGMENTS.

——— **copy of**—

See REVIEW—FORM OF, AND PROCEDURE ON, APPLICATION **I. L. R. 17 All. 213**

——— **copy of, deduction of time necessary for obtaining**—

See LIMITATION ACT, 1877, SS. 12 AND 5.

See LIMITATION ACT, 1877, SCH. II, ART. 177 . . **I. L. R. 1 All. 644**
I. L. R. 19 Bom. 301

——— **in civil suit, admissibility in evidence of**—

See EVIDENCE—CRIMINAL CASES—JUDGMENT IN CIVIL SUIT.
I. L. R. 6 Calc. 247
I. L. R. 23 Calc. 610

——— **in criminal cases**—

See DISCHARGE OF ACCUSED—EFFECT OF DISCHARGE . **I. L. R. 29 Calc. 726**

——— **in former suit, admissibility in evidence of**—

See ESTOPPEL—ESTOPPEL BY JUDGMENT.
See EVIDENCE, CIVIL CASES—DECREES.
See RES JUDICATA—ESTOPPEL BY JUDGMENT.

——— **in rem**—

See JUDGMENT IN REM.

See RES JUDICATA—ESTOPPEL BY JUDGMENT . **I. L. R. 6 Calc. 171**
I. L. R. 16 Mad. 380
I. L. R. 20 Calc. 888
I. L. R. 25 Calc. 522

——— **not inter partes**—

See EVIDENCE ACT.
I. L. R. 31 Bom. 143

——— **not in accordance with law**—

See CIVIL PROCEDURE CODE, 1882, ss. 551, 574 . **13 C. W. N. 177 : 1031**

——— **notes of, to explain decree**—

See DECREE—CONSTRUCTION OF DECREE—GENERAL CASES
I. L. R. 1 Bom. 158

——— **reasons for**—

See PROVINCIAL SMALL CAUSE COURTS ACT . . **I. L. R. 31 Bom. 314**

JUDGMENT—*contd.*

——— reversal of—

See Appellate Court—Interference with, and Power to vary, order of Lower Court

——— variation of, addition to—

See Criminal Procedure Code, s 367 (1872, s 464) . **I. L. R. 3 Mad. 48**
23 W. R. Cr 49

1 CIVIL CASES.

(a) What amounts to.

1. ——— **Record of impression or opinion on partial evidence.** Where a District Judge on appeal made an order of remand under Act VIII of 1859, s 356, that evidence might be taken on one of the points raised, and at the same time recorded the impression which his mind had received on the other parts of the case, it was *held* that the opinion so recorded was not a judgment on appeal Buloram Baboo *v* Issur Chunder Baboo . . . . . . **23 W. R. 77**

2. ——— **Memoranda of opinions**—*Resignation or death of Judge before judgment Held, per totam Curiam,* that written opinions sent to the Registrar by Judges who had retired or died before the judgment in the case was pronounced in open Court are not judgments, but merely memoranda of the opinions and arguments of such Judges. Mahomed Akil *v.* Asadunnissa Bibee. Mutty Lall Sen *v.* Deskhar Roy
B. L. R Sup. Vol. 774 : 9 W. R. 1

3. ——— **Judgment written by Judge, and pronounced in Court by his successor.** —A Subordinate Judge wrote out his judgment in a case which had been heard before him after he had been relieved from his office, and left the judgment to his successor to be pronounced in open Court. The judgment was pronounced in Court by the succeeding Subordinate Judge. An objection being taken in special appeal that the judgment read out by the succeeding Subordinate Judge was not a judgment according to Act VIII of 1859. *Held,* that the judgment was valid. Parbutti *v.* Bhikun . . . **8 B. L. R. Ap. 98**

s. c Parbutty *v.* Higgin **17 W. R. 475**

3a. ——— *Judgment written by Judge after taking leave and pronounced by successor—Civil Procedure Code (Act XIV of 1882), s. 199*—The Judge, who has heard the evidence in a case, is entitled under s 199 of the Civil Procedure Code to write his judgment and to send it to his successor for delivery, although the judgment was written by him after he had taken leave [illegible] n he [illegible] amut [illegible] ar *v.* [illegible]

I. L. R. 34 Calc. 293

JUDGMENT—*contd.*

1. CIVIL CASES—*contd.*

(a) What amounts to—*contd.*

4. ——— **Judgment given by successor on Judge getting promotion.** Remarks on the impropriety of a Principal Sudder Ameen, who, after hearing the evidence [illegible]

[illegible] W. R. 441

5. ——— Death of [illegible]

[illegible] *Anantacharya, I. L R. 21 Bom. 314*; and *Surendro Keshub Roy* v. *Doorgasoondery Dossee, I. L R 19 Calc 513,* followed Chetan Charan Das *v.* Balbhadra Das **I. L. R 21 All. 314**

(b) Language of.

6. ——— **Proper language for judgment**—*Judge whose vernacular is English.* A Judge whose vernacular language is English ought to write his decision in his own language, though to do otherwise does not affect its validity. Huro Soondury Dabee *v* Sreedhur Bhuttacharjee
17 W. R. 352

(c) Form and Contents of Judgment.

7. ——— **Oral judgment**—*Oral statement of intended judgment* A Judge may, at the close of the hearing of a suit, state at once orally the judgment which he intends to record and deliver. Anonymous . . . **5 Mad. Ap. 8**

8. ——— **Materials on which judgment should be founded.** *Civil Procedure Code, 1859, ss. 172, 183—Examination of witnesses in lower Court—Perusal of depositions* The [illegible]

JUDGMENT—*contd.*

1. CIVIL CASES—*contd.*

(c) FORM AND CONTENTS OF JUDGMENT—*contd.*

of the lower Courts, to prevent the necessity of resummoning witnesses. NARANBHAI VRIJBHUKANDAS *v.* NAROSHANKAR CHANDRO SHANKAR 4 Bom. A. C. 98

9. ———— *Decision on facts—Reasons.* In deciding on the facts of a case, Judges should not base their decision upon some isolated piece of evidence, but take into consideration and record their opinion on the whole evidence offered on both sides. TILUCKDHAREE SINGH *v.* SAMOODRA SINGH . . . 6 W. R. 9

10 ... find- ... a dis- ... aterial ... v Joy NARAIN BOSE . . . 8 W. R. 481

11. ———— *Duty of Appellate Court as to judgments—Civil Procedure Code, 1859, s 359.* It is the duty of Appellate Judges to ...

12. ———— General assent to judgment of lower Court—*Duty of Appellate Court as to judgments* Where the Civil Judge, confirming a decree of the District Munsif, stated by way of ...

13. ———— *Duty of Appellate Court as to judgments* An Appellate Court should take notice of ... guec ... a ge ... BHO(... W. R. 212

14. ———— Judgment of Appellate Court—*Reasons for the decision—Civil Procedure Code, 1882, s 574.* S 574 of the Code of Civil Procedure is imperative. Under that section, the Appellate Court is bound to state the reasons for its decision A Court of Appeal framed certain issues under s 566 of the Code of Civil Procedure and remanded them for findings by the original Court. On the return of those findings, as neither party filed any objections, the Appellate Court accepted these findings, without giving any reasons for so doing, or even stating in its judgment whether it concurred in them ...

I. L. R. 17 Bom. 428

15. ———— Judgment not in proper form—*Civil Procedure Code, 1859, s. 359—Illegal and defective judgment.* A Judge's decision, not being in conformity with the provision of s. 359, Act VIII of 1859, was *held* to be illegal and defective. RUGHOBUR SUHAI *v.* CHATIRAPAT . 1 Agra 73

IMRIT SINGH *v* KOYLASHOO KOER 11 W. R. 558

16. ———— *Civil Procedure Code, 1859, s 359—Judgment of lower Appellate Court—Omission to record decision on material points* The Judge of the lower Appellate Court not having recorded his judgment as required by s 359 of Act VIII of 1859, the case was sent back to the lower Court for the Judge to state the points for decision, and to give his decision upon those points consecutively TATUR KHAWAS *v* JAGANNATH PRASAD . 7 B. L. R. Ap. 14 : 15 W. R. 131

17. ———— *Judgment of Appellate Court* The judgment of an Appellate Court should clearly and fully dispose of all the points in issue between the parties by a distinct finding on each of them BHAGBUT KHAN *v.* PUDDO BEWA . . . 3 W. R. 192

DHUN RAE *v* RAMPHUL RAE . 2 N. W. 109

SOOKH RAJ SINGH *v* TUFFAZOOL HOSSEN 2 W. R. 142

18 ———— *Civil Procedure Code, 1882, s 574—Contents of appellate judgment* The judgment ... SURYANARAYANA SASTRULU I. L. R. 22 Mad. 12

19. ———— Reasons for decision—*Civil Procedure Code, 1859, s 359.* S 359, Code of Civil Procedure, made it incumbent upon an Appellate Court to ... SADHOO CHURN GHOSE . . . 15 W. R. 130

RAJ CHUNDER BURMAN *v.* ROMA KANT CHUKERBUTTY . . . 15 W. R. 324

20. ———— *Civil Procedure Code 1859, s 359* The ... CHUNDER CHOWDHRY 1 W. R. 214

GOBURDHUN *v.* SADHOO . . 1 W. R. 244

KARTICK NAPIT *v.* PERSONOMOYEE NAPTINEE 2 W. R. 77

DOOLEE CHUND *v.* OOMDA BEBUM 18 W. R. 473

JUDGMENT—*contd.*

1. CIVIL CASES—*contd.*

(c) FORM AND CONTENTS OF JUDGMENT—*contd.*

KHETTUR MOHUN GOSSAIN v. BHYRUB CHUNDER SHET . . . . . 3 W. R. 126

TRILOCHUN DUTT v. ISHEN CHUNDER CHOWDHRY 3 W. R. 176

HOSSEIN BUKSH v. AMEENA KHATOON 16 W. R. 280

KORBAN ALI v. ASHAN ALI . 4 W. R. 4

SHATHUK PAUL v. GUDADHUR ROY 4 W. R. 100

GANPATRAM LAKHMIRAM v. JAICHAND TALAK CHAND . . 4 Bom. A. C. 109

BHAGVATSANGJI JALAMSANGJI v. PARTABSANGJI AJJABHAI . . . 4 Bom. A. C. 105

21. ——————— The reasons for their decisions must in all cases be recorded by the Judges of the High Courts in India. KACHEKA-

22. ——————— *Appellate Court.* An Appellate Court is not bound to discuss *seriatim* the arguments adduced by a lower Court in support of its judgment, but need only give its own reasons for its own judgment. INDRABATI KUNWARI v. MAHADEO CHOWDHRY . 1 B. L. R. S. N. 2

23. ——————— *Reversal of judg-*

DAY . .

MUNSOOB BIBEE v. ALI MEAH 17 W. R. 358

MAHOMED SALLEH v. NUSSEEROODDEEN HOSSEIN 21 W. R. 284

24. ——————— *Civil Procedure Code, 1859, s. 359.*—*Held* by MARKBY, J., that in

what points of fact or law the decision runs. The bare fact that a Judge had not given the reasons for his judgment is not in itself a ground of special appeal. RAMESSUR BHUTTACHARJEE v. BHANOO 12 W. R. 272

25. ——————— *Omission to state reasons in judgment—Civil Procedure Code (Act XIV of 1882), ss. 574, 584.* The fact that the judgment of an Appellate Court is not drawn up in the manner prescribed by s. 574 of the Civil Procedure Code is no ground for a second appeal under s. 584, unless it can be shown that the judgment has failed to determine any material issue of law. BISVANATH MAITI v. BAIDYANATH MANDUL I. L. R. 12 Calc. 199

26. ——————— *Civil Procedure Code, 1859, s. 359.* The judgment of an Appellate Court must contain the points for determination, the decision thereupon, and the reasons therefor. It need not, under s. 359 of the Code, contain a review or setting forth of the whole of the evidence. The propriety of giving an intelligent and clear account of the evidence in the judgment laid down. NOOR MAHOMED v. ZUHOOR ALLY 11 W. R. 34

27. ——————— *Finding of Appellate Court—Omission to give reasons.* The finding of an Appellate Court not accompanied by reasons is not conclusive. GOPALRAO GANESH v. KISHOR KALIDAS . . I. L. R. 9 Bom. 527

See KAMAT v. KAMAT . I. L. R. 8 Bom. 371

28. ——————— *Judgment unsupported by reasons—Defective judgment on facts—Grounds of second appeal.* Where no reasons are

nath v. *Gopal Nilu Nathaji, I. L. R. 9 Bom. 452, 454,* referred to. NINGAPPA v. SHIVAPPA I. L. R. 19 Bom. 323

29. ——————— *Omission to give reasons for order holding appeal barred.* Order

has considered the evidence

CHOWDRY v. DIGUMBUREE DEBIA CHOWDRAIN 16 W. R. 15

See SHUMSHUROODY v. JAN MAHOMED SIKDAR . . . 21 W. R. 260

31. ——————— *Appellate Court*

8 W. R. 340

32. ——————— *Civil Procedure Code (Act XIV of 1882), s. 574—Judgment not containing the reasons for decision, validity of—Judgment of Appellate Court affirming judgment of first Court.* Where a judgment of the lower Appellate Court does not go fully into the reasons

JUDGMENT—*contd.*

1. CIVIL CASES—*contd.*

(c) FORM AND CONTENTS OF JUDGMENT—*contd.*

for affirmance and even does not so much as state whether it accepts, as correct, reasons given

case may require, the reasons for its affirming the decision of the first Court *Radha Gobind Kur v. Ramkishore Dutt, 8 W. R 240*, referred to HAIMABATI DASI *v.* GOVINDA CHANDRA GHOSH **2 C. W. N. 695**

33. ———— *Omission to give reasons—Appellate Court—Civil Procedure Code, 1877, s 574.* Where the judgment of the lower Appellate Court dismissing an appeal was

provisions of s. 574 of the Civil Procedure Code SRIKANT DEY *v.* HURI DAS PAL **11 C. L. R. 131**

34. ———— *Affirming judgment of lower Court* Where the decision of a case involves issues of fact, and the first Court has gone fully into the evidence and recorded its finding

JUGGESHUR SAHOY *v* GOPAL LALL **15 W. R. 54**

35. ———— *Civil Procedure Code, 1859, s. 359—Omission to give reasons.* In a case decided on pure questions of fact, no point

KULUMUTEE KOOER *v.* JOWAHUR LALL **11 W. R. 318**

36. ———— *Civil Procedure Code, 1859, s. 359*

reasons for agreeing with the Court of first instance that the evidence in question had very little connection with the case, its judgment was *held* to be not a legal decision in the terms of s 359, Act VII of 1859 ADHEEN MISSER *v.* JOGRAJ MISSER **11 W. R. 312**

37. ———— *Affirmance of decision of lower Court—Decision on oral testimony.*

detail does not involve the adoption by the lower Appellate Court of the first Court's view of the oral testimony. RAJOO *v.* RAJ COOMAR SINGH **7 W. R. 137**

38. ———— *Omission to give reasons*

cally met and refuted the reasons on which that decision had proceeded; but such an omission may form a good ground for an application to the High Court to require the lower Appellate Court to set forth the reasons on which its judgment proceeded. GOLAM HOSSEIN *v* RAM DOYAL GHOSE **12 W. R. 152**

39. ———— *Judgment of an Appellate Court reversing the judgment of the first Court, requisites of.* It is clearly the duty of an Appellate Court, reversing the judgment of the first Court, to state clearly and fully the grounds on which it does so, and the more especially when the first Court has gone fully into the facts and the reasons for the conclusion arrived at RAM RANGINI CHANDA CHAUDHURANI *v* CHANDRA BINODE PAL **1 C. W. N. 691**

40. ———— *Civil Procedure Code, 1859, s 359—Ground for remand* It is the

evidence, set aside his judgment, and remanded the case to be heard in appeal *de novo.* KRISTO CHUNDER CHUCKERBUTTY *v.* RAM BROMHO CHUCKERBUTTY **20 W. R. 403**

41. ———— *Duty of Appellate Court—Transfer of Judge—Irregularity in*

that the Civil Judge might record a judgment in accordance with the Civil Procedure Code. The Civil Judge had been appointed to another district; and when the case went down, the new Judge had the case re-argued before him, and reversed the decision of the Munsif The High Court

42. ———— *Omission to give reasons—Death of Judge before judgment.* A Deputy Collector having died before giving his

JUDGMENT—*contd.*

I. CIVIL CASES—*contd.*

(c) FORM AND CONTENTS OF JUDGMENT—*contd*

reasons for a decree said to have been made by him, the whole of the subsequent proceedings were *held* to be bad, and the case was remanded to the Collector to be tried *de novo* upon the evidence upon the record NOBO CHUNDER BANERJEE *v* ISHUR CHUNDER MITTER . **12 W. R. 254**

43. ——— ——— *Judgment of Appellate Court—Omission to give reasons—Remand under ss 566 and 587, Civil Procedure Code, 1882* Where the lower Appellate Court omits to give reasons for its decision, the High Court will retain the case in second appeal, and either require the Judge to state his reasons, or, in the event of his absence, refer the case to his successor for fresh trial ASSANULLAH *v* HAFIZ MAHOMED ALI **I L. R. 10 Calc. 932**

44. ——— **Judgment containing findings unnecessary for disposal of case**—*Appellate Court—Dismissal of suit—Findings unnecessary for disposal of case—Appeal by successful party—Civil Procedure Code, 1882, s 203*

45. ——— **Additions to judgment**

reasons, merely to show more fully the correctness of the decision at which he has arrived, though such a course is not strictly warranted by the Civil Procedure Code. SNADDEN *v.* TODD, FINDLAY & CO. **7 W. R. 286**

46. ——— **Final disposal on settlement of issues**—*Omission to take evidence.*

47. ——— **Form of judgment on appeal**—*Judgment not in conformity with law—Dismissal of appeal—Civil Procedure Code (Act XIV of 1882), ss. 551, 574* The lower Appellate

JUDGMENT—*contd.*

I. CIVIL CASES—*contd.*

(c) FORM AND CONTENTS OF JUDGMENT—*contd.*

points, and the reasons for deciding them RAMI DEKA *v.* BROJO NATH SAIKIA **I. L. R. 25 Calc. 97** **1 C. W. N. 692**

pleas in appeal, concluded, with general observa-

arrived at by the Munsif, that the plaintiff's claim is established, is correct and consistent with the

section. *Mahadeo Prasad* v. *Sarju Prasad, All. Weekly Notes (1886) 171*, referred to. Observations

9 *All. 30 note*, referred to. SOHAWAN *v.* BABU NAND . . . **I. L. R. 9 All. 26**

49. ——— **Judgment of High Court**—*Civil Procedure Code, ss 574, 633—"Substantial question of law"—Contents of judgment—Rules made by High Court under s 633 for recording*

writing, or according to any mode which might appear to it best in the interests of justice. The

JUDGMENT—*contd.*

1. CIVIL CASES—*contd.*

(c) FORM AND CONTENTS OF JUDGMENT—*contd.*

C J.—Apart from Rule 9, it never was intended that s 574 of the Code should apply to cases where the High Court, having heard the judgment of the Court below and arguments thereon, comes to the

unnecessary to say more than that the Court agreed with the Judge's reasons, is a substantial compliance with those provisions The judgment of the High Court, in a first appeal was as follows." This

50. ——— **Finding of lower Court based on misconception of evidence**—*Defective judgment on facts—Ground of second appeal*

Court it the appeal

I. L. R. 20 Bom. 753

51.——— **Findings on issues on remand**—*Civil Procedure Code, 1882, ss. 566, 569, and 574—Duty of Appellate Court to form its own opinion on the evidence and record reasons for findings—Procedure* In certifying to the High Court the findings on issues sent back on remand and found by the Court of first instance, the lower Appellate Court is, in the absence of any admission by the party against whom the issues have been found,

52. ——— **Contents of appellate judgment**—*Civil Procedure Code, 1882, s. 574—Duty of Appellate Court to examine the correctness of a finding in the absence of a memorandum of objections* A Judge, having remanded a case for further evidence to be taken and a fresh finding recorded on a question of fact, is bound to examine the correctness of the finding and to state in his judgment the reasons for which he either accepts or rejects it. KUNHI MARAKKAR HAJI *v.* KUTTI UMMA . . . **I. L. R. 20 Mad. 496**

53. ——— **Date of operation of judgment**—*Adjournment for written judgment—Death of party between hearing and judgment—Civil Procedure Code, 1882, s. 234—Practice.* An appeal having been argued on the 11th November 1892, the case was adjourned for judgment, which was delivered on the 30th November 1892, and was in favour of the plaintiffs. In the meanwhile the defendant had died On application for execution, it was contended that the decree was null and void, as the respondent was dead when it was passed *Held*, that the judgment should be treated as operating as if it had been delivered on the day when the argument was closed NARNA *v.* ANANT **I. L. R. 19 Bom. 807**

54. ——— **Contents of judgment in appeal**—*Civil Procedure Code, 1882, s. 574—Duty of Appellate Court to hear appeal after remand for findings, though no memorandum of objections.*

appeal coming on for hearing after the return of

I. L. R. 22 Mad. 344

55. ——— **Judgment of Small Cause Court, what should be contained therein**—*Civil Procedure Code, s 203—Revision—Civil*

costs" *Held*, that this was in fact no judgment at

JUDGMENT—*contd.*

1. CIVIL CASES—*contd.*

(c) FORM AND CONTENTS OF JUDGMENT—*concld.*

all, and the case must be remanded for re-trial on the merits under the analogy of s. 562 of the Code of Civil Procedure, read with s. 647. MANIK RAHMAT v. SHIVA PRASAD . **I. L. R. 13 All. 533**

(d) JUDGMENT GOVERNING OTHER CASES.

56. ———— **One judgment governing several cases**—*Filing judgment.* Where a judgment in one case governed other cases: *Held*, that the filing of that judgment was a substantial compliance with the requirements of the law and that the filing of a short judgment referring to the other judgment was merely formal and the delay excusable. MOTHOORNATH CHUCKERBUTTY v. KISSEN MOHUN GHOSE . **W. R. 1864, Mis. 9**

BHYRUBNATH SANDYAL v. HURE SOONDUREE DOSSEE . . . **W. R. 1864, Mis. 28**

(e) CONSTRUCTION OF JUDGMENT.

57. ———— **Inconsistency in portions of judgment**—*Ambiguity.* In construing a judgment, if a difficulty is found in reconciling the conclusion ultimately arrived at with the previous part such part must be rejected. BYKUNT CHUNDER CHUCKERBUTTY v. DHUNPUT SINGH

19 W. R. 104

58. ———— **Matter omitted in conclusion arrived at**—*Former decisions of same Judge as guides.* Where the final sentence in a judgment of the High Court made no mention of a matter specified in the previous words, and the District

(f) RIGHT TO COPIES OF.

59. ———— **Right of parties to copy of judgment**—*Translation.*—Parties to a suit are entitled to receive copies of the original judgment, not merely a translation. VARJIVAN RANGJI v. ALI DAJI . . . **1 Bom. 165**

60. ———— *Copies of judg-*

7 Bom. A. C. 130

61. ———— **Right of strangers to copy**

JUDGMENT—*contd.*

1. CIVIL CASES—*concld.*

(f) RIGHT TO COPIES OF—*concld.*

62. ———— **Copies of, delay in furnishing**—*Civil Procedure Code, s. 198—Resolution of High Court, 6th July 1872.* The plaintiff applied

copies until blank papers were put in. Such copies, by s. 198 of Act VIII of 1859 and a resolution of the Court of 6th July 1872, are to be issued on production of the necessary stamps. NILMONEY SINGH v. CHINIBAS MAHANTI

12 B. L. R. Ap. 8: 20 W. R. 405

2. CRIMINAL CASES.

1. ———— **Illegal judgment**—*Judgment pronounced by successor—Re-trial.* Until the find-

by the predecessor. ANONYMOUS

4 Mad. Ap. 43

2. ———— **Necessity of findings on each charge**—*Criminal Court—Sessions Judge.* — Sessions Judge should record findings, whether of conviction or acquittal, on all the charges under which prisoners are committed for trial. QUEEN v. MAHOMED ALI . . . **13 W. R. Cr. 50**

3. ———— To enter up findings on every head of charge is not only not illegal but the most convenient course. ANONYMOUS

6 Mad. Ap. 47

4. ———— **Reasons for decision**—*Crim-*

8 Bom. Cr. 101

5. ———— *Sessions Judges.* Sessions Judges should record their reasons for confirming, reversing, or modifying the sentences or orders of the Magistrates. ANONYMOUS

5 Mad. Ap. 12

6. ———— *Omission to give reasons—Criminal Procedure Code (Act X of 1882), ss. 367-424.* A Sessions Judge, after hearing an appeal, gave the following judgment: "It is urged that the evidence is quite untrustworthy, and that the decision should be reversed. The depositions have been gone through, and commented on

JUDGMENT—*contd.*

2. CRIMINAL CASES—*contd.*

at considerable length. The Court finds no ground for interference. The appeal is dismissed " *Held,* that this was not a sufficient compliance with ss. 367 and 424 of Act X of 1882, and that the case should be re-tried KAMRUDDIN DAI *v* SONATUN MANDAL . . . **I. L. R 11 Calc. 449**

7. ——— **Reasons for rejecting appeal**—*Judgment of Appellate Court—Criminal Procedure*

BALGOPAL SINGH . **I. L. R. 21 Calc. 92**

8. ——— *Criminal Procedure Code (1882), ss. 367 and 421—Summary rejection of appeal—Reasons for rejection.* It is advisable that a Court, when rejecting an appeal in a criminal case under the provisions of s 421 of the Code of Criminal Procedure, 1882, should record shortly its reasons for such rejection in view of the possibility of such order being challenged by an application for revision. QUEEN-EMPRESS *v.* NANHU. **I. L. R. 17 All. 241**

9. ——— *Criminal Procedure Code, 1882, s. 421—Judgment rejecting an appeal* In rejecting an appeal under s 421 of the Code of Criminal Procedure (Act X of 1882), the Appellate Court is not bound to write a judgment *Rash Behari Das* v. *Balgopal Singh, I. L R 21 Calc 92,* followed QUEEN-EMPRESS *v.* WARUBAI **I. L. R. 20 Bom. 540**

10. ——— **Judgment not in proper form**—*Form and contents of judgment—Criminal appeal to Magistrate—Criminal Procedure Code,*

11. ——— *Criminal Procedure Code, 1882, ss 367 and 421—Judgment, Contents of—Omission to give reasons.* A District Magistrate, in disposing of an appeal, recorded the following judgment: " The affray was a faction

JUDGMENT—*contd.*

2. CRIMINAL CASES—*contd.*

accordance with ss 367 and 424 of the Code of Criminal Procedure (Act X of 1882) *In re* SHIVAPPA BIN SHIDLINGAPPA . **I. L. R. 15 Bom. 11**

12. ——— *Form and contents of judgment—Criminal Procedure Code (Act X of 1882), ss 367 and 537.* A Sessions Judge, in

fine is not ...ontended ... terms of ... of the Code of Criminal Procedure. *Held,* that having regard to the provisions of s 537,

...had appreciated the point that the prosecution had to establish, *viz.*, the credibility of the evidence of the witnesses for the prosecution, and had expressed his opinion on that point, there being nothing to show that any other point was raised before him, it was not a case in which the High Court should exercise its revisional powers *Kamruddin Dai* v. *Sonatun Mondal, I. L. R. 11 Calc. 449,* and *In the matter of the petition of Ram Das Maghi, I. L. R. 13 Calc 110,* referred to and commented on. ROHIMUDDI *v.* QUEEN-EMPRESS **I. L. R. 20 Calc. 353**

13. ——— *Form and contents of judgment—Criminal appeal, judgment in—Criminal Procedure Code, 1882, ss. 367 and 424.*

opinion that the lower Court had ample ground for convicting the accused of rioting. I do not consider the sentence too severe Appeal dismissed." *Held,* that this was not a judgment within the

... Calc. 110, followed. FARKAN *v.* SOMSHER MAHOMED **I. L. R. 22 Calc. 241**

14. ——— *Form of judgment* ...
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JUDGMENT—*contd.*

2. CRIMINAL CASES—*contd.*

that the Deputy Magistrate has decided the case rightly. The appeal is dismissed." *Held*, that the judgment was not in accordance with the law within the meaning of ss 367 and 424 of the Criminal Procedure Code GIRISH MYTE *v* QUEEN-EMPRESS . . . I. L. R. 23 Calc. 420

15. ——————— *Criminal Procedure Code, 1882, ss. 362, 367, and 424—Judgment of Appellate Court—What such judgment must contain.* A Magistrate having special powers under s. 34 of the Code of Criminal Procedure convicted one *P B* under ss 471 and 476 of the Indian Penal Code, and sentenced him to four years' rigorous imprisonment. *P B* appealed to the Sessions Judge and on that appeal the Sessions Judge recorded the following judgment: "I have perused the record, and see no cause for interference with the finding of the District Magistrate. As regards the sentence, it is not excessive, but, having regard to the great age of the appellant, I will reduce it to three years' rigorous imprisonment with three month's solitary confinement." *Held*, that this judgment was in compliance with the provisions of s. 367 of the Code of Criminal Procedure, read with s. 424 of the same Code. QUEEN-EMPRESS *v.* PANDEH BHAT . . I. L. R. 19 All. 506

16. ——————— *Judgment in stereotyped form—Judgment showing consideration of evidence—Criminal Procedure Code, 1882, ss. 367, 424.* Where the judgment of a Criminal Appellate Court is in the nature of a stereotyped one which might answer for any case, it is not one in accordance with ss. 367 and 424 of the Criminal Procedure Code; but when the judgment, though

guished. KASIMUDDI *v.* QUEEN-EMPRESS

1 C. W. N. 169

17 ——————— *Civil suit—Criminal Procedure Code (Act X of 1882), s. 370 cl. (i)—Summary procedure—Conviction, Reasons for.* The meaning of s. 370, cl. (i), of Act X of 1882

and imprisonment in default of payment of the fine, is not a sentence of imprisonment within the meaning of the section. MOTEERAM *v.* BELASEERAM

I. L. R. 14 Calc. 174

QUEEN-EMPRESS *v.* SHIDGANDA

I. L. R. 18 Bom. 97

18 ——————— *Irregularity—Magistrate passing sentence before finishing his judgment—Criminal Procedure Code (Act X of 1882), ss. 366, 367, and 537.* A Magistrate on a charge of rioting passed sentence on the accused without delivering his judgment in open Court,

the Code, and not having occasioned any failure of justice, it did not necessitate a re-trial of the case.

entitled; the case ought therefore to be re-tried DAMU SENAPATI *v.* SRIDHAR RAJWAR

I. L. R. 21 Calc. 121

19. ——————— *Criminal Procedure Code 1882, ss. 366, 367, and 537—Pronouncing sentence before writing judgment—Irregularity.* In this case, after the evidence was adduced on both sides, the Assistant Magistrate fixed a day for

Criminal Procedure Code. In the circumstances

itself, by reason of this irregularity, was not an illegal sentence so as to render the trial nugatory. *Queen-Empress* v. *Hargobind Singh, I. L. R. 14 All 242*, and *Damu Senapati* v. *Sridhar Rajwar, I. L. R. 21 Calc. 121*, discussed TILAK CHANDRA SARKAR *v.* BAISAGOMOFF

I. L. R. 23 Calc. 502

20. ——————— *Record sent to Appellate Court—Criminal Procedure Code, 1882, s. 367, para. 5, proviso—Record of heads of charge*

JUDGMENT—*contd.*

2 CRIMINAL CASES—*contd.*

misdirection in the charge. QUEEN *v.* KASIM SHAIKH . . . . 23 W. R. Cr. 32

21. ——— **Summary trial**—*Criminal Procedure Code, 1898, s. 263, cl. (h)—Statement of reasons in judgment—Findings of fact constituting offence* A judgment in a summary trial must, in accordance with s 263, cl (*h*), set out a brief statement of the reasons for the conviction, which include the findings of fact upon which the conviction is based. The proceedings in a summary trial must show the reasons for convicting the accused so that the High Court in revision may judge whether there are sufficient materials in support of the conviction. LALIT MOHAN SAHA *v.* CHUNDER MOHAN ROY . 3 C. W. N. 281

22. ——— **Comments on conduct and evidence of police officers**—*Sessions Judges.* For the purposes of a judgment in Sessions trials the testimony or conduct of police officers concerned should be scrutinised and commented on in the same degree as those of other material witnesses, and no further. QUEEN *v* BUDRI ROY 23 W. R. Cr. 65

23. ——— **Note added to judgment of judicial officer in criminal case**—*Irregular-*

dence in such case. EMPRESS *v.* CHATTER SINGH I. L. R. 2 All. 33

24. ——— **Power to alter judgment**—*Rules of High Court, N.-W. P., 18th January 1898, rule 83—Finality of judgment or order of the High Court—Power of Judge to alter it.* *Held*, that a

procedure by way of review of judgment being taken. QUEEN-EMPRESS *v.* LALIT TIWARI I. L. R. 21 All. 177

25. ——— **Summary dismissal of appeal**, *Criminal Procedure Code (Act V of 1898), s 421.* A Court, when dismissing an appeal

I. L. R. 25 Mad. 534

26. — **Judgment of Appell**... **Court**—*Cr*... *1898), s* ... *Deficiency,* ... *judgment of Court of first instance—Appeal, proper trial of—Order for re-trial—Practice.* It is the duty

JUDGMENT—*concld.*

2. CRIMINAL CASES—*concld.*

trate, and the Sessions Judge, on appeal, upheld the conviction, but did not state the facts or the reasons for his decision in his judgment: *Held,*

Sessions Judge for re-trial of the appeal. BHOLA NATH MULLICK *v.* EMPEROR (1902) 7 C. W. N. 30

27. ——— *Defective judgment—Appellate Court's judgment not supplementary to that of first Court—Criminal Procedure Code (Act V of 1898), ss 367, 424—Practice.* The judgment of an Appellate Court must show on the face of it that the case of each accused has been taken into consideration, and reasons should be given, as far as may be necessary, to indicate that the Court has directed judicial attention to the case of each accused. The Appellate Court's judgment cannot be read in connection with, and as supplementary to, the judgment of the Court of first instance, but just be quite independent and stand by itself JAMAIT MULLICK *v.* EMPEROR (1907) I. L. R. 35 Calc. 138

JUDGMENT IN REM.

See ESTOPPEL—ESTOPPEL BY JUDGMENT.

See EVIDENCE—CIVIL CASES—DECREES, JUDGMENTS, AND PROCEEDINGS IN FORMER SUITS.

1. ——— **Decision as to status of particular person or family**—*Judgment inter partes* A judgment is not a judgment *in rem* be-

2. ——— **Rule making judgments conclusive**—*Exceptions to rule.* The rule which

judgments *in rem*, except in some peculiar cases, results from the nature of the proceedings; and before attempting to apply the rule in this country, consideration should be given to the question whether there are Courts so proceeding as to warrant the application of the doctrine of decrees *in rem.* Mr. Smith's definition of a judgment *in rem* dis-

JUDGMENT IN REM—*contd.*

cussed and dissented from, and the authorities in English and Roman law upon the subject examined and commented upon YARAKALAMMA *v.* ANAKALA NARAMMA . . . . **2 Mad. 276**

3. ——— Judgments of mofussil Courts—*High Court—Evidence.* In a suit by *R C* against *D*, the widow of *R N*, to set aside alienations by *D* and to establish his title as reversionary heir to the property left by *R N* on the ground that *R N* had been adopted by *J L*, deceased, and that, on the death of *R N* without issue, the right accrued to *R C* as an agnate of *J L*, it was found that *R N* had been adopted by *J L*, and that *R C* was reversionary heir In a subsequent suit by *K L* against *R C* for a declaration of his right as heir to *R N* and for possession of the property on the ground that *R N* had not been adopted by, but took the property by gift from, *J L* :—*Held*, that the judgment in the former suit was not admissible in evidence on the question of the adoption. *Semble*. There are no judgments *in rem* in the mofussil Courts, and, as a general rule, decrees in those Courts are not admissible against strangers, to prove the truth of any matter directly or indirectly determined by the judgment, or by the finding upon any issue raised in the suit, whether relating to status, property, or any other matter. KANHYA LALL *v* RADHA CHURN **B. L. R. Sup. Vol. 662**
2 Ind. Jur. N. S. 229 : 7 W. R. 338

4. ——— Decision as to disputed succession to Raj—*Power of Courts to give judgment in rem.* In a case of disputed succession to a raj, *A*, one son of the Raja, deceased, was put into possession under Act XIX of 1841, and a suit brought against him on behalf of another infant son, *B*,

Does there exist in India (exclusive of the particular jurisdictions which are exercised by the High Courts in matters of probate and the like, and which in the case of war might be exercised in matters of prize) any Court capable of giving a judgment *in rem?* JOGENDRO DEB ROY KUT *v.* FUNINDRO DEB ROY KUT
11 B. L. R. 244 : 17 W. R. 104
14 Moo. I. A. 367

5. ——— Decree declaring deed to be forged—*Evidence.* The plaintiff sued to set aside a decree which had been obtained against a cosharer on a mokurari pottah The decree which declared the pottah to be a forgery was in a suit to which the plaintiff was no party. *Held*, that the decree did not operate as a judgment *in rem* GUNGADHUR ROY *v.* WOOMA SOONDEREE DOSSEE
B. L. R. Sup. Vol. 672
2 Ind. Jur. N. S. 120 : 7 W. R. 347

JUDGMENT IN REM—*concld.*

See LALA RANGLAL *v* DEONARAYAN TEWARY . . **6 B. L. R. 60 : 14 W. R. 201**

6. ——— Decision on question of adoption. The full Bench decision in *B. L. R. Sup. Vol 622 ; 2 Ind Jur. N. S. 229 . 7 W. R. 338*, merely laid down that a decision in a suit *inter alias* relating to a question of adoption was not a judgment *in rem* and was not conclusive ; and that a judgment or order in a suit *inter partes*, in which it had been found that the plaintiff had been adopted, could not be used at all as evidence of the fact of adoption in a suit *inter alias* It only spoke of decrees or judgments *inter alias*, and never intended to speak of the admissibility or inadmissibility of thakbust maps or other similar surveys as to whether they would or would not be evidence against persons who were not parties to them. MOTEE LALL *v* BHOOP SINGH
2 Ind. Jur. N. S. 245 . 8 W. R. 64

JUDGMENT-DEBT.

See CONTRACT ACT, s 25.
I. L. R. 3 All. 781
I. L. R. 14 Bom. 390

——— agreement to give time for satisfaction of—

See CIVIL PROCEDURE CODE, 1882, s 257A.
I. L. R. 26 Mad. 19

JUDGMENT-DEBTOR.

See ARREST—CIVIL ARREST.

See ATTACHMENT—ATTACHMENT OF PERSON

See BENGAL TENANCY ACT, s 174.
I. L. R. 15 Calc. 482

See CIVIL PROCEDURE CODE, 1882, ss. 295, 313, 331, 351.

See CIVIL PROCEDURE CODE, 1882 s. 244.
10 C. W. N. 240

See IMPRISONMENT.
I. L. R. 13 Mad. 141

See INSOLVENCY—INSOLVENT DEBTORS UNDER CIVIL PROCEDURE CODE

See LIMITATION ACT, 1877, SCH. II. ART. 11.
I. L. R. 1 Mad. 391
I. L. R. 11 Bom. 45 ; 114
I. L. R. 15 Calc. 674
I. L. R. 17 Bom. 629
I. L. R. 22 Bom. 875

See OCCUPANCY HOLDING
I. L. R. 34 Calc. 199

See RIGHT OF SUIT—EXECUTION OF DECREE.
I. L. R. 15 Calc. 437 ; 674
I. L. R. 23 Mad. 195
I. L. R. 10 All. 479

See WARRANT OF ARREST—CIVIL CASES.
I. L. R. 26 Mad. 120

JUDGMENT-DEBTOR—*contd.*

See WRONGFUL CONFINEMENT.
I. L. R. 30 Mad. 179

———— **death of—**

See CIVIL PROCEDURE CODE, 1882, s. 108.
I. L. R. 29 Calc. 33
I. L. R. 21 All. 274

See CIVIL PROCEDURE CODE, 1882, s 244—PARTIES TO SUITS.
I. L. R. 10 All. 479
I. L. R 24 Calc. 62
I. L. R. 16 All. 286
I. L. R. 19 All. 332

See CIVIL PROCEDURE CODE, 1882, s 244—QUESTIONS IN EXECUTION OF DECREE.
I. L. R. 17 All. 431

See EXECUTION OF DECREE—EXECUTION BY AND AGAINST REPRESENTATIVES

See LIMITATION ACT, ART 179—NATURE OF APPLICATION—IRREGULAR AND DEFECTIVE APPLICATIONS
I. L. R. 19 All. 337

See REPRESENTATIVE OF DECEASED PERSON.

See SALE IN EXECUTION OF DECREE—INVALID SALES—DEATH OF JUDGMENT-DEBTOR BEFORE SALE

See SURETY—LIABILITY OF SURETY.
I. L. R. 24 Mad. 637

———— **deposit of money by—**

See SALE IN EXECUTION OF DECREE—DISTRIBUTION OF SALE-PROCEEDS.
I. L. R. 30 Calc. 262

———— **discharge of—**

See ATTACHMENT—ATTACHMENT OF PERSON . . . **Bourke O. C. 109**
5 N. W. 220
I. L. R. 6 Mad. 170
I. L R. 8 Mad. 21; 276; 503
I. L. R. 12 Bom. 46
I. L. R. 11 Calc. 527
I. L. R. 20 Calc. 874

See CIVIL PROCEDURE CODE, 1882, s 341
I. L. R. 9 Bom. 181
I. L. R. 8 Mad. 21

See INSOLVENCY—INSOLVENT DEBTORS UNDER CIVIL PROCEDURE CODE.

See SUBSISTENCE-MONEY.

———— **insanity of—**

See SALE IN EXECUTION OF DECREE—SETTING ASIDE SALE—IRREGULARITY.
I. L. R. 19 Mad. 219

———— **representative of—**

See CIVIL PROCEDURE CODE, 1882, s. 244—PARTIES TO SUIT.

See REPRESENTATIVE OF DECEASED PERSON.

JUDGMENT DEBTOR—*concld.*

———— *Civil Procedure Code, ss 244, 331—Defendants not joining in compromise on which decree is passed not judgment-debtors—S. 331 applies to such defendants.* Where a decree passed on compromise entered into between the plaintiff and some of several defendants in a suit does not adjudicate on the rights of the defendants who have not joined in the compromise, such defendants are not judgment-debtors and any disputes arising in execution of the decree between the plaintiff and such defendants must be decided under s 331 and not under s. 244 of the Code of Civil Procedure *Vibhudapriya Thirthaswami v Vidianidhi Thirthaswami, I. L. R. 22 Mad. 131,* doubted JATHAVEDAN NAMBUDIRI v. KUNCHU ACHAN (1906) **I. L. R. 30 Mad. 72**

JUDICATURE ACT, 1873 (36 & 37 VICT. C. 66).

———— **s. 100—**

See PRACTICE . **I. L. R. 32 Bom. 599**

JUDICIAL ACT.

See JUDICIAL OFFICERS, LIABILITY OF.

JUDICIAL COMMISSIONER.

———— **Power of**—*False evidence—Criminal Procedure Code (Act XXV of 1861), s. 172.* A Judicial Commissioner has no power, under s. 172 of the Code of Criminal Procedure, to commit a witness for a false deposition given before the Assistant Commissioner QUEEN v MATI KHOWA
3 B. L. R. A. Cr. 36 : 12 W. R. Cr. 31

JUDICIAL COMMISSIONER, ASSAM.

———— **Jurisdiction of**—*Act XL of 1858—Succession Act (X of 1865), s 235.* Assam does not come within the definition of a province, but of a

[illegible]

property is committed KRISTO SURMA ADHIKAREE v. BASOODEB GOSSAMEE . . **12 W. R. 424**

JUDICIAL COMMISSIONER, OUDH.

See OUDH COURTS ACT, s. 8.
5 C. W. N. 781

JUDICIAL COMMISSIONER, PUNJAB.

———— **circular orders passed by—**

See INDIAN COUNCILS ACT.
12 B. L. R. P. C. 167

JUDICIAL DECISIONS.

See HINDU LAW—CUSTOM—GENERALLY.
I. L. R. 16 All. 379

JUDICIAL DISCRETION.

See DISCRETION OF COURT.

JUDICIAL NOTICE.

See ACCUSED PERSON . **5 C. W. N. 110**

See CIVIL PROCEDURE CODE, 1882, s. 87. **4 B. L. R. O. C. 51**

See EVIDENCE ACT (I OF 1872), s 57 **I. L. R. 14 Calc. 178**

See RELIGION, OFFENCES RELATING TO. **I. L. R. 7 All. 461**

——— **Justice of the Peace**—*Case sent up to High Court* Where *R* had tried a case and sent it up to the High Court but it did not appear whether he had done so in his capacity of a Magistrate or of a Justice of the Peace :—*Semble* The High Court was bound to take judicial notice that *R* was a Justice of the Peace for Bengal QUEEN v. NABADWIP GOSWAMI
1 B. L. R. O. Cr. 15 : 15 W. R. Cr. 71 note

JUDICIAL OFFICER.

See BENGAL TENANCY ACT, s 153 **I. L. R. 15 Calc. 327**

See FALSE EVIDENCE—GENERALLY **I. L. R. 27 Calc. 820**

See JUDICIAL OFFICERS, LIABILITY OF.

See JUDICIAL OFFICERS' PROTECTION ACT.

——— **charge by, for executing commission.**

See COMMISSION—CIVIL CASES **12 B. L. R. Ap. 4**

——— **Land Acquisition Collector is not—**

See LAND ACQUISITION ACT (I OF 1894). **I. L. R. 30 Calc. 36**

——— **on tour—**

See JUDICIAL OFFICERS' PROTECTION ACT (*XVIII of 1850*). **I. L. R. 30 Bom. 241**

——— **transfer of—**

See MAGISTRATE, JURISDICTION OF—TRANSFER OF MAGISTRATE DURING TRIAL

JUDICIAL OFFICERS, LIABILITY OF.

1. ——— **Protection while exercising judicial functions**—*Stat 21 Geo III, c 70, s. 24—Trespass, action of* The 21st Geo. III, c. 70, s 24, protecting Provincial Magistrates in India from actions for any wrong or injury done by them in the exercise of their judicial offices, does not confer unlimited protection, but places them on the same [illegible]

JUDICIAL OFFICERS, LIABILITY OF —*contd.*

means of knowing, of the defect of jurisdiction, and it lies upon the plaintiff in every such case to prove that fact CALDER v HALKET **2 Moo. I. A. 293**

2 ——— **Act XVIII of 1850**—*Person* [illegible]

3. ——— *Acts done in good faith—Pleading* Act XVIII of 1850 does not protect judicial officers from being sued in a Civil Court except in respect of acts done by them in good faith in the discharge of their judicial functions. When a [illegible]

3 Bom. A. C. 47

4. ——— *Criminal Procedure Code, 1861, ss 68, 212—Liability of Magistrate* *Held*, that neither Act XVIII of 1850 nor ss. 68 and 212 of the Code of Criminal Procedure, 1861, protected a Magistrate who had failed to act reasonably, carefully, and circumspectly in the discharge of his duties VINAYAK DIVAKAR v. BAI ITCHA . . . . **3 Bom. A. C. 36**

5. ——— *Liability of public servant for injury done by his act, illegal though bonâ fide—Protection of judicial officers—Cantonments Act (XXII of 1861), s 11—Lunatic Asylums Act (XXXVI of 1858), s. 4.* Act XVIII of 1850 is for the protection of judicial officers acting judicially, [illegible]

I. L. R. 9 Calc. 341 : 13 C. L. R. 185
L. R. 9 I. A. 152

JUDICIAL OFFICERS, LIABILITY OF
—*contd.*

6. ——— *Liability of Municipal Commissioner sitting as Magistrate under Beng. Act III of 1864.* A Municipal Commissioner

HOOGHLY . . . . 13 W. R. 340

7. ——— *Collector of Sea Customs at Madras—Imposition of fine without*

protected by Act XVIII of 1850 COLLECTOR OF SEA CUSTOMS *v.* PUNNIAH CHITHAMBARAM

I. L. R. 1 Mad. 89

8. ——— *Judicial act within the limits of the officer's jurisdiction—Such act protected, though done erroneously, illegally or not in good faith—"Jurisdiction"—Magistrate, jurisdiction of.* Under Act XVIII of 1850, where an act

even illegally, or without believing in good faith that he had jurisdiction to do the act complained of Where the act done or ordered to be done in the discharge of judicial duties is without the limits of the officer's jurisdiction, he is protected if, at the

authority or power to act in a matter, and not authority or power to do an act in a particular manner or form. A judicial officer who in the discharge of his judicial duties issues a warrant

of the first class, having sentenced an accused person to three years' rigorous imprisonment and R500 fine under ss. 379 and 411 of the Penal Code, and having issued a warrant, purporting to act under s. 386 of the Criminal Procedure Code, for the levy of the fine by distress and sale of cattle belonging to the accused, sold such cattle before the date fixed for the sale, and in contravention of form 37, sch. V and s. 554 of the Code, and form D in ch. V of the circular orders of the High Court: *Held,*

that he was acting in the discharge of his judicial duty within his jurisdiction as a Magistrate of the first class; that under such circumstances it was immaterial that he did not in good faith believe himself to have jurisdiction to sell the property in the manner he did; and that the fact that he acted with gross and culpable irregularity did not deprive him of the protection afforded by Act XVIII of 1850 TEYEN *v.* RAM LALL I. L. R. 12 All. 115

9. ——— *Liability of Magistrate—Conviction of servant for misbehaviour—Bom Reg. I of 1814—Act II of 1839. Held,* that an act on of trespass for false imprisonment lay

Regulation, and when called upon to plead, having stated that he left the service because there were wages due to him from his employer, upon which statement he was convicted, without any proper investigation into the truth of it *Held,* also, that the Magistrate, who failed to act reasonably, carefully, and circumspectly, cannot be said to have in good faith believed himself to have jurisdiction within the meaning of Act XVIII of 1850, and consequently that he cannot claim the protection of that Act in an action brought against him in a Civil Court. VITHOBA MALHARI *v* CORFIELD

3 Bom. Ap. 1

10. ——— *Order made by*

Agent at the Court of Modhool, for damages for injury done to them by certain orders made by him

Court of the defendant was a Court subject to the superintendence of the High Court at Bombay; and that the orders complained of were made by him as Political Agent and in his executive capacity. *Held,* that there was no cause of action, whether the acts were done by the defendant as Political Agent or in his judicial and magisterial capacity. INHABITANTS OF MAHALINGPORE *v* ANDERSON

7 B. L. R. 452 note

11. ——— *Refusing bail, liability of Magistrate to action for* The refusing

NARASYA PANTULU *v.* STUART . 2 Mad. 396

JUDICIAL OFFICERS, LIABILITY OF —contd.

12. ——————— *Liability of Magistrate—Delay in trying prisoners—Power to adjourn case.* A Deputy Magistrate, who without reason causes delay in proceeding with the trial of persons whom he keeps in jail, is liable, notwithstanding Act XVIII of 1850, to an action for damages if the prisoners are eventually acquitted By s. 22 of the Code of Criminal Procedure, a Magistrate may, by a written order from time to time, adjourn an enquiry for a period not exceeding fifteen days QUEEN *v.* SHAHON

11 W. R. Cr. 19

13. ——————— *Illegal arrest when acting bonâ fide—Liability of public officer* Where the defendant, a commanding officer of a regiment had unlawfully caused the plaintiff, a con-

scious violation of the law, nor for the furtherance of any unlawful purpose, but failed to establish the fraud imputed ;—*Held*, that the plaintiff under the circumstances was entitled to substantial damages PATTON *v* HUREE RAM . . **3 Agra 409**

14. ——————— *Improper procedure of Magistrate.* The Magistrate of a district issued an order under s. 308 of the Criminal Procedure Code, 1861, calling on the petitioner to remove a building, on the ground that it was an unlawful obstruction in a highway. A jury of five persons, though without any instructions and differing in their views as to the proper performance of their duties, found, after the time for their report had ex-

tioner showed cause under s. 313, but without effect,

ceedings were ultimately forwarded to the Sessions Judge, whose successor in office returned them with the remark that nothing appeared to have been done contrary to the law for the removal of local nuisances. *Quære* · Whether Act XVIII of 1850 would protect a Magistrate in such a case from being sued for damages. REG. *v.* DALSUKRAM HARIBHAI

2 Bom. 437 : 2nd Ed. 384

15. ——————— *Liability of Magistrate—Illegal order under s. 308 of Criminal Procedure Code, 1861.* A Magistrate who makes an illegal order, which purports to be made under s. 308 of Act XXV of 1861, but is not made in accordance

JUDICIAL OFFICERS, LIABILITY OF —contd.

with the provisions of that section, is liable to be sued in the Civil Court in respect of such order, and to be restrained by injunction from carrying it into effect. ASHBURNER *v.* KESHAV VALAD TUKU PATIL . . . **4 Bom. A. C. 150**

16. ——————— *Liability of Magistrate—Officer acting without jurisdiction.* Suit to

removal of the house ; upon the second issue that defendant had not acted with due care and attention but from feelings of personal animosity towards plaintiff, and was therefore not protected by Act XVIII of 1850 ; upon the third issue he assessed the

entertained that belief in good faith, unless the provisions of the Criminal Procedure Code, under which

6 Mad. 423

17. ——————— *Liability of Magistrate to damages for illegal order made under s. 308, Criminal Procedure Code, 1861.* The first defendant, acting as a Magistrate, ordered the

JUDICIAL OFFICERS, LIABILITY OF —*contd.*

v. RUGHUNATHA ROW . . . 5 Mad. 345

18. ——— *Liability of Magistrate—Order under Criminal Procedure Code (Act XXV of 1861), Ch. XX, ss 62, 308* The

mere absence of *mala fides* is no defence A Magistrate cannot be said to have "in good faith" believed himself to have jurisdiction to do or order

the course he takes When a Magistrate violates the plain language of the law and the very first principles of judicial enquiry, his proceedings presumably are characterized by want of care TARAKNATH MOOKHOPADHYA v. COLLECTOR OF HOOGHLY .4 B. L. R. A. C. 37 : 13 W. R. 13

In the same case on review the lower Appellate

JUDICIAL OFFICERS, LIABILITY OF —*concld.*

proposes to interfere to appear and show cause. COLLECTOR OF HOOGHLY v. TARAKNATH MUKHOPADHYA . 7 B. L. R. 449 : 16 W. R. 63

19. ——— *Judicial act—Right of suit—Liability of Magistrate—Beng. Act*

right of the person against whom the order was made to create the obstruction and for damages. CHUNDER NARAIN SINGH v. BROJO BULLUB GOOYEE 14 B. L. R. 254 : 21 W. R. 391

Affirming decision in CHUNDER NARAIN SING v. BROJO BULLUB GOOYEE . 21 W. R. 126

20. ——— *Abuse of his authority by Judge* Wilful abuse of his authority

JUDICIAL OFFICERS' PROTECTION ACT (XVIII OF 1850).

See JUDICIAL OFFICERS, LIABILITY OF.

See TORT . . 12 C. W. N. 973

——— *Civil Procedure Code (Act XIV of 1882), s 199—Suit against a Magistrate to recover damages—Judgment written by a Judge after his transfer—Proceedings before a Magistrate for arrears of Municipal revenue—Jurisdiction—Protection afforded to judicial officers—*

JUDICIAL OFFICERS' PROTECTION ACT (XVIII OF 1850)—*concld*

trate may gain a protection designed not for him, but in the public interest, it does not follow that he can exercise his malice with impunity His conduct can be investigated elsewhere and due punishment awarded. Judicial officers, whose official movements may leave them open to the charge that they wilfully compel parties, who appear before them, to follow the movements of their camp, should strive to exercise their powers with such consideration for such parties as will secure them from any imputation of misconduct in this respect. GIRJASHANKAR *v.* GOPALJI (1905)
I. L. R. 30 Bom. 241

JUDICIAL PROCEEDING.

See BOMBAY DISTRICT MUNICIPAL ACT, 1873, s 84 . I. L. R. 17 Bom. 731

See CAUSE OF ACTION 10 C. W. N. 107

See CIVIL PROCEDURE CODE, 1882, s 2
I. L. R. 2 Bom. 553

See COMPLAINT . I. L. R. 36 Calc. 72

See CRIMINAL PROCEDURE CODE, s 4 (*m*)
I. L. R. 28 All. 89

See CRIMINAL PROCEDURE CODE, s. 176 (1872, s. 135) . I. L. R. 3 Calc. 742

See CRIMINAL PROCEDURE CODE, ss. 195, 364 AND 476 . 9 C. W. N. 1030

See CRIMINAL PROCEDURE CODE, s. 476
7 C. W. N. 423

See CRIMINAL PROCEDURE CODES, s. 487.
10 Bom. 73
18 W. R. Cr. 15
I. L. R. 16 Calc. 121; 766
I. L. R. 20 Mad. 283
I. L. R. 14 All. 354
I. L. R. 27 Calc. 452

See FALSE EVIDENCE—
GENERAL CASES:

FABRICATING FALSE EVIDENCE.
I. L. R. 28 Calc 348

See LAND ACQUISITION ACT (I OF 1894) ss. 6, 11, 12, 40 . I. L. R. 32 Calc. 605

See PENAL CODE, ss 191 AND 193, CL. (2).
9 C. W. N. 127

See REFORMATORY SCHOOLS ACT, s 8
I. L. R. 14 Bom. 381

See SANCTION FOR PROSECUTION—POWER TO GRANT SANCTION.
I. L. R. 19 Mad. 18
I. L. R. 27 Calc. 452

——— proceeding before Land Acquisition Collector is not—

See LAND ACQUISITION ACT (I OF 1894).
I. L. R. 30 Calc. 36

——— revision of—

See REVISION—CRIMINAL CASES.

See SUPERINTENDENCE OF HIGH COURT.

JUDICIAL PROCEEDING—[illegible]

1. ——— Offence in the [illegible]—*Resistance to delivery of* [illegible]—*Procedure Code (Act V of 1898)*, [illegible]—*Jurisdiction—Civil Procedure Code* [illegible] *of 1882), s. 328.* Where in an [illegible] warrant for the delivery of [illegible] [illegible] Procedure Code and sent the [illegible] trate for trial under s. 186 of the Penal Co[illegible] that the "judicial proceeding" in the [illegible] mined when the Munsif finally [illegible] there being no further question left for [illegible] [illegible] notice of the Munsif in the course [illegible] proceeding," and that he had no [illegible] s. 476 of the Criminal Procedure [illegible] inquiry HARA CHARAN MOOKERJE[illegible] (1905) . . . . I. L. R. [illegible]
[illegible]

2. ——— [illegible] *ceeding—Local enquiry, not* [illegible] *Custody of female child—* [illegible] *mother—Question for Civil Court—* [illegible] *Deputy Magistrate—Order for* [illegible] *jury by District Magistrate.* [illegible] made before the District Magistra[illegible] a mother for the recovery of [illegible] child from her grandfather [illegible] called upon by a Magistrate [illegible] declared before the Deputy [illegible] child had been already marr[illegible] Magistrate examined *R* and [illegible] fied himself that the marriage [illegible] place, submitted the case [illegible] District Magistrate, who [illegible] The District Magistrate upon [illegible] tion, in which the story [illegible] lenged as false, held a local [illegible] conclusion that *G* and *R* [illegible] before the Deputy Magis[illegible] prosecution for perjury. [illegible] offence of perjury had [illegible] notice of the District Magis[illegible] ceeding" within the mean[illegible] of Criminal Procedure, and [illegible] was made without juris[illegible] held by him was one wh[illegible] the case he was not [illegible] Questions as to legal [illegible] determined by the Civil [illegible] *King-Emperor, I. L. R.* [illegible] GODAI SHAHA *v.* EMPER[illegible]

JUDICIAL SEPARATION [illegible]

See DIVORCE [illegible]

See DIVORCE [illegible]

JUDICIAL SEPARATION—*concld.*

See DIVORCE ACT, s. 35.
8 B. L. R. Ap. 6
I. L. R. 5 Calc. 357

See DIVORCE ACT, s. 41 6 B. L. R. 318

See PARSIS . I. L. R. 17 Bom. 146

JUDICIAL SUPERINTENDENT OF RAILWAYS, NIZAM'S DOMINIONS.

——— Dominions of Nizam of Hyderabad—*Power of Court of Judicial Superintendent of Railways to commit to High Court—Charges preferred by Advocate General—Letters Patent, 1865, cl. 24—European British subjects* The provisions of the Code of Criminal Procedure (X of 1882) apply to the Court of the Judicial Superintendent of Railways in His Highness the Nizam's Dominions held at Secunderabad Where, [illegible]

in His Highness the Nizam's Dominions, without any previous sanction having been obtained as required by that section :—*Held*, that the proceedings were illegal and without jurisdiction, and that a sanction subsequently obtained was of no effect; but *held*, also, that the provisions of s 532 of the Criminal Procedure Code applied, and that the Judge presiding at the criminal sessions of the High Court had power, in his discretion, to accept the commitment and to proceed with the trial of the prisoner. *Per* SARGENT, *C.J*—The Court of the [illegible]

[illegible]

for that by the High Court cannot be tried on charges preferred by the Advocate General under that clause. QUEEN-EMPRESS *v.* MORTON
I. L. R. 9 Bom. 288

"JUJMANI" RIGHT.

See DECREE—CONSTRUCTION OF DECREE—ENDOWMENT . 20 W. R. 331

JUNGLE LAND.

See POSSESSION, SUIT FOR.
12 C. W. N. 273

JUNGLEBURI TENURE.

See HINDU LAW—WIDOW—POWER OF WIDOW—POWER OF DISPOSITION OR ALIENATION . I. L. R. 14 Calc. 323

See RIGHT OF OCCUPANCY—PERSONS BY WHOM RIGHT MAY BE ACQUIRED.
I. L. R. 14 Calc. 323

JUNGLEBURI TENURE—*concld.*

——— *Kabuliat—Raiyat—Heritable interest—Occupancy rights—Rent, enhancement of—Bengal Tenancy Act (VIII of 1885), ss. 18 and 30—Status of such raiyat.* *E* held 50 bighas of land for more than 12 years under a jungleburi lease, which provided for a progressive rate of rent and did not expressly provide that the interest of *E* was to be heritable or perpetual. It did not expressly exclude enhancement on any ground, but expressly provided for enhancement on the ground of increase in the productiveness of the soil effected at the expense of the landlord. *Held*, that the interest created by the lease was not one covered by s 18 of the Bengal Tenancy Act and that *E* was not a raiyat holding at fixed rates. *Held* (per RAMPINI, *J.*), that *E* was a raiyat with occupancy rights RAJ KUMAR SARKAR *v.* NAYA CHATOO BIBI (1904) . I. L. R. 31 Calc. 960

JURISDICTION.

JURISDICTION—*contd.*

See Act XIX of 1841 . 12 C. W. N. 65

See Agra Tenancy Act (II of 1901), ss. 31, 57, 179, 199.
I. L. R. 31 All. 109

See Agra Tenancy Act (II of 1901), s 32 . . I. L. R. 29 All. 66

See Agra Tenancy Act (II of 1901), s.167.
I. L. R. 31 All. 445

See Agra Tenancy Act (II of 1901), ss. 176, 177 and 182.
I. L. R. 29 All. 69

See Appeal . I. L. R. 33 Calc. 1323

See Arbitration I. L. R. 29 Mad. 69
I. L. R. 33 Bom. 401

JURISDICTION—*contd.*

See Arbitration Act (52 & 53 Vict., c. 49), s. 12 . . I. L. R. 31 Calc. 274

See Arbitration Act (IX of 1899), s. 19.
I. L. R. 31 Bom. 236

See Arbitrator . 8 C. W. N. 37

See Attorney . I. L. R. 35 Calc. 915.

See Award.

See Bengal, N.-W. P. and Assam Civil Courts Act (XII of 1887), ss. 15, 17, 18, 19 and 21.

See Bengal Tenancy Act (VIII of 1885), s. 106 . 12 C. W. N. 987

See Bombay Civil Courts Act (Bombay Act XIV of 1869), s 16
I. L. R. 32 Bom. 634
I. L. R. 33 Bom. 371

See Bombay Revenue Jurisdiction Act.

See Cause of Action.
I. L. R. 31 Calc. 274

See Chota Nagpur Encumbered Estates Act, s. 10 . 11 C. W. N. 1127

See Civil and Revenue Courts.
I. L. R. 26 All. 591

See Civil Procedure Code, 1882, ss. 17 (c), 551, 623.
I. L. R. 30 Bom. 570 ; 625

See Civil Procedure Code, 1882, ss. 25, 191 (2) . . 10 C. W. N. 12

See Civil Procedure Code, 1882, s 11.
I. L. R. 33 Bom. 278.

See Civil Procedure Code, 1882, ss 16, 19 . . I. L. R. 30 All. 560

See Civil Procedure Code, 1882, s 195 (7) (c) . . I. L. R. 31 All. 313

See Civil Procedure Code, 1882, ss. 206, 632 . . I. L. R. 31 Bom. 44

See Civil Procedure Code, 1882, s 244.
I. L. R. 31 All. 45

See Civil Procedure Code, 1882, s 285.
I. L. R. 31 All. 527

See Civil Procedure Code, 1882, s 310A.
I. L. R. 31 All. 279

See Civil Procedure Code, 1882, s 433.
I. L. R. 29 All. 379

See Civil Procedure Code, 1882, s. 622.
I. L. R. 31 All. 38

See Collector . I. L. R. 26 Mad. 742
I. L. R. 28 Bom. 238

See Commitment . I. L. R. 36 Calc. 48

See Companies Act, s. 58.
10 C. W. N. 906

See Contract Act (IX of 1872), ss. 16, 19A . . I. L. R. 31 Bom. 348.

See Contract Act (IX of 1872), s. 69.

JUDICIAL SEPARATION—*concld.*

See Divorce Act, s. 35.
9 B. L. R. Ap. 6
I. L. R. 5 Calc. 357

See Divorce Act, s. 41 6 B. L. R. 318

See Parsis . I. L. R. 17 Bom. 146

JUDICIAL SUPERINTENDENT OF RAILWAYS, NIZAM'S DOMINIONS.

———— **Dominions of Nizam of Hyderabad**—*Power of Court of Judicial Superintendent of Railways to commit to High Court—Charges preferred by Advocate General—Letters Patent, 1865, cl. 24—European British subjects.* The provisions of the Code of Criminal Procedure (X of 1882) apply to the Court of the Judicial Superintendent of Railways in His Highness the

was committed for trial to the High Court of Bombay by the Judicial Superintendent of Railways in His Highness the Nizam's Dominions, without

but *held*, also, that the provisions of s. 532 of the Criminal Procedure Code applied, and that the Judge presiding at the criminal sessions of the High Court had power, in his discretion, to accept the commitment and to proceed with the trial of the prisoner. *Per* Sargent, *C.J.*—The Court of the

for trial by the High Court cannot be tried on charges preferred by the Advocate General under that clause. Queen Empress *v.* Morton
I. L. R. 9 Bom. 288

"JUJMANI" RIGHT.

See Decree—Construction of Decree —Endowment . 20 W. R. 331

JUNGLE LAND.

See Possession, suit for.
12 C. W. N. 273

JUNGLEBURI TENURE.

See Hindu Law—Widow—Power of Widow—Power of Disposition or Alienation . I. L. R. 14 Calc. 323

See Right of Occupancy—Persons by whom Right may be acquired.
I. L. R. 14 Calc. 323

JUNGLEBURI TENURE—*concld.*

———— *Kabuliat—Raiyat—Heritable interest—Occupancy rights—Rent, enhancement of—Bengal Tenancy Act (VIII of 1885), ss. 18 and 30—Status of such raiyat.* *E* held 50 bighas of land for more than 12 years under a jungleburi lease, which provided for a progressive rate of rent and did not expressly provide that the interest of *E* was to be heritable or perpetual. It did not expressly exclude enhancement on any

covered by s. 18 of the Bengal Tenancy Act and that *E* was not a raiyat holding at fixed rates. *Held* (per Rampini, *J.*), that *E* was a raiyat with occupancy rights Raj Kumar Sarkar *v.* Naya Chatoo Bibi (1904) . I. L. R. 31 Calc. 960

JURISDICTION.

JURISDICTION—*contd.*

See Act XIX of 1841 . **12 C. W. N. 65**

See Agra Tenancy Act (II of 1901), ss. 31, 57, 179, 199. **I. L. R. 31 All. 109**

See Agra Tenancy Act (II of 1901), s 32 . . **I. L. R. 29 All. 66**

See Agra Tenancy Act (II of 1901), s 167. **I. L. R. 31 All. 445**

See Agra Tenancy Act (II of 1901), ss. 176, 177 and 182. **I. L. R. 29 All. 69**

See Appeal . **I. L. R. 33 Calc. 1323**

See Arbitration **I. L. R. 29 Mad. 69**
I. L. R. 33 Bom. 401

JURISDICTION—*contd.*

See Arbitration Act (52 & 53 Vict., c. 49), s. 12 . . **I. L. R. 31 Calc. 274**

See Arbitration Act (IX of 1899), s. 19. **I. L. R. 31 Bom. 236**

See Arbitrator . **8 C. W. N. 37**

See Attorney . **I. L. R. 35 Calc. 915**

See Award.

See Bengal, N.-W. P. and Assam Civil Courts Act (XII of 1887), ss. 15, 17, 18, 19 and 21.

See Bengal Tenancy Act (VIII of 1885), s 106 . **12 C. W. N. 987**

See Bombay Civil Courts Act (Bombay Act XIV of 1869), s 16.
I. L. R. 32 Bom. 634
I. L. R. 33 Bom. 371

See Bombay Revenue Jurisdiction Act.

See Cause of Action.
I. L. R. 31 Calc. 274

See Chota Nagpur Encumbered Estates Act, s 10 . **11 C. W. N. 1127**

See Civil and Revenue Courts.
I. L. R. 26 All. 591

See Civil Procedure Code, 1882, ss. 17 (c), 551, 623.
I. L. R. 30 Bom. 570 ; 625

See Civil Procedure Code, 1882, ss. 25, 191 (2) . . **10 C. W. N. 12**

See Civil Procedure Code, 1882, s 11.
I L. R. 33 Bom. 278

See Civil Procedure Code, 1882, ss. 16, 19 . . **I. L. R. 30 All. 560**

See Civil Procedure Code, 1882, s. 195 (7) (c) . . **I. L. R. 31 All. 313**

See Civil Procedure Code, 1882, ss 206, 632 . . **I. L. R. 31 Bom. 44**

See Civil Procedure Code, 1882, s. 244.
I. L. R. 31 All. 45

See Civil Procedure Code, 1882, s. 285.
I. L. R. 31 All. 527

See Civil Procedure Code, 1882, s 310A.
I. L. R. 31 All. 279

See Civil Procedure Code, 1882, s 433.
I. L. R. 29 All. 379

See Civil Procedure Code, 1882, s 622.
I. L. R. 31 All. 38

See Collector . **I. L. R. 26 Mad. 742**
I. L. R. 28 Bom. 236

See Commitment . **I. L. R. 36 Calc. 48**

See Companies Act, s. 58.
10 C. W. N. 906

See Contract Act (IX of 1872), ss. 16, 19A. . . **I. L. R. 31 Bom. 348**

See Contract Act (IX of 1872), s. 69.

JURISDICTION—*contd.*

See CONTRACT ACT, 1872, s 265.

See COPYRIGHT ACT, s. 6
10 C. W. N. 134

See COSTS—SPECIAL CASES—JURISDICTION . . . Marsh. 311, 375
1 Ind. Jur. N. S. 38
14 W. R. 312
Bourke O. C. 131

See CRIMINAL PROCEDURE CODE, s. 203
I. L. R. 29 All. 7

See CRIMINAL PROCEDURE CODE, s 250.
I. L. R. 29 All. 137

See CRIMINAL PROCEDURE CODE, s 435
I. L. R. 29 All. 563

See DISTRICT JUDGE, JURISDICTION OF

See DIVORCE . I. L. R. 36 Calc. 964

See EXCISE ACT (XII OF 1896), ss 44, 57
I. L. R. 30 All. 377

See EXECUTION OF DECREE—

APPLICATION FOR EXECUTION, AND POWERS OF COURT;
5 C. W. N. 287

TRANSFER OF DECREE FOR EXECUTION, AND POWER OF COURT AS TO EXECUTION OUT OF ITS JURISDICTION.

See FOREIGN COURT, JUDGMENT OF
I. L. R. 2 Mad. 400; 407
I. L. R. 22 Calc. 222
L R 21 I. A. 171
I. L. R. 13 Mad. 493
I. L. R. 15 Mad. 82
I. L R. 18 Mad. 327
I. L. R. 20 Mad. 112
I. L. R. 29 Calc. 509

See FRAUD . I. L. R 29 All. 418;
11 C. W. N. 579

See HEREDITARY OFFICES ACT (BOM ACT III OF 1874), s. 18
I. L. R. 25 Bom. 186

See HIGH COURT, JURISDICTION OF.

See INJUNCTION.
I. L. R. 34 Calc. 97, 101

See INSOLVENCY . I. L. R. 31 Calc. 761
8 C. W. N. 468
I. L. R. 36 Calc. 489

See INSOLVENCY ACT, s. 5.

See INSOLVENCY ACT (11 AND 12 VICT., c 21), ss. 7, 26, 36.
I. L. R. 33 Bom. 462

See INSOLVENCY ACT (11 AND 12 VICT., c. 21), ss. 26, 27.
I. L. R. 32 Bom. 198

See INSOLVENCY ACT, s. 58.
I. L. R. 13 Bom. 114

See JURISDICTION OF CIVIL COURT.

JURISDICTION—*contd.*

See JURISDICTION OF CRIMINAL COURT.

See JURISDICTION OF REVENUE COURT.

See LAND ACQUISITION ACT (I OF 1894).
I. L. R. 35 Calc. 525, 1104
12 C. W. N. 263

See LAND REGISTRATION ACT (VI OF 1876) . I. L. R. 35 Calc. 120, 571

See LEGAL PRACTITIONERS ACT (XVIII OF 1879), ss. 13 AND 14.
I. L. R. 29 All. 61

See LEGAL PRACTITIONERS ACT, 1879, s. 36 . . I. L. R. 31 All. 59

See LETTERS OF ADMINISTRATION.
1 B. L. R. O. C. 3, 19
8 W. R. 3
4 B. L. R. Ap. 49
1 Hyde 67
Bourke, Test. 6
11 W. R. 413

See LETTERS PATENT, 1865, CLS 10, 39.
I. L. R. 32 Bom 106

See LETTERS PATENT, 1865, CL. 12
I. L. R. 30 Bom. 167
I. L. R. 35 Calc. 394

See LETTERS PATENT, HIGH COURTS, 1865, CLS 12, 13

See MAGISTRATE—
GENERAL JURISDICTION;
POWERS OF MAGISTRATES.
I. L R. 29 Calc. 242
I. L. R. 36 Calc. 72

See MAHOMEDAN LAW
I. L. R. 36 Calc. 21

See MAMLATDAR, JURISDICTION OF.

See MAMLATDARS' COURTS ACT.
I. L. R. 31 Bom. 86

See MORTGAGE . I. L. R. 34 Calc. 886

See MUNICIPALITIES ACT (N W. P. 1900), s 183 . . I. L. R. 31 All. 371

See N.-W. P LAND REVENUE ACT, 1873, ss. 132, 241 . I. L. R. 31 All. 41

See MUNSIF.

See PARTITION . I. L. R. 29 All. 604

See PENAL CODE, s 392.
I. L. R. 28 All. 372

See PLAINT—PROCEDURE
I. L. R. 24 Mad. 158

See POSSESSION . I. L. R. 33 Calc. 33

See POWER OF COURT TO RECTIFY MISTAKE.
12 C. W. N. 1027

See PRACTICE . I. L. R. 30 Bom. 109
I. L. R. 35 Calc. 541

See PRESIDENCY SMALL CAUSE COURTS ACT (XV OF 1882), s. 19 (*k*).
I. L. R. 32 Bom. 575

JURISDICTION—*contd.*

See PROBATE—JURISDICTION IN PROBATE CASES

See PROVINCIAL SMALL CAUSE COURTS ACT (IX OF 1887), s 15
I. L. R. 35 Calc. 677

See PROVINCIAL SMALL CAUSE COURTS ACT (IX OF 1887), s 35.
I. L. R. 30 Mad. 217

See PROSECUTION, ORDER FOR.
I. L. R. 35 Calc. 114 ; 133

See PUTNI SALE . 11 C. W. N. 765

See RECEIVER . I. L. R. 30 Calc. 593

See RELIGIOUS ENDOWMENTS ACT, SS. 5, 14

See RENT, SUIT FOR—BY WHAT COURT TRIABLE . I. L. R. 30 Calc. 453

See RESTITUTION OF CONJUGAL RIGHTS
I. L. R 31 Calc. 849

See RIGHT OF SUIT—FRAUD.
7 C. W. N. 353

See SALE IN EXECUTION OF DECREE

See SECRETARY OF STATE.
I. L. R. 27 Bom. 189

See SESSIONS JUDGE, JURISDICTION OF.

See SMALL CAUSE COURT, MOFUSSIL—JURISDICTION . I L. R. 28 All. 292

See SMALL CAUSE COURT, PRESIDENCY TOWNS—JURISDICTION.

See SPECIFIC RELIEF ACT, s 9
13 C W. N. 303, 305

See SUBORDINATE JUDGE, JURISDICTION OF

See SUITS VALUATION ACT (VII OF 1887), SS. 8, 11 . . I. L R. 31 Bom. 73
I. L. R. 33 Bom. 307

See SUMMARY TRIAL
I. L. R 36 Calc. 67

See SUPERINTENDENCE OF HIGH COURT.

See TANK . I. L. R. 31 Calc. 937

See TRANSFER OF SUIT
I. L R. 30 Bom. 246

See TRESPASS . I. L. R. 36 Calc. 28

See U P. LAND REVENUE ACT, III OF 1901, s 233 (*l*) I. L R. 31 All. 330

See VALUATION OF SUIT—APPEALS

See WAIVER . I. L. R. 35 Calc. 394

———— **attachment of property outside**—

See ATTACHMENT—ATTACHMENT BEFORE JUDGMENT . . 7 C. W. N. 216

———— **cause of action**—

See EXECUTOR . 7 C. W. N. 476

See MISJOINDER.
I. L. R. 26 Bom. 259

JURISDICTION—*contd.*

———— **civil and revenue Courts**—

See ADEN COURTS ACT.
I. L. R. 29 Bom. 368

See CIVIL COURT.
I. L. R. 32 Calc. 1072

See CIVIL PROCEDURE CODE, 1882, s 204.
9 C. W. N. 61

See CIVIL PROCEDURE CODE 1882, s. 622.
9 C. W. N. 605

See CONTRACT . I. L. R. 32 Calc. 884

See COURT FEES ACT, s 7.
9 C. W. N. 690

See CRIMINAL COURT
I. L R. 32 Calc. 783

See DEFAMATION. I. L. R. 32 Calc. 425

See EXECUTION. . 9 C. W. N. 381

See FOREST ACT I. L. R. 29 Bom. 480

See GOVERNOR IN COUNCIL.
9 C. W. N. 257

See HIGH COURT . 9 C. W. N. 961

See INDIAN POST OFFICE ACT (VI OF 1898), s. 34

See INSOLVENCY . 9 C. W. N. 952

See JUDICIAL PROCEEDING, OFFENCE IN THE COURSE OF.
I. L. R. 32 Calc. 367

See LETTERS PATENT.

See LIMITATION . 9 C. W. N. 956

See REMAND . I. L. R. 32 Calc. 1069

See REVENUE SALE.
I. L. R. 32 Calc. 229

See SALE . I. L. R. 32 Calc. 1104

See SANCTION FOR PROSECUTION.
I. L. R. 32 Calc. 379

See SECURITY TO KEEP THE PEACE
I. L. R. 32 Calc. 948

———— **illegal exercise of, or failure to exercise**—

See CERTIFICATE OF ADMINISTRATION—CERTIFICATE UNDER BOMBAY REGULATION VIII OF 1827.
I. L. R. 16 Bom. 708

See SUPERINTENDENCE OF HIGH COURT—CIVIL PROCEDURE CODE, 1882, s. 622.

———— ***irregularity***—**interference in revision**—

See CIVIL PROCEDURE CODE, 1883, s 285.
I. L. R. 27 All. 56

See CRIMINAL PROCEDURE CODE, SS. 37, 88 AND 89 . I. L. R. 27 All. 572

JURISDICTION—*contd.*

——— irregularity—interference in revision—*concld.*

See Criminal Procedure Code, s 145 9 C. W. N. 1046

See Criminal Procedure Code, ss. 443, *et seq.* . . I. L. R. 27 All. 397

See Criminal Procedure Code, s 556. I. L. R. 27 All. 25 ; 33

See Execution of Decree. I. L. R. 27 All. 62

See Limitation Act (I of 1877), Sch. II, Art. 28 . I. L. R. 27 All. 622

See Offence . 9 C. W. N. 816

——— matrimonial jurisdiction—

See Divorce Act (IV of 1869)

——— of British Courts to decide question of succession to Foreign Sovereign State—

See Tipperah Raj I. L. R. 35 Calc. 777

——— of Financial Commissioner—

See Oudh Sub-Settlement Act, XXVI of 1866 . . I. L. R. 31 All. 394

——— of High Court to interfere in the Attorneyship Examination—

See Mandamus . I. L. R. 35 Calc. 915

——— of Mofussil Small Cause Court—

See Small Cause Court—Mofussil—Jurisdiction ;

Practice and Procedure. I. L. R. 25 Bom. 417

——— of Munsifs—

See Restitution of Conjugal Rights. I. L. R 34 Calc. 352

——— of Presidency Small Cause Court—

See Small Cause Court, Presidency Towns—Jurisdiction.

——— of Small Cause Court—

See Attachment—Subjects of Attachment—Salary. I. L. R. 30 Calc. 713

——— over foreigners—

See Foreign Court, judgment of. 5 C. W. N. 741

——— question of—

See Appellate Court—Objections taken for first time on Appeal—Jurisdiction.

JURISDICTION—*contd.*

——— to set aside award—

See Arbitration Act, 1899, s. 14 13 C. W. N. 63

——— transfer or re-arrangement of, in British Territory—

See Cession of British Territory in India . I. L. R. 1 Bom. 367 I. L. R. 2 All. 1

——— want of—

See Appellate Court—Exercise of Powers in various Cases I. L. R. 13 All. 575

See Sale in Execution of Decree—Invalid Sales—Want of Jurisdiction.

See Registration Act (III of 1877), s 28 . . I. L. R. 29 Calc 654

1. QUESTION OF JURISDICTION.

(*a*) Generally.

1. ——— **Duty of Court to show its jurisdiction on its proceedings** The High Court pointed out the necessity of a Court showing its jurisdiction and competency on the face of all its proceedings Queen *v* Bipro Doss 8 W. R. Cr. 45

2. ———**Jurisdiction on what dependent**—*Nature of claim—Nature of defence* The jurisdiction of a Court of justice as to a cause of action depends on the nature of the claim put forward by the plaintiff and the matter involved in it, not on what the defendant may assert by way of defence. Chunder Koomar Mundul *v* Bakur Ali Kan . . . . . 9 W. R. 598

Dalgleish *v.* Jeebun Mahto . 25 W. R. 1

Watson *v* Hedger W. R. 1864, Act X, 25

Nobin Chunder Roy Chowdhry *v.* Bhowanee Pershad Doss . . W. R 1864, Act, X, 52

3. ———**Questions of jurisdiction how governed**—*Statements in plaint and defence—Valuation of suit.* Questions of jurisdiction, whether with reference to the nature of the suit or with reference to the pecuniary limits of the claim, are matters to be governed by the statements contained in the plaint in the cause The valuation of the claim as preferred by the plaintiff, and not as set up by the plea in defence, would govern the action, not only for the purposes of the original Court, but also for the purposes of appeal, and indeed throughout the litigation. Jag Lal *v.* Har Narain Singh . . I. L. R. 10 All. 524

4. ——— **Objection to jurisdiction**—*Evidence of jurisdiction—Military Court of Requests Act (XI of 1841) s. 8* Where the plaintiff

JURISDICTION—*contd.*

1. QUESTION OF JURISDICTION—*contd.*

(*a*) GENERALLY—*contd.*

5. ———— *Appeal on merits*

the first Court found that plaintiff's bill of sale was fraudulent, and that he was not in possession. On appeal the Judge, on an objection taken for the first time in his Court, *held* that the Small Cause Court had no jurisdiction to try a suit on a bond in which land was hypothecated, and, without going into plaintiff's case, gave him a decree *Held*, that the Judge ought to have tried first, not the defendant's case, but the plaintiff's, who was bound to prove his possession and the genuineness of his bill of sale; until then the question of jurisdiction did not arise RASH BEHAREE ROY *v* EZUD BUKSH 11 W. R. 276

6. ———— **Admission or rejection of jurisdiction by Court**—*Judicial investigation* A judicial investigation of allegations and facts sufficient to guide the Court should precede the admission or rejection of jurisdiction NUSRUN BEEBEE *v* WATSON & Co 3 W R 215

See HUREE PERSAD MALEE *v* KOONJO BEHARY SHAHA . . Marsh. 99 : 1 Hay 238

and ISHAN CHUNDER ROY *v* TARRUCK CHUNDER BANERJEE . . . 18 W. R. 238

7. ———— Jurisdiction in supple-

which the plaintiff seeks to follow out that right. KASHEE NATH KOOER *v* DEB KRISTO RAMANOOJ DOSS . . . . . . 16 W. R. 240

8. ———— **Distinction between suits, appeals, and applications in matters of jurisdiction** The distinction made for the purposes of limitation between suits, appeals, and applications by the Limitation Acts has no bearing upon a question of jurisdiction. BALAJI RANCHODDAS *v.* MOHANLAL DALSUKHRAM I. L R. 5 Bom. 680

9. ———— **Plea of jurisdiction**—*Power of Appellate Court* An Appellate Court cannot

10. ———— *Power of Court to decide want of jurisdiction in another Court* Although one Court cannot set aside the proceedings of another Court for want of jurisdiction, yet when a

Revenue Court's want of jurisdiction appeared on the face of its decree, a Munsif was *held* to be justified in holding that the Revenue Court had no jurisdiction GUNNESH PATTRO *v* RAM NIDHEE KOONDOO . . . . 22 W. R. 361

11. ———— *Right to object to jurisdiction.* Where a suit is instituted against a Collector and another person, and the Collector does not appeal:—*Held*, that the question of the District Court's jurisdiction to entertain the suit

10 Bom. 194

12. ———— **Competence of Court having jurisdiction to hear a suit, to decide every question arising in the suit**—*Limitation.* Where a Court is competent to hear a particular suit, it is competent to decide every question, whether of limitation or any other matter, arising in the suit If it decides such question wrongly it does not thereby lose its jurisdiction, and its decree, though possibly

(1904) . . . . I. L R. 26 All. 522

13. ———— **Suit against Official Assignee**—*Mofussil Civil Courts—Insolvent—Civil*

I. L. R. 10 All. 133; and *Misri Lal* v. *Mozhar Hosain*, I. L. R. 13 Calc. 262, referred to. In order to carry on the business of an indigo factory *A*

JURISDICTION—*contd.*

1. QUESTION OF JURISDICTION—*contd.*

(*a*) GENERALLY—*contd.*

mortgaged to *B* the factory, out-works and produce. Subsequently *B* sued *A* for the amount of the

14. ——— Munsif exercising Small

Small Causes the suits which had been pending in the abolished Court of Small Causes. The successor can try such suits only in his ordinary civil jurisdiction and his decision in such case is open to appeal *Mangal Sen* v. *Rup Chand, I L. R. 13 All 324*, dissented from. DULAL CHANDRA DEB *v.* RAM NARAIN DEB (1904) . I L. R. 31 Calc. 1057

15. ——— Tiled huts—*Presidency Small Cause Court—New trial—Title to immoveable property—Presidency Small Cause Courts Act (I of 1895), s 38—Civil Procedure Code (Act XIV of 1882), s. 622* Ordinarily where property attached as being the property of a judgment-debtor is claimed by a third person, that third person may file a claim; and, where the Court has jurisdiction to try the question, the title to the property is determined in the execution proceedings. Tiled huts are immoveable property. Under the pre-

RAN CHANDRA NAYEK (1904)
I. L. R. 31 Calc. 340
s.c. 8 C. W. N. 246

16. ——— Refusal to examine witnesses—*Interference by High Court—Criminal Procedure Code (Act V of 1898), s. 145.* Where in a proceeding under s 145 of the Criminal Procedure Code the trying Magistrate refused to examine certain witnesses on behalf of one of the

MITTER *v.* BARODA PROSAD ROY CHOWDHRY (1904)
I. L R. 31 Calc. 685

17. ——— Suit against deceased person—*Where a suit is instituted against a deceased person, Courts have no jurisdiction to allow the plaint to be amended by substituting the names of the representatives of the deceased.* There is nothing in the Code of Civil Procedure to authorise the institution of a suit against a deceased person and the Courts have no jurisdiction to allow the plaint in such a case to be

Azeen Gazee Chowkeedar (12 W R 45), followed, *Mallikarjuna* v *Pullayya, I. L R. 16 Mad. 319*, distinguished. VEERAPPA CHETTY *v.* TINDAL PONNEN (1907) . . . I. L. R. 31 Mad. 86

18. ——— Small Causes suit—*Suit brought in the Court of the First Class Subordinate Judge having Small Cause powers—The Subordinate Judge on privilege leave—Charge of the Court in Joint Second Class Subordinate Judge who had no small cause powers—Registering the suit*

JURISDICTION—*contd.*

1. QUESTION OF JURISDICTION—*contd.*

(*a*) GENERALLY—*concld.*

Judge tried the suit under his ordinary jurisdiction deprive it of its character as a small cause. NARAYAN RAVJI *v.* GANGARAM RATANCHAND (1909) I. L. R. 33 Bom. 664

(*b*) WHEN IT MAY BE RAISED.

19. ———— **Objection not taken in first Court.** The Court will receive and adjudicate a point of jurisdiction, though not taken below, because as acts done without jurisdiction are acts of no legal effect at all, they must be set aside. GOOROO PERSAD ROY *v.* JUGGOBUNDO MOZOOMDAR W. R. F. B. 15

JUGGOBUNDO MOZOOMDAR *v.* GOOROO PERSAD ROY . . . Marsh. 54 : 1 Hay 228

20. ———— *Objection not* [illegible]

[illegible]

MAZHAR HUSAIN . . . I. L. R. 7 All 230

21. ———— *Objection to jurisdiction in Appellate Court* [illegible]

22. ———— **Time for taking objection.** It is an objection which can be taken at any stage of the case. NOBEEN KISHEN MOOKERJEE *v* SHIB PERSHAD PATTACK . . . 7 W. R. 490

SUSHTEEBUR MOOKERJEE *v.* MACKENZIE 2 W. R., Act X, 76

ANUNDEE KOONWAR *v* TAKOOR PANDEY 4 W. R. Mis 21

23. ———— **Objection taken for first time in appeal.** The question of jurisdiction cannot be raised in appeal for the first time, unless it appear upon the f[illegible]

3 B. L. R. A. C. 283

S C. NYMOODDEE JOARDAR *v* MONCRIEF 12 W. R. 140

24. ———— *Objection raised for first time on appeal.* Where a suit which ought to have been instituted in the Court of the Sudder Ameen was, that Court being closed for the [illegible]

[illegible] Assistant Judge. MOTILAL RAMDAS *v* JAMNADAS JAVERDAS . . 2 Bom. 42 : 2nd Ed. 40

25. ———— *Objection raised for first time on appeal. A* sued *B* in a Court which had no jurisdiction to entertain the claim. The suit was heard and determined in favour of *B* [illegible]

TRIMBAKJI *v* TOMU VALAD KUTUR 2 Bom. 200 ; 2nd Edn. 192

26. ———— *Objection raised* [illegible]

face of the record. BAPUJI AUDITRAM *v.* UMEDBHAI HATHESING . . 8 Bom. A. C. 245

27. ———— **Objection taken on appeal after remand** The Court will take notice of a question affecting its jurisdiction even when urged for the first time on appeal after remand. CHOWDRY WAHID ALI *v.* MULLICK INAYET ALI 6 B. L. R. 52 : 14 W. R 288

28. ———— An objection to jurisdiction may be raised at any stage of a suit, even after remand by the High Court in second appeal. KESHAV *v.* VINAYAK I. L. R. 23 Bom. 22

29. ———— *Objection taken on appeal after remand* When the High Court has remanded a suit for re-trial on the merits, the lower Appellate Court has no authority to raise a question of jurisdiction for the first time TEMULJI RUSTAMJI *v.* FARDUNJI KAVASJI 5 Bom. A. C. 137

30. ———— *Objection raised* [illegible]

first instance again passed a decree in favour of the plaintiff, and the defendant again urged his plea of

JURISDICTION—*contd.*

1. QUESTION OF JURISDICTION—*contd.*

(*b*) WHEN IT MAY BE RAISED—*contd.*

jurisdiction in appeal, but the Judge declined to go into it a second time. *Held*, that the suit not having been instituted in the Court of the lowest

the defendant in special appeal to raise the plea of jurisdiction. GANPUTRAV RANCHODJI *v* BAI SURAJ **7 Bom. A. C. 79**

31. ———— *Objection raised on special appeal—Suing without authority* A widow, without any written authority, sued on behalf of her son, who was absent on military service beyond the jurisdiction of the Court; the defendant did not object to her want of authority in the Court of first instance, but did so in the Courts of appeal and special appeal. *Held*, that the objection was a valid one. SHIVRAM VITHAL *v* BHAGIRTHIBAI **6 Bom. A. C. 20**

32. ———— *Objection raised on special appeal—Presumption of jurisdiction. Held* by MARKBY, J., that whenever an objection is made to the want of jurisdiction for the first time in the High Court on special appeal, every presumption should be made in favour of the jurisdiction of the Courts below ROOKE *v.* PYARI LAL **4 B. L. R. Ap. 43 : 11 W. R. 634**

33. ———— *Objection to jurisdiction taken at late stage of suit—Procedure.* When an objection to the jurisdiction is first taken

1 Hyde 284

34. ———— *Procedure on allowance of objection* Where the objection of jurisdiction had been raised and allowed at an early stage of the case, the plaint should have been returned to be presented in the proper Court KHOOSHAL CHUND *v* PALMER . **1 Agra 280**

KHANDU MORESHVAR *v.* SHIVJI GORKOJI **5 Bom. A. C. 212**

35. ———— *Objection taken on appeal—Costs* Where the plea of want of jurisdiction was taken

. W. R. 460

36. ———— *Application for execution of decree—Objection apparent in record. Quære:* Whether upon an application for execution of a decree, an objection, apparent on the face of the record, to the jurisdiction of the Court which made the decree, can be entertained. MOHAN ISHWAR *v.* HAKU RUPA . **I. L. R. 4 Bom. 638**

JURISDICTION—*contd.*

1. QUESTION OF JURISDICTION—*contd.*

(*b*) WHEN IT MAY BE RAISED—*contd.*

37. ———— *Objection to order made without jurisdiction—Objection on appeal from subsequent order.* A Court has no jurisdiction, reading s 372 of the Civil Procedure Code with s 647, to bring in a party after decree and make him a judgment-debtor for the purposes of execution *Gocool Chunder Gossamee* v *Administrator General of Bengal, I. L R 5 Calc. 726*, and *Attorney-General* v. *Corporation of Birmingham, L. R. 15 Ch. D. 423*, referred to Where a Court had so acted, by an order which might have been, but was not, made the subject of appeal under s 588 of the Code:—*Held*, that, as there was no jurisdiction to make such an order, the party aggrieved was competent to object thereto on appeal from a subsequent order enforcing execution against him as a judgment-debtor GOODALL *v* MUSSOORIE BANK **I. L. R. 10 All. 97**

38. ———— *Objection that certificate had not been obtained for suit—Suit under Dekkan Agriculturists' Relief Act. Held*, that an objection to a suit under the Dekkan Agriculturists' Relief Act, on the ground that a proper certificate had not been obtained, could be taken for the first time in second appeal, as it was an objection affecting the jurisdiction of the Courts below. NYAMTULA *v* NANA VALAD FARIDSHA **I. L. R. 13 Bom. 424**

39. ———— *Objection as to jurisdiction, first taken in second appeal—Waiver of objection to jurisdiction* A suit of which the

and determine the suit. On second appeal the objection was taken as above *Held*, that the objection could not be waived, but must prevail, and the plaint be returned for presentation in the proper Court. VELAYUDAM *v* ARUNACHALA **I. L. R. 13 Mad. 273**

40. ———— **Criminal Court**—*Objection taken for first time on appeal* A plea of want of jurisdiction may be taken in the High Court, though not taken below. MACDONALD *v* RIDDELL **16 W R. Cr. 79**

41. ———— *Criminal Court* The case of a prisoner accused of the offence of attempting to cheat by personation was referred for trial by the District Magistrate to a Magistrate, who, without a complaint being made to him, convicted and sentenced the prisoner The conviction

JURISDICTION—*contd.*

1. QUESTION OF JURISDICTION—*contd.*

(b) WHEN IT MAY BE RAISED—*concld*

been raised before the Sessions Court. REG *v.* VISHVANATH DAULATRAV . 4 Bom. Cr. 33

(c) WRONG EXERCISE OF JURISDICTION

42. ———— **Suit instituted in wrong Court**—*Transfer of suit.* Where a suit has been instituted in the wrong Court, the defect of jurisdiction is not cured by its transfer to the Court in which it ought to have been brought PACHAONI AWASTHI *v.* ILAHI BAKSH I. L. R. 4 All. 478

43. ———— **Case tried without jurisdiction owing to improper valuation**—*Civil Procedure Code, 1859, s 6—Irregularity not prejudicing defendant—Valuation of suit* Act VIII of 1859, s 6, occurring in a Code of Civil Procedure regulated the practice of Courts, but did not take away jurisdiction from any Court, which,

the suit ought to have been brought RUSSICK CHUNDER *v* RAM LALL SHAHA . 22 W. R. 301

44. ———— *Subject-matter—Act XIV of 1869, s 25* What *primâ facie* determines the jurisdiction of a Court is the claim or subject-matter of the claim as estimated by the

ing to sustain LAKSHMAN BHATKAR *v* BABAJI BHATKAR . . I. L. R. 8 Bom. 31

45 ———— **Suit brought without authority**—*Subsequent sanction, effect of.* Where a suit was brought by a widow on behalf of her son who was absent on military service and the objection of jurisdiction was taken and allowed :—*Held*, that the defect of jurisdiction could not be cured by the production of a written authority on special appeal SHIVRAM VITHAL *v* BHAGIRTHIBAI . . . . . 6 Bom. A. C. 20

46. ———— **Suit brought under honest misinformation**

JURISDICTION—*contd.*

1. QUESTION OF JURISDICTION—*contd.*

(c) WRONG EXERCISE OF JURISDICTION—*concld.*

proceedings being thus justified, a Special Judge has jurisdiction to revise them and, if necessary, to order a new trial. KONDAJI BAGAJI *v* ANAN I. L. R. 7 Bom. 448

47. ———— **Suit against Sardar**—*Retrospective effect of appointment.* Creation of the defendant as Sardar in 1867 cannot have a retrospective effect so as to affect a suit instituted against her in the Civil Court in 1861 and to render the decree of that Court one without jurisdiction RAMABAI SAHEB PATVARDHAN *v.* APPA 12 Bom. 13

48. ———— **Exercise of jurisdiction by Court wrongly, owing to negligence of party.** Where jurisdiction over the subject-matter exists, requiring only to be invoked in the right way, the party who has invited or allowed the Court to exercise it in a wrong way cannot afterwards challenge the legality of the proceedings due to his own invitation or negligence. But if there is no jurisdiction over the subject-matter, the acquiescence of the parties concerned cannot create it. VISHNU SAKHARAM NAGARKAR *v* KRISHNARAO MALHAR . . . I. L. R. 11 Bom. 153

NARO HARI *v* ANPURNABAI I. L. R. 11 Bom. 160 note

(d) CONSENT OF PARTIES AND WAIVER OF OBJECTION TO JURISDICTION.

49. ———— **Consent of parties**—*Power to give Court jurisdiction by consent* Where a

BHOOPENDRO NATH CHOWDHRY *v* KALEE PROSUNNO GHOSE . . . 24 W. R. 205

50. ———— *Agreement of parties that suit shall be brought in Court which has no jurisdiction* Jurisdiction cannot be given or taken away by the agreement of parties. *Held*, therefore, that a clause in a bill of lading vesting jurisdiction in a Court which has no jurisdiction can have no legal effect or be pleaded in bar of a suit brought in a Court which has jurisdiction CRAWLEY *v* LUCHMEE RAM . . . . 1 Agra 129

51. ———— *Suit brought not in competent Court—Case transferred by consent to competent Court* When a suit has been tried by a Court having no jurisdiction over the matter, the parties cannot, by their mutual consent, convert the proceedings into a judicial process ; although, when the merits have been submitted to a Court it may result that, having themselves constituted it their arbiter, the parties may be bound by its decision On the other hand, in a suit tried by a competent Court the parties having without objec-

JURISDICTION—*contd.*

1. QUESTION OF JURISDICTION—*contd.*

(*d*) CONSENT OF PARTIES AND WAIVER OF OBJECTION TO JURISDICTION.—*contd*

which, if objected to at the time, would have led to the dismissal of the suit. A suit, having been instituted in a Court not of competent jurisdiction, was transferred with the consent of parties to a Court which was competent ; but the defence of jurisdiction was set up before the issues were ...hout. ...ndant ...had ...this ...d on the ground that it was not competently brought LEDGARD *v.* BULL . . I. L. R. 9 All 191
L. R. 13 I. A. 134

52. ——— *Effect of con-*

GOVERNMENT OF BOMBAY *v.* RANMALSINGJI AMARSINGJI . . . . 9 Bom. 242

53. ——— *Consent to jurisdiction—Waiver of objection to jurisdiction.* The plaintiff sued three defendants on a bond alleged to have been executed by them to the plaintiff. Two of the defendants did not appear, or make any defence to the suit. The second defendant only appeared and objected to the jurisdiction of the Court ;

JURISDICTION—*contd.*

1. QUESTION OF JURISDICTION—*contd.*

(*d*) CONSENT OF PARTIES AND WAIVER OF OBJECTION TO JURISDICTION—*contd.*

even if it could be held to have amounted to consent

itself as an attribute of the Court, which must directly or indirectly emanate from the Sovereign. BABAJI *v* LAKSHMIBAI . I. L. R. 9 Bom. 266

54. ——— *Hearing of evidence and decision by different Judges.* Where the Judge who decides the case is not the Judge who heard the witnesses and received the evidence, the defect may be cured by the assent of the parties. MOHAMED *v.* OOMDAH KHANUM. 13 W. R. 184

55. ——— *Bengal Civil Courts Act (VI of 1871), s 17—Close holiday—Proceeding on civil side of District Court during vacation—Irregularity* S 17 of the Bengal Civil Courts Act (VI of 1871) was framed in the interests of the Judges and officials of the Courts, and probably also in the interests of the pleaders, suitors, and witnesses, whose religious observances might interfere with their attendance in Court on particular

event of any such inquiry having been proceeded

diction of the Judge to hear and determine such matter. *Bennett* v. *Potter, 2 C. & J. 622 ; Andrews* v. *Elliott, 5 E & B 502 , 6 E & B. 38;* and *Bisram Maton* v. *Sahib un-nissa, I L R. 3 All 333* referred to. RAM DAS CHAKARBATI *v* OFFICIAL LIQUIDATOR OF THE COTTON GINNING COMPANY
I. L. R. 9 All 366

56. ——— *Transfer of case —Objection to jurisdiction subsequently taken.* A suit having been instituted in the Court of the Subordinate Judge who was incompetent to try it, the case was transferred by consent of parties to the

JURISDICTION—*contd.*

1. QUESTION OF JURISDICTION—*contd.*

(*d*) CONSENT OF PARTIES AND WAIVER OF OBJECTION TO JURISDICTION—*contd.*

Court of the District Judge for convenience of trial *Held*, that such transfer was incompetent, and that such consent did not operate as a waiver of the plea to the jurisdiction which was taken in the defendant's written statement and subsequently insisted on. LEDGARD *v.* BULL . . I. L. R. 9 All 191
L. R. 13 I. A. 134

57. ———— *Objection to jurisdiction after consent.* In a cause which a Judge is competent to try, if the parties without [illegible]

L. R. 13 I. A. 134, referred to and followed MINAKSHI NAIDU *v.* SUBRAMANYA SASTRI
I. L. R. 11 Mad. 26
L. R. 14 I. A. 160

KUMARASAMI REDDIAR *v.* SUBBARAYAR REDDIAR
I. L. R. 23 Mad. 314

58. ———— Waiver of jurisdiction—*Consent of parties.* An objection to jurisdiction cannot be waived by the parties. LALMONEY DOSSEE *v.* JADDOONAUTH SHAW
1 Ind. Jur., N. S. 319

(*Contra*) *see* TICKUM LALL DOSS *v.* MACARTHUR
1 W. R. 279

59. ———— *Omission to raise* [illegible] 's Court under- [illegible] bjecting to trial, and, after passing through the subordinate Courts, *to come up to the High Court in special appeal.* It was remanded on a question of fact and came up again in special appeal, when the point was raised for the first time (though not taken in the petition of appeal) that the suit was not cognizable by the Munsif, and therefore that all that had been done had been done without jurisdiction. *Held*, that the defendant was not at liberty to waive jurisdiction, and that the objection must be allowed to be taken even at this late stage. *Held*, that the suit having been beyond the Munsif's jurisdiction, his judgment was not legal, and his decree, in the eye of the law, no decree at all and of no legal effect. NAUNHOO SINGH *v.* TOFAN SINGH. 14 W R. 228

60. ———— *Omission to raise plea of jurisdiction* *Held*, that, if a defendant who appears in a suit chooses not to raise the plea of want of jurisdiction, he must be taken to submit to the jurisdictions and that any decree which may be pronounced against him cannot, when it is sought to be executed, be objected to by him on the ground that the Court which made it had no jurisdiction to try the suit. *Ex parte* MANOHAR BHIVRAV POTANIS 2 Bom. 396: 2nd Ed. 374

KANDOTH MAMMI *v.* NEELAN CHERAYIL ABDU KALANDAN . . 8 Mad. 14

61. ———— *Defendant not taking plea of jurisdiction, effect of.* Where a Court has no inherent jurisdiction over the subject-matter of a suit, the parties cannot by their mutual consent give it jurisdiction A suit of a nature cognizable by a Court of Small Causes alone was brought in the Court of a Joint Subordinate Judge, The defendant objected to the jurisdiction of the Court, but his objection was overruled. The suit was, however, dismissed on the merits On appeal before the District Judge the defendant did not renew the plea of want of jurisdiction The District Judge reversed the decree of the Subordinate Judge and awarded the plaintiff's claim. The defendant thereupon applied to the High Court under s. 622 of the Code of Civil Procedure (Act XIV of 1882). *Held*, that both the lower Courts had no jurisdiction to deal with the suit The mere circumstance that the defendant did not raise the plea of want of jurisdiction in the Appellate Court did not clothe that Court with a jurisdiction not given to it by law LADLI BEGAM *v* RAJE RABIA
I. L. R. 13 Bom. 650

62. ———— *Agreement to submit to execution of decree—Jurisdiction* A [illegible]

having pleaded in the Court below on the assumption that the decree was a money-decree which the Court which made it had jurisdiction to make, it was not open to the judgment-debtor's pleader to urge that it was not a money-decree RADHA GOBIND GOSSAMI *v* OOMA SUNDUREE DOSSIA
24 W. R. 363

63. ———— *Omission to raise* [illegible]

JURISDICTION—*contd.*

1. QUESTION OF JURISDICTION—*contd.*

(*d*) CONSENT OF PARTIES AND WAIVER OF OBJECTION TO JURISDICTION—*contd.*

to be valid, was taken too late and the sale could not be set saide. MODUN MOHUN GHOSE HAZRA *v.* BORODA SUNDARI DASIA . 8 C. L. R. 261

64. ———————— *Omission to raise*

objection could not be taken at this stage, as the defendant had not chosen to appeal against the District Judge's order of 14th June 1872 KOYLASH CHUNDER GHOSE *v* ASHRUF ALI 22 W. R. 101

RAJ NARAIN *v.* ROWSHAN MULL 22 W. R. 126

65. ———————— A suit for rent having been brought in the Beerbhoom Collectorate and decreed, the case was referred in execution to the Collector of Burdwan, within whose jurisdic-

ing the sale on the ground that the decree for rent had been made by a Collector who had not jurisdiction. *Held*, that, after all that had passed, it was too late to raise the question of jurisdiction. OOMA SOONDUREE DOSSEE *v.* BIPIN BEHAREE ROY 13 W. R. 292

66. ———————— *Civil Procedure Code, 1882, s. 20.* In 1876, *K* sued *M* on a bond, dated 25th December 1869, for R5,000, by which certain land in the district of South Tanjore was hypothecated as security for the debt, and obtained a decree on the 6th of April 1876 for the sale of the

quired by a railway company under the Land Acquisition Act in 1874, and that the compensation,

made defendant in the suit on his own application, and pleaded that the Court had no jurisdiction, as both the money and the land which it represented were, and he (*V*) resided, without the Munsif's Court's jurisdiction *Held*, that the suit was for money, and that *V*, not having applied to stay proceedings under s 20 of the Civil Procedure Code, must be held to have acquiesced in the jurisdiction of the Court VENKATA VIRARAGAVA AYYANGAR *v.* KRISHNASAMI AYYANGAR I. L. R. 6 Mad. 344

67. ———————— *Subsequent plea*

CHUNDER MANIKKYA *v* RAJ COOMAR NOBODEEP CHUNDER DEB BURMONO

I. L. R. 9 Calc. 535 : 12 C. L. R. 465

68. ———————— *Waiver of want of jurisdiction—Civil Procedure Code, s 25, Order made under, without notice to the party not applying—Transfer of civil case* A suit for land was filed in 1883 in the subordinate Court of Cochin. In 1884, the Government, by a notification under Act III of 1874, transferred the district where the land was situated from the jurisdiction of that

The District Judge granted the application without notice to the defendants. The defendants went to trial, and also preferred an appeal against the decree, which was passed in favour of the plaintiff, without objection to the jurisdiction of the Court In execution of the above

waived by the defendants, and that the present defendants were precluded from availing themselves of it. SANKUMANI *v.* IKORAN

I. L. R. 13 Mad. 211

69. ———————— *Suit on mortgage—Land situated outside territorial jurisdiction of*

JURISDICTION—*contd.*

1. QUESTION OF JURISDICTION—*contd.*

(*d*) CONSENT OF PARTIES AND WAIVER OF OBJECTION TO JURISDICTION—*contd.*

Court—Court otherwise competent to entertain suit—Decree passed without objection—Execution of decree. A suit on a mortgage was instituted in the Court of the District Munsif at Nellore, which was competent to try a suit of its nature and value; but the mortgage-lands were situated within the jurisdiction of the Court of the District Munsif at Tirupati. A decree was passed for the amount due and for sale, no objection being raised as to want of jurisdiction of the Nellore Court to try the case When the decree-holder applied for an order abs lute and for execution of the decree, objection was taken that the Court had no jurisdiction to entertain the suit, and that the decree passed by it could neither be made absolute nor be executed *Held,* that the decree was not a mere nullity, and inasmuch as no objection had been taken to the entertainment of

70. ———————— *Re-transfer—Dis-*

gage, subrogation of —Compromise decree, when binding A suit was instituted originally in the Court of the second Subordinate Judge; the District Judge transferred the case to his own Court acting in the exercise of the powers conferred on him by s 25 of the Code of Civil Procedure (Act XIV of 1882) Subsequently, the District Judge transferred the case to the first Subordinate Judge as he himself was about to proceed on leave. The case was tried by him and no objection was taken by either party to the effect

...istrative control over all the Civil Courts within the local limits of his jurisdiction, he had inherent power to transfer the case from his own Court to that of a Subordinate Judge, especially when the order was for the obvious benefit of the litigants and for the speedy determination of the matter *Held,* further, that under s 18 of Act XII of 1887, the Subordinate Judge, unquestionably possessed jurisdiction over the subject-matter of the litigation, and that therefore the case was not one of absolute want of jurisdiction, but was at best an irregular assumption of jurisdiction, and as no objection at an earlier stage of the proceedings was taken by the defendants appellants, they waived their right to take exception to the power of the Subordinate Judge to try the cause under authority of an order of transfer made by the District

JURISDICTION—*contd.*

1. QUESTION OF JURISDICTION—*contd.*

(*d*) CONSENT OF PARTIES AND WAIVER OF OBJECTION TO JURISDICTION—*contd.*

Judge. To determine the question of *res judicata* it is essential to assertain what were the rights in

Khan, I L R 31 Calc. 95, referred to. In a suit to enforce a second mortgage, the first mortgagee is not a necessary pary Where an adjudication between the defendant is necessary to give the appropriate relief to the plaintiff, there must be an adjudication, and in such a case the adjudication will be *res judicata* between the defendants as well as between the plaintiff and the defendants; but for this there must be a conflict of interest amongst the defendants and the judgment must define the real rights and obligations of the defendants *inter se* *Magniram* v *Mehdi Hossein Khan, I. L. R 31 Calc 95, Chajju* v *Umrao Singh, I. L. R. 22 All 386, Balambhat* v. *Narayanbhat, I. L. R. 25 Bom. 74, Muhammad Kuni Rowthan* v. *Visvanathaiya, I L R. 26 Mad 33,* and *Cottingham*

under an agreement with the debtor or creditor that he should receive and hold an assignment of the debt as security or he must stand in such a relation to the mortgaged premises that his interest cannot otherwise be adequately protected The doctrine of subrogation is not applied for the mere stranger or volunteer, who has paid the debt of another, without any assignment or agreement for subrogation, being under no obligation to make the payment and not being compelled to do so for the preservation of any rights or property of his own Subrogation is by redemption, and unless there is redemption,

JURISDICTION—*contd.*

1. QUESTION OF JURISDICTION—*concld.*

(*d*) CONSENT OF PARTIES AND WAIVER OF OBJECTION TO JURISDICTION—*concld.*

2. CAUSES OF JURISDICTION.

(*a*) DWELLING, CARRYING ON BUSINESS, OR WORKING FOR GAIN.

1. ——— Dwelling place—*Animus revertendi.* Whatever the purpose for which a man ... which ... rtendi, ... to be ... DEB ... 240

2. ——— *Civil Procedure Code, 1859, s. 5—Act XXIII of 1861, s 4—Residence—Soldier with his regiment* The fixed and ...

XXIII of 1861. FATIMA BEGAM *v.* SAKINA BEGAM **I. L. R. 1 All. 51**

3. ——— Dwelling—*Letters Patent, cl. 12* ...

there temporarily for the purpose of carrying on a suit. *Held,* that, he could not be said to dwell in ...

Cor. 46: 2 Hyde 117

4. ——— *Letters Patent, cl. 12—Officer on leave.* The defendant, an officer in the Bombay Staff Corps, holding an appointment in Scinde, came to Bombay on leave, and remained about ten days. During his stay in Bombay, he was served with a writ of summons on a cause of action arising in Scinde. *Held,* that the defendant did not "dwell" within the local limits so as to give the Court jurisdiction under cl. 12 of the Letters Patent. KAVASJI FRAMJI *v.* WALLACE **1 Bom. 113**

JURISDICTION—*contd.*

2. CAUSES OF JURISDICTION—*contd.*

(*a*) DWELLING, CARRYING ON BUSINESS, OR WORKING FOR GAIN—*contd.*

5. ——— *Letters Patent, cl. 12—Leave of Court. H* died at Ajmere, his representative then and at the time of suit brought ...

SUKDAS *v* ABDOOL KHAN HAJEE MUHAMMAD **9 Bom. 429**

6. ——— *Addition of a defendant residing out of jurisdiction in a suit in which leave to sue has been already obtained—Letters Patent, 1865, cl 12—Fresh leave to sue such new* ...

7. ——— *Civil Procedure Code, 1859, s. 5—What constitutes "dwelling" within the meaning of that section* A testator bequeathed the income of his "altamgha," "zamindari" and "thikadari lands" situate in the districts of ...

were rendered by the manager to the sharers at different times and in different places, including ...

JURISDICTION—*contd.*

2. CAUSES OF JURISDICTION—*contd.*

(a) DWELLING, CARRYING ON BUSINESS, OR WORKING FOR GAIN—*contd.*

district, for the hot weather; and in his answer

Bilaspur as to make him subject to the jurisdiction of the Meerut Court in this suit It was accordingly not necessary to consider whether he was or was not

I. L. R. 5 All. 81
L. R. 7 I. A. 196

8. ——— *Letters Patent 1865, cl. 12—"Dwell"—"Carry on business"—*

of Oodeypore. In 1876, he was deported from the territories of His Highness, and his son, the defendant, had ever since been in charge of the shrine The plaintiff alleged that at the time of his deportation he had money and valuables at Nathdwar which he had entrusted to his son, the defendant, for safe custody. He now sued to recover this property from the defendant. The defendant pleaded that the High Court of Bombay had no jurisdiction to try the suit It appeared that the defendant's permanent residence was at Nathdwara, from which he was absent only when on pilgrimage or on tour He had in Bombay an establishment, called a pedi in which a bhandari or treasurer, a munim, and mehtas and servants were regularly employed. Into this

on the Bombay pedi and honoured by that pedi, and sometimes by articles being purchased for the defendant's use by the servants of the pedi in Bombay and sent to Nathdwara In May 1888, the

house. Interest was paid on the unpaid purchase-

JURISDICTION—*contd.*

2. CAUSES OF JURISDICTION—*contd.*

(a) DWELLING, CARRYING ON BUSINESS, OR WORKING FOR GAIN—*contd.*

money. In 1889, when the defendant visited Bombay, he lived in this house, but he sold it in the same year shortly before he returned to Nathdwara The defendant had never been in Bombay until 1889 In that year, in accordance with the practice, he obtained from the British Resident at Meywar a permit to travel with an armed following to the places mentioned in the permit, one of which was Bombay The journey was supposed to last for six months The defendant left Nathdwara in February 1889, and after various stoppages reached Bombay on the 2nd April, and took up his quarters

tion. On these occasions he received offerings which in the aggregate amounted to about R75,000. These offerings were personal, and were not paid into the pedi. This suit was filed on the 3rd May 1889, while the defendant was in Bombay. Early in August he left Bombay and returned to Nathdwar. The plaintiff contended that the Court had jurisdiction under cl 12 of the Letters Patent, 1865. *Held,* that, at the date of the institution of the suit the defendant was neither dwelling nor carrying on business, nor personally working for gain, in Bombay, and that the Court had no jurisdiction GOSVAMI SHRI 108 *v* GOVARDHANLALJI

I. L. R. 14 Bom. 541

9. ——— **Temporary residence.** Occasional residence will not bring a defendant within the jurisdiction, he must be a fixed inhabitant of *the district in which the suit is brought.* ZALEM TEWAREE *v.* GOBINDGEER GOSSAIN

1 Ind. Jur. O. S. 85

s c LELIM TEWAREE *v* GOBINDGEER GOSSAIN **Marsh. 64: 1 Hay 132**

10. ——— *Residence for temporary purpose—Receipt of presents by high priest of temple—Office for receiving presents—purchase of house—Letters Patent, High Court, cl. 12* The word "dwell" must be construed with reference to the particular object of the enactment in which it occurs.

had purchased the house which he occupied during a temporary visit to Bombay afforded no inference of

defendant, when in Bombay, was invited by his

JURISDICTION—*contd.*

2 CAUSES OF JURISDICTION—*contd.*

(*a*) DWELLING, CARRYING ON BUSINESS, OR WORKING FOR GAIN—*contd.*

devotees and pupils to their houses, where he was treated as an incarnation of the deity with certain forms and ceremonies, and received presents, and gave his blessing *Held*, that this did not amount to "personally working for gain" within the meaning of cl. 12 of the Letters Patent, 1865. GOSWAMI SHRI 108 SHRI GIRDHARIJI *v* GOVARDHANLALJI GIRDHARIJI **I. L. R. 18 Bom. 290**

Held on appeal to the Privy Council, that the expression "carry on business" in cl. 12 of the

tablishment for the collection and entry of gifts made by devotees; and there also donations, made in like establishments elsewhere were received for transmission to Nathdwara. The defendant also, while in Bombay, accepted offerings on ceremonial visits made or received by him personally, but no bargain for the amount was made beforehand *Held*, by the Privy Council, that in the above transactions there was no "carrying on business" within cl 12 of the Letters Patent, 1865 GOSWAMI SHRI 108 SHRI GIRDHARIJI *v* GOVARDHANLALJI GIRDHARIJI

I. L. R. 18 Bom. 294
L. R. 21 I. A. 13

11. ———————— *Letters Patent, 1865, cl. 12—"Duell"—Temporary residence when* ... nt, who ... apur on ... ind on a ... the 8th ... While the defendant was in Bombay (*viz.*, on the 8th

cumstances gave the Court jurisdiction, and that the plaint should be admitted. For the purposes of jurisdiction a man may be said *primâ facie* to dwell where he is staying at any particular time, but it is open to him to show that he is not dwelling there, but at some other place. The defendant had no residence at Kolhapur at the time the plaint was presented, and must be taken to have then been dwelling in Bombay FERNANDEZ *v.* WRAY (1900)

I. L. R. 25 Bom. 176

12. ———— **Jurisdiction of Court**—*Suit for rent of land in Gwalior, defendant being resident in British India—Place where defendant resides—Civil Procedure Code 1882, s. 17. Held*, that a suit by a lessor against his lessee to recover rent which had accrued due in respect of agricultural land situated in Gwalior, the plaintiff being a subject of the Gwalior State, but the defendant a British subject resident in the district of Jhansi, was properly brought in a Civil Court in the district of Jhansi. *Gurdyal Singh* v. *Raja of Faridkot, I. L. R., 22 Calc, 222*, referred to. BHUJBAL *v* NANHEJU . **I. L. R. 19 All. 450**

13. ———————— *Immoveable property—Civil Procedure Code (Act XIV of 1882), s. 16—Varshasans charged on villages in Nizam's territory and paid in the same territory—Suit to establish title to a share in such varshasans* Plaintiffs filed a suit in the Court of the first class Subordinate Judge at Nasik to establish their right to a certain share in two varshasans (annual allowances) The allowances were charged on the revenues of two villages in the Nizam's territory, and paid to the defendants by the treasury officers at Aurangabad in the same territory The plaintiffs alleged that the varshasans were granted to a common ancestor of the parties and enjoyed as joint ancestral property, while the defendants contended that the allowances were granted to their grandfather as his exclusive property to descend to his heirs, and that plaintiffs had no right to share in them. *Held*, that the Nasik Court had no jurisdiction to try the suit The varshasans were immoveable property, and there being a *bonâ fide* claim of title to them, the claim should be determined according to the law in force in the Nizam's dominions The suit should therefore be brought in the Courts of the Nizam, in whose territory the varshasans were granted and paid. Plaintiffs could not claim a declaration of title or ask for a refund of the allowances in a British Court, merely because the defendants happened to be residents in British territory KESHAV *v.* VINAYAK .

I. L. R. 23 Bom. 22

14. ———————— *Civil Procedure Code, 1882, s 16—Relief to be obtained by personal obedience of defendants—Property situate outside the jurisdiction of the Court in which the suit*

therefore, that a suit for the determination of an interest in immoveable property filed in a Court within the jurisdiction of which the property was not situate did not lie in that Court, as all the defendants did not reside within the jurisdiction of that Court, even though the relief sought could

JURISDICTION—*contd.*

2. CAUSES OF JURISDICTION—*contd.*

(a) DWELLING, CARRYING ON BUSINESS, OR WORKING FOR GAIN—*contd.*

have been obtained through their personal obedience. ISAK *v* KHATIJA **I. L. R. 23 Bom. 756**

15. ——————— *Suit to establish right to a share in certain income—Property having a foreign origin—Incomes received within the jurisdiction of the Court—Question of title not involved—Civil Procedure Code, ss. 16 and 17.* All property having a foreign origin is not outside the jurisdiction of a British Court. "The Courts of equity in England are, and always have been, Courts of conscience, operating *in personam* and not *in rem* and in the exercise of this personal jurisdiction they have always been accustomed to compel the performance of contracts and trusts as to subjects which were not either locally or *ratione domicilii* within their jurisdiction." The jurisdiction of Courts in India is governed and must be ascertained by the same principles except so far as they may be at variance with legislative enactment. *Ewing* v. *Orr Ewing, L. R. 9 Ap Ca. 34*, followed The plaintiff sued in the Court at Nasik in British India to establish his right to a share in the income derived from certain grants of land situate outside of British India, but received by the defendant within the jurisdiction of the Nasik Court. *Held*, that the suit was within the jurisdiction of the Court there being no dispute as to title *Keshav* v. *Vinayak, I L R. 23 Bom. 22*, distinguished KASHINATH GOVIND *v* ANANT SITARAMBOA **I. L. R. 24 Bom. 407**

16. ———— **Residence alternately in Calcutta and mofussil** A party spending his time alternately in the mofussil and Calcutta and resident in the latter for some days previous to, and on the day of, filing his plaint, is subject to the jurisdiction of the High Court in its ordinary original civil jurisdiction. NISHADINEY DOSSEY *v* CALLY KRISTO GHOSE . . . **Cor. 24**

17. ———— **Temporary residence for pleasure**—*Person without residence elsewhere.* That a temporary residence in Calcutta, for purposes of pleasure, with intention of remaining there a month, without having at the time a residence out of the jurisdiction, is a sufficient dwelling within the jurisdiction to satisfy cl 12 of the Charter. MORRIS *v* BAUMGARTEN

Bourke O. C. 127 : Cor. 152

MAYHEW *v* TULLOCH . . **4 N. W. 25**

18. ———— **Residence out of jurisdiction**—*Bringing suit for damages by collision*

RIVER STEAM NAVIGATION COMPANY *v* HEILGUX **4 Bom. O. C. 149**

JURISDICTION—*contd.*

2. CAUSES OF JURISDICTION—*contd*

(a) DWELLING, CARRYING ON BUSINESS, OR WORKING FOR GAIN—*contd.*

19. ———— **Pakki Adat Agency**—*Place of performance of contract by Pakki Adatya—Custom.* K, a Bombay merchant, employed S as his agent at Akola on the *pakki adat* system. On K's instructions S entered as his agent into certain contracts at Akola On an agency account being taken a sum of money was found to be due from S to K On K suing for this sum, S pleaded that

ment should be made in any other place if the

has come into the hands of his constituent KEDARMAL *v* SURAJMAL (1909) . **I. L. R. 33 Bom. 364**

20. ———— **Carrying on business**—*Suit against Government—Residence or place of business of Government* In a suit for specific performance of a contract against Government where the land was situated out of the limits of the

individuals only Though Government is in one sense, through its officers, ubiquitous, s 65 of 21 and 22 Vict., c 106, means not that the Secretary of State may sue or be sued in any Court irrespective of all question of jurisdiction, but that he may sue or be used in such court or courts as may have jurisdiction in respect of each particular cause of action RUNDLE *v* SECRETARY OF STATE

1 Hyde 37

21. ——————— *Suit against Government—Civil Procedure Code, 1859, s 5—Letters Patent, cl 12* *Semble* The jurisdiction to entertain suits against the Government under s. 5 of Act VIII of 1859 exists only where the cause of action arose Under cl. 12 of the Letters Patent

business" in that clause imply a personal and regular attendance to business within the local limits. A suit will not lie in the High Court against the Collector of Madras residing and carrying on business at Sydapet in respect of matters arising in

JURISDICTION—*contd.*

2. CAUSES OF JURISDICTION—*contd.*

(a) DWELLING, CARRYING ON BUSINESS, OR WORKING FOR GAIN—*contd.*

Chingleput though his Deputy Collector carried on business within the local limits, and the orders and proceedings in reference to the matters in question were in his name of office as Collector of Madras. SUBBARAYA MUDALI *v.* GOVERNMENT

1 Mad. 286

22. ———————— *Letters Patent, cl. 12—Secretary of State for India in Council.* The words "cause of action" in cl 12 of the Letters Patent, 1865, mean all those things necessary to give a right of action; and in a suit for breach of contract, where leave has not been obtained to sue under that section, it must be established that the contract as well as the breach have taken place within the local limits of the Court. The work carried on by the Government of India in governing the country in salt, opium, etc, although carried on by Government officers in charge of the several departments of Government, is not, properly speaking, business carried on by Government, but work carried on for the benefit of the Indian Exchequer. The words of cl 12 "carry on business" or "personally work for gain" are, however, inapplicable to the Secretary of State for India in Council. DOYA NARAIN TEWARY *v.* SECRETARY OF STATE FOR INDIA

I. L. R. 14 Calc. 256

23. ———————— *Civil Procedure Code, 1877, s. 17—Residing—Onus probandi.* Where the cause of action arises in the jurisdiction of a Court other than that in which the suit is brought, the plaintiff must, under the provisions [illegible]

MODHU SUDAN CHOWDHRY *v.* COCHRANE

6 C. L. R. 417

24. ———————— *Letters Patent, cl 12—Temporary stay and office in Calcutta—A,* who had no regular office, but came once or twice a week from the mofussil to a friend's house in [illegible]

CHUNDER BANERJEE *v.* COLLINS **3 Hyde 79**

25. ———————— *Letters Patent, cl. 12—Temporary residence. M,* residing at Meerut sued *B* in respect of a cause of action which did not arise in Calcutta. It appeared that *B* usually resided at Mussoorie from March to October, but [illegible]

race meeting, and had been living in Calcutta for some days previous to and on the day the plaint was filed. The Court decided that he was amenable to its jurisdiction *Held,* that such racing transactions do not constitute a "carrying on business" or "personally working for gain" within the meaning of cl 12 of the High Court Charter MORRIS *v.* BAUMGARTEN **Bourke O. C. 127: Cor. 152**

MAYHEW *v.* TULLOCH . **4 N. W. 25**

26. ———————— *Letters Patent, cl 12* A trader in the mofussil habitually sent grain to Madras for sale [illegible]

[illegible]

CHINNAMAL *v* TULUKANNATAMMAL **3 Mad. 146**

27. ———————— *Letters Patent, cl. 12.* The defendant resided and carried on business in London, and employed *C F & Co* as their com- [illegible]

attorney to *C F & Co.,* who undertook to forward it to the defendants in London, and that the defendants should endeavour to recover the money so due to the plaintiffs. The defendants recovered the money in England for the plaintiffs, but did not transmit it to the plaintiffs in Bombay In a suit brought by the plaintiffs to recover the money so received by the defendants, it was *held* that the cause of action had not arisen wholly in Bombay and that the High Court, under cl 12 of its Letters Patent, had no jurisdiction to entertain the claim, the leave of the Court to file the suit not having been obtained. Where an English firm, upon the usual terms, employs a Bombay firm to act as the English firm's commission agents in Bombay, such English firm does not thereby render itself liable to be sued in the High Court of Bombay, as it does not carry on business within the local jurisdiction of such High Court within the meaning of the above clause of the Letters Patent. KHIMJI CHATURBHUJ *v.* FORBES . . **8 Bom. O. C. 102**

28. ———————— *Letters Patent, 1865, cl. 12—Suit on hundi.* The defendant, who resided and carried on business at Patna, was in the

[illegible]

ment was refused by the defendant. The defendant

[illegible]

cutta. Leave to institute the suit had not been obtained under cl 12 of the Letters Patent *Held, that the whole cause of action did not arise in* Calcutta. *Held,* also, that the defendant was not, at the commencement of the suit, carrying on business in Calcutta within cl 12 of the Letters Patent. Leave to institute the suit under cl. 12 not having been obtained, the Court had no jurisdiction to entertain the suit HARJIBAN DAS *v.* BHAGWAN DAS

7 B. L. R. 102 : 16 W. R. O. C. 16

Held, on appeal, reversing the decision of the Court below, that the defendant was "carrying on business" in Calcutta within cl 12 of the Letters Patent. HARJIBAN DAS *v.* BHAGWAN DAS

7 B. L. R. 535 : 16 W. R. O. C. 16

29. ———————— *Letters Patent,*

[illegible]

1 Bom. 220

30. ———— Carrying on business by agent—*Letters Patent, cl 12* Cl 12 of the Letters Patent of the Madras High Court does not, in order to give jurisdiction, require a defendant personally to carry on business within the local limits of Madras MUTHAYA CHETTI *v.* ALLAN . . . . I. L. R. 4 Mad. 209

31. ———————— *High Court of Bombay, Jurisdiction of—Letters Patent, High Court, 1865, cl 12—Persons not British subjects resident outside the jurisdiction, but carrying on business by an agent within the jurisdiction—British subjects resident outside the jurisdiction,*

[illegible]

must be interpreted to mean "if the defendant being a British subject . . . shall . . . carry on business" and where the liability of a foreigner is in question, the "carrying on business" must include actual residence. The scope and

[illegible]

derogates from their general principles. Every

[illegible]

but only such subjects of other countries as have brought themselves within the allegiance of the Sovereign A person not a British subject resident out of the jurisdiction, but carrying on a branch business in Bombay through an agent, is not liable to be sued in the High Court of Bombay where the cause of action has arisen wholly outside the jurisdiction *Semble* The High Court has jurisdiction in such cases where the defendant is a British subject. See *Chinammal* v *Talukannammal,* 3 *Mad.* 146 KESSOWJI DAMODAR JAIRAM *v.* KHIMJI JAIRAM I. L. R. 12 Bom. 507

32. ———————— *Foreigner carrying on business by agent* Per SARGENT, C J—Although it is true that a non-British subject who does not personally carry on business within the

[illegible]

profit, he accepts the protection of the territorial authority for his business, and his property resulting from it, and may be fully regarded as submitting to the Courts of the country GIRDHARDAMODAR *v.* KASSIGAR HIRAGAR I. L. R. 17 Bom. 662

33. ———————— *Civil Procedure Code, 1882, s 17—Suit on a foreign judgment—"Carrying on business" within the jurisdiction—Business carried on by the managing member of a Hindu family—"Principal and agent" with*

JURISDICTION—*contd.*

2. CAUSES OF JURISDICTION—*contd.*

(a) Dwelling, Carrying on Business, or Working for Gain—*contd.*

reference to s. 17 of Civil Procedure Code—Appli

1896; but in the meanwhile, namely, on 20th July 1896, defendant had been declared an insolvent in

of the defendant as well as for his benefit *Held*, that the District Court had no jurisdiction to entertain the suit. Inasmuch as defendant and his cousin had, as a fact, become partially divided prior to the commencement of the business, and as there was no evidence of his consent, the presumption contended for could not arise. But even if the facts had been otherwise, and the defendant had been entitled to claim an interest in the business on the

to exclude from its operation non-resident foreigners, even though they carry on business in British India through agents; and, if such construction be inadmissible, whether the said section of the Indian Legislature should be *held* with reference to such foreigners to be *ultra vires*. Murugesa Chetti v. Annamalai Chetti

I. L. R. 23 Mad. 458

34. — Personally working for gain—*Suit to recover value of timber* A suit to recover the value of timber alleged to have been forcibly carried off by the defendants from a ghât in the district of Tirhoot having been brought in the Court of the Subordinate Judge of the 24-Pergunnahs, that Court was *held* to have jurisdiction in the case, on its being shown that one of the defendants, at the commencement of the suit, personally worked for gain within the limits of the 24-Pergunnahs. Motee Dossee v. Deeta Hurukmun Singh 11 W. R. 64

35. — Cause of action —*Civil Procedure Code, 1859, s 5—Jurisdiction—*

fees had not been returned:—*Held*, in a suit for the recovery of the moneys advanced as aforesaid, that the cause of action arose at Benares If the alleged condition was not complied with, and the fees thereby became returnable to the client, it would have been the duty of the barrister to have sought out his creditor at Benares and to have paid him there, or have remitted the money to him. *Semble* —That a member of the Bar of the High Court residing out of the station in which the High Court is located, but who holds himself out as ready to

located within the meaning of s. 5, Act VIII of 1859. Rai Narain Dass v. Newton 6 N. W. 43

(b) Cause of Action.

36. — General cases—*Civil Procedure Code, 1859, s. 5—Act XXIII of 1861, s 3.* A Civil Court has jurisdiction to determine a suit where the defendants dwell, or the cause of action arises, within the jurisdiction The two qualifications need not exist together. Act XXIII of 1861, s 3, requires the absence of both to justify the dismissal of the suit for want of jurisdiction. Morris v. Atmakuru Lutchmana Row

6 Mad. 43

Anonymous Case . . 5 Mad Ap. 4

37. — *Letters Patent cl. 12—Cause of action partly arising—Leave of Court.* Under cl. 12 of the Charter of the High

1 Ind. Jur. N. S. 210

38. — *Suit for sum made up of items as to which cause of action arose in different places—"Whole cause of action."* An application

JURISDICTION—*contd.*

2 CAUSES OF JURISDICTION—*contd.*

(*b*) CAUSE OF ACTION—*contd.*

was refused for leave to commence a suit in the original side of the High Court to recover a sum

Court, especially when exercising its ordinary original jurisdiction, is bound to adopt the interpretation of the words "cause of action" and "part of the cause of action" laid down with general, if not complete, uniformity under the English County Court Act. The cause of action means the whole cause of action. The whole cause of action includes every fact essential to the maintenance of

action spoken of may consist of several parts, which parts may arise in different places *Per* HOLLOWAY,

Council and the Common Law Courts at Westminster, the decision of the Judicial Committee is entitled to the greater weight. Irrespectively of the domicile of the defendants, there is a competent forum wherever a place can be indicated to which the right and its infraction can both be referred, because there is a cause of action and the whole cause of action DE SOUZA *v* COLES . 3 Mad. 384

39. ———— *Evidence as to jurisdiction at hearing—Letters Patent, High Court, cl. 12—Suit for rent of house out of jurisdiction and for price of goods sold by defendants in Calcutta as agents—Amendment of plaint to cause of action.* The plaintiff as Receiver to the estate of *S* instituted a suit on the 11th July 1898 against the defendants to recover the sum of R2,808-13-2, a portion of the

under cl. 12 of the Charter. The defendant contend-

JURISDICTION—*contd.*

2. CAUSES OF JURISDICTION—*contd*

(*b*) CAUSE OF ACTION—*contd.*

BULDEO DASS . . I. L. R. 26 Calc. 715
3 C. W. N. 524

40. ———— *Leave to withdraw suit with liberty to bring fresh suit—Civil Procedure Code (Act XIV of 1882), ss 373, 374—Leave to sue—Letters Patent, 1865, cl 12—Limitation —Limitation Act (XV of 1877), s. 14* Where a suit was originally instituted in this Court, with leave under clause 12 of the Charter obtained from the

only be regarded as one directing the plaint to be returned to the plaintiff *Watson* v. *The Collector of Rajshahye; 13 Moo. I A. 160,* followed S 373 of the Code of Civil Procedure does not apply except to cases where the suit is properly proceeding in the Court, in which the leave was granted. *Held,* further, that the suit was covered by s. 14 of the Limitation Act, and not barred RAMDEO DASS *v* GONESH NARAIN (1908) . . I. L. R. 35 Calc. 924
s.c. 12 C. W. N. 921

41. ———— Account, suit for—*Letters Patent, cl. 12—Leave to sue—Part of the cause of action material* The plaintiff and the second defendant were the owners of a family business which was carried on by munims in Bombay, Cutch and Zanzibar The first defendant was for many years the munim in management of the business at Zanzibar This suit was brought, praying that an account might be taken of the management by the first defendant of the business at Zanzibar, and that in taking such account the first defendant might be charged with all sums misappropriated by him, or lost by his neglect or fraud The second defendant was joined as a defendant merely because he refused to join as a plaintiff. The plaint instanced various

obtained. On a summons taken out to rescind such leave:—*Held,* that the leave given must be rescinded, no such material part of the cause of action having arisen in Bombay as would justify

JURISDICTION—*contd.*

2 CAUSES OF JURISDICTION—*contd.*

(*b*) CAUSE OF ACTION—*contd.*

this Court, in transferring to itself a case which *primâ facie* ought to be tried elsewhere. *Ismail Hadji Hubbeeb v. Mahomed Hadji Joosub, 13 B. L. R. 91,* referred to KESSOWJI DAMODAR JAIRAM *v.* LUCKMIDAS LADHA

I. L. R. 13 Bom. 404

42. ———— *Cause of action arising on items of account—Civil Procedure Code, 1859, s. 5—Act XXIII of 1861, s. 4* In the Civil Court of Berhampur, plaintiffs sued defendants for money due by one *S*, deceased. Defendants 1, 2, 3, and 4 were sued as heirs of the deceased, the fifth

Berhampore. From the accounts produced, it appeared that there were, between the plaintiffs

not be so separated, and that the intention was that the dealing should be continuous; that upon that footing the plaintiffs had properly sued for the balance of the whole account, but that they had brought their suit in the wrong Court, because the whole cause of action did not arise within the jurisdiction of that Court, and none of the defendants, who were properly joined in the suit, dwelt or worked within that district *Held*, also, that the wrongful addition of the resident defendant could not bring the case under the operation of s 4, Act XXIII of 1861, and that the cause of action against the fifth defendant was totally distinct from that alleged against the others, and the two could not be joined in one suit. ATMAKURI BHAVANA SETTI *v.* SANYASI SETTI **3 Mad. 222**

43. ———— *Civil Procedure Code, 1859, s. 5—Place of making and performance of contract different.* *B* entered into a verbal agreement with *A* at Serampore, where *A* resided, to start in Calcutta a certain banianship business in conjunction with *A*'s son; *A* agreeing to advance the required funds on the condition that the sum advanced should be repaid him within a certain date with interest No place was fixed for repayment. The money was advanced partly at Serampore and partly in Calcutta *B* afterwards went to reside at Chandernagore In a suit by *A* for recovery of the balance of the sum advanced, brought in the Hooghly Court, the Judge *held* that he had no jurisdiction, inasmuch as the cause of action arose in Calcutta *Held*, on appeal, that, under s 5, Act VIII of 1859, the Hooghly Court had jurisdiction to try the suit.

JURISDICTION—*contd.*

2. CAUSES OF JURISDICTION—*contd.*

(*b*) CAUSE OF ACTION—*contd.*

Per MARKBY, *J.*—An action may be brought either in the forum of the place where the contract was made or in that where the performance was to have taken place. *Quære:* Whether this rule would

prescribed by the agreement, or exacted by the necessities of the case, the place where it is intended by the parties such contract should be fulfilled ought to supply the forum. GOPIKRISHNA GOSSAMI *v.* NILKOMUL BANERJEE

13 B. L. R. 461 : 22 W. R. 79

44. ———— *Agreement to*

by the fact of the transaction, in respect of which the agreement was given, having happened elsewhere. HAIM RAJ *v.* RAM BUX **1 Agra 115**

45. ———— *Place of payment not specified*—*D & Co*, carrying on business at C, shipped goods to London for sale on account of *P D* and advanced money to *P D* against the

to recover money due on account of such short falls, that the whole cause of action arose at C, where *D & Co.* carried on business, where the promise was made, and where the money must be taken to have been payable. DABRAGH & CO *v.* PURSHOTAM DEVEJI . . . **I. L. R. 4 Mad. 372**

46. ———— *Residence by agents—Joinder of causes of action.* The right to

The plaintiff sued the defendants for money due on account of the transactions in Tellicherry *Held*, that no cause of action arose in Tellicherry. KHIMJI JIVRAJU SHETTU *v.* PURUSHOTAM JUTANI **I. L. R. 7 Mad. 171**

47. ———— *Venue—Act X of 1859, s. 24—*

two estates

intendent of

JURISDICTION—*contd.*

2. CAUSES OF JURISDICTION—*contd.*

(*b*) CAUSE OF ACTION—*contd.*

his accounts. Some retrenchments were made, and to recover the balance which appeared due the zamindar brought this suit. *Held*, that, as the defendant had agreed by his kabuliat to make the principal kutchery his place of business, and as both the plaintiff and defendant agreed that the cause of action arose in the principal kutcherry, and as it was the place to which all the moneys were remitted, and where all the accounts were prepared, and the money first came under the control of the defendant, and was by his order disbursed, the cause of action arose in the district within the principal kutcherry lay. PRASANNA CHANDRA BOSE v. PRASANNA CHANDRA RAI **7 B. L. R. Ap. 35**
15 W. R. 343

48. ——————— *Account suit valued at less than ten thousand rupees before Munsif—Final decree exceeding pecuniary limit—Appeal—Preliminary decree—Final decree—Civil Procedure Code* ... *Court Fees* ... *—Suits* ... *N W* ... *1887),* ... very of papers brought before a Munsif who had pecuniary jurisdiction to try suits up to R1,000 in value, the claim for recovery of papers was valued at R50 and that for accounts at R150, with a prayer that additional court-fees would be paid for any amount to be found due in excess, after the preliminary decree the amount due was ascertained to be R8,424: *Held*, that the plaintiff cannot obtain a decree for a sum above R1,000, *i e*, in excess of the limit of the Munsif's pecuniary jurisdiction. That the plaintiff ought to be called ... presume the excess to be remitted. *Rameswar* v. *Dilu, I L R 21 Cal 550, Arogya* v. *Appachi, I. L. R. 25 Mad 543*, distinguished. GOLAP SINGH v. INDRA COOMAR HAZRA (1909)
13 C. W. N. 493

49. ——————— Agreement—*Part of cause of action arising in jurisdiction—Suit on agreement executed within jurisdiction—Place for payment of money under deed—Costs of preparing a deed—Stamp duty*. In December 1892, the plaintiffs agreed to supply the defendants with machinery for their mill near Calcutta. The defendants, being ... agreement provided that the defendant company should forthwith execute an indenture of trust, in favour of trustees to be named by the plaintiffs, for the purpose of securing the said debentures, ... tures were duly prepared by the plaintiffs and approved by the defendants' solicitors in Bombay. The plaintiffs, having paid in Bombay the solicitor's bill of costs in respect of the preparation of the indenture and debentures, now sued to recover the amount from the defendants under the terms of the above agreement of 1894. The defendants contended that the Court had no jurisdiction, on the ground that they did not reside or carry on business in Bombay, and that no part of the cause of action arose in Bombay. *Held*, that the Court had jurisdiction. The agreement of August 1894 was signed in Bombay by the plaintiffs' agent on their behalf, and therefore part of the cause of action arose within the jurisdiction. Further, it appeared that it was intended that the payment to be made by the plaintiffs should be made in Bombay where both the plaintiffs' agent and solicitors resided. *Held*, also, that the plaintiffs were entitled to include in their claim the stamp duty paid on the trust-deed. The agreement contemplated that the defendants should pay all the costs incidental to the execution of the deed. DOBSON AND BARLOW v. BENGAL SPINNING AND WEAVING CO.
I. L. R. 21 Bom. 126

50. ——————— Bond, suit on—*Immediate cause of suit—Civil Procedure Code, 1859, s. 5.* S. 5 of Act VII of 1859 gave jurisdiction to the Court where the cause of action shall have arisen, or in other words, where the facts which immediately confer the right to sue have occurred. Where the immediate cause of the suit was the non-payment of money due on a bond.—*Held*, that the Court of ... default had been made in payment ... the ... was ... **149**

51. ——————— *Residence.* A bond was executed at Arrah, and provided that payment should be made to plaintiff in person, and though it described plaintiff and defendant as inhabitants of Patna, yet the plaintiff having been ad... lent at Arrah at the time the b...

JURISDICTION—*contd.*

2. CAUSES OF JURISDICTION—*contd.*

(b) CAUSE OF ACTION—*contd.*

52. ———— Breach of contract—*Contract for sale and delivery of goods at fixed price —Suit for price—Place of suing—Act X of 1877 (Civil Procedure Code), s 17 (a).* C and L entered into an agreement at a place in the Sarun district, in which the latter resided and carried on business, whereby C promised to sell and deliver to L at a place in the Sarun district certain goods, and

fore sued L for the price of the goods, suing him at Cawnpore *Held*, that the "cause of action," within *the meaning of s. 17 of the Civil Procedure Code*, was L's breach of his promise to pay for the goods, that the parties intended that payment should be made at Cawnpore, and the cause of action therefore arose there, and that therefore the suit had been properly instituted there LLEWHELLIN v CHUNNI LAL . . . I. L. R. 4 All. 423

53. ———— *Civil Procedure Code, 1882, s 17—Place of making of contract* The expression "cause of action" as used in s 17 of the Civil Procedure Code, does not mean whole cause of action, but includes material part of the cause of action. In a suit for compensation for breach of a contract, the making of the contract is a material part of the cause of action *Held*, therefore, where a contract was made at C and broken at A, that the Court at C had jurisdiction to try the suit for compensation for the breach of such contract. *Llewhellin* v. *Chunni Lal, I. L. R. 4 All. 423*, and *Gopikrishna Gossami* v *Nilkomul Banerjee, 13 B L. R. 461*, followed *DeSouza* v. *Coles, 3 Mad 384*, and *Jumoonah Pershad* v. *Zaibunnissa, 5 C L. R. 268*, dissented from. BISHUNATH v ILAHI BAKHSH I. L. R. 5 All. 277

54. ———— *Performance of contract—Making of contract—Goods to be shipped at Bombay to the plaintiff at Karwar—Place where cause of action arose.* The plaintiff residing at Karwar sent a sum of money to K & Co. (defendant No 1), a firm at Bombay, asking them to send him certain goods. K & Co informed the plaintiff that they had not the goods required by him The plaintiff thereupon telegraphed to them to pay the amount to defendant No 2, a resident of Bombay, provided he shipped the goods On the failure of defendant No 2 to ship the goods, the plaintiff brought a suit against the defendants in the Court at Karwar to recover the amount He claimed against K & Co (defendant No 1) because they had paid the money to the second defendant before the goods

ant be

he had

was of opinion that Karwar was the place where the contract was to be performed, and that therefore it had jurisdiction to entertain the suit, and it passed a decree against defendant No 2 The claim as against defendant No 1 was dismissed *Held*, reversing the decree, that the understanding on which the money was paid to defendant No 2 by K & Co, and which was the agreement on which the plaintiff sued, was that the second defendant would ship the goods at Bombay to the plaintiff at Karwar. The contract, therefore, as between defendant No 2 and K & Co., acting on behalf of the plaintiff, was both entered into and intended to be performed at Bombay The cause of action arose therefore in Bombay and the Court at Karwar had no jurisdiction. DADABHAI DAJIBHAI v. DIOGO SALDANHA I. L. R. 18 Bom. 43

5 ———— *Consignment and sale of goods—Suit on failure to sell where agreed.* When goods were consigned for sale to Cawnpore and the consignors sued for damages because the goods were sold elsewhere, the cause of action arose at Cawnpore on failure to sell them there, and not at the place from which they were consigned. DEOEE NUNDUN v. OOMRAO SINGH . . 2 Agra 248

arose at Padshu, where the goods ought to have been delivered CHUNILAL MANIKLALBHAI v MAHIPATRAV VALAD KHUNDU 5 Bom. A. C. 33

57. ———— *Goods delivered through carrier—Delivery at consignor's risk* A

as goods, though delivered to a common carrier appointed by the consignee, remain at the risk of the consignor, they are not delivered to the consignee. WINTER v WAY . . . . 1 Mad. 200

58. ———— *Letters Patent, cl 12—Non-delivery of goods* Plaintiffs contracted at Cawnpore with the East Indian Railway Company to deliver goods in Madras The East Indian Railway does not run into the jurisdiction of the Madras High Court. The Railway Company made

JURISDICTION—*contd.*

2. CAUSES OF JURISDICTION—*contd.*

(*b*) CAUSE OF ACTION—*contd.*

default in delivery of the goods, and the plaintiffs sued them in the Madras High Court for damages for the breach of contract No leave to sue (under cl 12 of the Letters Patent) was obtained. The Court of first instance dismissed the suit for want of jurisdiction *Held*, on appeal, following *Gopikrishna Gossami v. Nilkomul Banerjee, 13 B. L. R. 461*, and *Vaughan v. Weldon, L. R. 10 C. P. 47*, that the breach of contract having taken place at Madras, the cause of action had wholly arisen within the jurisdiction of the High Court MUHAMMAD ABDUL KADAR v. E. I. RAILWAY COMPANY

I. L. R. 1 Mad. 375

59. ———————— *Part of cause of action in jurisdiction* Where defendant, in an action for goods sold and delivered, pleaded want of jurisdiction, inasmuch at the whole cause of action did not arise within the jurisdiction, the Court found

1 Ind. Jur. N. S. 191

60. ———————— *Civil Procedure Code, 1859, s 5.* By a contract entered into at Beerpore, in the district of Nuddea, the plaintiff

shedabad Court had jurisdiction to entertain the suit The refusal of payment by the defendant, which

that section do not mean the whole cause of action. HILLS *v.* CLARK **14 B. L. R. 367 ; 23 W. R. 63**

61. ———————— *Place of performance of contract—Suit for price of seed* Plaintiff

Held, that the latter Court had jurisdiction to entertain a suit for the price of the seed HURRI MOHUN MULLICK *v.* GOBURDHUN DASS

3 C. L. R. 459

62. ———————— *Whole cause of action—Contract—Place of performance of contract where no stipulation in contract—Leave to sue under cl 12 of Letters Patent* By a contract executed in Bombay on the 19th December 1885, the defendant promised to pay the plaintiff R9,152, of which amount the sum of R4,752 was to be paid by monthly instalments of R132 extending over a period of three years, and the remainder, *viz*, R4,400, in a lump sum at the end the three years. It was

eight of the instalments, brought this suit for the balance. The defendant, who did not dwell or carry

iff under cl 12 of the Letters Patent. The written contract, which was admittedly executed in Bombay

should be made at Surat. The breach of contract

action" within the meaning of cl 12 of the Letters

performed, and that its breach took place there. DHUNJISHA NUSSERWANJI *v* FFORDE

I. L. R. 11 Bom. 649

63. ———————— *Sale of goods Payment of proceeds* Where the plaintiffs and defendants made consigments of a certain number of bales of cotton belonging to each for the Mirzapore market, and the cotton was unloaded and sold at

64. ———————— *Advances made for delivery of wood.* Where the suit was brought upon the defendant's breach to deliver wood in pursuance of the terms of the contract:—*Held*, that the

JURISDICTION—*contd.*

2. CAUSES OF JURISDICTION—*contd.*

(b) CAUSE OF ACTION—*contd.*

65. ———— *Contract for sale of land—Suit for purchase-money.* Where there is

66. ———— *Suit for specific performance or return of money—Land situated without local limits of jurisdiction* In consideration of the loan of R1,000, the defendant agreed to exe-

be entitled to redeem by paying the mortgage-money in Calcutta, and that a money-decree could be made. SREENATH ROY v. CALLY DOSS GHOSE
I. L. R. 5 Calc. 82

67. ———— *Contract, ratification of—Contract relating to lands* A, on be-

tain of the yearly payments. KISHEN KINKUR GHOSE v. BORODAKANTH ROY
Marsh. 533: 2 Hay 656

68. ———— *Civil Procedure Code (Act XIV of 1882), s 17 (a) and Expl. III (ii) and (iii)—Suit for price of goods delivered—Jurisdiction—Place of suing—Contract, suit arising out of—Cause of action, where arises.* Plaintiff, who resided at Samastipur in the Tirhoot District, having indigo seeds for sale, advertised: "For sale: 300 mds. fresh indigo seeds at R3-8 per md. delivered at Kishanpore station" (in Tirhoot District) Defendant, who resided at Nadia, wired: "Will give R3 for 300 mds. and, if offer accepted, despatch to Chooadanga" (Railway station in Nadia District), and wrote a letter the same day to the same effect

enclosed. Your cheque for R900 on receipt of seed will oblige . . . ." The seeds were delivered at

that it was the intention of the parties that the contract should be performed at the Kishenpore railway station, and that the price was also payable to the plaintiff at Samastipur; and, that, consequently the Court at Samastipur had jurisdiction to try the suit. SHERIFF v. MANNERS (1903)
7 C. W. N. 912

69. ———— *Civil Procedure Code (Act XIV of 1882), s 17, Expl. III—Cause of action arises only where money is expressly or impliedly payable under the contract and not under any general rule of law* The rule of general law that, where a contract is silent as to the place of payment, it is the duty of the debtor to seek out his creditor and pay him, does not control the express provisions of s 17, expl III of the Code of Civil Procedure, and cannot be applied in determining where, for the purposes of the section, the cause of action has arisen The place where the cause of action arises under s 17, expl III, is the place where money is payable, expressly, or impliedly, under *the contract itself*, and not under any *general rule of law* When a promissory note payable on demand is made at T and no place is fixed

K the place of payment for the purposes of s 17, expl. III of the Civil Procedure Code, and the Court at K has, in the absence of evidence that

70. ———— Compromise—*Letters Patent, cl. 12—Compromise outside of decree obtained within jurisdiction.* Where A obtained a decree in the

JURISDICTION—*contd.*

2 CAUSES OF JURISDICTION—*contd*

(*b*) CAUSE OF ACTION—*contd.*

71. ——————— *Civil Procedure Code, s. 17—" Cause of action "—Suit for a declaration that a compromise and a decree founded thereon are null and void as against the plaintiff, and for an injunction restraining execution* *Held,* that the term "cause of action" as used in s 17 of the Code of Civil Procedure, does not necessarily mean the whole of the cause of action; but a suit to which s. 17 applies may be instituted where some material portion of the cause of action arises. *Murti* v. *Bhola Ram, I. L. R. 16 All 165; Read* v. *Brown, L R. 22 Q B D. 128; Lleuhellin* v *Chunni Lall, I. L R. 4 All. 423; Bishunath* v *Ilahi Bakhsh, I. L R 5 All. 277; Gopi Krishna Gossami* v *Nillamul Banerjee, 13 B L R 461, Hills* v. *Clark, 14 B L R 367, Lalji Lall* v. *Hardey Narain, I L R. 9 Calc 105, Jackson* v. *Spittall, L R 5 C P. 542, Vaughan* v. *Weldon, L R 10 C P 47;* and *Haromoni Dassi* v *Hari Churn Chowdhary, I. L. R 22 Calc. 833, 840,* referred to The plaintiff came into Court, alleging that he was the adopted son of one Balmakund, having been adopted to him by Balmakund's widow, and that the defendants, who were trustees of the Will of Balmakund, had entered into a collusive suit, which they had *fraudulently compromised,* with the result that one defendant had obtained from the Court a decree for a considerable sum payable out of the property left by Balmakund, which property the plaintiff claimed as his own The decree-holder got the decree sent for execution to Cawnpore, and was seeking to execute it against the estate of Balmakund within the limits of the jurisdiction of the Subordinate Judge of Cawnpore The plaintiff filed his suit in the Court of the Subordinate Judge of Cawnpore and asked in effect, that the compromise and the decree founded thereon might be declared to be null and void as against him, and that an injunction might be issued restraining execution of the decree *Held,* that, although the decree was passed in Calcutta, yet inasmuch as the property affected by the decree was in Cawnpore, and execution was being taken out there, a material portion of the plaintiff's cause of action arose in

[illegible]

referred to *Solomon* v *Abdool Aziz, 4 C L R 366,* distinguished BANKE BEHARI LAL *v* POKHE RAM (1902) . I. L. R 25 All. 48

72. ——————— Costs.—*Assignment of decree for costs—Costs realized by assignee—Decree reversed* [illegible] *to recover* [illegible] Certain [illegible] ned from [illegible] ondents', [illegible] lecree for costs was assigned by the decree-holders, and the assignee took out of Court in execution thereof the money which had been paid in satisfaction of it by the judgment-debtors Subsequently that decree was reversed by the Privy Council, and the plaintiffs obtained a decree *in their favour, with costs in all Courts* After an infructuous attempt to get a portion of those costs from the assignee by way of execution of the order of the Privy Council, the decree-holders filed a separate suit against him for their recovery. *Held,* that the decree-holders had no cause of action for a suit to recover from the assignee the costs realized by him in the manner above described LALTA PRASAD *v* SADIQ HUSEN (1902) . . . I. L. R. 24 All. 288

73. ——————— *Award of costs—Such award not a nullity—Civil Procedure Code (Act XIV of 1882), s 646B.* A Court of First Instance having no jurisdiction, tried and decided a suit

[illegible]

recoverable S 646 of the Code of Civil Procedure

[illegible]

I. L. R. 30 Mad. 41

74. ——— Dower—*Suit for dower debt—Civil Procedure Code, 1882, s 17—Mahomedan law, Dower—Suit for recovery of dower debt from the assets of a deceased Mahomedan.* A suit for the recovery of a dower debt from the assets of a deceased Mahomedan being a suit on a contract is subject to the provisions as to jurisdiction contained in s 17 of the Code of Civil Procedure, 1882 Where, therefore, *none of the requisites for jurisdiction given in* that section existed within the jurisdiction of the Court in which such a suit was brought, that Court had no jurisdiction to entertain it SHANKAR DIAL *v* MUHAMMAD MUJTABA KHAN

I. L. R. 18 All. 400

75. ——————— False Evidence.—*False evidence not actionable—Conspiracy to give false evidence.* No civil action lies against a witness for giving false evidence, and the fact that the evidence is given in pursuance of a conspiracy to obtain the conviction of the accused person does not make any difference The only remedy against a false witness is a prosecution for perjury Where, therefore a plaintiff [illegible]

[illegible]

action A mere conspiracy to injure a man, without an overt act resulting in the injury, does not

JURISDICTION—*contd.*

2. CAUSES OF JURISDICTION—*contd.*

(*b*) CAUSE OF ACTION—*contd.*

furnish any cause of action. A conspiracy is not illegal unless it results in an act done which by itself would give a cause of action. TEMPLETON *v* LAURIE (1900) . . I. L. R. 25 Bom. 230

77. ———— Foreigner—*Defendants non-resident foreigners—Cause of action arising within jurisdiction—Civil Procedure Code (Act XIV of 1882), s 17, Expl. III—Letters Patent, cl 12—Small Cause Courts Act (IX of 1887), s 18* Under the Civil Procedure Code (Act XIV of 1882), British Courts are empowered to pass judgment against a non-resident foreigner, provided that the cause of action has arisen within the jurisdiction of the Court pronouncing the judgment. RAMBHAT v. SHANKAR BASWANT (1901)
I. L. R. 25 Bom. 528

78. ———— *Non-resident foreigner—Subjects of protected Native States may be sued, if cause of action arises within the jurisdiction.* A non-resident foreigner, who is a subject of a protected Native State, may be sued in the Courts of British India, if the cause of action arose within the jurisdiction of any such Court. Even apart from the provisions of s. 17 of the Code of Civil Procedure, the cause of action in the case of contracts arises at the place of performance. *Annamala, Chetty v Murugesa Chetty, I. L. R. 26 Mad. 544* followed TADEPALLI SUBBA RAO *v* MIR GULAM ALLIKHAN OF BANGANAPALLI (1905)
I. L. R. 29 Mad. 69

79 ———— Fraud—*Suit for goods obtained by fraud—*

JURISDICTION—*contd.*

2. CAUSES OF JURISDICTION—*contd.*

(*b*) CAUSE OF ACTION—*contd.*

took it to *K*, at his residence, which was out of the local limits of the jurisdiction of the Court, and

of the Contract Act, an essential element in the plaintiff's case that the jewellery had been obtained

against him KARTICK CHURN SETTY *v.* GOPALKISTO PAULIT . . I. L. R. 3 Calc. 264

80. ———— Legacy, suit for—*Place of residence of legatee and of heir.* A suit for a legacy

81. ———— Lost property—*Property lost in one district and found in another.* A suit to recover property lost in one district and found in another must be instituted in the Court of the district in which it is found RAM PARTAB SINGH *v.* BHOLABUTTY KOONWAR . 9 W. R. 586

82. ———— Maintenance, suit for—*Letters Patent, 1865, cl 12* The plaintiff's father left various properties partly within and partly outside Calcutta The plaintiff instituted this suit, as an indigent sonless widowed daughter, against the defendants for the recovery of her maintenance out of the estate inherited by them from her father, and prayed that her maintenance might be declared a charge upon the property situated within the limits of Calcutta. Some of the defendants lived within and some outside Calcutta Leave was obtained under cl 12 of the Letters Patent. It was *held* that, under the abovementioned circumstances, the High Court had jurisdiction to try the action MOKHODA DASSEE *v* NANDO LALL HALDAR . . . I. L. R. 27 Calc. 555
4 C. W. N. 669

83. ———— Malicious prosecution, suit for—*Letters Patent, 1865, cl 12—Jurisdiction.*

6 B. L. R. 141

84. ———— *Cause of action—Malicious prosecution—Letters Patent, cl 12—Leave*

JURISDICTION—*contd.*

2. CAUSES OF JURISDICTION—*contd.*

(b) CAUSE OF ACTION—*contd.*

—*Liability of prosecutor, when prosecution ordered by Court* The plaintiff, a resident in British India was charged with a criminal offence by the defendant in the Magistrate's Court at Rajkot In order to secure his attendance the defendant moved the Bombay Government to initiate extradition proceedings against the plaintiff before the Chief Presidency Magistrate in Bombay who, however, *held* that a case for extradition had not been made out. The plaintiff obtained leave from the High Court to file a suit against the defendant in Bombay for malicious prosecution On an application by the defendant to have the leave rescinded *Held*, that a material part of the cause of action accrued in Bombay and that the High Court had jurisdiction to entertain the suit. *Fitzjohn v. Mackinder, 9 C B N S. 505, 528*, applied MUSA YAKUB v. MANILAL (1905)

I. L. R. 29 Bom. 368

85 **Minor**—*Suit to recover custody of—Suit by a father for the recovery of his children illegally detained—Tort—Death of defendant pending suit—Survival of cause of action against defendant's heirs—Practice—Procedure* A Mahomedan

[illegible]

ative, on the ground that the minors were in her

[illegible]

extinguished when the defendant Mukimbhai died. SHARIFA v MUNEKHAN (1901)

I. L. R. 25 Bom. 574

86. ——— **Misrepresentation**—*Information as to carriage of goods by railway.* Where the defendants at C were asked to obtain information from a railway company as to the cost of carriage

[illegible]

railway company a much larger sum than the defendant had represented :—*Held*, assuming there was a right of suit, that the cause of action must be held to have arisen at C, where the alleged representation must be deemed to have been made. BENGAL COAL COMPANY v. ELGIN COTTON COMPANY . . . . . . **2 N. W. 13**

87. ——— *Letters Patent, cl. 12—Suit to set aside decree of High Court on ground of misrepresentation.* It is not necessary to obtain the leave of the High Court under cl. 12 of the Letters Patent, to sue to set aside a decree of that Court made upon a compromise to which the plaintiff has been induced by the misrepresentations of the defendant to agree, even when it appears from the plaint that the defendants are outside the jurisdiction of the Court. SOLOMON v. ABDUL AZIZ

4 C. L. R. 368

88. ——— **Money had and received, suit for**—*Place of estate sold and place of receipt*

[illegible]

sion of the estate from *B. R* by a suit in the Supreme Court against *B*, recovered the estate and mesne profits which were paid to him in Calcutta. In a suit instituted in P by the representatives of *S* against *R* for the amount so realized by him, it was *held* that the plaintiff was entitled to recover, and that the cause of action arose in P. SHARODAPERSAD MOOKERJEE v BENGAL INDIGO COMPANY

1 Ind. Jur. N. S. 32

89. ——— *Money in Government Treasury—Suit for sum held in deposit by Government for collections made by it* Where a suit was brought for the surplus collections of the proprietary profits of an estate made by Government during a period when it was held as Koork

[illegible]

90. ——— **Negotiable instruments**—*Suit on bill of exchange.* Where a bill of ex-

[illegible]

91. ——— *Hundi—Whole cause of action—Letters Patent, cl 12.* Where plaintiff brought an action to recover money paid by him in Calcutta, on hundis drawn by defendant beyond the local limits, but sent by him to Calcutta, and there accepted and paid by the plaintiff:—*Held*, that the whole cause of action arose within the local limits of Calcutta, so as to give the High Court jurisdiction under the 12th clause of the Charter. JOAN MULL v. MUNNOOLOLL

1 Ind. Jur. N. S. 219

92. ——— *Hundi—Letters Patent, cl. 12. A*, who resided and carried on

JURISDICTION—*contd.*

2. CAUSES OF JURISDICTION—*contd.*

(*b*) CAUSE OF ACTION—*contd.*

In a suit by *B* against *A* for balance of account:—*Held*, that the whole cause of action arose in Calcutta within the meaning of cl. 12 of the Letters Patent DHUNRAJ *v.* GOVINDARAM

1 B. L. R. O. C. 76

93. ——— *Hundi—Suit on hundi* A suit for recovery of the amount of a

DYAL *v.* DWARKA DASS . . 3 N. W. 343

94. ——— *Hundi—Whole cause of action—Suit on hundi made out of jurisdiction—Letters Patent, cl. 12.* The contract that the

arose in part in Bombay SUGANCHAND SHIVDAS *v.* MULCHAND JOHARIMUL . 2 Bom. 270

95. ——— *Hindu—Suit on hundis* The defendant, who resided in the district of M, but carried on business through an agent at Calcutta, by a letter, dated 4th August

jurisdiction to try the case *Per* BROUGHTON, *J.*—If the letter of 4th August 1874 amounted to a

96. ——— *Hundi—Suit on hundi—Letters Patent, cl. 12.* Where a hundi had

JURISDICTION—*contd.*

2. CAUSES OF JURISDICTION—*contd.*

(*b*) CAUSE OF ACTION—*contd.*

whom it was dishonoured within the jurisdiction:—*Held*, that the dishonour of the hundi by the drawee within the jurisdiction was a material part of the cause of action by the holder against the first endorser, and consequently that such material part of the cause of action having arisen within the jurisdiction, and the holder having obtained leave to bring his suit under cl. 12 of the Letters Patent, 1865, the Court had jurisdiction MULCHAND JOHARIMAL *v.* SUGANCHAND SHIVDAS

I. L. R. 1 Bom. 23

Affirming the decree of the Court below in SUGANCHAND SHIVDAS *v.* MULCHAND JORAHIMAL

12 Bom. 113

97. ——— *Agreement at*

The plaintiffs, who traded in Bombay, had dealings with certain firms at Delhi In December 1884, it was agreed at Delhi between the plaintiffs and

reference to the claim, and that the munim should give one to him, that the latter should, upon such letters being exchanged, return to Bombay, and that the defendant should remit the amount found due to the plaintiffs when the accounts had been made up The following letter was accordingly written by the defendant and handed to the plaintiffs' munim: " Peace, prosperity. To Shripast

JURISDICTION—*contd.*

2. CAUSES OF JURISDICTION—*contd.*

(*b*) CAUSE OF ACTION—*contd.*

the account according to the practice of the merchants, the same I will pay you at the rate of eight annas in the rupee This chitti is written 21st December 1884" The plaintiffs' munim handed the following letter to the defendant; "To Shah Dowlatrai Shriram at that auspicious place Delhi From the seaport (town) of Bombay, written by Ganeshdas Thakurdas, whose salutations of victory . , etc Do you be pleased to read . I have an account with Shah Fatechand Kanyalal Jugalkissan, wherein R are claimable by me On account of those rupees I will receive payment from you at the rate of eight annas in the rupee A chitti in respect thereof I have obtained in writing from you 21st December 1884" These letters were exchanged at Delhi, and the plaintiffs' munim then returned to Bombay *Held*, that the Court had jurisdiction If the oral agreement between the defendant and the plaintiffs' munim were taken as the basis of the plaintiffs' claim, it was clear that part of the cause of action arose in Bom- [illegible]

parties to vary them (Contract Act IX of 1872, ss 73, 74) If the letters had varied the terms of the oral agreement, the latter would be modified by the later expressions of the will of the contracting parties, but they did not do so, and the oral agreement remained in force and unvaried If, on the [illegible]

in Bombay might fairly be inferred from the terms of the letters themselves The defendant addressed the plaintiffs at Bombay from Delhi and [illegible]

same contractual effect as if they had been respectively written to and from the places to and from which they purported to be written:—*Held*, also, that the fact that the debt due from the insolvent firm to the plaintiffs, which the defendant had agreed to satisfy, had been contracted in Bombay would not give the Court jurisdiction independently of the stipulation, oral or documentary, by the defendants to pay in Bombay. It would be necessary for the plaintiffs to prove the existence of such debt as showing the nature and extent of the defendant's promise, but the existence of the debt would not constitute a part of the plaintiffs' cause of action. PRAGDAS THAKURDAS *v.* DOWLATRAM NANURAM . **I. L. R. 11 Bom. 257**

98. ———— *Leave to sue under cl 12 of the Letters Patent, 1865—Amendment of plaint in cases in which leave to sue under cl. 12 is necessary—Part of cause of action arising outside the jurisdiction—Hundi, suit on—Suit by drawee within the jurisdiction against the drawer outside the jurisdiction* In suits for which leave to sue under cl 12 of the Letters Patent, 1865, is necessary, the plaint cannot be afterwards amended The grant of leave must be taken to relate to the suit as put forward in the plaint on which leave is endorsed by the Judge accepting it. The grant of leave under cl 12 of the Letters Patent, 1865, is a judicial act which must be held to relate only to the cause of action contained in the plaint, as presented to the Court at the time of the grant. Such leave, which affords the very foundation of the jurisdiction, is not available to confer jurisdiction in respect of a different cause of action which was not judicially considered at the time it was granted In respect of such a different cause of action, leave under cl 12 cannot be granted after the institution of the suit; and therefore the Court cannot try such different cause of action, except in another suit duly instituted In suits upon hundis drawn outside the jurisdiction upon drawees within the jurisdiction, part of the cause of action arises outside the jurisdiction, and leave to sue under cl 12 of the Letters Patent, 1865, is therefore necessary for such suits RAMPURTAB SAMRUTHROY *v* PREMSUKH CHANDAMAL
I. L. R. 15 Bom. 93

In a later case the plaint was amended by the addition of another defendant after the leave to sue had been granted, and an appeal by the original defendant from that order was dismissed FOOLIBAI *v* RAMPRATAB SAMRATRAI **I. L. R. 17 Bom. 466**

99 ———— *Suit on hundi —Endorsement by payee* A hundi, drawn at Benares on the drawer's firm at Bombay in favour of a firm at Mirzapur and Calcutta, was endorsed at Calcutta by the payee to a firm at Calcutta, and dis- [illegible]

Held, that, the endorsement having taken place in Calcutta, part of the cause of action arose in Calcutta, so as to give the Court jurisdiction. *Kellie v. Fraser, I. L. R. 2 Calc. 445*, and *Daya Narain Tewary v. Secretary of State, I. L. R. 14 Calc. 256*, approved. ROGHOONATH MISSER *v.* GOBINDNARAIN
I. L. R. 22 Calc. 451

100. ———— *Letters Patent, High Court, cl 12—Suit on hundi payable at fixed date—Dishonoured by non-acceptance—Negotiable*

JURISDICTION—*contd.*

2. CAUSES OF JURISDICTION—*contd.*

(*b*) CAUSE OF ACTION—*contd.*

Instruments Act (XXVI of 1881). On the 14th April 1889, the defendant at Gwalior drew a hundi for R2,500 on his firm at Bombay in favour of *D*, payable forty-five days after date. It was subse-

Bank presented it to the defendant's firm at Bombay for acceptance, which was refused The Bank thereupon returned it to the plaintiff at Cawnpore, and it was never presented for payment. On the 16th June 1891, the plaintiff filed a suit upon the

High Court of Bombay Previously to the filing of the suit, the defendant had ceased to carry on business at Bombay. The defendant contended that the Court had no jurisdiction, inasmuch as (*a*) the defendant was a foreigner, and at the date of suit did not carry on business in Bombay; and (*b*) no part of the cause of action (if any) had arisen in Bombay *Held*, (i) that, under the Negotiable Instruments Act (XXVI of 1881), the dishonour of a hundi, by non-acceptance, constitutes now, as it has always done, part of the cause of action in a suit against the drawer, (ii) that the Court had jurisdiction under cl 12 of the Letters Patent, 1865 RAM RAVJI JAMBHEKAR v PRALHADDAS SUBKARN

I. L. R. 20 Bom. 133

101. ———— *Promissory note made and delivered within jurisdiction—Letters Patent, cl. 12.* Where a promissory note payable within the jurisdiction is also in the first instance delivered within it, the cause of action arises within the jurisdiction. ISSER CHUNDER SEIN v CRUZ

1 Ind. Jur. N. S. 233

102. ———— *Promissory note made out of jurisdiction—Defendant out of jurisdiction.* The proclamation of the Governor General in Council, dated 26th August 1865, did not revive the jurisdiction of the late Supreme Court or affect the local limits under the Letters Patent; therefore

1 Ind. Jur. N. S. 61

103. ———— *Promissory note* In an action on a promissory note, when the note was made payable to *A*, who resided in Calcutta, and was executed and delivered to him in Calcutta:—*Held*, that the whole cause of action arose in Calcutta RAMGOPAL LAW v. BLAQUIERE

1 B. L. R. O. C. 35

104. ———— *Promissory note —Letters Patent, 1865, cl. 12.* The High Court has no jurisdiction to entertain a suit brought upon a promissory note made without, but payable within, the local limits of his jurisdiction, leave to institute the suit not having been first obtained MOTHOORMOHUN ROY v. JADOOMONEY DOSSEE

10 B. L. R. 122

105. ———— *Promissory note, Suit on—Delivery of note* Where the payee sued the maker of a note which was dated "Madras, 27th September 1860," and delivered to the plaintiff

106. ———— *Promissory note, Suit on—Maxim "Debitum et contractus sunt*

was signed by him beyond those limits Jurisdiction to entertain a suit on a promissory note is *primâ facie* shown upon a plaint alleging that the note was delivered by the defendant at Madras, and that he thereby promised to pay at Madras Remarks on the maxim "*Debitum et contractus sunt nullius loci.*" RAJENDRA RAU v SAMA RAU . 1 Mad 436

107. ———— *Promissory note —Place of performance—Code of Civil Procedure (Act X of 1877), s 17, Illus* Where a promissory note is executed in one district, and it is agreed that the amount of the note shall be paid in another, the Courts of the latter district have jurisdiction to entertain a suit on the note The illustrations to s 17 of the Code of Civil Procedure afford no

I. L. R. 8 Calc 105 : 11 C. L. R. 12

108. ———— Partnership—*Place of*

were to be conducted by means of the capital embarked in the concern at that place. *Held*, that the cause of action in a suit for the balance resulting from these partnership transactions arose at Muttra. LUCHMEE CHAND RADHAKISHEN v. ZORAWAR MULL

1 W. R. P. C. 35 : 8 Moo. I. A. 291

JURISDICTION—*contd.*

2. CAUSES OF JURISDICTION—*contd.*

(*b*) Cause of Action—*contd.*

109. ——————— *Letters Patent*

business to be carried on at Bakuram, near Hyderabad, and by the terms of the agreement the tanned skins were to be sent to the plaintiff at Madras, for sale or shipment to England, and hundis in respect of the goods sent to Madras were to be drawn upon the plaintiff at Madras and paid by him, and accounts of the partnership transactions were to be sent to the plaintiff once in eight days:—*Held*, in a suit for an account of the partnership dealings, that the cause of action had arisen in part within the original civil jurisdiction of the High Court, and, the leave of the Court to bring the suit having been obtained under cl 12 of the Letters Patent of 1865, that the Court had jurisdiction to entertain the suit *Held*, also, that the jurisdiction of the Court was not affected by the circumstance that the defendants were non resident foreigners Bavah Meah Saib v. Khajee Meah Saib 14 Mad. 218

110. ——————— *Letters Patent, High Court, cl 12—Part of cause of action arising on jurisdiction—Death of partner—Subsequent recovery of assets by surviving partner—Suit by administrator of deceased partner against surviving partner for recovered assets—Suit for partnership account* In 1889 one *H*, a widow and a partner in a firm carrying on business in partnership with two persons, viz, *G* and *B* (defendants Nos 1 and 2), in Sind and at Behrin in the Persian Gulf, died, and the partnership was then dissolved. *H* had no children, but it was alleged that she had adopted one *P*, the brother of the second defendant. On the 13th

they denied that *K* was her heir, and alleged that *P* had performed her funeral ceremonies The matter came on as a suit on the 19th February 1894, when an order was made without prejudice to any of the questions raised by the issues, dismissing the application and ordering letters of administration

B (defendant No 2) had filed three suits in the High Court of Bombay, in the name of himself and *G* (defendant No. 1), as surviving partners of *H's* firm, to recover certain debts due to that firm. Disputes subsequently arose between *B* and *G*, and by a consent order of the 22nd July 1893 it was ordered that any moneys recovered in the said three suits should be paid over to a receiver (defendant No. 3), to be held by him until further order. On the 1st August 1895, consent decrees were passed in the

appointed as above stated. He claimed to recover the whole sum paid to the receiver, alleging that the first and second defendants as her partners were largely indebted to the firm, and that the money really belonged to her estate. He prayed that the receiver might be directed to pay over the money to him, and that, if necessary, the partnership account should be taken. The second defendant (*inter alia*) pleaded that the suit was one for partnership accounts, and was barred by limitation, and also that the High Court of Bombay had no jurisdiction to try it. *Held*, that the Court had jurisdiction to hear the suit. The cause of action alleged was that the second defendant was endeavouring, under cloak of his position as surviving partner, to get into his hands a sum of money within the jurisdiction of the Court, with a view to deprive the representatives of his deceased partner of it, and to employ it for his own purposes. That was, at all events, part of the cause of action, and leave to sue had been obtained under cl 12 of the Letters Patent, 1865. Rivett-Carnac *v.* Goculdas Sobhanmull . . I. L. R. 20 Bom. 15

Affirmed by the Privy Council in Bhagwandas Mitharam *v.* Rivett-Carnac

I. L. R. 23 Bom. 544
3 C. W. N. 186

111. ——————— *Stamp Act (I of*

interest in Madras A promissory note was executed in plaintiff's favour at Vizianagram, payable in Secunderabad or Madras. Payments of interest due on the note were made in Madras The note

112. ——— **Principal and Agent**—*Principal residing out of jurisdiction* *Held*, that the Court at Furruckabad had no jurisdiction to entertain a suit against principals residing elsewhere, brought by the agents at Furruckabad. Khooshal Chund *v.* Palmer . . . 1 Agra 280

JURISDICTION—*contd.*

2. CAUSES OF JURISDICTION—*contd.*

(b) Cause of Action—*contd.*

113. ——————— *Jurisdiction—Foreigner carrying on business by agent—Civil Procedure Code (Act XIV of 1882), s. 17—Suit in Court in British India on judgment of French Court—Effect of order in insolvency of French Court—Business carried on by managing member of joint*

Girdhar Damodar v. Kassigar Hiragar, I. L. R. 17

tion of such persons resembles that of trustee and *cestui que trust*, rather than that of principal and

judgment of the Pondicherry Court, obtained after the order of adjudication in insolvency took effect, was barred by the proceedings in insolvency, as held in *Quelin v Moisson, 1 Knapp. P. C 265* The High Court *held* that the suit was so barred, but in the view of the case taken by the Judicial Committee it was not necessary to decide the point ANNAMALAI CHETTY *v.* MURUGASA CHETTY (1903)
I. L. R. 26 Mad. 544: s.c. L. R. 30 I. A. 220; 7 C. W. N. 754

114. ——————— **Registration**—*Suit to compel registration—Registration Act, 1864, s 21—Civil Procedure Code, 1869, s. 5.* Defendant executed in favour of plaintiff at Combaconum, in the zillah of Tanjore, a deed of mortgage of lands situated at a place within the jurisdiction of the District Munsif of Perambalur, in the Trichinopoly zillah. The deed, to make it enforceable, required registration, the place of registry (from the situation of the lands) being Perambalur. Plaintiff appeared at the registry office, but defendant did not. In consequence, the Sub-Registrar refused to register the deed The pressent suit was brought to compel defendant to join in registering it The District Munsif of Perambalur dismissed the suit upon the ground that the cause of action did not arise within his jurisdiction, but at Combaconum. The Civil Judge confirmed this decision, as he found that the defendant was a permanent resident of Combaconum Upon special appeal:—*Held*, reversing the decree of the Civil Judge, that as s. 21 of the Registration Act (XVI of 1864), which governed this case, rendered it necessary that the deed should be registered in Perambalur, the defendant was under an obligation to plaintiff to get the document registered at that place; that the breach of the obligation was the cause of action, and that consequently the Court at Perambalur had jurisdiction, as it was the place of the fulfilment of the obligation. SAMI AYYANGAR *v.* GOPAL AYYANGAR . . . **7 Mad. 176**

115. ——————— **Release**—*Suit to set aside release—Letters Patent, 1865, cl 12.* The plaintiff, resident in Calcutta, sued *H*, resident in Bombay,

made by *H* The plaint prayed that the release

might be declared not binding on the plaintiff; for an account; and for the appointment of a receiver. *Held*, that the whole cause of action did not arise in Calcutta so as to enable the plaintiff to sue in Calcutta without leave of the Court under cl. 12 of the Letters Patent The word "defendant" in that clause means all the defendants, if there are several defendants to a suit. It is not sufficient that one of the defendants should dwell or carry on business within the jurisdiction. ISMAIL HADJEE HUBBEEB *v.* MAHOMED HADJEE JOOSUB ROHIMA BYE *v.* MAHOMED HADJEE JOOSUB .
13 B. L. R. 91: 21 W. R. 303

116. ——————— **Representative of deceased person.**—*Suit against representatives.* The representative of a deceased person may be sued in that Court within the jurisdiction of which the cause of action with the deceased person arose. LADD *v.* PARBUTTY DOSSEE . . . **2 Hyde 18**

117. ——————— Restitution of conjugal

the decree was confirmed on second appeal.

JURISDICTION—*contd.*

3 SUITS FOR LAND

(a) GENERAL CASES.

1 ———— **General cases of suits for land**—*Land partly in, and partly out of, jurisdiction—Letters Patent, cl. 12* Some of the property being situated in, and some out of, the jurisdiction of the Court :—*Held,* that the Court had

2. ———— ———— *Letters Patent, High Court, cl 12—Leave to sue—Immoveable property situated outside jurisdiction—Moveable property situated within the jurisdiction—Power to give leave to sue.* Where the plaintiffs brought a suit for their share of family property consisting of land situated outside the jurisdiction of the High Court, and for moveables situated within, leave having been granted by the Registrar :—*Held,* that the High Court had no jurisdiction as to the lands, and that the suit must be dismissed as to them *Held,* further, that leave to sue had been wrongly granted by the Registrar SESHAGIRI RAU *v.* RAMA RAU . I. L. R. 19 Mad. 448

3. ———— *Land partly in, and partly out of, jurisdiction—Letters Patent, cl 12* Under cl 12 of the Letters Patent, the High

MANI DASI . [illegible]

4. ———— *Suit for land in territories of Raja of Pudukotta—Trichinopoly Court, jurisdiction of.* In a suit for the recovery of land situated within the territories of the Raja of Pudukotta : *Held,* that the Civil Court of Trichinopoly had no jurisdiction RANGAIYAN *v.* HARI KRISHNA AIYAN . . . . 2 Mad. 437

5. ———— *Land in posses-*

1 Hyde 141

6. ———— *Civil Courts—Bombay Revenue Jurisdiction Act (X of 1876, as* ... *Held* that the

schedule annexed to that Act from exercising jurisdiction over claims against Government to hold lands wholly or partially free from payment of land revenue KALABHAI *v* THE SECRETARY OF STATE FOR INDIA (1905) I. L R. 29 Bom. 192

7. ———— *Civil Procedure Code (Act XIV of 1882), s 16, cl. (d)—Suit for the*

JURISDICTION—*contd.*

3 SUITS FOR LAND—*contd*

(a) GENERAL CASES—*contd.*

determination of any right to, or interest in, immoveable property—Suit for the recovery of purchase-money under contract for the sale of land A suit for the recovery of unpaid purchase-money under a contract for the sale of land in a suit " for the determination of any right to, or interest in, immoveable property " within the meaning of s 16, cl. (*d*) of the Code of Civil Procedure. *John Young v Mangalapilly Ramaiya, 3 Mad. H. C. 125,* and *His*

I. L. R. 28 Mad. 227

8. ———— *Letters Patent, cl 12—Suit for land—Leave of Court—Cause of action—Title—Appeal from order discharging summons.* The plaintiffs asked for a declaration that they were *entitled to exclusive possession and enjoyment of* a *talao* situated outside the jurisdiction of the

for land and that under the circumstances the Court had no jurisdiction to entertain it. *Held,* also, that an appeal lies from an order dismissing a Judge's summons to show cause why leave granted under cl. 12 of the Letters Patent should not be rescinded and the plaint taken off the file *Hadjee Ismail*

litigant, or their predecessors some privity or relation is established on the ground of con-

I. L. R. 29 Bom. 249

JURISDICTION—*contd*

2. CAUSES OF JURISDICTION—*contd*

(*b*) CAUSE OF ACTION—*contd*

113. ———— *Jurisdiction—Foreigner carrying on business by agent—Civil Procedure Code (Act XIV of 1882), s. 17—Suit in Court in British India on judgment of French Court—Effect of order in insolvency of French Court—Business carried on by managing member of joint family. Quære :* Whether a non-resident foreigner can, by carrying on business within the jurisdiction of a British Court in India by an agent subject

that such a person is not the agent of the members of the family so as to make them liable to be sued as if they were the principals of the manager. The relation of such persons resembles that of trustee and *cestui que trust*, rather than that of principal and

was barred by the proceedings in insolvency, as held in *Quelin v. Moisson, 1 Knapp. P. C* 265. The High Court *held* that the suit was so barred, but in the view of the case taken by the Judicial

114. ———— **Registration**—*Suit to compel registration—Registration Act, 1864, s 21—Civil Procedure Code, 1869, s 5* Defendant executed in favour of plaintiff at Combaconum, in the zillah of Tanjore

at the registry office, but defendant did not In

Combaconum The civil

tered in Perambalur, the defendant was under an obligation to plaintiff to get the document registered at that place; that the breach of the obligation was the cause of action, and that consequently the Court at Perambalur had jurisdiction, as it was the place of the fulfilment of the obligation. SAMI AYYANGAR *v.* GOPAL AYYANGAR . . . **7 Mad. 176**

115. ———— **Release**—*Suit to set aside release—Letters Patent, 1865, cl 12.* The plaintiff,

might be declared void and cancelled; that a certain inventory and account relating to the said property, which the plaintiff alleged he had been induced to file in Bombay by the false representations of *H*, might be declared not binding on the plaintiff; for an account, and for the appointment of a receiver. *Held*, that the whole cause of action did not arise in Calcutta so as to enable the plaintiff to sue in Calcutta without leave of the Court under cl. 12 of the Letters Patent The word "defendant" in that clause means all the defendants, if there are several defendants to a suit. It is not sufficient that one of the defendants should dwell or carry on business within the jurisdiction. ISMAIL HADJEE HUBBEEB *v.* MAHOMED HADJEE JOOSUB ROHIMA BYE *v* MAHOMED HADJEE JOOSUB .

13 B. L. R. 91 : 21 W. R. 303

116 ———— **Representative of deceased person.**—*Suit against representatives.* The representative of a deceased person may be sued in that Court within the jurisdiction of which the cause of action with the deceased person arose LADD *v* PARBUTTY DOSSEE . . . **2 Hyde 18**

117. ———— **Restitution of conjugal rights**—*Husband and wife* The plaintiff sued his

JURISDICTION—*contd.*

3. SUITS FOR LAND

(a) General Cases.

1. ———— General cases of suits for land—*Land partly in, and partly out of, jurisdiction—Letters Patent, cl. 12* Some of the property being situate in, and some out of, the jurisdiction of the Court:—*Held*, that the Court had jurisdiction to try the suit according to the true construction of cl. 12 of the Charter, 1865, in reference to the whole of the property. Prasannamayi Dasi v. Kadambini Dasi **3 B. L. R. O. C. 85**

2. ———— *Letters Patent, High Court, cl. 12—Leave to sue—Immoveable property situated outside jurisdiction—Moveable property situated within the jurisdiction—Power*

having been granted by the Registrar:—*Held*, that

3. ———— *Land partly in, and partly out of, jurisdiction—Letters Patent, cl. 12* Under cl. 12 of the Letters Patent, the High Court has jurisdiction to entertain suits for land,

...mani Dasi . **6 B. L. R. 686**

4. ———— *Suit for land in territories of Raja of Pudukotta—Trichinopoly Court, jurisdiction of.* In a suit for the recovery of land situated within the territories of the Raja of Pudukotta: *Held*, that the Civil Court of Trichinopoly had no jurisdiction Rangaiyan v. Hari Krishna Aiyan . . . **2 Mad. 437**

5. ———— *Land in posses-*

1 Hyde 141

6. ———— *Civil Courts—Bombay Revenue Jurisdiction Act (X of 1876, as amended by Act XVI of 1877), s. 4.* *Held*, that the

schedule annexed to that Act from exercising jurisdiction over claims against Government to hold lands wholly or partially free from payment of land revenue. Kalabhai v. The Secretary of State for India (1905) **I. L. R. 29 Bom. 192**

7. ———— *Civil Procedure Code (Act XIV of 1882), s. 16, cl. (d)—Suit for the determination of any right to, or interest in, immoveable property—Suit for the recovery of purchase-money under contract for the sale of land.* A suit for the

I. L. R. 28 Mad. 227

8. ———— *Letters Patent, cl. 12—Suit for land—Leave of Court—Cause of action—Title—Appeal from order discharging summons.* The plaintiffs asked for a declaration that they were entitled to exclusive possession and enjoyment of a *talao* situated outside the jurisdiction of the

for land and that under the circumstances the Court

title to land should ordinarily be determined by

JURISDICTION—*contd.*

3. SUITS FOR LAND—*contd*

(a) GENERAL CASES—*contd.*

9. ———— **Administration suit**—*Acts of maladministration regarding immoveable property outside jurisdiction—Power of Court to set aside leases of immoveable property outside its jurisdiction—Letters Patent, High Court, cl. 12—*

comprised in the leases complained of is wholly outside the limits of its ordinary original civil jurisdiction does not preclude it from setting aside such leases, and leave for that purpose under cl 12 of the Charter is not necessary The Court assumes jurisdiction in regard to immoveable properties

NUNDO LALL BOSE . I. L. R. 26 Calc. 891
3 C W N. 670

10 ———————— *Jurisdiction of High Court—Original Side of High Court—Suit for administration of the estate and to set aside decree on the ground of fraud—Decree of Mofussil Court—Leases of land outside jurisdiction—Executor defendant residing in Calcutta—Construction of Hindu will—Expenses of poojas, etc —Discretion of executors—Void bequest—Directions as to accumulations.* The plaintiff brought a suit on the original side of the High Court at Calcutta for administration of the

fraud was proved *Held*, by the Judicial Committee, that the High Court on its Original Side had jurisdiction to entertain the suit. That Court had power to order administration of the estate, and as auxi-

JURISDICTION—*contd.*

3. SUITS FOR LAND—*contd.*

(a) GENERAL CASES—*contd.*

performed by my brothers in our own house you

entitled to the fund directed to be accumulated she could release the direction for accumulations and enjoy the whole income BENODE BEHARI BOSE *v.* NISTARANI DASSI (1905)

I. L R. 33 Calc. 180

11. ———— **Award**—*Application to file award—Cause of action—Civil Procedure Code,*

dispute in any matters relating to the partnership. Differences having arisen, arbitrators were appointed in accordance with the clause in the deed. The

defendant should execute a mortgage of his share to the plaintiff as security for such payment; that

JURISDICTION—*contd.*

3. SUITS FOR LAND—*contd.*

(a) GENERAL CASES—*contd.*

the partnership should be dissolved on certain terms, and that the tea garden at Darjeeling should be sold in Calcutta In an application under s. 327, Act VIII of 1859, to file the award. —*Held*, affirming the decision of the Court below, that the High Court at Calcutta had jurisdiction to file the award Section 327 gives jurisdiction to file an award to any Court in which a suit in respect of the subject-matter of the award might be instituted. A suit in respect of the subject-matter of this award would not be a suit for land, but a suit in which, by reason of the execution of the deed of partnership in Calcutta, a part of the cause of action arose there; such a suit could, with leave, have been instituted in the High Court · that Court, therefore, had jurisdiction to file the award. KELLIE v. FRAZER . I. L. R. 2 Calc. 445

12. ——— **Claim to attached property**—*Claim under Civil Procedure Code, 1859, s 246.* A claim to property under s. 246, Act VIII of 1859, is virtually a suit for land SAGORE DUTT v. RAMCHUNDER MITTER . . 1 Hyde 136

13. ——— **Foreclosure**—*Lex loci rei sitæ* When land forms the subject-matter of the suit, the *lex loci rei sitæ* applies A suit for foreclosure is a suit for land. BLAQUIERE v. RAMDHONE DOSS Bourke O. C. 319

14. ——— *Foreclosure of property out of jurisdiction—Practice* A suit for

1 Ind. Jur. N. S. 40

15. ——— *Cause of action —Property out of jurisdiction.* A suit by a mortgagee for foreclosure must be brought in the district where the land is. In like manner, a suit by a mort-

BULDEO DOSS v. MOOL KOOER . 2 N. W. 19

16. ——— *Portion of property in mofussil.* Where a plaint prayed for foreclosure of a mortgage in the English form of certain land situated partly in Calcutta and partly in the mofussil, and for an account;—*Held*, that, leave to sue having been obtained under cl 12 of the Letters Patent, the Court had power to make a decree with respect to the whole of the property BANK OF HINDUSTAN, CHINA, AND JAPAN v. NUNDOLALL SEN . . . 11 B. L. R. 301

17. ——— *Letters Patent, 1865, cl 12—Foreclosure, suit for.* A suit for fore-

I. L. R. 22 Bom. 701

18. ——— **Injunction** —*Civil Procedure Code, s. 5—Suit in personam—Suit for injunction to restrain nuisance* The plaintiffs, the owners and occupiers of a house and premises in Howrah, sued for an injunction to restrain a nuisance caused by

pedient The workshops complained of were erected

RAILWAY COMPANY . . 10 B. L. R. 241

19. ——— *Letters Patent, cl. 12—Suit to restrain working of mine.* In a suit

JURISDICTION—*contd.*

3 SUITS FOR LAND—*contd.*

(*a*) GENERAL CASES—*contd.*

and therefore one which, the land being in the mofussil, the Court had no jurisdiction to try On the facts stated in the plaint and before the filing of the defendants' written statement, the Court granted an interim injunction, and refused an application to take the plaint off the file. EAST INDIAN RAILWAY COMPANY *v.* BENGAL COAL COMPANY . . I. L. R. 1 Calc. 95

20. ——— *Valuation of suit—Valuation for purposes of jurisdiction—Declaratory decree, suit for—Consequential relief—Court fees—Court Fees Act (VII of 1870) s 7, para 4, cls* (c), (d)*—Suits Valuation Act (Act VII of 1887), s 8.* A suit by a plaintiff in possession for declaration of his title to land, and for an injunction restraining defendants from interfering with his possession by cutting trees thereon, and for damages falls within s. 7, para. IV, cls. (c) and (d) of the Court Fees Act. In such a suit the Court must accept the value of the relief stated in the plaint for the purposes of the Court fees as well as for the purposes of jurisdiction *Sardarsingji* v. *Ganpatsingji, I L. R 17 Bom. 56; Bai Varunda Lakshmi* v *Bai Manegavri, I. L. R 18 Bom 207, Ostoche* v. *Hari Das, I L. R 2 All 869; Jogal Kishor* v. *Tale Singh, I. L. R 4 All. 320, Sheo Deni Ram* v. *Tulshi Ram, I L R. 15 All 378; Valu Goundan* v. *Kumaravelu Goundan, I L. R 20 Mad 249,* approved; *Kirty Churn Mitter* v. *Aunath Nath Deb, I L R. 8 Calc. 757,* and *Boidya Nath Adya* v. *Makhan Lal Adya, I L. R. 17 Calc 680,* distinguished HARI SANKER DUTT *v.* KALI KUMAR PATRA (1905)
I L. R. 32 Calc. 734

21. ——— Lien—*Letters Patent, cl 12—Leave to institute suit in High Court—Suit to have maintenance declared a charge on property in the mofussil.* The widow of one *A D* applied under

enhanced, and declared as a charge on the said estate She prayed also for an account and the appointment of a receiver. It appeared that all the moveable property and the greater part of the immoveable was in Benares, a portion only of the latter being within the ordinary original civil jurisdiction of the High Court. The application was granted on 31st May 1873, leave being reserved to the defendant to move to have this order set aside. The plaint was then filed. When the case came on for settlement of issues, the defendant questioned the jurisdiction of the High Court, and the Judge of the Court of original jurisdiction, who found that the defendant was in no way subject personally to its jurisdiction, withdrew the permission which had been granted to the plaintiff to institute the suit. *Held*, that, as the parties and witnesses resided in Benares, there was no reason why the suit should be tried in Calcutta, and as there was ample property within the jurisdiction of the Court at Benares to satisfy the maintenance, there was no necessity for its being declared to be a charge on the Calcutta property. RADHA BIBEE *v.* MUCKSOODUN DASS . . . 21 W. R 204

22 ——— *Suit to have lands declared liable in satisfaction of bond* A suit to have certain lands declared liable for the satisfaction of an instalment bond is substantially a suit for an interest in land, and as such cognizable by the Courts within whose jurisdiction the property is situated, even though the cause of action has not arisen there and the defendants reside elsewhere. RAM LALL MOOKERJEE *v.* CHITTRO COOMAREE
15 W. R. 277

23. *Suit to enforce mortgage lien on land.* A suit for the enforcement

is situated AHMEDEE BEGUM *v* DABEE PERSAUD
18 W. R. 287

MAHOMED KHULEEL *v.* SONA KOOER
23 W. R. 123

24. ——— *Suit to enforce mortgage-lien on land* A suit brought upon a mortgage, praying for a decree for the amount due thereunder, and that in default of payment the land mortgaged may be sold, is a suit for land within the meaning of s. 5 of Act VIII of 1859, and is rightly brought in the Court of the district within which the land is situate. *In the matter of the Petition of* LESLIE 9 B. L. R. 171

s c. LESLIE *v* LAND MORTGAGE BANK OF INDIA . . . . . 18 W. R. 269

25. ——— *Mortgage lien—Suit to recover mortgage-debt sale of mortgaged*

and can only be instituted in that Court within the local limits of whose jurisdiction the mortgaged property is situate A Court has no jurisdiction to entertain such a suit relating to property situate outside the local limits of its jurisdiction VITHALRAO *v* VAGHOJI . . I. L. R. 17 Bom. 570

26. ——— *Letters Patent, High Court, cl. 12—Suit for land out of jurisdiction —Suit to declare interest on land—Suit to have*

balance, and prayed that the mortgage contract

JURISDICTION—*contd.*

3. SUITS FOR LAND—*contd.*

(a) GENERAL CASES—*contd.*

might be declared void and the mortgage set aside

tion to try it. KANTI CHUNDER PAL CHAUDHRY *v.* KISSORY MOHUN ROY . I. L R 19 Calc. 361 note

27. ———— *Suit to recover mortgage-debt by sale of mortgaged property out of the jurisdiction.* A suit for the recovery of a mortgage-debt by the sale of the mortgaged property is not a suit for land within the meaning of s 5 of the Code of Civil Procedure A Court may decree the sale of mortgaged immoveable property, though situated beyond its jurisdiction YENKOBA BALSHET KASAR *v.* RAMBHAJI VALAD ARJUN 9 Bom 12

6 B. L. R. 134

29. ———— *Suit for partition where moveables are within, and immoveables outside, the jurisdiction—Practice—Leave to sue under cl. 12 of Letters Patent—Leave to sue as a*

of

ve-

all

the immoveable property was outside the jurisdiction of the Court. *Held*, that the case did not fall within the provisions of cl. 12 of the Letters

be implied from the fact that leave of sue as a pauper has been granted to a plaintiff. Leave for the former purpose must be distinctly sought and obtained. JAIRAM NARAYAN RAJE *v.* ATMARAM NARAYAN RAJE . . . . I. L. R. 4 Bom. 482

30. ———— *Partition of*

estate. A suit for the partition of certain specific plots of land situated within a revenue-paying estate in Assam, the plaintiff having no joint interest in the other lands of the estate, is not covered s 154 of the Assam Land and Revenue Re-

within the meaning of s. 96 of the Regulation and is not cognizable by the Civil Court, except as provided for in s. 154 (1) (e) of the Regulation. GOURI KRISHNA *v.* SABANUNDA SARMA (1905) I. L. R. 32 Calc. 1036

31. ———— *Court Fees Act (VII of 1870), s 7, cl. (iv) (b), s. 7, cl. (v)—Suits Valuation Act (IX of 1887), s. 8—Suit for partition and separate possession of joint family property—Valuation for Court-fee purposes—Market value of subject-matter determines jurisdiction.* The plaintiff sued for partition of certain houses, house-sites, moveables and lands, valuing his share in lands at five times the assessment (*i e*, at R489-6-0) for

The Subordinate Judge held that the value for Court fees, that is R1,944-14-0 should be treated as the value for jurisdiction under s. 7, cl. (iv) (b) of the Court Fees Act, 1870, and s. 8 of the Suits Valuation Act, 1887, and returned the plaint for presentation

I. L. R. 33 Bom. 658

Charter. LALLMONEY DASSI *v.* JUDDOO NAUTH SHAW . . . 1 Ind. Jur. N. S. 319

33. ———— *Suit for redemption where mortgage includes other lands out of jurisdiction—Account of all the mortgaged lands.* In a suit for redemption of lands lying within

JURISDICTION—*contd.*

3. SUITS FOR LAND—*contd.*

(a) General Cases—*contd.*

the suit on the ground that such account could not be taken without deciding questions lying *ultra vires* of the Mirzapur Court. *Held*, that the Mirzapur Court might take such account for the purpose of deciding whether the entire mortgage-debt had been satisfied, and might give the plaintiff a decree for the redemption of the property lying within the

I. L. R. 1 All. 431

34. ———— Rent—*Suit for rent—Civil Procedure Code, 1859, s. 5—Residence of defendant—Title to land incidentally raised.* A suit to recover the rents of land situated in district J may be brought in district S, where the defendant is residing although in such suit the plaintiff's title to the land in respect of which the rent is sought to be recovered may incidentally come in question. Chintaman Narayan v. Madhavrav Venkatesh 6 Bom. A. C. 21

35. ———— *Suit for arrears of rent—Letters Patent, cl 12* A leased to B for 25 years, commencing from October 1855, certain aurengs or pieces of ground situated in the zillah of Beerbhoom in Bengal at a certain rent payable monthly, B entering into a covenant to pay the rent. The property leased was a "loha mehal," or iron mine, and the lessee used it as such and erected smelting furnaces B resided in Calcutta. *Held*,

Chunder Ghose v. Minto 1 Ind. Jur. N S. 426

36. ———— *Suit for rent of land, with alternative claim for compensation for use and occupation—Land situated outside jurisdiction of High Court.* A suit by a landlord against a tenant for rent at a rate agreed upon for one period, and for rent on the basis of use and occupa-

37. ———— *River changing its course—Act XII of 1881 (North-Western Provinces Rent Act), ss 1, 104, 93 (a)—Suit for rent* Of two agricultural holdings

JURISDICTION—*contd.*

3. SUITS FOR LAND—*contd.*

(a) General Cases—*contd.*

Beni Prasad Kuari v. Ratul Thakur (1901) I. L. R. 23 All. 282

38. ———— *Revenue Court —Rent of tank, suit for—"Land"—Fishery, right of—Act X of 1859, s. 623, cl (4).* A suit for reco-

applicable to such a suit. The term "land" in s. 6 of Act X of 1859 means cultivated land and does not include a tank regarded as land covered with water. *Siboo Jelya* v *Gopal Chunder Chowdhry, 19 W. R 200*, *Nidhi Krishna Bose* v. *Ram Doss Sen, 20 W. R. 341*; *Nidhi Kristo Bose* v. *Nistarini Dossee, 21 W. R. 386*; and *Doorga Soonduree Dossee* v. *Oomdutoonissa, 18 W. R 235*, referred to. *Semble* · Where the grant is merely of a right of fishery, the lessee acquires no interest in the sub-

Mohun Mundul v. *Neel Madhub Mundul, 24 W. R. 200*; and *David* v *Grish Chunder Guha, I L R. 9 Calc 183*, referred to. Mahananda Chakravarti v. Mangala Keotani (1904) I. L. 31 Calc. 937

39. ———— *Landlord and tenant—Suit for land—Suit by lessee for rents and profits during absence—Lessor in possession—Letters Patent, 1865, cl. 12.* A, a lessee of certain premises outside the jurisdiction of the Court, having vacated the premises on account of being sentenced to a term of imprisonment, on his release brought a suit against the lessor, who had *in the meantime* taken over possession, claiming the rents and profits arising therefrom pending the termination of the lease, and further claiming that the lessor during his absence became trustee for him. At the hearing, the lessor contended there was no cause of action as this was a suit for land. *Held*, that,

JURISDICTION—*contd.*

3. SUITS FOR LAND—*contd.*

(*a*) GENERAL CASES—*contd.*

London Bank v. Wordie, I L R. 1 Calc. 249, Keltie v. Fraser, I L.R. 2 Calc 445, and *Hura Lal Banerjee v. Nilambini Debi, I L. R. 29 Calc. 315,* followed. *Rungo Lall Lohea v. John Wilson, I. L R 26 Calc. 204, 2 C W. N. 718,* distinguished. EBRAHIM ISMAIL TIMOL *v.* PROVAS CHANDER MITTER (1908) **I. L. R. 36 Calc. 59**

40. ——— Specific performance—*Letters Patent, cl 12—Land situated without local limits of jurisdiction* In consideration of the loan of R4,000 the defendant agreed to execute a mortgage of certain land beyond the jurisdiction of the High Court to the plaintiff, and agreed to produce his title-deeds and to make a good title. In the agreement the plaintiff was described as "of Durmahatta in the town of Calcutta, merchant," and the defendant as "of Panchathopy in Zillah Beerbhoom, at present of Coomertooly in Calcutta"

GHOSE . . . . **I. L. R 5 Calc. 82**

41. ——— *Contract in Calcutta for lands outside* Defendant executed an agreement in Calcutta to sell plaintiff certain lands out of Calcutta In a suit for specific performance:—*Held,* that the Court had jurisdiction to entertain a suit upon the contract, it having been made in Calcutta RAM DHONE SHAW *v.* NOBEENMONY DOSSEE . . . . **Bourk O. C. 218**

Upheld on appeal

42. ——— *Letters Patent, High Court, cl 12—Suit for land out of jurisdiction—Suit for specific performance* A vendor, having obtained leave to sue under cl 12 of the Letters Patent of 1865, sued in the High Court to enforce *inter alia* the specific performance of a contract entered into by the defendant for the purchase of certain land situated in the district of Burdwan, and in the alternative for damages *Held,* that, as far as the abovementioned objects of the suit were concerned, the suit was not one for land within the meaning of that clause. LAND MORTGAGE BANK *v* SUDURUDEEN AHMED **I. L. R. 19 Calc. 358**

43. ——— *Power of High Court to order sale of land situate outside jurisdiction—Mortgage of land outside jurisdiction—Suit for specific performance relating to land outside jurisdiction—Letters Patent, 1865, cl. 12.* In a suit for specific performance of an agreement made in Bombay, but relating to land situate outside the original jurisdiction of the High Court, and to realize a mortgage-debt by sale of the said land:—*Held,* that the Court had jurisdiction to try the suit and to order a sale of the mortgaged land. YASHVANTRAV HOLKAR *v.* DADABHAI CURSETJI ASHBURNER . . . **I. L. R. 14 Bom. 353**

44. ——— *Suit for specific performance—Specific performance of agreement to*

cute in favour of *A* a putni lease of a compact

appeal to the High Court was barred by the provisions of s 3 of the Chota Nagpur Encumbered

definite in its terms and having never since been

JURISDICTION—*contd.*

3. SUITS FOR LAND—*contd.*

(*a*) General Cases—*contd.*

definitely expressed or concluded was incapable of specific performance, and that it was also bad as infringing the law of perpetuities, inasmuch as, having regard to the amending Act V of 1884, the Dhalbhoom Raj might not have been released within the period limited by the law. *Chandi Charan Burua* v *Sidheswari Debi, I. L. R. 16 Calc. 71,* relied on. Jagadis Chandra Deo Dhabal *v.* Satrughan Deo Dhabal (1906)

I. L. R. 33 Calc 1065

45.———— **Title-deeds**—*Suit to recover title-deeds—Letters Patent, cl 12.* A suit to recover title-deeds, although it may involve a question of title, is not a suit to obtain possession of land or to deal in any way with the land itself within the meaning of s. 12 of the Letters Patent. Juggernath Doss *v.* Brijnath Doss

I. L. R. 4 Calc. 322 : 3 C. L. R. 375

46 ———— **Trusts**—*Suit for land subject to a trust—Trustees personally subject to jurisdiction.* Although the High Court, in the original jurisdiction, has no jurisdiction over land or other immoveable property situate beyond the limits of Calcutta, and can make no adjudication of the right and title to such land, yet where a party is personally subject to the jurisdiction, the Court has power to declare whether or not such party holds such land subject to a trust. Bagram *v.* Moses

1 Hyde 284

47. ———————— *Trust estate—Receiver—Account.* The plaint, in a suit brought by some of the persons appointed trustees under a deed of endowment of certain land against their co-trustees who were in possession, alleged that the defendant-trustees had ousted the plaintiffs and had committed breaches of trust, and prayed that the deed might be construed and given effect to, and for a declaration that the plaintiffs were entitled to be sebaits jointly with the defendants, for the settle-[illegible]

over and above the expenses of management, but were themselves to have no beneficial interest in the property. The land, the subject of the deed, was situated out of Calcutta, but all the parties to the suit resided within the local limits of the High Court's jurisdiction. *Held,* that the suit was not a suit for "land or other immoveable property" within cl. 12 of the Letters Patent and therefore the Court had jurisdiction to entertain it without leave [illegible]

JURISDICTION—*contd.*

3. SUITS FOR LAND—*contd.*

(*a*) General Cases—*concld.*

48. ———————— *Deed of trust* [illegible]

[illegible] absence of *L* in England, *M* executed, on behalf of himself and *L*, a deed of assignment of the whole of the property to trustees for the benefit of the creditors of the estate, which was heavily encum-[illegible]

defendants *L*, who was in England, denied any power in *M* to execute the deed on his behalf: the trustees and *M* were personally subject to the jurisdiction *Held, per* Phear, J., in the Court below, that the plaint disclosed a good cause of action, as the Court, if it had jurisdiction, would [illegible]

Bank *v.* Wordie

I. L. R. 1 Calc. 249 : 25 W. R. 272

(*b*) Property in different Districts.

49. ———— **Partition, suits for**—*Separate suits when property is in different districts—Civil Procedure Code, 1859, s. 12.* A plaintiff may maintain separate suits for partition of im-[illegible]

50. ———— **Foreclosure, order for**—*Mortgaged property situated beyond limits of ordinary original civil jurisdiction—Civil Procedure Code, 1859, s. 12* The Court at the hearing of a suit, ordered foreclosure of mortgaged property situate beyond the limit of its ordinary original civil jurisdiction under the powers conferred on it by

JURISDICTION—*contd.*

3. SUITS FOR LAND—*contd.*

(*b*) PROPERTY IN DIFFERENT DISTRICTS—*contd.*

s.12 of Act VIII of 1859. KHETTRO MOHUN DOSS *v.* CHUNDRA MONEY DABEE . . Cor 125

51. ———— Possession, suit for—*Suit for property in different districts.* In a suit to

52. ———————— *Civil Procedure Code, 1882, ss 16, 19, and 45—Joinder of causes of action—Suit for recovery of possession of immoveable property within the territorial jurisdiction*

that the plaintiffs could bring one suit for recovery

to. HARCHANDAR SINGH *v* LAL BAHADUR SINGH I. L. R. 16 All. 359

53. ———— Rent—*Suit for rent of a fishery —Uncertainly as to jurisdiction—Code of Civil Procedure, 1882, s. 16A—Immoveable property* A suit for rent of a fishery is a suit for immoveable

54. ———— Sale under mortgage—*Tarai Regulation (IV of 1876)—Civil Procedure Code, 1882, ss. 1, 2, 19, and 24—Mortgage of property situated partly in the district of Moradabad and partly in the Tarai—Suit for sale in Moradabad Court—Transfer of Property Act (IV of 1882), s. 88. Held,* that the Courts of the Moradabad district had no jurisdiction to pass a decree in a

I. L. R. 17 All 483

55 ———— Decree, effect of—*Property in two different districts—Leave of Court.* Where property was situated in Bhagulpore and other property in Tirhoot, and no leave had been obtained to include the property in Bhagulpore:—*Held,* that a decree in the Tirhoot Court could have no effect as against the property in Bhagulpore. BUNGSEE SINGH *v.* SOODIST LAL

I. L. 7 Calc. 739 : 10 C. L. R. 263

56. ———— Power of Appellate Court

High Court in its appellate capacity power to give jurisdiction to a District Court to enquire into facts, as upon a remand, in a suit decided in the Court

B. The second mortgage comprised, in addition to the above, three other villages in district B. Suits brought in both districts by the assignee of the mortgagee against the mortgagor were thus framed, *viz*, in the suit in district A for possession upon foreclosure of both mortgages, and for a declaration of the plaintiff's right as purchaser of one of the properties; and in the suit in district B, for pay-

proportionate value of the properties determined, with a view to the apportionment of the liabilities of the parties by way of contribution. As the defendant, who succeeded in both suits in the District

on contested appeals. This order was accordingly unauthorized Although wide powers of amendment, of framing new issues, and of modifying decrees are conferred upon the High Court by provisions in the Code, of which the plain meaning is not

JURISDICTION—*contd.*

3. SUITS FOR LAND—*contd.*

(b) PROPERTY IN DIFFERENT DISTRICTS—*contd.*

parties. KAMINI SUNDARI CHAODHRANI *v* KALI PROSSUNNO GHOSE
I. L. R 12 Calc. 225 : L. R. 12 I. A. 215

57. ———— **Power of High Court to sanction trial in Sonthal Pergunnahs**—*Civil Procedure Code, 1859, ss 12 and 386—Suit for land above R1,000—Beng Reg. III of 1872, s 2—Bengal Civil Courts Act (VI of 1871).* Act VIII,

of 1859, the High Court had power to sanction the trial of a suit for land situated in the Sonthal Pergunnahs, in which the value of the subject-matter exceeds R1,000 in the Civil Court competent to try it. KALIPROSAD RAI *v.* MEHER CHANDRO ROY
I. L. R. 4 Calc. 222 : 2 C. L R. 478

58. ———— **Execution of decree made by Court without jurisdiction**—*Place of suing —Suit for sale of mortgaged property —Civil Procedure Code, ss. 16, 20.* In 1879 *R* gave *J* a bond containing a simple mortgage of immoveable property. Subsequently *R* and *P* jointly gave *D* a bond containing a simple mortgage of the same property. In 1881 *D* obtained a decree for the sale of the property under his mortgage, and it was put up *for sale and purchased by the plaintiffs* *In 1882* *J* obtained a decree in the Court of the Munsif of G (within the local limits of whose jurisdiction the property was not situated) for enforcement of his mortgage-bond by sale of the property. The plaintiffs objected to the sale, and, their objection having been disallowed, brought a suit for cancellation of *J's* decree, so far as it ordered the sale. *Held,* that *J's* decree could only be regarded as a simple money decree because, as shown by s. 16 of the Civil Procedure Code, the Munsif had no power under the law to direct enforcement of hypothecation against immoveable property situate beyond the local limits of his jurisdiction; and neither the proviso to s. 16 nor s. 20 of the Code met the circumstances. *Held,* therefore, that the plaintiffs were entitled in this suit to have i
simple money
process in exe
property in di

JURISDICTION—*contd.*

3. SUITS FOR LAND—*concld.*

(b) PROPERTY IN DIFFERENT DISTRICTS—*concld.*

sion from any part of it. GUDRI LAL *v.* JAGANNATH RAM . . . I. L. R. 8 All. 117

(c) FOREIGN STATE.

59. ———— **Succession to foreign state**—*Tipperah Raj, succession to—Act of State —Declaratory suit—Contingent right—Right of suit.* The Courts in British India have no jurisdiction to decide a question as to who is entitled to succeed to the Raj of a Foreign Sovereign State or to any immoveable property, which goes with the Raj, although situated in British territory. *Neelkisto Deb Burmono* v *Beerchunder Thakoor, 12 Moo I. A. 523,* discussed and distinguished *Beerchunder Manikhya* v. *Rajcoomar Nobodeep Chunder Deb*

Pranputtee Koer v. *Lalla Futteh Bahadur, 2 Hay, 608.* SAMARENDRA CHANDRA DEB *v* BIRENDRA KISHORE DEB (1908) . I. L. R. 35 Calc. 777

60. ———————— *Tipnis Pansare right—Right to levy toll on exports of paddy from foreign territory—Such a right is nibandha under Hindu law—The right in immoveable property Suit to enforce the right in British Courts.* The plaintiff

tention, that what the plaintiff claimed was an allowance granted by the Peshwa in permanence,

and that the British Court had no jurisdiction to try it for the determination of a right to or interest in the property, when the right was denied. *Keshav* v. *Vinayak, I.L.R. 23 Bom. 22,*

I. L. R. 33 Bom.

JURISDICTION—*contd.*

4. ADMIRALTY AND VICE-ADMIRALTY JURISDICTION.

See MERCHANT SHIPPING ACT, 1875, s 3.
I. L. R. 5 Calc. 453

1. ———— Supreme Court, Bombay, Charter of—*English Admiralty Rules* The Bombay Charter, December 1823, established the Admiralty jurisdiction of the Supreme Court, "as the same is used and exercised in that part of Great Britain called England, together with all and singular their incidents, emergents, and dependencies annexed and connexed causes whatsoever; and to proceed summarily therein with all possible despatch, according to the course of our Admiralty in that part of Great Britain called England" *Held*, on a construction of the Charter, that the rules and practice of the High Court of Admiralty in England prevailed and governed the proceedings in the Supreme Court at Bombay in maritime causes. LOUGHNAN *v.* JOOSUB BHULLADINA
5 Moo I. A. 137

2. ———— High Court, Bombay—*Stat 3 and 4 Vict, c 65, s 6—Stat. 24 Vict, c 10.* The Stat. 3 & 4 Vict c. 65, s 6, does not confer jurisdiction upon the High Court of Bombay on its Admiralty side to entertain causes for necessaries supplied to foreign ships, that statute not extending to India The Stat 24 Vict, c. 10 (Admiralty Act of 1860), does not extend to India. The jurisdiction of the High Court on its Admiralty side is the same as that exercised in the Court of Admiralty in England prior to the passing of the above statutes The extent and nature of that jurisdiction considered and explained *In re the proceeds of the* "ASIA" *Ex parte* HORMASJI
5 Bom. O. C. 64

3. ———— Collision—*Collision between foreign vessels at sea—Jurisdiction of High Court,*

Calcutta had jurisdiction to try an action in respect of such collision THE "GARLAND" *v* THE "DRAGON" . . . **1 Hyde 275**

4. ———— *Stats 3 & 4 Vict, c. 65, 24 Vict, c. 10, and 26 & 27 Vict, c. 26* The Imperial Stat. 3 & 4 Vict, c. 65, 24 Vict, c. 10 and

upon the high seas between two foreign vessels, although that collision may not have occurred in British or Anglo-Indian waters, and notwithstanding the opposition of the Consul of the State to which the defendant belongs. *Quære*—Whether the High Court has a discretion to decline to entertain such a suit. Even if there be such a discretion, the Court will ordinarily allow a suit of that nature to proceed. BARDOT *v.* THE "AUGUSTA"
10 Bom. 110

5. ———— *Suits for damages for collision—Cross-suit—Residence out of jurisdiction.* One who has sued for damages

RIVER STEAM NAVIGATION COMPANY *v.* HELEUX
4 Bom. O. C. 149

6. ———— Vice-Admiralty Jurisdiction—*Vice-Admiralty Regulations of 1852—Practice under Code of Civil Procedure—Procedure—Pleadings* In Vice-Admiralty cases, the effect of

have no operation, except in case of suits *in rem* in which no appearance has been entered, and other matters to which the Procedure Code cannot be applied. The enactments and rules affecting the Vice-Admiralty jurisdiction reviewed and examined. *In the matter of the ship* "*Champion,*" *I L R. 17 Calc 67*, referred to. *In the matter of the ship* "FANNIE SKOLFIELD". **I. L R. 17 Calc. 337**

7. ———— *High Court jurisdiction of—Power to arrest ship for repairs.* The

8. ———— *24 Vict. c. 10 (Admiralty Act, 1861)—26 Vict c. 24 (Admiralty Act, 1863).* 24 Vict, c. 10 (The Admiralty Act, 1861), and 26 Vict. c. 24 (The Vice-Admiralty Act, 1863), extend to India. The High Court, as constituted by the Charter of 1862, had not, by virtue of the Admiralty Act, 1861, or otherwise, any jurisdiction over claims for disbursements by the master. But after the passing of the Charter of 1865, the Vice-Admiralty Act, 1863, applied to the High Court, as being "a Vice-Admiralty Court established after the passing of that Act on a British possession" *Held*, therefore, that the High Court had jurisdiction, as a Vice-Admiralty Court, to entertain the claim of the master for wages and

JURISDICTION—*contd.*

4. ADMIRALTY AND VICE-ADMIRALTY JURISDICTION—*concld.*

disbursements on account of the ship. *In the matter of the ship* "PORTUGAL" . 6 B. L. R. 323

9. ———— Judge of Moulmein, jurisdiction of—*Suit on bottomry bond* A suit will not lie on an ordinary bottomry bond given by the master of a vessel against the owner to recover the amount thereof. Such a suit cannot be brought in the Court of the Judge of the town of Moulmein, which has no Admiralty jurisdiction against the owner personally; and the vessel cannot be declared to be primarily liable or be sold to satisfy the amount of the bond. GLADSTONE, WYLLIE & Co. v. HARRISON . . . . . 24 W. R. 50

5. MATRIMONIAL JURISDICTION.

See DIVORCE ACT, s. 2.

1. ———— High Court, Calcutta—*Parties resident within jurisdiction* The High Court at Calcutta, in its matrimonial jurisdiction, had before the Divorce Act, 1869, jurisdiction only over parties actually resident within its local limits. THOMPSON v. THOMPSON . Bourke Mat. 1

2. ———— Supreme Court, Bombay, Ecclesiastical side—*Suit for restitution of conjugal rights—Parsis* The Supreme Court of Bombay on its Ecclesiastical side declared incompetent to

3. ———— Civil Court, jurisdiction of—*Suit by Mahomedan husband for restitution of conjugal rights.* A Mahomedan husband may sue

JUDOONATH BOSE v. SHUMSOONISSA BEGUM 8 W. R. P. C. 3 : 11 Moo. I. A. 551

6. TESTAMENTARY AND INTESTATE JURISDICTION.

1. ———— High Court, Jurisdiction of—*Appeals.* The High Court has jurisdiction to hear appeals in testamentary cases. SARODASOONDERY v TINCOWRY NUNDY . 1 Hyde 70

2. ———— *Power to compel native to prove will* The High Court cannot

3. ———— *Probate or letters of administration of British-born subject dying in Moulmein.* In the case of a British-born subject dying and leaving assets in Moulmein, but no assets in Calcutta, and a will, dated 5th August, 1865, before Act X of 1865 came into effect:—*Held*, that the executrix could not obtain probate or letters of administration, with the will annexed from the High Court in Bengal. SAUNDERS v NGA SHOAY GEEN . . . . . 8 W. R. 3

4 ———— *Reference by executor and caveator to arbitration of question as to due execution of will—Effect of award—Jurisdiction of testamentary Court to recognize arbitration pro-*

the Court will recognize such reference and the award made on it. An executor having propounded a will and applied for probate, a caveat was filed denying the execution of the alleged will, and the matter was duly registered as a suit. The executor and the caveatrix subsequently referred "the dispute" to arbitration, and an award was made that the alleged will had not been duly executed. The executor nevertheless subsequently continued the suit. At the hearing the caveatrix pleaded the award and contended that it was binding on the plaintiff (executor) The plaintiff

question as to the award. *Held*, also, that the award was binding on the executor. GHELLABHAI ATMARAM v. NANDUBAI . I. L. R. 20 Bom. 238

This case was reversed on appeal, the Court

arbitration the question whether the will propounded by him was duly executed by the deceased. GHELLABHAI ATMARAM v. NANDUBAI I. L. R 21 Bom. 335

7. JURISDICTION OF MAGISTRATES.

See JURISDICTION OF CRIMINAL COURT.

1. ———— Security for good behaviour—*District Magistrate, power of* A District Magistrate has no power under the law to order a 'further' inquiry in a proceeding under s 110 of the Code of Criminal Procedure after setting aside, on appeal, an order passed by a Subordinate Magistrate directing the accused to furnish security for good behaviour. DAYANATH TALUQDAR v. EMPEROR (1905) . . I. L. R. 33 Calc. 578

JURISDICTION—*concld.*

7. JURISDICTION OF MAGISTRATES—*concld.*

[illegible]

contended that the defendant had no jurisdiction to entertain the proceedings, because the arrears were paid before the proceedings were commenced *Held*, that the case was one which the Magistrate was competent to entertain and none the less [illegible]

[illegible]

8 JURISDICTION OF REVENUE OFFICERS.

See JURISDICTION OF REVENUE COURT

1. ——————— *Revenue Officer*—*Bengal Tenancy Amendment Act* (*Bengal Act III* [illegible]

[illegible]

NATH BHUTTACHARJEE (1905)
I. L. R 32 Calc 162

JURISDICTION OF CIVIL COURT.

JURISDICTION OF CIVIL COURT—*contd.*

See ABATEMENT OF RENT
1 B L R. F. B 93

See ACT IX OF 1847, ss 6, 9
I. L. R. 14 Calc. 67
I. L. R. 17 Calc. 590
L. R. 17 I. A. 40

See ACT XX OF 1863
15 B. L R. 167 : 23 W. R. 453
I. L. R. 3 Calc 324
2 C. L R. 128
I. L. R. 4 Mad. 157
I. L. R. 9 Calc. 133
I. L. R. 17 Mad. 212

See AGRA TENANCY ACT (II OF 1901) s 4
I. L. R. 31 All. 342

See BENGAL ACT III OF 1870
13 B. L. R. 214, 215 note ; 216 note ; 217 note

JURISDICTION OF CIVIL COURT—*contd.*

See BENGAL MUNICIPAL ACT (BENGAL ACT III OF 1884). **I. L. R. 35 Calc. 859**

See BENGAL TENANCY ACT, SS. 101 TO 111A. . **I. L. R. 28 Calc. 28**

See COLLECTOR . **I. L. R. 5 All. 314**
I. L. R. 9 All. 43
I. L. R. 11 Bom. 478
I. L. R. 12 Bom. 371
I. L. R. 11 All. 94

See COURT OF WARDS ACT (BENG. ACT IX OF 1879), SS. 6, 7 AND 10. **I. L. R. 29 Calc. 638**

See CROWN LANDS. **I. L. R. 25 Mad. 268**

See HIGH COURT, JURISDICTION OF.

See JURISDICTION OF REVENUE COURT.

See MADRAS HEREDITARY VILLAGE OFFICES ACT, S. 3. **I. L. R. 26 Mad. 490**

See OUDH RENT ACT, 1886, *ss* 52 (2), 108 **13 C. W. N. 1093**

See PARTITION—JURISDICTION OF CIVIL COURT IN SUITS RESPECTING PARTITION

See PENSIONS ACT (XXIII OF 1871), SS. 4 AND 6.

See PRACTICE—CIVIL CASES—EXECUTION PROCEEDINGS. **I. L. R. 28 Calc. 353**

See RECEIVER **I. L. R. 28 Calc. 790**

See RIGHT OF SUIT.

See SALE IN EXECUTION OF DECREE—DISTRIBUTION OF SALE-PROCEEDS. **I. L. R. 29 Calc. 773**

See SMALL CAUSE COURT, MOFUSSIL—JURISDICTION—MILITARY MEN **2 B. L. R. S. N. 3; 7**

See SMALL CAUSE COURT, PRESIDENCY TOWNS—JURISDICTION—BREACH OF PROMISE OF MARRIAGE. **I. L. R. 24 Mad. 652**

See SONTHAL PERGUNNAHS SETTLEMENT. **I. L. R 18 Calc. 133; 146**
I. L. R. 22 Calc. 473

See TAX **I. L. R. 26 Bom. 294**

———— **Magistrate's orders, interference with—**

See MAMLATDAR, JURISDICTION OF. **I. L. R. 26 Bom. 353**

———— **marriage—**

See RESTITUTION OF CONJUGAL RIGHTS **I. L. R. 28 Calc. 37**

JURISDICTION OF CIVIL COURT—*contd.*

1. ABUSE, DEFAMATION, AND SLANDER.

1. ———— **Abuse**—*Suit for damages.* A suit will lie in the Civil Court to recover damages for abuse. KALI KUMAR MITTER *v.* RAMGATI BHUTTACHARJI. **6 B. L. R. Ap. 99**
16 W. R. 84 note

SREENATH MOOKERJEE *v.* KOMUL KURMOKAR **16 W. R. 83**

KANOO MUNDLE *v.* RAHUMOOLLAH MUNDLE **W. R. 1864, 269**

GHOLAM HOSSEIN *v.* HUR GOBIND DOSS **1 W. R. 19**

TUKEE *v.* KHOSHDEL BISWAS **6 W. R. 151**

OSSEEMOODDEEN *v.* FUTTEH MAHOMED **7 W. R. 259**

2. ———— *Suit for damages for verbal abuse—Hindus in mofussil of Bombay—Special damage.* In a suit between Hindus in the Bombay mofussil, damages may be recovered for mere verbal abuse, without proof of actual damage resulting therefrom to the plaintiff. KASHIRAM VALAD KRISHNA *v.* BHADU BAPUJI **7 Bom. A. C. 17**

3. ———— *Suit for damages—Absence of special damage.* An action will lie for

And *See* NILMADHAB MOOKERJEE *v.* DOOKERAM KHOTTAH **15 B. L. R. 161**

WOOZEERUNNISSA BIBEE *v* MAHOMED HOSSEIN **15 B. L. R. 166 note**

HOSSEIN *v.* BAKIR ALI **W. R. 1864, 302**

PHOOLBASEE KOOER *v.* PARJUN SINGH **12 W. R. 369**

4. ———— *Action for abuse without proof of special damage—Malicious defamation.* The rule of English law which prohibits, except in certain cases, an action for damages for

I. L. R. 8 Mad. 175

5. ———— **Defamation**—*Slander—Defamation—Verbal abuse—Special damage.* A suit to recover damages for verbal abuse of a gross character may be maintained without proof of consequential damage. IBIN HOSEIN *v.* HAIDAR **I. L. R. 12 Calc. 109**

6. ———— *Slander—Damages—Consequential damage.* A suit for damages for defamation of character involving loss of social position and injury to reputation will lie without proof

JURISDICTION OF CIVIL COURT—*contd.*

1. ABUSE, DEFAMATION, AND SLANDER—*concld.*

of special damage *Parvathi* v. *Mannar, I. L R. 8 Mad 175,* and *Srikant Rai* v *Satcouri Saha,* 3 *C. L R. 181,* followed. TRAILOKYA NATH GHOSE v. CHUNDRA NATH DUTT **I. L. R. 12 Calc 424**

7. ———————— *Cause of action —Damages for insult, loss of reputation, and mental pain, by the use of abusive language—Suit for libel and slander—Special damage. Held,* by the majority of the Full Bench (MACLEAN, *C.J.*, MACPHERSON, HILL, and JENKINS, *JJ*, GHOSE, *J*, dissent-

father, that is, ironically, bastard), apart from defamation, is not actionable irrespective of any special damage *Per* GHOSE, *J* —A case like the present should be decided according to the principles of justice, equity, and good conscience, and therefore it is but just and right that a person thus vilified, who has suffered from insult and mental pain, should be entitled to maintain an action irrespective of any special damage GIRISH CHUNDER MITTER *v* JATADHARI SADUKHAN **I. L. R. 26 Calc. 653 3 C W. N. 551**

2. CASTE

1. ——— Suits as to caste questions —*Suit for restoration to caste and for damages and compensation for cost of restoration.* A suit will lie for a declaration of right to restoration to caste, and for damages and compensation for cost of restoration to caste When the defendant denies that he made any accusation, and it is proved that he made one, and that it alone led to the excom-

See SUDHARAM PATAR *v.* SUDHARAM **3 B. L. R. A. C. 91**

2. ———————— *Bom Reg. II of 1827, s 1—Suit for certain fees as mehtars.* The

between the parties was a caste question with which the Courts were precluded from interfering by Bombay Regulation II of 1827, s. 21 MURAR DAYA *v.* NAGRIA GANESHIA . **6 Bom. A. C. 17**

AMBU VALAD APPAJI *v.* KHANU SAKHARAM **6 Bom. A. C. 19 note**

3. ———————— *Dispute as to right to gifts for services as Maha Brahmins—Suit on award setting rights.* The plaintiff and the

JURISDICTION OF CIVIL COURT—*contd.*

2. CASTE—*contd.*

defendants were Maha Brahmins and members of one family. Disputes having arisen as to the gifts made to them on account of their services, the matter was referred to arbitration, and the arbi-

presented to some of the defendants during a period at which under the terms of the award, he was entitled to the family gains. *Held,* that the claim

4. ———————— *Suit for recovery of money value of holy cakes—Question of religious character.* The plaintiffs, members of the Tangalai sect of Brahmins, sued the defendants, the trustees of a temple at Conjeveram, for the recovery of the money value of certain holy cakes which they

entertain. NARASIMMA CHARIAR *v* KRISTNA TATA CHARIAR . . . . **6 Mad. 449**

5. ———————— *Suit as to religious rights and ceremonies—Suit by Temple Committee against poojaris—Civil Procedure Code, 1877, s. 11.* Suits as to religious rights or ceremonies which involved no question of the right to property or to an office, are not suits of a civil nature, nor are

the custody of the priests, and that they were responsible for their safe custody was *held* unsustainable. S. 11 of the Civil Procedure Code (Act X of 1877) introduces no new law, but merely declares the law as it has always been administered. VASUDEV *v.* VAMANJI . **I. L. R. 5 Bom. 80**

JURISDICTION OF CIVIL COURT—*contd.*

2. CASTE—*contd.*

6. ——— *Jurisdiction in matters of religion—Cause of action—Dancing-girl's offerings rejected by priest—Disturbance of right of public worship.* A dancing-girl's offerings

GURUKAL I. L. R. 6 Mad. 151

7. ——— *Suit to recover cooking-vessels—Bom Reg. II of 1827, s. 21.* A claim by the members of one division of a caste against the members of the other division of that

cognizable by a Civil Court GIRDHAR *v.* KALYA I. L. R. 5 Bom. 83

NEMCHAND *v.* SAVAICHAND I. L. R. 5 Bom. 84 note

8. ——— *Bom. Reg. II of 1827, s. 21—Suit for fees appurtenant to the office of guru* A claim to a caste office and to be entitled

same rule applies where there are fees appurtenant to the office The plaintiff belonged to the Mahar

9. ——— *Dispute as to right to office of khatib—Mahomedan law—Bom Reg. II of 1827, s 21.* S. 21 of Regulation II of 1827 has no application to suits between Mahomedans A dispute as to the right to an office, such as the office of khatib (or preacher) is said to be among Mahomedans, is not a caste question within the meaning of the terms as used in the section: a suit to establish the right to such an office will therefore lie in a Civil Court. HASHIM SAHEB VALAD AHMED SAHEB *v.* HUSEINSHA VALAD KARIMSHA FAKIR I. L. R. 13 Bom. 429

10. ——— *Powers of the head of a caste in respect of caste customs.* In a matter relating to caste customs over which the ecclesiastical chief has jurisdiction, and exercises his jurisdiction with due care and in conformity to the usage of caste, the Civil Courts cannot interfere. A guru as head of a caste has jurisdiction to deal with all matters relating to the autonomy of caste according to recognized caste customs *Queen v. Sankara, I. L R. 6 Mad 381*, and *Murari v. Suba, I. L. R 6 Bom. 725*, cited and followed. GANAPATI BHATTA *v.* BHARATI SWAMI I. L. R. 17 Mad. 222

11. ——— *Suit for right to exclusive worship—Bom Reg II of 1827, s. 21—Right of suit.* Four persons of the Chitpavan caste brought a suit in 1876, alleging that they and the members of their caste, in common with certain other castes, possessed the exclusive right of entry and worship in the sanctuary of a temple, and that the defendants, members of the Palshe caste, not being of the privileged castes, infringed that right in 1871 and thereafter by entering the sanctuary and performing worship therein. They prayed for a declaration of their right and an injunction restraining the defendants from interfering

is not to be interfered with by the Courts, not that no possible matter of litigation in which a question of caste usage, or right, or privilege may arise can be taken cognizance of. ANANDRAV BHIKAJI PHADKE *v.* SHANKAR DAJI CHARYA I. L. R. 7 Bom. 323

12. ——— *Bom. Reg. II of 1827, s 21—Resolution of caste excluding Brahmans from caste feasts—Majority of caste, right of* The plaintiffs and defendants were members of the Kutchi Dossa Oswal caste of Hindus residing in Bombay. The plaintiffs alleged that by a resolution of the caste unanimously passed at a caste

necessary, to take legal steps in the matter. The plaint alleged that the defendants proposed to give a feast in the caste oart, to which they had invited Brahmans, and prayed for an injunction, and for a declaration that the above resolutions were validly passed and were binding upon the defendants and

JURISDICTION OF CIVIL COURT— *contd.*

2. CASTE—*contd.*

Brahmans had from time immemorial as a matter of course attended the caste feasts, and they denied

at a *bonâ fide* decision that the convenience and comfort of the caste were best advanced by the exclusion of the Brahmans from their part, it was not a case in which the Court could say that the decision was so subversive of the interest of the

to the management and custody of caste property, which the minority seek to set at naught, by reason

minority of their right to use what is the common

13. ——————— *Bom Reg II of 1827, s 21—Arrangement between members of the caste for the purpose of paying off the debts of the caste—Mahomedans* The term "caste" in s 21 of Regulation II of 1827 is not necessarily confined to Hindus, but comprises any well defined native community governed for certain internal purposes by its own rules and regulations An agreement embodying an arrangement come to between members of the caste for the purpose of paying off the debts of the caste, out of certain contributions to the caste funds, involves a caste question, and a suit on such agreement is not maintainble in the Civil Courts ABDUL KADIR *v.* DHARMA

I. L. R. 20 Bom. 190

14. ——————— *Mochi caste at Surat—Dismissal of delegates by the caste—Suit for injunction and damages.* The hereditary priest of the Mochi caste deputed certain persons to perform religious ceremonies for the caste. The caste, however, dismissed these delegates, and the defendants, who were members of the caste, employed other persons to perform certain religious ceremonies for them The plaintiffs sued for an injunction and damages alleging that they were entitled to perform these ceremonies and to receive the fees. *Held*, that the Court had no jurisdiction. The Civil Court could not enquire into the validity or otherwise of the decision of the caste in the matter The parties were bound by it, and the plaintiffs could not legally complain of the action of the defendant, who had done no more than obey that decision DAYARAM HARGOVAN *v.* JETHABHAT LAKHMIRAM . I. L. R. 20 Bom. 784

15. ——————— *Bom Reg. II of 1827, s. 21—Suits to recover caste property from a*

answer to a claim for property or on a breach of contract. The section provides that there shall be no interference on the part of the Court in caste questions. But to take evidence of the customary

I. L. R. 11 Bom 654

16. ——————— *Secession from a caste—Property purchased by seceding section during period of secession—Reunion of section with the*

with the exception of the defendant, reunited with the other members of the caste. The lands, however, remained in the possession of the defendant The plaintiff, on behalf of the caste, brought this suit to recover the lands from the defendant. Both the lower Courts *held* that the case was not cognizable by the Civil Courts, as it involved a caste question. On appeal by the plaintiff, the High Court reversed the decrees of the

JURISDICTION OF CIVIL COURT—*contd.*

2. CASTE—*contd.*

Courts below and sent back the case for re-trial. The lands in question had been admittedly purchased out of their own funds and for their own purposes by the members of the caste who had

for the Civil Court alone to determine who was entitled to the property, although it might be incidentally necessary for that purpose to enquire into the usage and practice (if any) of caste sections, situated

17. ———— *Civil Procedure Code, s 11—Hindu Marriage Act (XV of 1856), s 5—Hindu law, marriage—Widow re-marriage—Exclusion from temple—Excommunication.* The plaintiff, who was a Smarta Brahman, but had married a widow (whose first marriage had not

he sued for damages for the above obstruction and imputation, for a declaration that he was entitled to enter the shrine as a Brahman, and for an injunction restraining the defendants from interfering with his exercise of this right. *Held*, (i) that the

shrine for the purposes of worship at the date of the suit, or the presumable intention of the religious foundation as regards such admission, and (b) whether according to such usage or presumable intention of the foundation, those who secede from the caste custom as to re-marriage of women are outside the class of beneficiaries as regards the right of admission into the inner shrine as above. VENKATACHALAPATI *v.* SUBBARAYADU

I. L. R. 13 Mad. 293

JURISDICTION OF CIVIL COURT—*contd.*

2. CASTE—*contd.*

18. ———— *Right of suit by bhakats of religious fraternity expelled by other members for re-admission into fraternity—Powers of fraternity to impose fine and cause expulsion until fine is paid—Cause of action.* The plaintiffs were some of the bhakats or members of a satra

established; that the kirtanghar from which they had been dispossessed might be made over to them for the purpose of such performance, and that a prohibitory injunction might be granted enjoining the defendants not to obstruct them in such performance The defendants, who were the satria and the other members of the fraternity forming the majority of the entire body of bhakats, denied the rights claimed by the plaintiffs as bhakats, and stated that the satra was governed by the satria and a select body of bhakats, that the plaintiff No. 1 had received mantra or spiritual initiation from one Saruram, contrary to the rules of the fraternity, and had been convicted, moreover, of a criminal

JURISDICTION OF CIVIL COURT—*contd.*

2. CASTE—*contd.*

voluntary associations. Cases of expulsion from them were therefore cognizable by the Civil Courts. *Sudharam Patar* v. *Sudharam, 3 B. L. R. A. C. 91 : 11 W. R 457; Hopkinson* v. *Marquis of Exeter, L. R. 5 Eq. 63*; and *Dawkins* v. *Antrobus, L R. 17 Ch. D. 615*, distinguished. *Gopal Gurain* v. *Gurain, 7 W. R. 299*, and *Ramkant* v. *Ram Lochan, S. D A. (1859) 535*, followed. *Advocate General of Bombay*

exclusion after the reason for it had ceased, and

JAGANNATH CHURN *v.* AKALI DASSIA
I. L. R. 21 Calc. 463

19. ——————— *Infringement of caste rule—Defamation by caste resolution—Truth of allegation—A defence to civil suit for defamation—Privilege—Caste resolution depriving a member of caste of man pan invitation—Sumptuary law*

...sion with the munj, marriage and other ceremonies,

in Salsette on the 5th June 1887. Several rules framed with the view of lessening these expenses were then passed. The fourth rule was as follows. "The practice of bringing a naikin to sing in the

... the caste. Copies of these rules and their

JURISDICTION OF CIVIL COURT—*contd.*

2. CASTE—*contd.*

attention to communications on the subject. A meeting of the Girgaum section of the caste was then held, at which twenty-two members were present and a resolution was passed, declaring that the plaintiff had transgressed the caste rules, and depriving him of the man-pan invitation by the

accepted and approved of the resolution, which thus became known to the whole caste The defendants were among the twenty-two members

JURISDICTION OF CIVIL COURT—*contd.*

2. CASTE—*contd.*

Courts below and sent back the case for re-trial. The lands in question had been admittedly purchased out of their own funds and for their own purposes by the members of the caste who had seceded; and the question as to whom those lands now belonged to, being one between the caste

section of it, and would have been a caste question, and not cognizable by the Civil Court. MEHTA JETHALAL *v.* JAMIATRAM LALUBHAI

I. L. R. 12 Bom. 225

17. ———————— *Civil Procedure Code, s. 11—Hindu Marriage Act (XV of 1856), s. 5—Hindu law, marriage—Widow re-marriage—Exclusion from temple—Excommunication.* The plaintiff, who was a Smarta Brahman, but had married a widow (whose first marriage had not been consummated), alleged that he had made a vow to present an offering in a certain temple, and that the defendants, who were the committee of the temple, had obstructed and prevented him from

to be determined was not a question of the plaintiff's legal status, since a Brahman widow is at liberty to re-marry under Act XV of 1856, but it was a question of caste status, in respect of a caste institution; (iii) that in order to determine the above question, the Courts must inquire (a) what was the usage of the temple as regards admission into the inner shrine for the purposes of worship at the date of the suit, or the presumable intention of the religious foundation as regards such admission, and (b)

right of admission into the inner shrine as above. VENKATACHALAPATI *v.* SUBBARAYADU

I. L. R. 13 Mad. 293

JURISDICTION OF CIVIL COURT—*contd.*

2. CASTE—*contd.*

18. ———————— *Right of suit by bhakats of religious fraternity expelled by other members for re admission into fraternity—Powers of fraternity to impose fine and cause expulsion until fine is paid—Cause of action.* The plaintiffs were some of the bhakats or members of a satra

they and their forefathers

by the defendants in such performance, and had been expelled from the kirtanghar. The prayer of the plaint was that the plaintiff's right to enter the

for the purpose of such performance, and that a

body of the satra, whose orders they had disobeyed by refusing to pay the fine, and they had therefore been excluded from entering the kirtanghar; and the defendants contended that the Civil Court

JURISDICTION OF CIVIL COURT—*contd.*

2. CASTE—*contd.*

L R 5 Eq. 63; and *Dawkins* v *Antrobus, L R.* 17 *Ch D* 615, distinguished *Gopal Guram* v. *Guram,* 7 *W R* 299, and *Ramkant* v. *Ram Lochan, S D A.* (1859) 535, followed. *Advocate General of Bombay*

association on grounds, one of which is that the decision is contrary to natural justice The decision of the lower Courts, therefore, ordering the re-ad-

to natural justice for the fraternity to enforce such exclusion after the reason for it had ceased, and make the disqualification of the plaintiffs perman-

their refusal to pay the fine imposed on them. JAGANNATH CHURN *v* AKALI DASSIA

I. L. R. 21 Calc. 463

19. ——————— *Infringement of caste rule—Defamation by caste resolution—Truth of allegation—A defence to civil suit for defamation —Privilege—Caste resolution depriving a member of caste of man-pan invitation—Sumptuary law enforced by caste—Bom Reg. II of 1827, cl 21, s. 1—Cause of action—Right of suit—Onus probandi* In the year 1887, some members of the Pathare Kshatria caste considered that the outlay in connection with the munj, marriage and other ceremonies, by the members of the caste, were unnecessarily and unreasonably large, and that this was the cause of ill feeling in the caste. A meeting purporting to be a meeting of the whole caste, was held at Malad in Salsette on the 5th June 1887. Several rules framed with the view of lessening these expenses were then passed. The fourth rule was as follows: "The practice of bringing a naikin to sing in the

JURISDICTION OF CIVIL COURT—*contd.*

2. CASTE—*contd.*

Girgaum section of the caste, why he should not

attention to communications on the subject. A meeting of the Girgaum section of the caste was then held, at which twenty-two members were present and a resolution was passed, declaring that the plaintiff had transgressed the caste rules, and depriving him of the man-pan invitation by the

thus became known to the whole caste The defendants were among the twenty-two members

JURISDICTION OF CIVIL COURT—*contd.*

2. CASTE—*contd.*

defamation, it failed. *Held*, also, that the fact that

tribunal to which a casteman deprived of that privilege could resort The question was a caste question unconnected with property or legal right. *Held*, also, that the fact that the rule which the resolution enforced might be in fact *ultra vires* and one which the caste could not validly pass, did not operate to give the Court jurisdiction As

dictate to the caste what rules it shall and what it shall not lay down for its guidance. The rule in

issues was on the defendant, and that he (the

them until

on them.

rules were

RAGHUNATH DAMODHAR *v.* JANARDHAN GOPAL

I. L. R. 15 Bom. 599

20. ——— Excommunication—*Court's power to inquire into the validity of the order of excommunication—Burden of proof.* The plaintiff, who was pujari of a Jain temple, sued for an injunction to restrain the defendants from entering the temple and worshipping the idol on the

Swami for

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justifiable grounds and after a fair and proper inquiry. APPAYA *v* PADAPPA

I. L. R. 23 Bom. 122

21. ——— *Excommunication of member from caste—Presumption of good faith.* The caste having presumably acted in good faith and proceeded regularly according to the custom in excommunicating a member, it was *held* that the Civil Court could not interfere with its action or examine the question on its merits KESHAVLAL *v* BAI GIRJA I. L. R. 24 Bom. 13

22. ——— *Caste question—Excommunication from caste—Bombay Regulation*

on the plaintiffs for an explanation, excommunicated them and notified the fact through the caste *Gor* or priest at Zanzibar. The plaintiffs there-

communicated only to members of the caste. The evidence did not disclose any communication beyond that limit, and no evidence of malice was given. *Per* CHANDAVARKAR, *J.*—Roughly speak-

have no jurisdiction, although the plaintiff alleges that he has not been heard in his defence or that

JURISDICTION OF CIVIL COURT—*contd.*

2 CASTE—*concld.*

his excommunication has been for the breach of a rule which either never existed or which the plaintiff, in fact, never violated. The question is entirely a caste question, and falls within Bombay Regulation II of 1827, s. 21, cl 1. *Secondly*, when the result of excommunication is to deprive a man of his civil rights, a Civil Court has jurisdiction to entertain a suit brought to set aside such excommunication as illegal and to inquire into the merits of the case But even here its jurisdiction is limited All the Court can inquire into is whether the order of excommunication was passed *bonâ fide* in accordance with natural justice, *i.e.*, after a due hearing given to the party excommunicated, at a regularly convened meeting of the caste which passed the order, or by a person duly authorized by the caste to

as a domestic tribunal, with whose discretion it will not interfere—the Court in that case having jurisdiction to inquire, from the point of view of the caste, not of the Court, into the reasonableness or justifiable character of the rule for a breach of which the order of excommunication was passed. *Thirdly*, suits claiming relief for loss of caste

I. L. R. 20 Bom. [illegible]

3 COURT OF WARDS

1. ———— **Suit against Court of Wards**—*Superintendence over minor.* No civil action will lie against the Court of Wards in respect of anything done by it regarding the person and education of any minor entrusted to its superintendence. COLLECTOR OF BEERBHOOM *v* MUNDAKINEE DEBIA . . . W. R. 1864, 332

And afterwards *held* that the Civil Court was competent to carry out an order that the Court of Wards was entitled to the custody of the minor MUNDAKINEE DEBEE *v* COLLECTOR OF BEERBHOOM 1 W. R. Mis. 27

2. ———— **Power of High Court**—*Restraining Court of Wards from bestowing minor in marriage.* The High Court cannot restrain the Court of Wards, whether acting with or without jurisdiction, from interference in the bestowal in marriage of a minor GUJADHUR PERSHAUD *v.* NARAIN SINGH . . 5 W. R. Mis. 41

JURISDICTION OF CIVIL COURT—*contd.*

4 CUSTOMARY PAYMENTS.

1 ———— **Vatandar kulkarni and raiyat**—*Bombay Hereditary Office Act (III of 1874)*—*Perquisites, right to.* Bombay Act III of 1874 does not deprive the Civil Court of its jurisdiction to try the question whether a vatandar kulkarni is entitled to receive perquisites from his raiyat. VISHNU HARI KULKARNI *v.* GANU TRIMBAK I. L. R. 12 Bom. 278

2. ———— **Suit for a declaration that plaintiff was kadim naik, and that defendant was not entitled to any payment from him in respect of the Government revenue payable by the plaintiff**—*Act XI of 1852, s. 7*—*Inamdar of the village*—*Government not a party* In a suit for a declaration that the plaintiff

had to pay to the Government as agreed upon

revenue as against Government. *Held*, further, that Government was not a necessary party to such a suit. IRAPA BIN MALAPA NAIK *v.* APASAHEB IRBASAPA DESAI . . I. L. R. 16 Bom. 649

5. DUTIES OR CESSES

1. ———— **Suit for fees from persons using market-place.** *Held*, that a claim to re-

2. ———— **Claim for dues for privilege of selling pân on hât days**—*Revenue Court.* A claim for a legal due or cess arising out of the privilege of selling pân on hât days is cognizable in the Civil Court HURRISH CHUNDER KOOND *v.* GOPAL BAROOYE . 3 W. R., Act X, 158

6. ENDOWMENT.

1. ———— **Suit for removal of manager of charitable trust on ground of malversation**—*Mad. Reg. VII of 1817.* A suit brought for the removal of defendant from the management of certain charitable trusts on the ground of malversation was dismissed by the Civil Judge, because he considered that the provisions of Regulation VII of 1817 required that application should

JURISDICTION OF CIVIL COURT—*contd.*

6. ENDOWMENT—*concld.*

first be made in such cases to the Board of Revenue *Held*, on appeal, that the Civil Judge was wrong. Regulation VII of 1817 is clearly intended to be

. Mad. 11

2. ——— Removal of trustees—*Trustees misapplying funds by mistake—Scheme of management of Hindu temple, form of—Religious endowment—Hindu temple, Manager of* Courts of equity in England have always allowed themselves some latitude in dealing with the trustees of a public charity who under a mistake have misapplied the funds of the institution, and Courts in India can similarly allow themselves some degree of latitude in dealing with the managers and pujaries of public Hindu temples, who for a long time have been accustomed to deem themselves

jurisdiction to deal with the managers of public *Hindu temples*, and, if necessary, for the good of the religious endowment, to remove them from their position as managers There is, however, no hard-and-fast rule that every manager of shrine, who has arrogated to himself the position of owner, should be removed from his trust; each case must be decided with reference to its circumstances *Chintaman* v *Dhondo, I. L. R. 15 Bom. 612*, referred to DAMODAR BHATJI v BHAT BHOGILAL KASANDAS . I. L. R. 22 Bom. 493

7. FEES AND COLLECTIONS AT SHRINES.

1. ——— Suit for collections of a shrine—*Right of property in site—Right of office.* A suit will lie for the collections of a shrine, either in right of property in the place or of lawful and established office attached to it. SHEO SUHAYE DHAMEE v. BHOOREE MAHTOON . 3 W. R. 33

2. ——— Suit for share of collections in return for

1 Agra 84

3. ——— Suit for share of offerings received by priest—*Contract to pay share of fees.* A suit will lie by one priest for a share of offerings received by another, if there be a contract

JURISDICTION OF CIVIL COURT—*contd.*

7. FEES AND COLLECTIONS AT SHRINES—*concld.*

to pay over such share. JUGDANUND GOSAMEE v. KESSUB NUND GOSAMEE . W. R 1864, 146

But otherwise no suit will lie MUDDUN MOHUN GHOSAL v. NUBORAM CHUCKERBUTTY 2 W. R. 69

4. ——— Suit for share of fees received by Hindu priest—*Contract to pay share of fees* The plaintiffs sued the defendants in the Civil Court for a declaration of their right by contract to share in the ministrations at a certain ghât, and to recover a sum of R75-9 as their share, under the contract, of moneys received by the defendants at that ghât. *Held*, that the suit would lie MAGJU PANDAEN v. RAMDYAL TEWARI 8 B. L. R. 50 : 15 W. R. 531

BECHARAM BENERJEE v THAKURMANI DEBI 8 B L. R. 53 note : 10 W. R. 114

CHUNI PANDEY v BIRJO PANDEY 13 C. L. R. 49

5 ——— Suit for fees received by village priest—*Jujman—Employment of another priest to perform service.* In the presidency of Bombay a village priest can maintain a suit against a jujman who has employed another priest to perform ceremonies, and recover the amount of the fee which would properly be payable to him if he had been employed to perform such ceremonies. As a rule, the fee paid to the priest actually employed would afford a fair indication of the amount recoverable by the plaintiff under such circumstances. *Semble* A jujman ought to pay to the village or city priest, if not employed, a fee similar in amount to that which he (the jujman) pays to the priest actually employed, if the latter were not unreasonably large DINANATH ABAJI v SADASHIV HARI MADHAVE . . . I. L. R. 3 Bom. 9

8 FERRIES.

1. ——— Suit for compensation for resumption of ferry by Government—*Civil Procedure Code, s 1—Beng. Reg. VI of 1819.* A suit for compensation for the loss sustained by reason of
lation
Civil C
TAGOR
NESSA

2. ——— Invasion of rights of pri-

JURISDICTION OF CIVIL COURT—*contd.*

8. FERRIES—*concld.*

ferries. RAM GOBIND SINGH v. MAGISTRATE OF GHAZEEPORE . . . . . 4 N. W. 146

9 FISHERY RIGHTS.

——— **Suit for damages and injunction to restrain illegal interference with plaintiff's right to fish in the sea**—*Low-water mark* The District Court may, when the defendants reside within its local jurisdiction, try a

of it BABAN MAYACHA v NAGU SHRAVUCHA I. L. R. 2 Bom. 19

10 FOREIGN AND NATIVE RULERS

1. ——— **Ruling Chief, suit against**—*Civil Procedure Code, 1882, s. 433—Consent of Governor-General in Council—Consent given subsequent to institution of suit—Waiver by defendant of objection to consent—Civil Procedure Code, s 373.* Under s 433 of the Civil Procedure Code

duct waive the defect, so that, notwithstanding the absence of a valid consent under the section, the suit can be heard and determined on its merits CHANDULAL KHUSHALJI v AWAD BIN UMAR SULTAN NAWAZ JUNG BAHADUR I. L. R. 21 Bom. 351

2. ——— **Suit against independent Sovereign Prince**—*Personal privilege—Thakur of Palitana*

3. ———**Suit againt ex-King of Oudh**—*Act VIII of 1862, s. 4* S. 4, Act VIII of

it would be out of their power, in a suit relating

JURISDICTION OF CIVIL COURT—*contd.*

10. FOREIGN AND NATIVE RULERS—*contd.*

solely to the title of the Rajah to a zamindari in British territory, to go into the question of the Rajah's title to the raj The Rajah being a

themselves to depend, as it were, upon the right to his zamindari, the Civil Courts had jurisdiction to

MUN v. BIR CHUNDRA MANIKYA BAHADUR 25 W. R. 404, 407 note

5. ——— *Zamindari in British territory—Civil Procedure Code, 1877,*

Nobodip Chundro Deb Burmun v. Bir Chundra, 25 W. R., 407, cited. BIR CHUNDER MANICKYA BAHADUR v ISHAN CHUNDER THAKUR . 3 C. L. R. 417

6. ——— *Sovereign prince—Suit against sovereign prince with respect to land owned by him, and situate in British India—Maintenance—Charge on immoveable property—*

within the meaning of ... and cannot be sued personally in the Courts of

JURISDICTION OF CIVIL COURT—*contd.*

10. FOREIGN AND NATIVE RULERS—*concld*

subject to such jurisdiction A suit for maintenance

[illegible]

1868, s, 2, cl 3 A claim for maintenance is not a charge upon immoveable property. A member of the royal family of Hill Tipperah brought a suit against the Rajah to have it declared that with respect to certain land situate within British India and forming portion of the possessions of the Rajah, he was entitled to the post of Jubaraj and to succeed to such land on the death of the Rajah, and also claim maintenance and sought to have it declared that such maintenance should be a charge on the revenues of the land situate in British India *Held*, that the British Courts had no jurisdiction to entertain the suit, it not being one for immoveable property BEER CHUNDER MANIKKYA v RAJ KOOMAR NOBODEEP CHUNDER DEB BURMONO

I. L. R. 9 Calc. 535 : 12 C. L. R. 465

7. ——————— *Civil Procedure Code, 1877, s 433—Suit for charge for maintenance on independent Sovereign State.* [illegible]

[illegible]

paid by the defendant Maharajah and from his estate of R, which was in British India. *Held*, that the suit, not being a suit for immoveable property, would not lie, and, further, that the decree in the former suit was not *res judicata* to show that the maintenance claimed in the present suit was a charge upon the zamindari of R, so as to give the Court jurisdiction under cl (c) of s. 433 of the Civil Procedure Code. BIR CHUNDER MANIKHYA v ISHAN CHUNDER TAGORE . . **12 C. L. R. 473**

8. ——————— **Suit against the Desai of Patadi**—*Ruling Chief—Code of Civil Procedure (XIV of 1882), ss. 432 and 433* The Desai of [illegible]

[illegible]

SINGJI . . . . **I. L. R. 8 Bom. 415**

11. HÂT.

1. ——————— **Suit to determine right of person to hold market on certain days.** The Civil Courts have jurisdiction to determine whether or no a person has a right to hold a market on certain days. THAKOOR SINGH v. SHEOPERSHAD OJHAR . . . . **5 N. W. 8**

12 MAGISTRATE'S ORDERS, INTERFERENCE WITH.

1. ——————— **Suit to set aside order of Magistrate opening a road.** The Civil Court have jurisdiction to set aside an order by a Deputy Magistrate to open a road over lands KADIR MAHOMED v MAHOMED SAFIR . **1 W. R. 277**

2. ——————— **Interference of Magistrate with private right of way** The interference of a Magistrate with a private right of way, being an act beyond his jurisdiction, may be remedied by suit in the Civil Courts SHAM DOSS v BHOLA DOSS . . . . **1 W. R. 324**

3. ——————— **Order of Magistrate to remove encroachment.** A regular suit lies in the Civil Court from the proceedings of a Magistrate ordering the removal of an encroachment not treated as a local nuisance ANUND CHUNDER CHATTERJEE v ROKHO TARUN CHATTERJEE **2 W. R. 287**

4. ——————— **Suit to set aside order of Magistrate declaring road public**—*Removal of obstruction to road* The Civil Courts have [illegible]

[illegible] tion [illegible]

7 W. R. 95

5. ——————— **Suit to set aside order of Magistrate removing obstruction**—*Criminal Procedure Code, 1861, s 308* Where a Magistrate made an order for the removal of a shed as being an obstruction to a thoroughfare under s 308 of the Code of Criminal Procedure, and the owner of [illegible]

[illegible] CHUMMUN RAM . . **7 W. R. 11**

6. ——————— **Suit for declaration of right to land encroached on by road.** A plaintiff is not debarred from suing in the Civil Courts for a declaration of his rights to land encroached upon by the widening of a road, on the ground that the order of the Magistrate directing the road to be kept up as widened is liable to be reversed as illegal AZEEZOOLLAH GAZEE v. BUNK BEHAREE ROY . . . **7 W. R. 48**

7. ——————— **Suit to set aside order of Magistrate as to private property**—*Criminal Procedure Code, 1861, s. 308.* S 308 of the Code of Criminal Procedure referred to nuisances in a thoroughfare or public place and had nothing to do with the interior of private houses, and therefore did not bar the jurisdiction of the Civil Courts

JURISDICTION OF CIVIL COURT— *contd.*

12. MAGISTRATE'S ORDERS, INTERFERENCE WITH—*contd.*

in a suit brought to set aside an order of a Deputy Magistrate restricting some of the owners and occupiers of a house from the free use of their own portion of joint property ESHAN CHUNDER BANERJEE *v* NUND COOMAR BANERJEE

8 W. R. 239

8. ——— **Obstructing public road**—*Criminal Procedure Code (Act XXV of 1861), s 320* A Magistrate found, under s 320 of the Criminal Procedure Code, on a dispute between *R* and *P* that the public had been in the habit of using a certain road over *P*'s land for carts, etc, and accordingly directed it to be opened (*i e*, by removal of obstructions) *P* brought a regular suit against *R*, in which the issue was, whether the road was public or not this was found in the negative except as to a footpath, costs were apportioned, and the cart-way was ordered to be stopped *R* appealed on the merits, and *P* filed a cross-objection the first judgment was affirmed. On special appeal by *R* as to the mode of dealing with the proofs:—*Held* the finding of the Civil Court was beyond its competence, and the suit was not such as contemplated by s 320, *viz*, "to test the right of exclusive possession" PYARI LAL *v* ROOKEE

3 B. L. R. A. C. 305 : 12 W. R. 199

Upholding on review, ROOKEE *v* PYARI LAL

3 B. L. R. Ap. 43 : 11 W. R. 434

9. ——— **Suit to restrain order of Magistrate as to nuisance**—*Suit to set aside order of Magistrate under s 308, Code of Criminal Procedure (Act XXV of 1861)—Nuisance.* No suit will lie in a Civil Court to set aside an order duly made by a Magistrate under Ch XX, s 308 of the Code of Criminal Procedure, relating to nuisances, or to restrain him from carrying such order into effect UJALAMAYI DASI *v* CHANDRA KUMAR NEOGI . . 4 B. L. R. F. B. 24

S C OOJULMOYE DOSSEE *v* CHANDRA KOOMAR NEOGEE . 12 W. R. F. B 18

10. ——— ***Order of Magistrate as to* right to use of water**—*Suit to set aside Magistrate's decision under s 320, Criminal Procedure Code, 1861* A suit to get rid of the effect of an order passed by a Deputy Magistrate under s 320, Code of Criminal Procedure, declaring a certain river to be a public thoroughfare, and to have it declared that plaintiffs are entitled with others to use the water of the said river by raising bunds or dams in the bed of the stream as heretofore, will not lie in the Civil Court, the only way in which the Deputy Magistrate's order can be got rid of in the Civil Court being by distinct proof of plaintiff's title to exclusive possession of the right of water claimed RAM KRISTO SARCAR *v.* KALOO

18 W. R. 284

11. ——— **Suit for possession and damages after order of Magistrate for removal of hut**—*Criminal Procedure Code (Act VIII of 1869), ss. 308-310, 311—Removal of house by order of Magistrate—Suit for possession and for* [illegible]

whom found that the Magistrate's order reasonable and proper. *A* refused to obey the order, and his hut was removed under s 311 *A* sued the Magistrate for possession of the land and for damages *Held*, that such suit would not lie. MEECHOO CHUNDER SARCAR *v* RAVENSHAW

11 B. L. R. 9 : 19 W. R. 345

12 ——— **Suit for possession after order of Criminal Court**—*Suit to set aside order of Magistrate under s. 318, Criminal Procedure Code, 1861—Suit for possession.* An award of a Magistrate under the Criminal Procedure Code, 1861, s 318, cannot be set aside by a decree of [illegible]

GOOPTA . . . . . . 21 W. R. 79

13. ——— **Suit for ejectment after dispossession of plaintiff under order of Magistrate.** An ejectment suit on the allega- [illegible]

14. ——— **Suit to cancel order of Magistrate** *Criminal Procedure Code, 1861, s 62 (Act X of 1872), s 518—Right to hold market on certain days.* Any person is entitled to establish a market on his own land, and the owner of a neighbouring market has no right of suit for the loss which may ensue from the establishment of the new market. The legality of an order made by a Magistrate, under s 62 of Act XXV of 1861 (s. 518 of Act X of 1872), can be questioned in the Civil Court. The Civil Courts are, however, bound to [illegible]

plaintiff's right to hold the market on the days named in the plaint was decreed, subject to the prohibition created by the order of the Magistrate. KEDARNATH *v.* RUGHONATH . 6 N. W. 104

JURISDICTION OF CIVIL COURT—*contd.*

12. MAGISTRATE'S ORDERS, INTERFERENCE WITH—*contd.*

15. ———————— *Right of way—Criminal Procedure Code, 1872, ss. 521-523—Estoppel.* A Civil Court is not competent to set aside the order of a Magistrate made under s. 521 of the Code of Criminal Procedure, on the ground that such order was made without jurisdiction, because the land in respect of which the order was made is private property, and not a thoroughfare or public place. A Civil Court can, however, irrespective of an order made under s. 521 by a Magistrate, try the question whether the land which formed the subject of such order is private property, and not a thoroughfare or public place, as between the parties to such suit and those who claim under them. *Per* FIELD, *J.*—A person who, on receipt of an order made by a Magistrate under s. 521 of the Code of Criminal Procedure, declaring the existence of a right of way over such person's lands, demands, under s. 523 of the same Code, the [illegible]

16. ——— Suit for declaration of right and confirmation of possession—*Criminal Procedure Code (Act X of 1882) s 133—Removal of nuisance—Public way—Cause of action.* On the 6th of July 1882, the Joint Magistrate of Krishnagur on a complaint made by *A*, ordered *B* to demolish a cow-shed which he had built some months previ- [illegible]

[illegible] firmation of possession. The plaint did not allege that *B*, in causing the Magistrate to initiate proceedings against *A*, had been actuated by malicious [illegible]

I. L. R. 14 Calc. 60

17 ———— Suit for declaration of title to lands claimed as public road—*Criminal Procedure Code, s. 137, order under.* An owner of land has a right to bring a suit for declaration of his right against any one of the public who formally claims to use such lands as a public road and who has thereby endangered the title of the owner Such a suit is not barred by an order of a Criminal Court under s. 137 of the Criminal Procedure Code. *Khodabuksh Mundul v. Monglai Mundul, I. L. R. 11 Calc., 60,* overruled. CHUNI LALL *v.* RAMKRISHEN SAHU . . . I. L. R. 15 Calc. 460

18. ———— Declaration of title to land —*Specific Relief Act (I of 1877), s. 42—Criminal Procedure Code (Act X of 1882), s. 133—Order by Magistrate under s. 133 of the Criminal Procedure Code for removal of an obstruction standing upon certain land.* A Magistrate made an order against the plaintiff, under s. 133 of the Criminal Procedure Code (Act X of 1882), for the removal of a certain otta standing in front of the plaintiff's shop as an obstruction to the public way. The plaintiff thereupon brought this suit against the Secretary of State for India in Council for a declaration that the land on which the otta stood was his property and not that of the Government. It was contended that the jurisdiction of the Court to make the declaration prayed for was taken away by the last clause of s. 133, which provides that " no order made by a Magistrate under this section shall be called in question in any Civil Court." *Held,* that the Magistrate's order under this section was not a conclusive determination of the question of title. SECRETARY OF STATE FOR INDIA *v.* JETHABHAI KALIDAS . I. L. R. 17 Bom. 293

19. ———— Order for maintenance—*Order of Magistrate for maintenance under s. 488 of the Code of Criminal Procedure does not oust the jurisdiction of Civil Courts—No injunction to restrain proceedings on order under s 488* The first defendant obtained an order for maintenance under s. 488 of the Code of Criminal Procedure against plaintiff In a suit brought by plaintiff subsequently against the first defendant, and her minor son, the second defendant, for a declaration that the defendants had no right to a share in or maintenance out of his properties. *Held,* (i) that the suit was not one to set aside the Magistrate's order for maintenance and was sustainable. The Magistrate's order did not take away the jurisdiction of the Civil Courts (ii) No suit will lie for an injunction to restrain proceedings under an order made by a Magistrate under s. 488 of the Code of Criminal Procedure. *Veeran v. Ayyammah, 2 Weir 615,* approved *Mahomed Abid Ali Kumar Kadar v. Ludden Sahiba, I. L. R. 14 Calc. 276,* followed. *Subhadra v. Basdeo Dube, I. L. R. 18 All. 29,* explained DERAJE MALINGA NAIKA *v.* MARATI KAVERI (1907) . . I. L. R. 30 Mad. 400

20. [illegible] —*Cr*[illegible] *XIV* [illegible] *Vict.,* [illegible] *revisional jurisdiction—Criminal proceedings, stay of, pending civil appeal—Stay not justifiable, when it would defeat ends of justice.* Where the District Judge has initiated proceedings under s. 476 of the Criminal Procedure Code: *Held, first,* that it is doubtful, if the High Court exercising civil jurisdiction has power to stay the criminal proceedings. *Held, secondly,* that the provisions of s. 15 of the Charter Act of 1861 do not appear to give the High Court power to interfere in the

JURISDICTION OF CIVIL COURT—*contd*

12. MAGISTRATE'S ORDERS, INTERFERENCE WITH—*concld.*

case; *Raj Kumari Debi* v. *Bama Sundari Debi, I. L. R. 23 Calc. 610,* followed. *Held, thirdly,* that the High Court must have regard to the nature of the revisional jurisdiction and must not allow what would virtually be an appeal from the order; *In re Alamder Husain, I. L R. 23 All. 249,* followed in principle. *Held, lastly,* that

... as speedily as possible, the

13. MAMLATDARS' COURT.

1. ——— *Jurisdiction—Mamlatdar's Courts Act (Bom. Act III of 1876), s 4—Mamlatdars' Courts Act (Bom Act II of 1906), s. 5—Mamlatdars' Court—Suit for possession of a house situate within a town—Jurisdiction—Act of procedure—Repealed statute* A suit for the recovery of possession of a house situate within a town was instituted in the Court of a Mamlatdar while the Mamlatdars' Courts Act (Bom. Act III of 1876) was in force, but before the suit was finally decided that Act was repealed and the Mamlatdars' Courts Act (Bom. Act II of 1906) had come into operation. *Held,* that the Mamlatdar had no jurisdiction to decide the suit VAJECHAND v NANDRAM (1907)
I. L. R. 31 Bom. 545

14 MARRIAGES

1. ——— **Suit to declare Hindu marriage invalid.** A suit for a declaration that an alleged Hindu marriage is invalid is a suit of civil nature, and will lie in the ordinary Civil Courts AUNJONA DASI v. PRAHLAD CHANDRA GHOSE
6 B. L. R. 243 : 14 W. R. 403

Reversing s c. . . . **14 W. R. 132**

2. ——— A suit to have a Hindu marriage declared invalid, or otherwise, where no rights of property depend on the validity or invalidity of the marriage, cannot be maintained in the Civil Courts under Act VIII of 1859 RAMSARAN MITTER v RAKHAL DASS DUTT
6 B. L. R. 244 note : 11 W. R. 412

3. ——— **Suit to enforce contract of marriage.** A suit to enforce a contract of marriage cannot be entertained in the Civil Courts of this country BHOOUN v RUNJAN
24 W. R. 360

JURISDICTION OF CIVIL COURT—*contd.*

14. MARRIAGES—*concld.*

4. ——— **Suit for breach of contract to give in marriage**—*Consideration—Promise by brother to give sister in marriage.* A certain amount of money had been paid by a Hindu to another in consideration of a promise by the latter that he would give his sister in marriage to the former. The girl's mother was alive. In a suit for recovery of the amount on the ground that the latter had failed to fulfil his promise:—*Held,* that the suit would lie JOGESWAR CHAKRABATTI v. PANCH KAURI CHAKRABATTI
5 B. L R. 395 : 14 W. R. 154

See RAM CHAND SEN v. AUDAITO SEN
I. L. R. 10 Calc. 1054

And LALLUN MONEE DOSSEE v. NOBIN MOHUN SINGH . . . . **25 W. R. 32**

5. ——— **Suit for jactitation of marriage**—*Jurisdiction of Courts in British India to entertain such a suit between Mahomedans* *Held,* that a suit for jactitation of marriage will lie in a Civil Court in British India, and is not within the ruling of the Privy Council in *Nilmony Singh* v. *Kally Churn Bhattacharjee, 14 B L. R. 382 , L. R 2 I. A 83.* AZMAT ALI v. MAHMUD-UL-NISSA
I. L. R. 20 All. 96

6. ——— **Suit for restitution of conjugal rights.** A suit for restitution of conjugal rights by the husband against the wife will lie in the Civil Courts JHOTUN BIBEE v. AMEER CHUND
1 Ind. Jur. N. S. 317 : 5 W. R. 105

HUR SOOKHA v POORAN . **2 Agra 115**

7. ——— *Supreme Court, Bombay, Ecclesiastical side—Parsis* The Supreme Court of Bombay, on its ecclesiastical side, was declared incompetent to entertain a suit for the restitution of conjugal rights at the instance of a Parsi wife against her husband. ARDASEER CURSETJEE v. PEROZEBOYE
4 W. R. P. C. 91 : 6 Moo. I. A. 348

15 MUNICIPAL BODIES.

1 ——— **Municipal body acting in excess of its jurisdiction**—*Control over municipal bodies* Municipal as well as other public boards are included within the restraining and regulating jurisdiction of the Civil Courts of the country which are competent to inquire into and control the action of public bodies when they have acted in excess or contravention of the powers conferred upon them BRINDABUN CHUNDER ROY v. MUNICIPAL COMMISSIONERS OF SERAMPORE
19 W. R. 309

2. ——— **Suit to set aside order as to assessment of rates**—*Beng. Act III of 1864, s 33—Municipal Commissioners—Appeal against assessment.* A suit to set aside an order made on a appeal under s. 33 of Bengal Act III of 1864 to the Municipal Commissioners against a

JURISDICTION OF CIVIL COURT—*contd.*

15. MUNICIPAL BODIES—*contd.*

rate assessment, and to reduce the tax levied by them under that Act, on the ground that they have tried the appeal in an improper way, and have exceeded their powers and acted contrary to the provisions of the Act cannot be maintained in the Civil Courts. The decision of the Commissioners in such an appeal is absolutely final. MANESSUR DASS *v.* COLLECTOR AND MUNICIPAL COMMISSIONERS OF CHAPRA . . . **I. L. R. 1 Calc. 409**

3. ———— **Question of liability to pay tax**—*Suit to recover Municipal tax—Tax levied under erroneous supposition* A suit was brought in the Court of the District Munsif of Guntur to recover the amount of a profession tax for 1876 levied by the Municipal Commissioners of Guntur on the plaintiff upon the supposition that he carried on business as an agent, while in fact he carried on no such business. The defendant pleaded that the Court had no jurisdiction. Upon reference:—*Held* by the High Court (INNES, *J* and MUTTUSAMI AYYAR, *J.*), that the Court had not jurisdiction to adjudicate on the matter in contest. *Leman* v. *Damodaraya, I. L. R 1 Mad 158*, distinguished KAMAYYA *v* LEMAN . **I. L. R. 2 Mad. 37**

4. ———— **Election of Municipal Commissioners**—*Civil Procedure Code, 1882, s 11—Bengal Municipal Act (Beng Act III of 1884)—Right to vote and stand as candidate at an election—Suit for declaratory decree—Form of decree—Parties to suit—Magistrate* At an election of Municipal Commissioners held under the Bengal Municipal Act (Bengal Act III of 1884) *S*, one of the candidates, was declared to have been elected: a poll was demanded and *S* was again declared by the presiding officer to have been duly elected. An objection was then taken by the defeated candidates

the election on both grounds; and *S* brought a suit in the Civil Court for a declaration of his right to vote and stand as a candidate, and for a declaration that he was duly elected. *Held*, that the suit was one of a civil nature, and under s. 11 of the Code of Civil Procedure (Act XIV of 1882) such a suit would lie in the Civil Court. *Held*, also, that the Magistrate should not have been made a defendant in the suit, and that the plaintiff was not entitled to a declaration that the election of the plaintiff was good and valid, but that the decree of the first Court granting a declaration of plaintiff's right to vote and stand as candidate was correct SABHAPAT SINGH *v* ABDUL GAFFUR . **I. L. R. 24 Calc. 107**

See ABDUR RAHIM *v* MUNICIPAL BOARD OF KOIL **I L. R. 22 All. 143**

5. ———— **Acts done in accordance with ss. 245 and 246, whether subject to the jurisdiction of a Civil Court**—*Bengal Municipal Act (Beng. Act III of 1884), ss. 224, 245, and 246—Notice under s 246 whether sufficient for the purpose of the removal of huts in a basti, as well as a pucca privy* Where a Municipality, having proceeded in accordance with ss 245 and 246 of the Bengal Municipal Act, decide that certain works are necessary, that conclusion in the absence of *mala fides* or fraud or considerations of that nature cannot be questioned in a Civil Court. The action of the Municipality, so far as a privy was concerned, was *held* not to be *ultra vires*, although in the notice issued in accordance with s. 246 of the Bengal Municipal Act, they directed the plaintiff to remove not

3 C. W. N. 508

6 ———— **Suit to set aside illegal assessment**—*Bengal Municipal Act (Beng. Act III of 1884), ss. 85, 93 113, 116.* There is nothing in the Bengal Municipal Act to prevent a ratepayer from seeking in a Civil Court a decision that the assessment made by a municipality is *ultra vires*, and not binding upon him So where the plaintiff was the owner of a granary and a threshing floor, which were both assessed as one holding at R12 in the year 1893, which was the time at which the last triennial assessment was made, and afterwards in the year 1894 the municipality treated the granary and threshing floor as separate holdings, and they assessed the granary at R12 and assessed threshing floor separately at 9 annas: *Held*, that this was not a case of enhancement of assessment, but of fresh assessment, and so the suit was maintainable. NAVADIP CHANDRA PAL *v* PURNANANDA SAHA . . . **3 C. W. N. 73**

7. ———— **Municipal taxation—Assessment**—*Bengal Municipal Act (Bengal Act III of 1884 as amended by Bengal Act IV of 1894), ss 85, cl (a), 87, 114, 116—Appeal against assessment—Jurisdiction of Civil Court to set aside an assessment—"Circumstances and property within municipality"—Capability and circumstances of the assessee—Specific Relief Act (I of 1877), ss 42, 47.* An assessment of tax under s 85, cl (a), of the Bengal Municipal Act (III of 1884 as amended by Bengal Act IV of 1894) made in consideration of the assessee's "circumstances and property" (altogether or partly) outside the local limits of the municipality is *ultra vires* and illegal, and the Civil Court has jurisdiction to set aside such an assessment. *Manessur Das* v. *Collector and Municipal Commissioners of Chupra, I L. R. 1 Calc 409*, distinguished *Navadip Chandra Pal* v. *Purnanand Saha, 3 C. W. N. 73*, referred to KAMESHWAR PERSHAD *v* CHAIRMAN OF THE BHABUA MUNICIPALITY . . **I. L. R. 27 Calc. 849**

JURISDICTION OF CIVIL COURT—*contd.*

15. MUNICIPAL BODIES—*concld.*

8. ———— **Acquisition of land for widening a street**—*Bombay District Municipal Act (Bom. Act VI of 1873), s 24—Powers of a Municipality—Civil Court's jurisdiction to interfere.* Where a District Municipality purchased

municipality, as it was conducive to the promotion of public health, safety, and convenience ; and that the Civil Court had no jurisdiction to restrain the municipality from exercising such powers SHASTRI RAMCHANDRA *v.* AHMEDABAD MUNICIPALITY

I. L. R. 24 Bom. 600

9. ———— **House tax**—*Municipal valuation—Civil Court's power to raise such valuation.* A Civil Court has no power to revise the valuation of houses made by a municipality for the purpose of imposing a house-tax MORAR *v* BORSAD TOWN-MUNICIPALITY . **I. L. R. 24 Bom. 607**

See MUNICIPALITY OF WAI *v.* KRISHNAJI GANGADHAR . . . **I. L. R. 23 Bom 446**

10. ———— **Election, validity of**—*Jurisdiction—Election of Councillor, validity of —Applicant's right to question election—Chief Judge of Small Cause Court has sole jurisdiction to try suits relating to election petitions—Jurisdiction of High Court—Civil Procedure Code (Act XIV of 1882), s 11—City of Bombay Municipal Act (Bom. Act III of 1888), s 33.* Under s. 33 the Chief Judge of the Small Cause Court has jurisdiction to determine the validity of a contested election. The High Court has no jurisdiction to entertain such a suit Where a special tribunal, out of the ordinary course, is appointed by an Act to determine questions as to rights which are the creation of that Act, then, except so far as otherwise expressly provided or necessarily implied, that tribunal's jurisdiction to determine those questions is exclusive It is an essential condition of those rights that they should be determined in the manner prescribed by the Act, to which they owe their existence In such a case there is no ouster of the jurisdiction of the ordinary Courts for they never had any The jurisdiction of the Courts can be excluded not only by express words but also by implication, and there certainly is enough in s 33 of the Municipal Act for this purpose *Semble* If the High Court has jurisdiction there might be a conflict between the view of the High Court and the order of the Chief Judge in which the order of the Chief Judge must by the express terms of the Act prevail BHAISHANKAR *v* THE MUNICIPAL CORPORATION OF BOMBAY (1907) . . **I. L. R. 31 Bom. 604**

16. OFFICES AND HONOURS, RIGHT TO

1. ———— **Suit by hereditary purohit for declaration of right to officiate and for damages for loss of fees**—*Cause of action.* The ancestor of the plaintiff was appointed purohit of the town of P by Government, and obtained,

of the defendants fell to the lot of the plaintiff. The plaintiff sued for a declaration of his right to officiate as the purohit of the defendants and or damages for loss of fees caused by the defendants employing another purohit *Held*, that the plaintiff had no cause of action RAMAKRISTNA *v* RANGA . . . **I. L. R. 7 Mad. 424**

2 ———— **Suit to obtain declaration of right to perfom religious ceremony.** *Quære* Whether the Courts in India have any jurisdiction to determine a question involving a mere declaration of a right to perform religious ceremonies NAMBOORY SEETAPATTY *v.* KANOO COLANOO PULLIA

7 W. R P. C. 7 : 3 Moo. I. A. 359

3. ———— **Right of suit**—*Civil Procedure Code, s 11—Hereditary right to an office—Declaratory decree—Jurisdiction—Emolument* A suit for the establishment of a right to the hereditary title of musicians to a satra will lie under s 11 of the Code of Civil Procedure, notwithstanding that the right sought to be established is one which brings in no profit to those claiming it MAMAT RAM BAYAN *v.* BAPU RAM ATAI BURA BHAKAT

I. L. R. 15 Calc 159

4 ———— **Suit for an office to which no fixed fees are attached**—*Civil Procedure Code, 1882, s 11—Bom Reg II of 1827, s 21—Its application to suits between Mahomedans—Caste question* Under s. 11 of the Code of Civil Procedure (Act XIV of 1882), a suit for an office will lie, even though the office be a religious one, to which no fixed fees are attached S 21 of Regula-

HASHIM SAHEB VALAD AHMED SAHEB *v* HUSEINSHA VALAD KARIMSHA FAKIR . **I. L. R. 13 Bom. 429**

5. ———— **Suit to establish rights of persons managing pagodas**—*Suit for damages for withdrawal of religious observances.* The Civil Courts will recognize and enforce the rights of persons holding offices connected with the management and regulation of pagodas ; and if the holder of such an office were entitled to remuneration for his services in the way of salary or otherwise, he would have a civil right entitling him to maintain a suit, if that remuneration were improperly withheld A Hindu priest cannot sue in respect of the withhold-

JURISDICTION OF CIVIL COURT—*contd.*

16. OFFICES AND HONOURS, RIGHT TO—*contd.*

ing of religious observances due to his sacred rank, but unconnected with any special office held by him, although the non-performance of such observances may have caused him some ascertainable pecuniary loss. STRIMAN SADA GOPA *v.* KRISTNA TATTACHARIYAR . . . . . . 1 Mad. 301

6. ——— Suit to establish right to honours of office in temple, and damages for invasion of right. A suit to establish the right of the plaintiff to certain honours appertaining to an office in the temple, and to recover damages for an invasion of the right, is one which it is competent to the Civil Courts to entertain. ARCHAKAM SRINIVASA DIKSHATULU *v.* UDAYAGIRY ANANTHA CHARLU 4 Mad. 349

7. ——— Suit for declaration of right to be priest and collect fees. In a suit for "Huk Purohitee":—*Held*, that each "jujman" has a right to select his own priest, and no suit to enforce a right to be priest and collect dues as such would lie in the Civil Court. BEHAREE LAL *v.* BABOO . . . . . 2 Agra 80

8 ——— Suit for a declaration of plaintiff's right to officiate as priest and receive offerings. A suit will lie in a Civil Court for a declaration of the plaintiff's right to officiate, in alternate years, as priest in a temple and receive the offerings to the idol. LIMBA BIN KRISHNA *v.* RAMA BIN PIMPLU . I. L. R. 13 Bom. 548

9. ——— Right to an office in a temple—*Civil Procedure Code, s 11* Plaintiffs sued for an injunction to prevent defendant from interfering with their right to present to certain persons at a certain festival in a certain temple, a crown and water. The lower Courts found that plaintiffs possessed the right claimed and granted the injunction. *Held*, that the suit was cognizable by a Civil Court under s 11 of the Code of Civil Procedure, and that the injunction was properly granted. SRINIVASA *v.* TIRUVENGADA I. L. R. 11 Mad. 450

10. ——— Suit for declaration of right to eldership among patils—*Act XI of 1843* In a suit brought for a declaration of right to the *vadilki* or eldership in a family of patils with a view to prove title to the patalki or office of patil:—*Held*, that a Civil Court had no right to entertain such a claim in order to influence the controlling revenue officer, who had the power in certain cases to nominate, from among the sharers of a family of hereditary officers, a representative to discharge the duties of the hereditary office ABAJI BIN SANKROJI *v.* NILOJI BIN BALOJI 2 Bom. 362 : 2nd. Ed. 342

11 ——— Suit for declaration of right

leged that the defendant, the actual incumbent of that office, had no right to share in the management of the watan, and had, in fact, until 1866, upon the death of the father of the plaintiff, never done so: *Held*, that the Civil Courts had jurisdiction to entertain the claim of the plaintiff. *Abaji bin Sankroji* v. *Niloji bin Baloji*, 2 Bom. 362 : 2nd Ed. 342, distinguished. VITHU BIN MAHKU *v.* AMRITA BIN JOTI . . . . 7 Bom. A. C. 72

12. ——— Act XI of 1843. Where a plaintiff sued for a declaration of his eligibility to the office of patil, if elected under the provisions of Act XI of 1843, he having been obliged to sue to establish his eligibility in consequence of the defendants' persistent denial of the plaintiff's claim to such eligibility, whereby the revenue

influence the revenue authorities by showing that the Civil Court had declared him eligible for office as patil *Abaji Sankroji v. Niloji Baloji, 2 Bom 342*, and *Yesaji Apaji v. Yesaji Mhaloji, 8 Bom A C. 35*, distinguished NINGANGAVDA PATIL *v.* SATYANGAVDA PATIL . . . 11 Bom. 232

13. ——— Suit to establish right to officiate in proportion to shares held. Where the plaintiff had two shares and the defend-

14. ——— Suit for declaration of right to officiate as sole representative of a branch of vatandar family—*Bombay Hereditary Offices Act (III of 1874)* From the date of the coming into force of the Bombay Hereditary Offices Act (III of 1874), it is not competent to the Civil Court to entertain a suit for a declaration of right to officiate as the sole representative of a branch of a vatandar family, the Act constituting the Collector a Judge for this and other purposes of the Act. KHANDO NARAYAN KULKARNI *v.* APAJI SADASIV KULKARNI . I. L. R. 2 Bom. 370

15. ——— Suit for declaration of right to officiate as vatandar—*Bombay Hereditary Offices Act (III of 1874)* Since Bombay Act

JURISDICTION OF CIVIL COURT—*contd.*

16 OFFICES AND HONOURS, RIGHT TO—*contd.*

16. ——— *Bombay Hereditary Offices Act (III of 1874), s. 18—Suit by village mahars to recover aya—Declaratory suit* S. 18 ... Offices ... lication ... declare ... reditary officers under the Act. *Khand Narayan* v. *Apaji Sadashiv, I. L. R. 2 Bom. 370,* and *Chinto Abaji* v. *Lakshmibai, I L. R. 2 Bom. 375,* followed. *Ramchandra Dabholkar* v *Anant Sat Shenvi. I L. R. 8 Bom. 25,* distinguished. The plaintiffs sued, as vatandar mahars of certain villages, to establish their right to receive the aya attached to their office, as against defendants, who were the vatandar mangs of the same villages, and who claimed the right to receive the aya equally with the plaintiffs *Held,* that the suit was not cognizable by a Civil Court PARSHA v. LAGMYA SHAN

I. L. R. 13 Bom. 83

17. ——— *Bombay Hereditary Offices Act (III of 1874), s 56—Registration of vatandar.* A decree of the District Court at Sholapore made in 1863 declared the plaintiff to be a hereditary deputy vatandar of a certain deshpandi vatan, vested in the defendants as hereditary vatandar, and as such deputy entitled to receive a certain sum annually out of the income of the vatan The plaintiff received moneys from time to time under his decree; he was not, however, subse-

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application for such registration should be made to the Collector. GOPAL HANMANT v SAKHARAM GOVIND . . . I. L. R 4 Bom. 254

18. ——— *Suit in respect* ...

A of 1867, s. 4—Its application to suits between private persons The plaintiff and his co-sharers in a kulkarni vatan entered into an agreement in 1869 for the performance of the duties of the vatan by the several sharers in turn The agreement provided that, if any of the sharers prevented the

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firmed in the appointment by the Collector. The plaintiff therefore sued the defendants to recover R100 as damages for breach of the agreement of 1869. *Held,* that the agreement could not be enforced by a civil suit, as it was opposed to the policy of s. 40 of Bombay Act III of 1874, which contemplates a free election of an officiator by the whole body of registered representative vatandars to whom the Collector issues his notice—an election unfettered by any promises made beforehand by any of the sharers. *Held,* also, that a suit in respect of any injury caused by exclusion from office

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19. ——— *Suit for lands attached to hereditary office—Mad. Reg VI of 1831, s. 3.* A suit in the Civil Courts for "maniam" lands attached to the hereditary office of village carpenter is barred by the operation of s 3 of Regulation VI of 1831 PALAMALAI PADAYACHI v. SHANMUGA AUSARI . I. L. R 17 Mad. 302

PICHHUVAYYAN v VILAKKUDAYAN ASARI

I. L. R. 21 Mad. 134

20. ——— *Suit for partition and declaration of right to a specific share in a kulkarni vatan and to officiate—Hereditary office—Vatandar's Act (Bom Act III of 1874), s 67—Collector, duty and functions of* In a suit for partition of a kulkarni vatan for a declaration that the plaintiffs were entitled to officiate as kulkarnis and for a third share in the moiety of the vatan belonging to the parties it was contended that under the Vatandar's Act (Bombay Act III of 1874) the suit was not maintainable in the Civil Court *Held,* that the Vatandar's Act does not preclude the Civil Court from declaring the plaintiff's right to the status of vatandars when the share defined is in respect of a share in the vatan belonging to the

...

each head, and is in no way concerned with the rights of the members of a particular branch *inter se* GOVIND SITARAM v BAPUJI MAHADEO

I. L. R. 18 Bom. 516

21. ——— **Right to hereditary office of guru**—*Civil Procedure Code (1882), s 11.* The plaintiff as Anagundi Raja guru claimed to be entitled and now sued for a declaration of his title to the hereditary office of priest of Samayacharam The defendants claimed the office and

JURISDICTION OF CIVIL COURT— *contd.*

16. OFFICES AND HONOURS, RIGHT TO— *contd.*

had collected voluntary contributions in the character of the holders of such office. The office was not connected with any particular temple; no specific pecuniary benefit was attached to it, and the alleged duties of the office were to exercise spiritual and moral supervision over persons wearing a certain caste mark in a certain tract of country. *Held*, that the suit was not cognizable by a Civil Court. THOLAPPALA CHARLU *v* VENKATA CHARLU **I. L. R. 19 Mad. 62**

22. ——— **Suit in which the right to an office and to its emoluments is in dispute.** A suit in which the only question for decision was whether or not the plaintiff was the aya of a certain muth, and entitled as such to receive certain fees on the occasion of marriages, is a suit of a civil nature in which the right to an office and thereby to certain fees is in contest Such a suit is cognizable by a Civil Court. Its decision in no way involves any interference in a caste question. GURSANGAYA *v* TAMANA **I. L. R. 16 Bom. 281**

23. ——— *Civil Procedure Code, 1882, s 11—Suit for right to property and for office or emolument.* The plaintiffs were some of the bhakats or members of a satra or religious

and their forefathers had been from generation to

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the defendants in such performance and had been expelled from the kirtanghar. The prayer of the plaint was that the plaintiffs' right to enter the kirtanghar to perform the said rites and

such performance, and that a prohibitory injunction might be granted enjoining the defendants not to obstruct them in such performance. The defendants, who were the satria and the other

JURISDICTION OF CIVIL COURT— *contd.*

16. OFFICES AND HONOURS, RIGHT TO— *contd.*

fine of R100 had accordingly been imposed on him and his partizans by the governing body of the satra, whose orders they had disobeyed by refusing to pay the fine and they had therefore been excluded from entering the kirtanghar; and the defendants contended that the Civil Court had no jurisdiction in the matter, and that the suit was therefore not maintainable The lower Courts *held* that the Civil Court could entertain the suit, and they made decrees practically ordering the admis-

suit must be regarded as one in which right to property and to an office, within the meaning of the explanation to s 11 of the Civil Procedure Code, is contested, and therefore, notwithstanding that the honorarium and offerings were of trifling and merely nominal value, one of a civil nature and cognizable by the Civil Court. JAGANNATH CHURN *v.* AKALI DASSIA . **I. L. R. 21 Calc. 463**

24. ——— **Suit for share in emoluments of vatan**—*Bombay Hereditary Offices Act (III of 1874)—Act X of 1876.* Neither Bombay Act III of 1874 nor Act X of 1876 contains any provision excluding the jurisdiction of Civil Courts in a suit brought to establish a share in the emoluments of a vatan which has ceased to be a service vatan MOHEYODIN *v* CHHOTIBIBI **I. L. R. 5 Bom. 578**

25 ——— **Suit for damages for**

il to give

Act X of

Act III

a suit

against Government VASUDEV VITHAL SAMANT *v.* RAMCHANDRA SAMANT **I. L. R. 6 Bom. 129**

GANPATRAV *v.* RANORAV **I. L. R. 6 Bom. 133 note**

GAVDAPA *v.* SHIBASANGVADA **I. L. R. 6 Bom. 133 note**

26. ——— **Suit to rank as vatandar** —*Bombay Hereditary Offices Act (III of 1874).* Under the Vatandars Act (Bombay Act III of 1874), as under the law antecedent to it, the Civil Court has jurisdiction to entertain a suit to be declared a

JURISDICTION OF CIVIL COURT—*contd.*

16. OFFICES AND HONOURS, RIGHT TO—*contd*

vatandar. This jurisdiction rests on the simple denial of the plaintiff's right by the defendant irrespective of the pecuniary loss or other injury caused or likely to arise to the plaintiff by its infraction When the list of vatandars is either undisputed or settled by the decree of the Civil Court, the Collector derives jurisdiction under the Act to determine which of them shall be their representative RAMCHANDRA DADHALKAR v ANANT SAT SHENVI . . . I. L. R. 8 Bom. 25

27 ———— **Suit for a share and entry of name in place of deceased vatandar**—*Bombay Hereditary Offices Act (III of 1874), s 35—Heir—Adopted son* S. 35 of the Bombay Hereditary Offices Act (III of 1874) only contemplates the intervention of a Civil Court for the purpose of establishing the right of the claimant to be regarded as the adopted son of the deceased registered vatandar. When the claimant's suit is not limited to that object, but asks for a declaration of his share in the vatan and of his title to have his name entered in the vatan register, the suit is beyond the jurisdiction of the Civil Court BALKRISHNA CHIMNAJI v BALAJI . I. L. R. 9 Bom. 25

28. ———— **Suit to recover lands enfranchised**—*Hereditary Office—Enfranchised inam—Mad Reg VI of 1831—Mad. Act IV of 1866.* Where a claim to an hereditary village office, falling under Regulation VI of 1831, has been made and rejected by a Collector prior to the abolition of the office and the enfranchisement of the lands which formed the emoluments of the office, a Civil Court cannot take cognizance of a suit by the claimant to recover the lands from the incumbent to whom the lands have been granted by the Inam Commissioner KAMATCHI AMMAL v. AGILAND AMMAL

I. L. R. 6 Mad. 334

29. ———— **Suit for a declaration as to land alleged to be nattamai maniyams**—*Mad Reg VI of 1831, s. 3—Jurisdiction of Revenue Courts—Res judicata—Civil Procedure Code, 1882, s 13* In a suit to establish plaintiff's

Revenue Court from granting the declaration prayed for. RAVUTHA KOUNDAN v MUTHU KOUNDAN . . . . I. L. R. 13 Mad. 41

30. ———— **Suit for declaration of right to represent family**—*Vatandar family—*

JURISDICTION OF CIVIL COURT—*contd*

16 OFFICES AND HONOURS, RIGHT TO—*contd.*

Hereditary Offices Act (Bombay Act III of 1874), s. 25 The plaintiff sued for a declaration that the branch of the Gavda family which he represented was elder than that represented by one of the defendants The object which he desired to obtain by

Court had no jurisdiction to entertain the suit, since the declaration sought, if made, would in effect be a declaration of plaintiff's status as representative vatandar This, however, equally with the duty of ascertaining the custom of the vatan as to service, was a duty which by s 25 of the Bombay Hereditary Offices Act (Bombay Act III of 1874) was imposed on the Collector, and not upon the Civil Court RAOJI v GENU

I. L. R. 22 Bom. 344

31. ———— **Suit to contest resumption of charitable inam**—*Mad Reg VII of 1817—Act XX of 1863* A suit by the grantees to contest the right of the Government to resume an inam

32. ———— **Suit for lands as emolument of office**—*Madras Hereditary Village Offices Act (III of 1895), ss. 13, 21—S. 21 applies to cases where defendant denies that lands claimed by plaintiffs are emoluments* The jurisdiction of Civil Courts is excluded by s 21 of the Madras Hereditary Village Offices Act in cases in which the plaintiff sues for lands as emoluments of his office and the defendant resists the claim on the ground that the land is not the emolument of the office Such a suit is not the less a suit for emoluments within the meaning of the section because the defendant resists the claim on such ground *Ravathu Kounden v Muthu Kounden, I L. R. 13 Mad 41,* distinguished KESHRAM NARASIMHULU v NARASIMHULU PATNAIDU (1906)

I. L. R. 30 Mad. 126

33. ———— **Suit for honours**—*Mandatory*

office, as part of its emoluments and not simply accorded to its holder as marks of respect which

JURISDICTION OF CIVIL COURT—[illegible]

[illegible] the plaintiff had a right as one [illegible] in the village. MOHAMED ABDUL [illegible] I. L. R. 24 Calc. 524

[illegible] v. MADHAVDAS I. L. R. 18 Bom. 683

[illegible] WAYS OBSTRUCTION OF.

[illegible] of building in pub- [illegible]

[illegible]

JURISDICTION OF CIVIL COURT—*contd.*

16 OFFICES AND HONOURS, RIGHT TO—*contd.*

vatandar. This jurisdiction rests on the simple denial of the plaintiff's right by the defendant irrespective of the pecuniary loss or other injury caused or likely to arise to the plaintiff by its infraction When the list of vatandars is either undisputed or settled by the decree of the Civil Court, the Collector derives jurisdiction under the Act to determine which of them shall be their representative. RAMCHANDRA DABHALKAR v. ANANT SAT SHENVI . . . I. L. R. 8 Bom. 25

27. ———— **Suit for a share and entry of name in place of deceased vatandar**—*Bombay Hereditary Offices Act (III of 1874), s 3*—*Heir—Adopted son.* S 35 of the Bombay Hereditary Offices Act (III of 1874) only contemplates the intervention of a Civil Court for the purpose of establishing the right of the claimant to be regarded as the adopted son of the deceased registered vatandar. When the claimant's suit is not limited to that object, but asks for a declaration of his share in the vatan and of his title to have his name entered in the vatan register, the suit is beyond the jurisdiction of the Civil Court. BALKRISHNA CHIMNAJI v. BALAJI . . I. L. R. 9 Bom. 25

28 ———— **Suit to recover lands en-**

cannot take cognizance of a suit by the claimant to recover the lands from the incumbent to whom the lands have been granted by the Inam Commissioner KAMATCHI AMMAL v. AGILAND AMMAL

I. L. R. 6 Mad. 334

29. ———— **Suit for a declaration as to land alleged to be nattamai maniyams**—*Mad Reg VI of 1831, s. 3—Jurisdiction of Revenue Courts—Res judicata—Civil Procedure Code, 1882, s 13* In a suit to establish plaintiff's title to certain land alleged by the defendants, who were the Secretary of State for India in Council and the nattamaigar of a certain village, to be maniyam land attached to the office of the second defend-

Revenue Court from granting the declaration prayed for. RAVUTHA KOUNDAN v. MUTHU KOUNDAN . . . I. L. R. 13 Mad. 41

30. ———— **Suit for declaration of right to represent family**—*Vatandar family*—

JURISDICTION OF CIVIL COURT—*contd.*

16. OFFICES AND HONOURS, RIGHT TO—*contd.*

Hereditary Offices Act (Bombay Act III of 1874),

Court had no jurisdiction to entertain the suit, since the declaration sought, if made, would in effect be a declaration of plaintiff's status as representative vatandar This, however, equally with the duty of ascertaining the custom of the vatan as to service, was a duty which by s. 25 of the Bombay Hereditary Offices Act (Bombay Act III of 1874) was imposed on the Collector, and not upon the Civil Court RAOJI v. GENU

I. L. R. 22 Bom. 344

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I. L. R. 30 Mad. 126.

33. ———— **Suit for honours**—*Mandatory injunction when not asked not to be granted—Suit for honours when sustainable—Decree must declare the honour to which plaintiff is entitled* Civil Courts have jurisdiction to entertain a suit for honours, if they are claimed as attached inseparably to an office, as part of its emoluments and not simply accorded to its holder as marks of respect which might be extended to any person to whom the same decree of respect is due In declaring that the plaintiff is entitled to honours, the decree must declare the specific honours to which the plaintiff is entitled A general declaration that the plaintiff is entitled to the honours appropriate to the office

JURISDICTION OF CIVIL COURT—*contd.*

16. OFFICES AND HONOURS, RIGHT TO—*concld.*

will not suffice, but the Court must, to protect the plaintiff in the enjoyment of the office, declare what is the honour to which he is entitled. The

ought not to be granted when it is not asked in the plaint. SRI RUNGACHARIAR *v* RUNGASAMI BHATTACHAR (1908) . I. L. R. 32 Mad. 291

17. PARTNERSHIP.

1. ———— **Suit for accounts and share of profits of partnership.** A suit between co-partners for a settlement of accounts and share of the profits is maintainable in the Civil Courts of India, which are Courts both of law and equity. RAM NARAIN *v* HEERA LALL . 1 Agra 226

2. ———— **Suit for dissolution of partnership**—*Winding-up—Contract Act (IX of 1872),*

I. L. R. 7 All. 227

18. PENALTIES.

———— **Imposing penalty without authority**—*Interference with rights of parties by way of penalty.* Civil Courts have no power to interfere with the vested rights of parties merely by way of penalty, unless they are authorized to do so by positive legislative enactment. RAM SAHOY SINGH *v.* KOLDEEP SINGH . 15 W. R. 80

See RAMNIDHY KOONDOO *v* AJOODHYARAM KHAN . . . . 11 B. L. R. Ap. 37

19. POLITICAL OFFICERS

1. ———— **Act done by political officer**—*Interference with private rights.* An act done by a political officer interfering with the private rights of parties can be questioned in the Civil Courts. MUKOOND NARAIN DEO *v* JOY COOMAREE DEBIA 1 W. R. 16

2. ———— **Suit for damages against Political Agent at Court of Modhool**—*24 & 25 Vict., c. 104, s. 9—Letters Patent, cl. 13.* In

JURISDICTION OF CIVIL COURT—*contd.*

19. POLITICAL OFFICERS—*concld.*

had no jurisdiction to try it either under s 9, 24 & 25 Vict., c. 104, as a Court of ordinary original civil jurisdiction, or in its extraordinary civil jurisdiction under s 13 of the Letters Patent. INHABITANTS OF MAHALINGPORE *v.* ANDERSON 7 B. L. R. 452 note

20. POTTAHS

1. ———— **Suit to compel grant of pottah**—*Landlord and tenant—Maurasidars, right of—Relinquish*

Where the m

quished their

under the Darkhast rules. SUBBARAYA MUDALI *v.* COLLECTOR OF CHINGLEPUT. I. L. R. 6 Mad. 303

that he was entitled to

3. ———— **Suit to cancel pottah**

affixed to plaintiff's house. *Held*, that the plaintiff had no cause of action cognizable by a Civil Court NURDIN *v.* ALAVUDIN I. L. R. 12 Mad 134

4. ———— **Suit in Civil Court to enforce exchange of pottah and muchalka**—*Madras Rent Recovery Act (VIII of 1865)—Declaratory decree—Civil Procedure Code, s. 53—Amendment of plaint.* A suit in the Court of a District Munsif to enforce acceptance of a pottah and execution of a muchalka by defendant in respect of a holding in a village to which plaintiff claimed title was dismissed as not being maintainable *Held*, that the suit should not have been

jurisdiction to grant by way of consequential relief the relief originally sought NARASIMMA *v.* SARYNARAYANA . . I. L. R. 12 Mad. 481

5 ———— **Suit to enforce acceptance of improper pottah**—*Madras Rent Recovery*

JURISDICTION OF CIVIL COURT— *contd.*

20. POTTAHS—*contd.*

Act (Mad Act VIII of 1865), ss. 3, 7, 87—Decree for rent. A landlord sued his tenants in the Court of a District Munsif to enforce acceptance of pottahs and the execution of muchalkas by them, and to recover arrears of rent. The suits were filed more than thirty days after tender of the pottahs which were found to contain certain improper stipulations *Held*, that the Civil Court had jurisdiction to entertain the suit and to modify the pottahs where they

6. ———— **Suit to enforce exchange of pottah and muchalka**—*Madras Rent Recovery Act (Mad Act VIII of 1865), ss 3, 7, 87—Amendment of pottah* *Held*, by COLLINS, C J, MUTTUSAMI AYYAR and PARKER, JJ. (SHEPHARD, J, dissenting), that an ordinary Civil Court has jurisdiction to entertain a suit to enforce acceptance of a pottah and execution of a muchalka. *Held*, further, that, if the pottah which has been tendered is found not to be a proper one, such a Court cannot amend it and direct the tenant to execute a muchalka corresponding with it as amended, but can in a suit properly framed for that purpose, pass a decree declaring what is a proper pottah RAMAYYAR v VEDACHALLA **I. L. R. 14 Mad. 441**

7. ———— **Suit for enforcement of pottah and other relief**—*Madras Rent Recovery Act (Mad. Act VIII of 1865), s 10—Declaration as to enforceable stipulations* In a suit brought in the Court of a District Munsif by a zamindar

to enforce

and for f

Ramayyar

that the Civil Court had jurisdiction, and that a decree should be passed containing a declaration as to the terms which the pottah should contain SATAPPA PILLAI v RAMAN CHETTI

I. L. R. 17 Mad. 1

8. ———— **Pottah granted by Government**—*Application to Government for waste land —Irregular publication of application—Effect of*

ment *Held*, that the plaintiff's title was not invalidated by reason of the non-compliance with the darkhast rules, and the Civil Court had no jurisdiction to set aside the plaintiff's pottah on that ground. PERIAROYALU REDDI v ROYALU REDDI . . **I. L. R. 18 Mad. 434**

21. PRIVACY, INVASION OF.

1. ———— **Suit for injury caused by invasion of privacy** The doctrine that the injury caused by invasion of one's privacy is a sentimental grievance, rather than a substantial injury for which relief can be claimed at law, has not

2. ———— **Invasion of privacy by opening windows** The invasion of privacy by opening windows is not treated by the law as a wrong for which any remedy is given KOMATHI v GURUNADA PILLAI . . **3 Mad. 141**

3. ———————— *Easement—Suit for injunction—Right of suit.* The invasion of privacy by opening windows is not a wrong for which an action will lie *Komathi* v. *Gurunada Pillai, 3 Mad. 141*, followed AZUF v. AMEERULIBI

I. L. R. 18 Mad. 163

4. ———— **Suit to have windows closed**—*Invasion of privacy of women* The defendants having opened certain windows and erected a verandah in their house which commanded a view

plaintiffs

windows

that no

ABDUR

RAHIM v BIRJU SAHU

5 B. L. R. 676: 14 W. R. 103

5. ———— **Suit to have windows removed**—*Invasion of privacy of women* In a suit

5 B L. R. 677 note

KALEE PERSHAD SHAHA v RAM PERSHAD SHAHA **18 W. R. 14**

6. ———— **Suit to have doors closed**—*Invasion of privacy of women* A suit to close doors recently opened in the house of a neighbour on the ground that such doors overlook the zenana or female apartments of the plaintiff, does not lie. GOLAM ALI v MAHOMED ZAHUR ALUM

6 B. L. R. Ap. 76

See GIBBON v ABDUR RAHMAN KHAN

3 B. L. R. A. C. 411

7. ———— **Raising house to get extended range of vision**—*Invasion of privacy* Where a house-owner in a street changed the arrangement or construction of the upper part of his

JURISDICTION OF CIVIL COURT— *contd.*

21. PRIVACY, INVASION OF—*concld.*

house, so that the alteration gave him a wider range of vision than before, but in a manner otherwise consistent with his rights of enjoyment, no legal right of suit is given to a neighbour living on the other side of the road complaining of loss of privacy JOOGUL LAL v. JASODA BIBEE . 3 N. W. 311

8. ———— **Opening new doors or windows**—*Usage of Gujerat—Overlooking neighbour's house. Held,* that, in accordance with the

doctrine of English law, which has been followed by the High Court of Madras, is different. MANI SHANKAR HARGOVAN v. TRIKAM NARSI

5 Bom. A. C. 42

9. ———— *Usage of Gujerat.* When in Gujerat a householder's privacy is in-

10. ———— **Right to have window opening on to neighbouring house**—*Right of privacy* Where the plaintiff opened a new window in his house at Dharwar, which rendered

the most satisfactory character is necessary. SRINIVAS UDPIRAV v. REID . 9 Bom. 266

11. ———— **View of open courtyard.** Where a window opened by the defendant commanded a view, not of the plaintiff's private apartments, but of an open courtyard outside his house, it was *held* that there had been no invasion of the plaintiff's privacy which would entitle him to have the window closed, according to the custom legally recognized in Gujerat KESHAV HERKHA v. GANPAT HIRACHAND 8 Bom. A. C. 87

22 PROCESSIONS.

———— **Suit for declaration of right to carry religious emblems in a procession and for damages**—*Right of suit—Public highway.* A suit for declaration of right to carry religious emblems in a procession through the streets of a

JURISDICTION OF CIVIL COURT— *contd.*

22. PROCESSIONS—*concld.*

village and for damages for preventing the plaintiff from doing so lies in the Civil Court In a case in which a Mahomedan of the Shea sect, claiming to be a part owner of a village, was prevented by a number of the rival sect of Sunnis from introducing the emblems of a standard and flags and a massack

See SUJAUDIN v. MADHAVDAS

I. L. R. 18 Bom. 693

23. PUBLIC WAYS, OBSTRUCTION OF.

1. ———— **Erection of building in public road**—*Nuisance* A person aggrieved by the erection of a building in a public thoroughfare, or on the waste land of a town or village, may institute a suit in a Civil Court for its removal, instead of preferring a complaint to the Magistrate JINA RANCHOD v. JODHA GHELLA . . 1 Bom. 1

2. ———— **Suit for closing a new road and opening old one** In a suit for closing a new road opened by the defendant through the land of the plaintiff, and for opening an old road which had been closed by the defendants:—*Held, per* MARKBY, *J.*, that the question of opening and closing a public road belongs to the Criminal Court. The Civil Court had no jurisdiction to entertain the suit. HIRA CHAND BANERJEE v. SHAMA CHARAN CHATTERJEE

3 B. L. R. A. C. 351: 12 W. R. 275

3. ———— **Obstructing public road, suit for**—*Special inconvenience—Dedication to*

3 B. L. R. A. C. 295 : 12 W. R. 160

4. ———— No suit lies for obstructing a public road, unless the plaintiff can show that he has suffered particular inconvenience from such obstruction. PARBATI CHARAN MUKHOPADHYA v. KALINATH MUKHOPADHYA

4 B. L. R. Ap. 73

5. ———— *Suit by zamindar for removal of obstruction—Special damage—Special inconvenience—Cause of action.* No suit lies for the removal of an obstruction to a public way, unless the plaintiff proves special damage from the obstruction; and this equally applies whether the plaintiff is a zamindar or any ordinary member

JURISDICTION OF CIVIL COURT—*contd.*

23. PUBLIC WAYS, OBSTRUCTION OF—*contd.*

of the community. RAJ NARAIN MITTER *v.* EKADASI BAG . . . I. L. R. 27 Calc. 793

6. ———— **Obstructing public road**—*Suit for declaration of right of way—Special damage.*

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7 B. L. R. 184

RAJ LUKHEE DEBIA *v* CHUNDER KANT CHOWDHRY . . . . . . 14 W. R. 173

BHAGEERUTH BISHEE *v.* GOKUL CHUNDER MUNDUL . . . . 18 W. R. 58

BHUGEERUTH DASS KOYBURTO *v.* CHUNDEE CHURN KOYBURTO 22 W. R. 463

7. ———— *Criminal Procedure Code, 1872, s 521.* No suit for obstructing a public thoroughfare can be maintained in a Civil Court without proof of special injury. KARIM BAKSH *v.* BUDHA . . I. L. R. 1 All. 249

8. ———— *Special damage —Abatement of nuisance—Criminal Procedure Code (Act X of 1872), s 518—Damages, right to* Where special damage is caused to any person by an

I. L. R. 3 Calc. 20

9. ———— *Public thoroughfare—Right to sue—Special damage—Leave—Right of lessee—Trespass* The plaintiff, a holder of a ten years' lease of the share and rights of one of the co-sharers of a village, sued for the demolition of certain buildings and constructions on a plot of land within the area of the village on the ground that the public had been very much inconvenienced in going to and coming from the road and in taking carts, carriages, cattle, etc , and that he by reason

structions complained of existed when the lease was granted , that the roadway mentioned in the plaint was one used by the public in general as a foot-path and also for vehicles, and that the buildings complained of had encroached on the road The suit was dismissed by the first Court, but decreed on appeal by the lower Appellate Court *Held*, that, in the absence of proof of damage over and above that which in common with the rest of

JURISDICTION OF CIVIL COURT—*contd.*

23. PUBLIC WAYS, OBSTRUCTION OF—*concld.*

the public the plaintiff has sustained, his action must fail Public nuisance is actionable only at the suit of a party who was sustained special dam-

249, referred to RAMPHAL RAI *v* RAGHUNANDAN PRASAD . . . I. L. R. 10 All. 498

10. ———— *Obstruction by*

road without showing special injury to himself beyond that suffered by any member of the public, does not apply to a zamindar who or whose predecessor in title had dedicated to the public the road over his zamindari land. A zamindar in giving the public right of road or way over his land does

public In an action of this kind, the zamindar does not sue as a guardian of the public, but in respect of an interference with his own rights of property *Baroda Prosad Mustafee* v. *Gorachand Mustafee, 3 B L R A C 295 12 W. R 160,* discussed *Dovaston* v *Payne, 2 Smith's L. C. 1st Ed 154, R v Pratt, 4 E & B 860, Rolls* v. *Vestry of St George the Martyr, Southwark, L. R. 14 Ch D 785,* and *Goodson* v *Richardson, L. R. 9 Ch D 221,* referred to TOTA *v.* SARDUL SING I. L. R. 10 All. 553

24 REGISTRATION OF TENURES.

1. ———— **Suit to compel registration of tenure**—*Suit to compel Collector to register and assess land transferred in accordance with Mad. Reg XXV of 1802.* The Civil Courts have jurisdiction to entertain a suit brought by the alienee to compel the Collector to register and sub-assess a

JURISDICTION OF CIVIL COURT—*contd.*

24. REGISTRATION OF TENURES—*contd.*

portion of a zamindari transferred in accordance with the provisions of Madras Regulation XXV of 1802 PONNUSAMY TEVAR *v.* COLLECTOR OF MADURA . . . . . . **3 Mad. 35**

2. ———— **Suit to compel Collector to register**—*Chota Nagpur—Beng. Regs II of 1793, s 9, and XIII of 1833.* A suit will not lie to compel a Collector in Chota Nagpur to register a party as proprietor of an estate. LALLA BISSEN PERSHAD *v.* COLLECTOR OF HAZARIBAGH **13 W. R. 397**

3. ———— **Right of transferee to have name registered**—*Act X of 1859, s. 27* The [illegible] 359 to the trans- [illegible] interest in land [illegible] sherista of the [illegible] his vendor is a right of a civil nature, and therefore the Civil Courts have cognizance of all suits necessary for the purpose of enforcing such right The jurisdiction of the Collector is not exclusive, but concurrent MADHUB CHUNDER PAL *v* HILLS

1 B. L. R. A. C. 175 : 10 W. R. 197

4. ———— **Right of claimant to have name registered**—*Jurisdiction of Revenue Courts—Question of title—Registration of names—Declaratory decree, suit for.* It is not the province of a Revenue Court to decide questions of title between contending claimants, such questions being within the province of the Civil Courts It is the duty of the latter in suits brought for declaration of a right to registration to declare the rights of parties in order that the revenue authorities may be duly certified as to the persons whom they ought to register. JUGUT SHOBHUN CHUNDER *alias* DOOLAL CHUNDER DEHINGUR GOSSAMY *v.* BINAUD CHUNDER *alias* SODA SHOBHUN CHUNDER DEHINGUR GOSSAMY **I. L. R. 9 Calc. 925**

5. ———— *Land in Assam —Suit for declaration of title to—Jurisdiction of Civil Court.* A person claiming a right to rent-bearing land in Assam, held under a pottah from Government in the names of the persons against whom he claims, is entitled to sue in the Civil Court for a declaration of his title and right to have his name registered as co-owner in the Collectorate, and the Civil Court has jurisdiction to determine such suits, although the Collector has not been first applied to, but should not pass any order against the Collector in any suit to which he is not a party but merely declare what the plaintiff's rights are. BEJOY KEOT *v.* BORIA KEOT

I. L. R. 7 Calc. 437 : 9 C. L. R. 218

KALINDRI DABIA *v* KOMOLOKANTO SURMA **I. L. R. 7 Calc. 439 note**

HOOTABOO RAYAH *v* LOOM RAYAH **I. L. R. 7 Calc. 440 note : 7 C. L. R. 221**

6. ———— **Power to reverse order for registration of name**—*Land Registration Act*

JURISDICTION OF CIVIL COURT—*contd.*

24. REGISTRATION OF TENURES—*concld.*

(Beng. Act VII of 1876), ss 52, 55—Declaratory decree—Possession, confirmation of. The Civil Courts have no jurisdiction to make a decree reversing an order for the registration of the name of any person made by a registering officer under Bengal Act VII of 1876 All that the Civil Courts can do is to declare the title of an individual or to give him a decree for possession, and then the registration officers, would, as a matter of course, proceed to amend their registers in accordance with the rights of the parties as settled by the Civil Courts OMRUNISSA BIBEE *v* DILAWAR ALLY KHAN

I. L. R. 10 Calc. 350

7. ———— **Right of purchaser to have lands registered in his name in revenue records**—*Vendor and purchaser—Suit for declaration of such right—Bombay Land Revenue Act (Bom. Act V of 1879), ss 71 and 190—Demand for registration and refusal of Collector as preliminary to right of suit.* Plaintiffs, having purchased certain lands in 1867, brought this suit in the year 1890 to [illegible]

suit, as the plaintiffs had not previously asked the Collector to place them on the register :—*Held*, that this circumstance was not necessary to give jurisdiction, although it might be a reason for treating the suit as premature. BHIKAJI BAJI *v.* PANDU

I. L. R. 19 Bom. 43

25. RELIGION.

1. ———— **Mahomedan religious customs**—*Civil Procedure Code, s. 11—Right of suit—Suit for injunction to restrain reading of the kutbah.* Certain Moplahs, described as "the Moktessor and Jamats" of a mosque, sued certain other Mahomedans, described as "members of the Puslar caste," alleging that the custom was for the defendants to attend the plaintiff's mosque on Friday at the reading of the kutbah, and that the defendants had recently built another mosque a short distance off, and had "for two months been attempting to read the kutbah there." It was further alleged in the plaint that such reading of the kutbah was "quite contrary to the Mahomedan religion," and that the defendants nevertheless proposed to have the kutbah read, "whereby the kutbah or adoration conducted in our mosque will, according to religion, be fruitless" The prayer of the plaint was for an injunction, restraining the defendants [illegible] their mosque. [illegible] use of action.

[illegible] **15 Mad. 355**

2. ———— **Suit for declaration of right to recite text**—*Jurisdiction of Civil Court*—

JURISDICTION OF CIVIL COURT—*contd.*

25. RELIGION—*contd.*

Maintainability A suit is not cognizable in a Civil Court, where the subject of the plaintiffs' claim is confined to rights in religious ceremonies without a claim to any office or any emolument. A right to recite sacred texts in a temple is a matter of ritual of ceremony in a religious matter with which a Civil Court has nothing to do SUBBARAYYA MUDALIAR *v* VEDANTACHARIAR (1905)
I. L. R. 28 Mad. 23

3. ——— Subject-matter of suit of mixed spiritual and temporal character—*If the two intimately connected, a Court can enquire into the spiritual matter—Right to bury dead is a civil right* Although Courts in this country have no jurisdiction in suits relating to ritual or religious

spiritual question will depend upon whether it is so intimately connected with the temporal as to be inseparable from it. The right of burial is a civil right: and an interference with the right of recit-

referred to KOONI MEERA SAHIB *v* MAHOMED MEERA SAHIB (1906) . **I. L. R. 30 Mad. 15**

4. ——— Removal or alteration of religious marks—*Jurisdiction—Injunction against trustees of temples—No injunction to restrain an act which although an innovation does not interfere with worship* Removal or alteration of *namams*, or religious marks, in a temple amounts to an interference with property, and will be a ground for action in the civil Courts.

rival sects following rival gurus have interest and worship, the trustee introduces a new metal idol, in addition to the existing stone idol of one of the rival gurus, such introduction, when not effected at the expense of the temple and when it does not interfere with the worship of the rival sect, is not inconsistent with the usage of the institution and ought not to be restrained by an injunction KRISHNASAMI AYYANGAR *v* SAMARAM SINGRACHARIAR (1906)
I. L. R. 30 Mad. 158

5. ——— Suit by temple committee against temple servants for declaration as to their right to have the services performed—*Civil Procedure Code (Act V of 1908), s. 9—Civil Court—Suit of a civil nature.* The plaintiffs, as members of the committee of management of a temple, received annually from Government a sum of money for defraying the expenses of certain kinds of religious worship in the temple, and it was obligatory upon them to get the worship performed by the hereditary officers of servants attached to the temple. Those officers owing to quarrels among themselves, failed to perform the worship, with the result that the duties owing to the deity were neglected and the funds in the hands of the plaintiffs remained undisbursed for the purposes for which they were held in trust The plaintiffs, therefore, filed this

tary officers or servants of the temple concerned failing to perform it, and for an injunction to restrain those officers or servants from obstructing the plaintiffs in the exercise of the right so declared. It was objected to the suit that it was not triable by a Civil Court because its prayer was for a bare declaration of the plaintiff's right either to perform by themselves or to get performed certain religious ceremonies in a temple, and there was no contest as to any right to property or to any office *Held*, that the suit was

PANDURANG (1909) . **I. L. R 33 Bom. 387**

26 RENT AND REVENUE SUITS.

(*a*) BOMBAY.

1. ——— Suits for immediate possession—*Jurisdiction of Revenue Court* *Held*, that the Civil and the Revenue Courts have concurrent jurisdiction to hear and decide suits in regard to immediate possession *Ex parte* NAGOVA KAM JAKAN GAUDA . . **3 Bom. A. C. 108**

2. ——— Suit to rectify assessment of land revenue—*Bom Reg XVII of 1827.* The jurisdiction of Civil Courts in questions of assess-

JURISDICTION OF CIVIL COURT—*contd.*

26. RENT AND REVENUE SUITS—*contd.*

(*a*) BOMBAY—*contd.*

See also GULAM MOHIDIN *v.* COLLECTOR OF AHMEDABAD . 12 Bom. Ap. 276

VYAKUNTA BAPUJI *v.* GOVERNMENT OF BOMBAY 12 Bom. Ap. 1

And GOVERNMENT OF BOMBAY *v.* HAPIBHAI MONBHAI . . 12 Bom. Ap. 225

3. ———— **Suit to recover possession of inam lands**—*Bom. Act III of 1863, s. 3.* Bombay Act III of 1863, s. 3, deprives the Civil Courts of jurisdiction in respect of all claims against Government on account of inams, in other words, claims referring to total or partial exemption from the payment of Government revenue, but it does not deprive the Civil Courts of jurisdiction in respect of claims to recover possession of inam lands. SHIDMAL GURA *v.* ANDERSON 11 Bom. 39

4. ———— **Removal or destruction of boundaries**—*Bom. Act II of 1866—Encroachment.* Where boundaries are removed or destroyed and when new ones are to be fixed, or where a question arises where boundaries run, the case falls under s. 3 of Bombay Act XI of 1866; but where the question between the parties is whether there has been an encroachment by the defendant on the lands of the plaintiff, the Civil Courts have jurisdiction. BAPUJI BALVANT *v.* RAGHUNATH VITHAL 6 Bom. A. C. 72

5. ———— **Suit for amount improperly levied as rent**—*Broach Talukdars' Relief Act (XV of 1871), s. 23—Personal liability of manager of thakur.* The Broach Talukdars' Relief Act (XV of 1871) does not bar the cognizance by the Civil Courts of a suit to recover the amount improperly levied as rent of rent-free land and to obtain a declaration that such land is not subject to the payment of rent, albeit that, under s. 23 of the Act the manager of a thakur's estate is exempt from personal liability for anything done by him *bonâ fide* pursuant to the Act, and is not subject to an action for damages on account of the attachment of the plaintiff's property. ASMAL SALEMAN *v.* COLLECTOR OF BROACH I. L. R. 5 Bom. 135

6. ———— **Inam Commissioner, investigation of** ...

... vestigation by the Inam Commission ... of 1852 and ... possessed of ... firmed the ... the plaintiff- ... however, in 1882, Government passed a resolution reversing its former decision, and subsequently passed a further resolution allowing the plaintiff's claim to the village and ordering the same to be restored to them. In 1885 the village was restored to the plaintiffs, and the arrears of revenue since 1859 were paid back to them. The plaintiffs then claimed interest on the arrears, and, being refused the same, sued to recover it. The District Judge was of opinion that s. 4, cl. (*f*), of Act X of 1876, barred the cognizance of the suit by the Civil Court, but referred that question under s. 13 of the Act to the High Court ...

the land was exempt from payment of revenue, ...

Governor in Council, who is one of the authorities upon whom judicial powers were conferred by Act XI of 1852. JANARDANRAV *v.* SECRETARY OF STATE FOR INDIA . I. L. R. 13 Bom. 442

7. ———— **Suit for redemption of mortgage**—*Bombay Revenue Jurisdiction Act (X of 1876), s. 4, cl. (c)—Sale of mortgaged land by Native Chief for arrears of assessment—Claim by purchaser against mortgagor and mortgagee.* The ...

public auction to realize the assessment, and he (defendant No. 2) had bought it. The Court of first instance rejected the plaintiff's claim on the ground that the suit could not be entertained by a Civil Court under the provisions of the Revenue Jurisdiction Act (X of 1876) and the Land Revenue Code (Bombay Act V of 1879). On appeal the District Court reversed the decree and remanded the case for trial on the merits. *Held*, confirming the order of the District Court, that Government having rendered no assistance in the proceedings for the realization of the revenue by the Native Chief on which the defendant relied, the jurisdiction of the Civil Court was not taken away by s. 4 (*c*) of the Revenue Jurisdiction Act. MAHADU *v.* LAKSHMAN . . I. L. R. 17 Bom. 681

8. ———— **Suit by an inamdar against a khot to recover balance of land revenue**—*Revenue Jurisdiction Act (X of 1876), s. 4, sub-cl. (b)—Bombay Land Revenue Code (Bom. Act V of 1879), s. 217, cls. (a), (b), and (c)—Collector's certificate—Pensions Act (XXIII of 1871), s. 4—Survey*

JURISDICTION OF CIVIL COURT— *contd.*

26. RENT AND REVENUE SUITS—*contd.*

(a) BOMBAY—*contd.*

by British Government—Change in rate of assessment of revenue. In a suit by an inamdar of a village against a khot to recover rent in kind (according to the market rate at the time of payment), the defendant (khot) contended (i) that he was only

ficate under s. 4 of the Pensions Act (XXIII of 1871), and (iii) that the Civil Court had no jurisdiction to entertain the suit under the Revenue Jurisdiction Act (X of 1876), s 4, sub-cl (b), and the Land Revenue Code (Bombay Act V of 1879), s 216, sub-cl. (b). *Held*, that, as there was no objection by either party to the amount or incidence of assessment of land revenue fixed by Government, and the question being whether the khot was liable to pay to the inamdar maktas of assessment, the suit was not taken away from the cognizance of the Civil Courts, by the Revenue Jurisdiction Act (X of 1876), s 4, sub-cl (b). *Held*, further, that the Court was not precluded from entertaining the suit for want of the Collector's certificate under the Pensions Act (XXIII of 1871), s 4, because the original grant passed the lands, and because it is the original grant which determines whether the Pensions Act is applicable, and not the actual rights which the grantee, as a matter of fact, may have enjoyed by it *Held*, further, that the payment which the khot had been making to the inam

... of that Act He would still get the old assessment in the alienated lands in the village in the former case, and the same amount of assessment in the latter, and the same must have been the intention in cases contemplated by sub cl (b) The "holder of the village" in the concluding paragraph of s 216 must be read as meaning the "holder of the assessment or any part thereof of an alienated village" GANGADHAR HARI KARKARE *v* MORBHAT PUROHIT . **I. L R. 18 Bom. 525**

9. — **Default in paying assessment of revenue**—*Bombay Revenue Jurisdiction Act (X of 1876), ss 4 (c) and 5 (b)—Payment of assessment by another—Order of Collector transferring lands into name of person paying assessment—Suit by defau*

by a Collecto

and transferr

that *A* had

into arrears, and that *B* had paid the assessment,

does not by

terests in the

land from *B*

parties for the ... right, s. 4 (c) of Act X of 1876 does not bar the jurisdiction of the Civil Court. BHAU *v* HARI **I. L. R. 20 Bom. 747**

10. ———— **Forest Officer**—*Bombay Re-*

SECRETARY OF STATE FOR INDIA **I. L. R. 20 Bom. 764**

11. ———— **Free pasturage**—*Bombay Revenue Jurisdiction Act (X of 1876), s 4, cl (f), and s 5—Bombay Survey and Settlement Act (Bom Act I of 1865), s 32—Land Revenue Code (Bom Act V of 1879), ss 38 and 39—Land set apart by Government for grazing—Subsequent sale by Government of part of such land—Right of pasturage by the inhabitants of a village over Government waste lands—Right*

M (defendant No 2) in 1891 The extent of the area over which village cattle grazed before the sale being thus curtailed, the plaintiff for himself and on behalf of the other villagers brought this

plaintiff might be declared to have the right of using the land comprised in the three survey

have jurisdiction to declare that the villagers of a specified village are entitled to rights of free pasturage over Government waste lands within the limits of their village, still they can go on further and

JURISDICTION OF CIVIL COURT—*contd.*

26. RENT AND REVENUE SUITS—*contd.*

(a) BOMBAY—*concld*

against Government respecting the occupation of waste land belonging to Government, the Civil

(b) MADRAS.

12. ——— Enfranchisement by Inam Commissioner. Civil Courts have jurisdiction to enquire into the title of lands enfranchised by the Inam Commissioner, and the sanad granted by the Commissioner may be annulled, without destroying its effect as an enfranchisement of the inam in a suit by the adopted son of the late possessor of *inam to recover it :—Held* that the Court had juris- ... the de- ... d had ... Com- ... ANTRA-VATHI LAKHSMI NARAYANA SASTRULU **2 Mad. 327**

13. ——— Effect of certificate of Inam Commissioner—*Evidence of title.* The certificate of the Inam Commissioner does not afford conclusive evidence of the title of the person, nor is his decision one over which the Civil Courts have no jurisdiction. VISSAPPA *v.* RAMAJOGI

2 Mad. 341

14. ——— Order for execution in suit tried by Village Munsif—*Corruption or partiality of Munsif—Mad Reg IV of 1816.* The

15. ——— Suit for produce of land held on service tenure—*Mad. Reg. VI of 1831.* Regulation VI of 1831 prohibits the Civil Courts from taking cognizance of a suit brought to recover the value of three years' produce of certain land (held by the plaintiff on service inam), on the ground that the defendant, who held a lease from the plaintiff, wrongfully refused to give up possession on the expiration of his lease, and continued to hold the land and to deprive the plaintiff of the possession and enjoyment thereof. *Basappah v. Kooroovatappa, Mad. S. D.* (1858) 268, distinguished. BASAPPAH *v* YENKATAPPA

4 Mad. 70

issued, but certain raiyats appealed under s. 43 by presenting ordinary petitions In disposing of these petitions, the Collector referred certain questions to arbitrators named by the parties, and then made an order in accordance with the award. The

(c) NORTH-WESTERN PROVINCES.

17. ——— Suits for possession of land—*Land in Jhansi—Act XVIII of 1867.*

18 ——— Suit for recovery of proceeds of sale in execution of decree for rent—*Decree of Revenue Court.* Where plaintiff held a decree of a Munsif's Court against certain persons who were cultivators, and issued an attachment against their property, and their zamindar subsequently obtained an order for the execution of a

zamindar for the recovery of such proceeds was cognizable in the Civil Courts. GOKOOL DASS *v.* GUNGESHER SINGH . . **3 N. W. 164**

See GOGARAM *v* KARTICK CHUNDER SINGH . **B L. R. Sup. Vol. 1002**
9 W. R. 514

19. ——— Suit for specific performance of condition of lease A suit to obtain specific performance of the conditions of a lease, and not to cancel the lease or eject the tenant from his holding, is cognizable by a Civil Court, and not by the Revenue Court. ABDOOL GHUNNEE *v.* GOODREE RAI . **2 Agra Pt. II, 192**

20. ——— Suit for declaration of title as holder of revenue-paying estate and for ejectment. A suit for a declaration that the defendant holds an estate paying revenue to Government as a manager subject to ejectment at will, and not under a perpetual lease at a fixed

JURISDICTION OF CIVIL COURT— *contd.*

26. RENT AND REVENUE SUITS—*contd*

(c) North Western Provinces—*contd.*

rate of rent, and for the defendant's ejectment, is one cognizable by the Civil Courts MUHAMMAD ABU JAFAR *v.* WALI MAHAMMAD

I. L. R. 3 All. 81

21. ——— **Suit for mesne profits** The jurisdiction in the case of a claim to mesne profits is in the Civil, and not the Revenue Court. SHUNKUR LALL *v.* RAM LALL

1 N. W. 177 : Ed. 1873, 256

22. — **Suit to eject ex-proprietary tenant as trespasser and recover mesne profits** A suit to eject from land as a trespasser a person who has entered upon such land asserting his claim to the status of an ex-proprietary tenant, and to recover from him mesne profits, is a suit cognizable by the Civil Court BAKHAT RAM *v.* WAZIR ALI . I. L. R. 1 All. 448

23. ——— **Suit to have land restored to original condition after illegal planting of trees by tenant** Where the suit was not for ejectment under Act X, but the zamindar claimed to have the land restored to its original condition by the removal of trees illegally planted by the cultivator *Held*, that such suit was cognizable by the Civil Court and not by the Revenue Court JHONA SINGH *v.* NEAZ BEGUM

2 Agra Pt. II, 183

24. ——— **Suit for the removal of trees**—*Landholder and tenant—Civil and Revenue Courts—N.-W. P Rent Act (XII of 1881), s 93 (b)* *Held*, that a suit by a landholder for the removal of certain trees planted by the defendants upon land [illegible]

[illegible] . . I. L. R. [illegible] All. [illegible]

25. ——— **Suit by landholder for removal of trees planted by tenant**—*Jurisdiction—Civil and Revenue Court— Act XII of 1881, s. 93, (b), (c), (cc).* *Held*, that a suit by a landholder against his tenant for the removal of certain trees [illegible]

I. L. R. [illegible] All. [illegible]

JURISDICTION OF CIVIL COURT— *contd*

[26. RENT AND REVENUE SUITS—*contd.*

(c) North-Western Provinces—*contd.*

27. ——— **Suit by assignee of interest for share of land** In a solehnamah between *B*, the assignor of the plaintiff, and the defendant and a third party, it was agreed that, as *B* held less sir land than the other two persons, there should be an equal division between the shareholders within a certain time, and in case no division took place that *B* should be entitled to damages The plaintiff sued to recover possession of certain sir land and a certain sum as damages for the breach of the contract *Held*, that, if the suit was regarded as one brought by a proprietor, who had purchased a certain share, the suit was not cognizable in the Civil Courts JURBUNDHUN SINGH *v.* SHEORAJ SINGH . . 5 N. W. 184

28. ——— **Suit for possession of land under kabuliat**—*Landholder and tenant—Relinquishment by occupancy-tenant of his holding—Effect of relinquishment on co-sharers—Act XVIII of 1873 (N.-W. P Rent Act), ss 8, 9, 95—Specific performance of contract* *K*, the occupancy-tenant of certain land, to whom the landholder had granted a lease thereof for a certain term, gave the latter a kabuliat containing the following clause: "On the expiration of the term, the landholder shall have the power to keep the said land under my cultivation at the former rent, or at an enhanced rent as may be agreed upon between the parties, or he may make over the land to some other cultivator at an enhanced rent fixed by himself." *K* died before the expiration of the lease, and was succeeded by his sons. On the expiration of the lease, the landholder sued *K's* sons in the Civil Court for possession of the land, claiming under the kabuliat *Per* MAHMOOD, *J*—That, inasmuch as the plaintiff did not seek the determination of the class of the defendants' tenure, and the suit could not be regarded as one for ejectment of a tenant in the manner [illegible]

sharers in the right of occupancy or had succeeded thereto under the provisions of the Rent Act. LALJI *v.* NARAN . . I. L. R. 5 All. 103

29. ——— **Suit for declaration that land is plaintiff's sir and defendant a lessee**—*Landholder and tenant.* A zamindar claimed a declaration that certain land was his sir, and that the defendants were in possession thereof as his lessees. The defendants resisted the claim on the ground that they were tenants of the land at fixed rates, and not lessees of it as the plaintiff's sir. *Held*, that the suit raised the question whether the land was sir, in respect of which no occupancy-

JURISDICTION OF CIVIL COURT— *contd.*

26. RENT AND REVENUE SUITS—*contd.*

(c) NORTH-WESTERN PROVINCES—*contd.*

rights could be treated except by contract, and [illegible]

[illegible] I. L. R. [illegible] All. [illegible]

30. ——— Suit for declaration that tenants are shikmis and not occupancy-tenants, and that their holdings are plaintiff's sir land—*Act XIX of 1873 (N.-W. P. Land Revenue Act), s. 241—N.-W. P. Rent Act (XII of 1881), ss. 10, 95 (a).* The effect of s. 95 (a) and s. 10 of the N.-W. P. Rent Act (XII of 1881) is to [illegible]

[illegible] entertain a suit in which, the defendants being admittedly the tenants of the plaintiffs, the plaintiffs pray for a declaration that certain entries of the defendants in the revenue records as occupancy-tenants and certain orders of the Revenue [illegible]

[illegible] tion, that being merely of importance as incidental to the previous ones, and as a roundabout mode of obtaining a declaration that the defendants are not the plaintiffs' occupancy-tenants *Per* STRAIGHT, J.—The suit might also be considered as one to set [illegible]

[illegible] thus the jurisdiction of the Civil Court was barred by s. 241 of the N.-W P Land Revenue Act (XIX of 1873) MAHESH RAI *v.* CHANDAR RAI

I. L. R. 13 All. 17

31. ——— Suit involving the determination of status of tenant—*N.-W. P. Rent Act (XII of 1881), s. 95.* A Civil Court has no jurisdiction to entertain a suit, the decision of which necessarily involves the determination of the class of tenancy of one or other of the parties to it. *Mahesh Rai v. Chandar Rai, I. L. R. 13 All. 17,* referred to. SAKINA BIBI *v.* SWARATH RAI

I. L. R. 15 All. 115

32. ——— Suit by zamindar to eject as trespassers, persons who claimed to be mortgagees of an occupancy-tenant, such tenants having died without heirs before suit—*N.-W. P. Rent Act (XII of 1881), s. 9.* S P and others, zamindars, sued M K and others as trespassers to eject them from certain land alleged to form part of the plaintiffs' zamindari. The defendants pleaded that they were mortgagees, holding under a mortgage with possession given by one S G, said to be a tenant at fixed rates of the land in suit. It was found that S G had been an occupancy-tenant not at fixed rates, and that he had died without heirs prior to the institution of the suit. *Held,* that the suit brought under the above circumstances was cognizable by a Civil Court. *Sakina Bibi v. Swarath Rai, I. L. R. 15 All. 115,* distinguished. MAHABIR KANDU *v.* SHEO PRASAD RAI . . I. L. R. 16 All. 325

33. ——— Suit for possession against trespassers—*N.-W. P. Rent Act, 1873, XVIII, s. 9—Sale of occupancy-rights with zamindar's consent—Acceptance of rent by zamindar from vendees.* Under a deed, dated in 1879, the occupancy-tenants of land in a village sold their occupancy-rights, and the zamindars instituted a suit for a declaration that the sale-deed was invalid under s. 9 of Act XVIII of 1873 (the N.-W. P. Rent Act in force in 1879), and for ejectment of the vendees, who had obtained possession of the land. It was found that the zamindars had consented to the sale to the vendees, and received from them arrears of rent due on the holding by the vendors, and had recognized them as tenants. *Held, per* MAHMOOD, J. (OLDFIELD, J., dissenting), that the zamindars [illegible]

[illegible] fore not trespassers; and that therefore the question as to ejectment did not fall within the jurisdiction of the Civil Court. DURGA *v.* JHINGURI

I. L. R. 7 All. 511

Upheld on appeal under the Letters Patent in JHINGURI TEWARI *v.* DURGA

I. L. R. 7 All. 878

Reversing the decision of OLDFIELD, J.

34. ——— *N.-W. P. Rent Act (XVIII of 1873)* [illegible]

[illegible] liability to be ejected under s. 39, denying that he held the land by virtue of such lease and alleging that he held it under a right of occupancy. The Revenue Court decided that K held the land under a right of occupancy, and not under such lease. S thereupon sued K in the Civil Court, claiming possession of such land, on the allegation that K was a trespasser, wrongfully retaining possession thereof after the expiration of his lease. *Held,* that the suit was cognizable in the Civil Courts. SUKHDAIK MISR *v.* KARIM CHAUDHARI

I. L. R. 3 All. 521

35. ——— Suit for demolition of a well—*Landlord and tenant—N.-W. P. Rent Act (XVIII of 1873), s. 44.* A suit in which the matter

JURISDICTION OF CIVIL COURT—*contd*

26. RENT AND REVENUE SUITS—*contd*

(c) NORTH WESTERN PROVINCES—*contd.*

in dispute is whether a landholder is entitled to demolish a well constructed by a tenant is not one cognizable in the Revenue Courts, but in the Civil Courts S 44 of Act XVIII of 1873 implicitly authorizes tenants of all classes to construct wells for the improvement of the land held by them, and therefore, where a well constructed by a tenant benefits the land held by him, a suit by the landholder in the Civil Court for its demolition as having been made without his consent is not maintainable RAJ BAHADUR *v* BIRMHA SINGH

I. L. R. 3 All. 85

36 ———— **Suit by assignee of rent against tenant**—*N.-W P Rent Act (XII of 1881), s 93 (d)* A suit by the person, to whom a landholder has assigned rents payable to him by tenants for the ...

I. L. R. 7 All. 200

37 ———— **Assignment of rent of land in satisfaction of interest—"*Jamog*"**—*Mutation of names in favour of assignee not effected—Suit on bond* Subsequently to the execution and registration of a bond, a jamog was made orally between the creditor and the debtor, by which the former agreed to take the rents of certain tenants of the latter in satisfaction of interest, the latter agreed to release the tenants from payment of rent to himself, and the tenants (who were parties to the arrangements) agreed to pay their rents to the creditor No mutation of names in favour of the creditor was effected in the revenue registers. The creditor brought a suit against the debtor to recover the principal and interest agreed to be paid under the bond, alleging that he had never received any rents under the jamog: *Held*, that, whether or not the plaintiff could maintain a suit on the jamog against the tenants for the rent assigned to him in the Revenue Court, he could do so in the Civil Court, and the fact that the jamog was not in writing did not affect the question *Gunga Prasad v. Chandrawati, I L. R 7 All. 256*, referred to AUTU SINGH *v.* AJUDHIA SAHA

I. L. R. 9 All. 249

38. ———— **Suit for share of revenue paid**—*Jurisdiction of Revenue Court N.-W. P. Rent Act (XVIII of 1873)* ...

... recorded proprietor. In January 1874, N who ...

name was expunged, and the name of *B*, who was one of the heirs, was recorded as the proprietor of such share *N* subsequently sued *B* to recover R70-13 4, being the amount which he had paid on ...

1873, but one cognizable in a Civil Court NATH PRASAD *v* BAIJNATH. **I. L. R. 3 All. 66**

39. ———— **Suit for declaration of proprietary right, and right to demand rent**—*N.-W P Rent Act (XVIII of 1873), ss 93, 95.* The plaintiffs in this suit claimed a declaration of their proprietary right in respect of certain lands and possession of the lands, alleging that the defendants were their tenants, and liable to pay rent for the lands The defendants, while admitting the proprietary right of the plaintiffs, alleged that they paid the revenue assessed on the lands, that they paid no rent, and that the plaintiffs were not entitled to rent, and they styled themselves tenants at fixed rates:—*Held*, on appeal, that, as the defendants substantially denied the proprietary title of the plaintiffs and set up a title of their own, the claim of the plaintiffs for a declaration of their proprietary right and of their right to demand rent was a matter which the Civil Court must decide, leaving the plaintiffs to sue in the Revenue Court to eject the defendants, and to recover rent, if the position of the defendants as tenants was established. KANAHIA *v.* RAM KISHEN

I. L. R. 2 All. 429

40. ———— **Suit by co-sharers in a joint undivided mehal for declaration of title to share of rent**—*Civil and Revenue Courts—Act XII of 1881 (N.-W. P. Rent Act), ss. 93 (h), 106, 148—Specific Relief Act (I of 1877), s. 42—Civil Procedure Code, s 11.* The effect and intention of the proviso to s. 148 of the Rent Act (XII of 1881) is to preserve the jurisdiction of the Civil Courts under s. 42 of the Specific Relief Act (I of 1877), while prescribing a special period of one year's limitation for such suits when they arise out of adjudications such as s 148 contemplates. Neither that section nor the proviso affects the jurisdiction of a Civil Court to entertain a suit by some of a body of co-sharers in a joint and undivided mehal for a declaration of their title to receive a proportionate share of the rent payable by the tenants Having regard to s. 11 of the Civil Procedure Code, a suit for the recovery of certain sums of money as the plaintiffs' share for rent alleged by them to have been wrongfully received by the defendants, their co-sharers, and in which the plaintiffs' right to receive any portion of the rent claimed is denied by the defendants, is not barred from the cognizance of the Civil Courts by s. 93 (*h*) of the N.-W. P. Rent Act. That provision

JURISDICTION OF CIVIL COURT—*contd.*

26. RENT AND REVENUE SUITS—*contd.*

(c) NORTH-WESTERN PROVINCES—*contd.*

does not contemplate suits in which such claims of title are so made and resisted But a suit by some of the co-sharers in a joint and undivided mehal for such declaration and such recovery of a proportionate share of rent as above referred to is barred by the provisions of s. 106 of the N.-W. P. Rent Act, in the absence of proof of local custom or special contract authorizing such suits MAHADEO SINGH *v.* BACHU SINGH I. L. R. 11 All. 224

41. ——— Suit for declaration of proprietary title in property said to have been wrongfully distrained—*Civil Procedure Code, s. 11—Act XII of 1881 (N.-W. P Rent Act), ss. 56, 83, 85, 93 (f)—Distress* In execution of a decree against the tenants of certain zamindars, the plaintiff attached and sold certain trees upon the holding of the judgment debtors, and the auction-purchaser in turn transferred them to the plaintiff, who obtained possession Subsequently, one of the judgment-debtors vacated the land on which the trees were situate, and the zamindars let the land to another tenant This last-mentioned tenant having fallen into arrears of rent, the zamindars, purporting to act under s. 56 of the

against the zamindars, praying for a declaration of his right to, and maintenance of, possession of the trees: *Held*, that the plaintiff was entitled, under s. 11 of the Civil Procedure Code, to bring the suit in a Civil Court, and that the Civil Courts were not

ss. 83,

W. P.

DIN

DIAL . . . I. L. R. 12 All. 409

42. ——— Agreement by occupancy-tenant to relinquish his holding—*Suit for specific performance of agreement* The defendant, who was a tenant with a right of occupancy in the land cultivated and held by him, executed a kabuliat in respect of the said land in favour of the plaintiffs (his landlords), agreeing that on the expiry of the term fixed in the kabuliat he should have no claim to retain possession of the cultivatory holding but that he should give it up. Plaintiffs sued for ejectment of the defendant on the basis of the agreement, and obtained a decree from the lower Appellate Court. On second appeal by the defendant. —*Held*, that, inasmuch as the plaintiffs sought to enforce the covenant contained in the kabuliat in such a manner as to extinguish the rights of occupancy found upon the facts of the case to have been acquired by the defendants in the land in suit, such suit must fail, as opposed to the policy of the law as shown in the provisions of s. 9 of the Rent Act (XII of 1881) Such a tenant may be ousted from his holding by enforcement of the remedies given in that behalf in s 95 (*d*) and (*f*) in a suit in the Civil Court, but not in the manner sought by the plaintiff in this action. KAURI THAKURAI *v.* GANGA NARAIN LAL

I. L. R. 10 All. 615

43. ——— Application to a Civil Court for stay of execution of a decree of a Court of revenue— *Civil Procedure Code, 1882, ss 2 and 492—"Decree," meaning of.* The term "decree" as used in the Code of Civil Procedure does not include the decree of a Court of Revenue:—*Held*, therefore that an application under s. 492 of the Code of Civil Procedure for stay of sale in execution of a decree of a Court of revenue in a suit under s 93 of Act XII of 1881 cannot be entertained by a Civil Court ONKAR SINGH *v.* BHUP SINGH . I. L. R. 16 All. 496

44. ——— Suit for maintenance of possession as tenants at fixed rates—*N.-W.*

entered the defendants in the village papers as the tenants at fixed rates, and the plaintiffs merely as

zance of a Civil Court. AJUDHIA RAI *v.* PARMESHAR RAI . . . . I. L. R. 18 All. 340

45. ——— Suit for recovery of possession by tenant dispossessed by a trespasser. Cl. (*n*) of s 95 of Act XII of 1881 (which enacts that suits for recovery of occupancy of land of which a tenant has been wrongfully dispossessed shall be brought in a Court of Revenue) must be

Where the dispossession has been by a trespasser, the suit is one for a Civil Court MAULA *v.* BAHALA

I. L. R. 19 All. 34

46. ——— Suit to recover moveable property sold on account of an arrear of revenue due by a person other than the owner of the property—*N.-W. P. Land Revenue Act (XIX of 1873), s. 241.* Where in satisfaction of an arrear of revenue due by certain defaulters some cattle belonging to another person, who had no concern with the land in respect of which the arrear was due, were sold, it was *held* that the remedy of the owner of the cattle lay entirely in the Courts of revenue, and that no suit

JURISDICTION OF CIVIL COURT—*contd.*

26. RENT AND REVENUE SUITS—*contd.*

(c) NORTH-WESTERN PROVINCES—*contd.*

would lie in a Civil Court respecting such sale. SECRETARY OF STATE FOR INDIA v. MAHADEI I. L. R. 19 All. 127

47. ——— **Jurisdiction of Civil Courts where no remedy obtainable in Courts of revenue**—*N.-W. P Rent Act (XII of 1881), s 95 (n)—N.-W P. Land Revenue Act (XIX of 1873), s. 64* A plaintiff brought his suit in a Civil Court alleging that he was entitled to the possession of certain land as a tenant at fixed rates, and that in consequence of the order of a settlement officer, he had been dispossessed by certain persons, alleged by him to be trespassers without title, whom he made defendants, together with the zamindar of the land in dispute:—*Held*, that, inasmuch as the plaintiff could, under the circumstances indicated in his plaint, have obtained no relief from a Court of revenue, the Civil Court was competent to entertain the suit, and to give the plaintiff a decree for possession as against the defendants, other than the zamindar, who were found to be trespassers, notwithstanding that the Civil Court could not declare what was the nature of the plaintiffs' tenancy. *Tarapat Ojha v. Ram Ratan, I. L R 15 All 387*, and *Ajudhia Rai v. Parmeshar Rai, I. L R. 18 All 340*, distinguished. DUKHNA KUNWAR v. UNKAR PANDE . I. L. R. 19 All. 452

48. ...

eject a trespasser, it is competent to a Civil Court to grant a decree for possession on the ground that the plaintiff is a tenant, the class of his tenancy being left to the Revenue Courts to determine. *Ajudhia Rai v. Parmeshar Rai, I. L. R 18 All. 340*, and *Dukhna Kunwar v. Unkar Pande, I. L. R 19 All. 452*, referred to. KALIANI v DASSU PANDE . . . . I. L. R. 20 All. 520

49. ——— **Suit to set aside, on the ground of duress, an agreement by an ex-zamindar for surrender of his sir land.** On the sale of a village, the vendor covenanted with ...

... a declaration that the said agreement was void and unenforceable, and had been extorted from him by undue influence. *Mahesh Rai v. Chander Rai, I. L. R. 13 All. 17*; *Ajudhia Rai v. Parmeshar Rai, I. L. R. 18 All. 340*; and *Hussain Shah v. Gopal Rai, I. L. R. 2 All. 428*, referred to. DAULAT RAM v ANWAR HUSEN I. L. R. 20 All. 241

50. ——— **Effect on tenant's rights of his neglecting to apply under s. 95**—*N.-W. P. Rent Act (XII of 1881), s 95, cl (n)* A tenant of certain muafi land was dispossessed by ...

ation for an application under that section, he dispossessed the zamindars, who had meanwhile taken the land in suit into their own cultivation. The zamindars thereupon sued in the Civil Court for ...

tion of the Civil Courts. DALIP RAI v. DEOKI RAI I. L R. 20 All. 471

Held, on appeal under the Letters Patent, that the failure of a tenant to apply under s 95 (n) of the N.-W. P. Rent Act, 1881, for the recovery of the occupancy of land, of which he has been wrongfully dispossessed, within the period of six months after the date of dispossession prescribed for such ... not only of ... extinguishing ... of the land.

I. L. R. 21 All. 204

51. ——— **Suit to eject a tenant on** ...

may have for desiring to eject a tenant of agricultural land has nothing to do with the procedure to be adopted for the tenant's ejectment. Where the procedure laid down in s. 36 *et seq.* of the N.-W. P. Rent Act, 1881, is available, the landholder must adopt that procedure, and the mere fact that the ...

I. L. R. 21 All. 143

52. ——— **Remedy of mortgagee for non-payment of rent**—*Mortgage—Lease of mortgaged premises by mortgagee to mortgagor—Jurisdiction of Revenue Court.* Certain mortgagees ...

mortgagor. The two documents were registered on the same day. The amount of rent reserved by the lease was exactly equivalent to the amount of

JURISDICTION OF CIVIL COURT—*contd.*

26. RENT AND REVENUE SUITS—*contd.*

(c) NORTH-WESTERN PROVINCES—*contd*

interest payable under the mortgage, and the mortgage-deed contained a covenant that any arrears due by the lessee should be a charge upon the mortgaged property. In the counterpart of the lease also a similar covenant making the mortgaged property security for the rent payable under the lease was inserted :—*Held*, that, under the above circumstances, the mortgage and the lease formed

KHAN *v.* LALTA PRASAD **I. L. R. 19 All. 496**

53. ———— Suit for possession and mesne profits alleging tenancy and dispossession—*Act XVIII of 1873, s 95* The plaintiffs sued to recover possession of certain land on the averment that they were occupancy-tenants and the defendants had forcibly dispossessed them, and also to recover mesne profits The defendants set up a rival title, but were found by the Court of first instance, which decreed the claim, to be the plaintiff's shikmis The decree of the lower Appellate Court dismissing the suit as one of which the Civil Courts were precluded from taking cognizance by s. 95, Act XVIII of 1873, was reversed, and the suit remanded to it for disposal on the merits MATA PARSHAD *v* JANKI . **7 N. W. 226**

54. ———— Suit by tenant against sub-tenant for ejectment—*Landholder and tenant—Act XII of 1881 (N.-W. P Rent Act), Ch. II (B), ss 93, 95, 148* The plaintiffs, alleging that they were the occupancy tenants of certain land, that they had sub-let its cultivation to the defendants, and that the defendant had denied their title and set up a claim to be the tenant-in-chief under the zamindar, sued in the Civil Court

... of the N.-W. P. Rent Act RIBBAN *v* PARTAB SINGH . . **I. L. R. 6 All. 81**

55. ———— Suit to eject mortgagee of occupancy tenant—*N. W P. Rent Act (XII of 1881), ss 93, 94—Limitation* A suit by the zamindar to eject the mortgagee of an occupancy-holding or his representatives in possession does not fall within ss 93 (b) and 94 of the N.-W. P. Rent Act, but is cognizable by a Civil Court under the rules of limitation applicable to suits in such Courts MADHO LALL *v* SHEO PRASAD MISR

I. L. R. 12 All. 419

56. ———— Suit for ejectment against occupancy-tenant and his mortgagee—*N.-W. P. Rent Act (XII of 1881), s. 94.—Limitation.* The plaintiff, a zamindar sued an occupancy-tenant for ejectment under s. 93 (b) of the N.-W. P. Rent Act (XII of 1881), and to that suit one *C D*, a mortgagee of the occupancy-holding who had obtained a foreclosure decree against the occupancy-tenant, got himself made a party defendant under s. 112A of the Act. The pleadings, however, were not amended, and the suit proceeded to appeal before the District Judge :—*Held*, that, under the above circumstances, the suit as against *C D*, the intervening defendant (who, so far as the plaintiff was concerned, was a trespasser), was of a civil nature and triable by the Civil Court, and therefore subject to the ordinary rules of limitation as laid down in the Limitation Act, and not to the special limitation prescribed by s. 94 of Act XII of 1881. SRI KISHEN *v.* ISHRI . **I. L. R. 14 All. 223**

57. ———— Suit for possession alleging tenancy and dispossession—*N.-W P. Rent Act (XVIII of 1873), s 75* The plaintiff sued the defendants (who were not his landlords) to recover possession of certain land on the averment that he held the same with a right of occupancy and had been forcibly dispossessed by them, and also to recover mesne profits. The defendants denied the alleged ejectment, and alleged that they were in possession of the land under a lease from the zamindar. It was held that the suit was one of which the Civil Courts could take cognizance RAGHOBAR MISSER *v.* SITAL . **7 N. W. 228**

58. ———— Suit for possession after being dispossessed unlawfully—*N.-W. P. Rent Act (XVIII of 1873), s 95* *Held*, that the Civil Courts were precluded by the provisions of s 95 of Act XVIII of 1873 from taking cognizance of a claim to obtain possession of a tenant-holding based on the averment that the zamindar, the real defendant, had sanctioned a mortgage of the holding to the plaintiff, and appropriated the mortgage-money in satisfaction of arrears of rent due by the tenant, the mortgagor and *pro formâ* defendant, and that, having placed the plaintiff into possession, he had subsequently wrongfully dispossessed him. MUAZZIM ALI KHAN *v.* SHEO PARSHAD . . . . **7 N. W. 259**

59. ———— Suit to recover sir land from person having no right to possession—*N.-W. P. Rent Act (XVIII of 1873), s 95. Held*, that the Civil Courts were not precluded by the provisions of s. 95 of Act XVIII of 1873

which needed to be determined, but only the question whether the defendants took possession of the

JURISDICTION OF CIVIL COURT—*contd.*

26. RENT AND REVENUE SUITS—*contd.*

(c) NORTH-WESTERN PROVINCES—*contd.*

land in dispute, with or without right, as trespassers or as tenants GHISA v DIDARI 7 N. W. 257

60. — Suit for ejectment of person wrongfully in possession as tenant—*N.-W P Rent Act (XVIII of 1873), s. 95 Held,* in accordance with the opinion of TURNER, SPANKIE, and OLDFIELD, *JJ* (STUART, *C J*, and PEARSON, *J*, dissenting), that the Civil Courts were not precluded by the provisions of s 95 of Act XVIII of 1873 from disposing, after the passing of the Act, of a suit which was instituted in the Court of first instance before the passing thereof, in which the main matter in dispute was whether the plaintiff was entitled to eject the defendants from their holding on the ground of their not having a right of occupancy, and retaining possession of the holding wrongfully after the expiry of the term of the lease granted to their father RADHA PARSHAD SINGH v BALMUKAND ODJA . 7 N. W 318

61. ——— Suit for perpetual injunction to restrain ejectment of tenant—*Act XII of 1881—N.-W P Rent Act, s 95—Specific Relief Act (I of 1877), s. 56 (b) and (f).* A tenant, on whom a notice of ejectment had been served under the N.-W. P. Rent Act, 1881, and whose suit to contest his liability to ejectment, brought under that Act, had failed, sued in the Civil Court for a perpetual injunction to prevent his ejectment, basing his suit on an agreement that he should not be ejected so long as he paid a certain rent: *Held*, that the suit was not maintainable, the [illegible]

62. ——— Suit by landlord to determine nature of tenant's tenure—*N.-W P. Rent Act (XII of 1881), s 95 (a).* The cognizance by the Civil Courts of a suit by a landholder for a declaration that a tenant is not a tenant at fixed rates, or an occupancy-tenant, but a tenant-at-will, is barred by the provisions of s. 95 (a) of the N.-W. P. Rent Act, 1881 MAHARAJA OF BENARES v. ANGAN . . . I. L. R. 7 All. 112

63. ——— Suit for declaration of [illegible]

village, and the defendants are tenants thereof at [illegible]

[illegible] Courts, but not as regards the other claims, such claims raising questions under s. 10 and s 95 (a) and (l), N.-W. P. Rent Act, 1881, exclusively

cognizable in the Revenue Court ANTU v GHULAM MUHAMMAD KHAN I. L. R. 6 All. 110

64. [illegible]

sion of certain land by virtue of a grant [illegible] him, land the the [illegible]

STUART, *C J*, PEARSON, *J*., and SPANKIE, *J*., that the suit was cognizable by the Civil Courts JAGAN NATH PANDAY v. PRAG SINGH

I. L. R. 2 All. 545

65. ——— Suit for damages for use and occupation of land—*N.-W. P. Rent Act XII of 1881), s 95 (l)—Landholder and tenant—Sir land—Determination of rent of ex-proprietary tenant.* A co-sharer, in whose mehal, assigned on partition, sir land belonging to another co-sharer had been included, without having applied to the Revenue Court to have the rent of the latter in respect of such sir land determined [illegible]

I. L. R. 4 All. 515

66. ——— *Suit against an evicted tenant for damages for use and occupation* [illegible]

[illegible] All. 200

67. ——— *Landholder and tenant—Ex-proprietary tenant—Rent Act XII of 1881 (N.-W. P. Rent Act), ss. 95 (l), 216. T*, who had acquired the proprietary rights of *D* in a certain mehal, sued *D* in a Civil Court for damages for the use and occupation of sir land of which *D*, on

JURISDICTION OF CIVIL COURT—*contd.*

26. RENT AND REVENUE SUITS—*contd*

(c) NORTH-WESTERN PROVINCES—*contd.*

interest payable under the mortgage, and the mortgage-deed contained a covenant that any arrears due by the lessee should be a charge upon the mortgaged property. In the counterpart of the lease also a similar covenant making the mortgaged property security for the rent payable under the lease was inserted:—*Held*, that, under the above circumstances, the mortgage and the lease formed merely different parts of the same transaction, and that the mortgagees were entitled to seek their remedy for non-payment of the rent reserved in a Civil Court by means of a suit upon the mortgage, and were not obliged to have recourse to a suit for rent in a Court of Revenue *Baghelin v. Mathura Prasad, I. L. R. 4 All 430*, followed ALTAF ALI KHAN v LALTA PRASAD **I. L. R. 19 All. 496**

53. ——— Suit for possession and mesne profits alleging tenancy and dispossession—*Act XVIII of 1873, s 95* The plaintiffs sued to recover possession of certain land on the averment that they were occupancy-tenants and the defendants had forcibly dispossessed them, and also to recover mesne profits The defendants set up a rival title, but were found by the Court of first instance, which decreed the claim, to be the plaintiff's shikmis The decree of the lower Appellate Court dismissing the suit as one of which the Civil Courts were precluded from taking cognizance by s. 95, Act XVIII of 1873, was reversed, and the suit remanded to it for disposal on the merits MATA PARSHAD v JANKI . . **7 N. W. 226**

54. ——— Suit by tenant against sub tenant for ejectment—*Landholder and tenant—Act XII of 1881 (N.-W. P Rent Act), Ch. II (B), ss 93, 95, 148* The plaintiffs, alleging that they were the occupancy-tenants of certain land, that they had sub-let its cultivation to the defendants, and that the defendant had denied their title and set up a claim to be the tenant-in-chief under the zamindar, sued in the Civil Court to establish the right they claimed to the land and for possession of the land:—*Held*, that the cognizance of the suit in the Civil Court was not barred by s 93 or 95 of the N.-W. P Rent Act RIBBAN v PARTAB SINGH . . **I. L. R. 6 All. 81**

55. ——— Suit to eject mortgagee of occupancy tenant—*N. W P Rent Act (XII of 1881), ss 93, 94—Limitation.* A suit by the zamindar to eject the mortgagee of an occupancy-holding or his representatives in possession does not fall within ss 93 (*b*) and 94 of the N.-W. P. Rent Act, but is cognizable by a Civil Court under the rules of limitation applicable to suits in such Courts. MADHO LALL v SHEO PRASAD MISR

I. L. R. 12 All. 419

56. ——— Suit for ejectment against occupancy-tenant and his mortgagee—*N.-W. P Rent Act (XII of 1881), s 94.—Limitation.* The plaintiff, a zamindar sued an occupancy-tenant for ejectment under s 93 (*b*) of the N.-W. P. Rent Act (XII of 1881), and to that suit one *C D*, a

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before the District Judge.—*Held*, that, under the above circumstances, the suit as against *C D*, the intervening defendant (who, so far as the plaintiff was concerned, was a trespasser), was of a civil nature and triable by the Civil Court, and therefore subject to the ordinary rules of limitation as laid down in the Limitation Act, and not to the special limitation prescribed by s 94 of Act XII of 1881. SRI KISHEN v ISHRI . **I. L. R. 14 All. 223**

57. ——— Suit for possession alleging tenancy and dispossession—*N.-W P Rent Act (XVIII of 1873), s 75* The plaintiff sued the defendants (who were not his landlords) to

also to recover mesne profits The defendants denied the alleged ejectment, and alleged that they were in possession of the land under a lease from the zamindar It was held that the suit was one of which the Civil Courts could take cognizance RAGHOBAR MISSER v SITAL . **7 N. W. 228**

58. ——— Suit for possession after being dispossessed unlawfully—*N.-W. P. Rent Act (XVIII of 1873), s 95. Held*, that the Civil Courts were precluded by the provisions of s 95 of Act XVIII of 1873 from taking cognizance of a claim to obtain possession of a tenant-holding based on the averment that the zamindar, the real defendant, had sanctioned a mortgage of the holding to the plaintiff, and appropriated the mortgage-money in satisfaction of arrears of rent due by the tenant, the mortgagor and *pro formâ* defendant, and that, having placed the plaintiff into possession, he had subsequently wrongfully dispossessed him. MUAZZIM ALI KHAN v. SHEO PARSHAD . . . **7 N. W. 259**

59. ——— Suit to recover sir land from person having no right to possession—*N.-W. P. Rent Act (XVIII of 1873), s. 95. Held*, that the Civil Courts were not precluded by the provisions of s. 95 of Act XVIII of 1873

which needed to be determined, but only the question whether the defendants took possession of the

JURISDICTION OF CIVIL COURT—*contd.*

26. RENT AND REVENUE SUITS—*contd.*

(c) NORTH-WESTERN PROVINCES—*contd.*

land in dispute, with or without right, as trespassers or as tenants. GHISA *v.* DIDARI **7 N. W. 257**

60. Suit for ejectment of person wrongfully in possession as tenant— *N.-W. P. Rent Act (XVIII of 1873), s. 95.* *Held*, in accordance with the opinion of TURNER, SPANKIE, and OLDFIELD, JJ. (STUART, C.J., and PEARSON, J., dissenting), that the Civil Courts were not precluded by the provisions of s. 95 of Act XVIII of 1873 from disposing, after the passing of the Act, of a suit which was instituted in the Court of first instance before the passing thereof, in which the main matter in dispute was whether the plaintiff was entitled to eject the defendants from their holding, on the ground of their not having a right of occupancy, and retaining possession of the holding wrongfully after the expiry of the term of the lease granted to their father. RADHA PARSHAD SINGH *v.* BALMUKAND ODJA . **7 N. W. 318**

61. ——— Suit for perpetual injunction to restrain ejectment of tenant— *Act XII of 1881—N.-W. P. Rent Act, s. 95—Specific Relief Act (I of 1877), s. 56 (b) and (f).* A tenant, on whom a notice of ejectment had been served under the N.-W. P. Rent Act, 1881, and whose suit to contest his liability to ejectment, brought under that Act, had failed, sued in the [illegible]

[illegible]

62. ——— Suit by landlord to determine nature of tenant's tenure— *N.-W. P. Rent Act (XII of 1881), s. 95 (a).* The cognizance by the Civil Courts of a suit by a landholder for a declaration that a tenant is not a tenant at fixed rates, or an occupancy-tenant, but a tenant-at-will, is barred by the provisions of s. 95 (a) of the N.-W. P. Rent Act, 1881. MAHARAJA OF BENARES *v.* ANGAN . . . **I. L. R. 7 All. 112**

63. ——— Suit for declaration of proprietary right to land— *Suit for a declaration* [illegible]

the will of the plaintiffs and liable to have the rent enhanced at the will of the plaintiffs, is, as regards the claim for a declaration of title, cognizable in the Civil Courts, but not as regards the other claims, such claims being cognizable under s. 19 and s. 95 (a) and ... N.-W. P. Rent Act, 1881, exclusively

cognizable in the Revenue Court. AJUB *v.* GHULAM MUHAMMAD KHAN **I. L. R. 6 All. 110**

64. ——— Suit to recover under grant [illegible] *Act (XVIII* [illegible] *Revenue Act* [illegible] *Jurisdiction of Revenue Court.* The plaintiff claimed the possession of certain land by virtue of a grant thereof to him, not merely of the proprietary right in such land, but of the rents of the same undiminished by the payment of the revenue assessed thereon which the grantor took upon himself to pay. *Held* per STUART, C.J., PEARSON, J., and SPANKIE, J., that the suit was cognizable by the Civil Courts. JAMAN NATH PANDAY *v.* PRAG SINGH

I. L. R. 8 All. 545

65. ——— Suit for damages for use and occupation of land— *N.-W. P. Rent Act (XII of 1881), s. 95 (l)—Landholder and tenant—Sir land—Determination of rent of ex-proprietary tenant.* A co-sharer, in whose mehal, assigned on partition, sir land belonging to another co-sharer had been included, without having applied to the Revenue Court to have the rent of the latter in [illegible]

I. L. R. 4 All. 515

66. ——— Suit against an evicted tenant for damages for use and occupation. If a landholder wishes to get rent from a tenant of his agricultural land, he must, during the continuance of the tenancy, either come to an agreement with the tenant as to the rent to be paid or get the rent fixed by means of an application under Act XII of 1881. If no rent has been fixed, the land- [illegible]

117, overruled. DEBI SINGH *v.* MUHAMMAD ISMAIL KHAN . **I. L. R. 20 All. 296**

67. ——— Landholder and tenant—Ex-proprietary tenant—Rent Act XII of 1881 (N.-W. P. Rent Act), ss. 95 (l), 116. *T,* who had acquired the proprietary rights of *D* in a certain mahal, sued *D* in a Civil Court for damages for the use and occupation of certain land of which *D*, as

JURISDICTION OF CIVIL COURT—*contd*

26. RENT AND REVENUE SUITS—*contd.*

(c) NORTH-WESTERN PROVINCES—*contd.*

losing such rights, had become by law the ex-proprietary tenant :—*Held*, that, *T* being *D's* landlord, such suit was not maintainable in the Civil Courts *Ram Prasad Rai* v *Dina Kuar, I. L R. 4 All 515 ; S A No. 768 of 1881 ;* and *S. A. No. 914 of 1879*, followed : *Held*, also, that the provisions of s 206 of the N-W. P. Rent Act were not applicable, it not being possible to treat the suit as being in any respect the claim that alone *T* was entitled to make on *D*, which was a claim for rent assessed or ascertained in the mode provided in that Act DHIAN RAI v THAKUR RAI

I. L. R. 5 All. 25

68. ———— Suit for money wrongly collected as rent—*Lease of zamindari rights—Wrongful dispossession—Lessor and lessee—Suit for compensation—N-W P Rent Act (XVIII of 1873), s 95, cl (m)* *A* granted *B* a lease of his zamindari rights in certain villages for a term of years at a fixed annual rent Two years before the term expired, in breach of the conditions of the lease, he dispossessed *B*, and thereafter made collections of rent from the agricultural tenants himself *B* sued him in the Civil Court to recover the money so collected by him in those two years. *Held* (by a majority of the Full Bench), that the

cognizance of the suit *Per* STUART, *C J*, and SPANKIE, *J* —That as the matter was not one on

I. L. R. 1 All. 338

69. ———— Suit to recover alleged ... gation ... 1873), ... age Act

...WANT SINGH v SECRETARY OF STATE FOR INDIA

I. L. R. 22 All. 139

70. — Suit for possession of land and for mesne profits—*N.-W. P. Rent Act (XVIII of 1873), s 95, cls (m) and (n)—Revenue Court, jurisdiction of* *T*, the occupancy-tenant of certain lands, gave *K* a lease of his occupancy-rights for a term of twenty years In the execution of a decree for the ejectment of *T* from such lands obtained by the landholder against *T* in a suit to which *K* was no party, *K* was ejected from such lands. This decree was subsequently

JURISDICTION OF CIVIL COURT—*contd.*

26. RENT AND REVENUE SUITS—*contd.*

(c) NORTH-WESTERN PROVINCES—*contd.*

set aside, and *T* recovered the occupancy of such lands : *Held*, in a suit by *K* against *T* and the landholder, in which *K* claimed the occupancy of the lands and mesne profits for the period during his dispossession, in virtue of the lease, that the suit was cognizable in the Civil Courts, and not one on the subject-matter of which an application of the nature mentioned in s 95 of Act XVIII of 1873 could have been made, so as to give the Courts of Revenue exclusive jurisdiction in such matter KALIAN DAS v TIKA RAM I. L. R. 2 All. 187

71. ———— Suit for compensation for wrongful dispossession—*N.-W. P. Rent Act, 1873, s 95, cls. (m) and (n)—Wrongful dispossession of land* In an estate held by *S* as a sub-proprietor he held certain land with a right of occupancy. *G*, the zamindar, obtained a decree against *S* in a Civil Court for the possession of the estate, in exe-

standing on such land at the time he was ousted

SAWAI RAM v. GIR PRASAD SINGH

I. L. R. 2 All. 707

72. ———— *N-W. P. Rent Act (XII of 1881), ss 30 and 95, cls (m) and (n)—Dispossession by process of law—Suit to recover damages for such dispossession* The expressions "wrongful dispossession" in cl (*m*) and "wrongfully dispossessed" in cl. (*n*) of s. 95 of Act XII of 1881 do not include a dispossession by order of

of a superior court of revenue, sues the evicting zamindar for damages, such a suit may be brought in a Civil Court *Sawai Ram v. Gir Prasad Singh, I L. R. 2 All 707*, and *Dhundu Bhagat* v. *Lal Pande, 1 Leg Rem R* and *R. 183*, referred to. THAKUR DIN v. MANNU LAL

I. L. R. 19 All. 456

73. ———— Suit for declaration of right to re-formed land—*Landlord and tenant—Submergence of occupancy-tenant's land—Diluvion—L ...*
—Custo...
cl. (n)
when land was submerged, and the tenant ceased to pay rent for the same, his right to it abated, and when the land re-appeared the landholder was entitled to possession thereof ; that certain land be-

JURISDICTION OF CIVIL COURT—*contd*

26. RENT AND REVENUE SUITS—*contd*

(c) NORTH-WESTERN PROVINCES—*contd.*

longing to him had been submerged, and the occupancy-tenant thereof had ceased to pay rent for it; and that such land had re-appeared and had come into his possession under such custom, sued such tenant in the Civil Court for a declaration of his right to the possession of it: *Held*, that the suit, even if maintainable was not, with reference to the provisions of s 95, cl (n), of Act XII of 1881, cognizable in the Civil Courts KUPIL RAI v. RADHA PRASAD . . I. L. R. 5 All. 260

74. ——— Suit for recovery of land of which tenant has been dispossessed—*Relation of landlord and tenant admitted—Act XII of 1881, s 95, cl (n)* A landholder served a notice of ejectment on G, under the provisions of s 36 of the Rent Act (N.-W. P.), as a tenant-at-will. [illegible]

[illegible] decided adversely to him, and he was ejected under s 40 of the Act. He subsequently sued the landholder in the Civil Court for possession of the land, by virtue of the agreement, alleging that his eject- [illegible]

[illegible] at the time of the proceedings under the Rent Act was admitted, and the dispute in the suit could appropriately form the subject of an application under cl (n) of s 95 of that Act, the suit was not cognizable in the Civil Courts. *Muhammad Abu Jafar* v. *Wali Muhammad, I. L. R 3 All 81;* [illegible]

75. ——— *N.-W. P. Rent Act, ss 93, 95, cls, (m), (n)—Landholder and tenant—Jurisdiction of Revenue Court.* No suit will lie against a landlord in a Civil Court for the wrongful [illegible]

[illegible] cases returned under s 57 of the same Code. The plaintiffs, alleging themselves to be occupancy-tenants and to have been wrongfully dispossessed by their landlords, who had made a lease of the land in suit sued the landlords and the lessees of such landlords for recovery of possession and for damages: *Held*, that such suit was not cognizable

JURISDICTION OF [illegible]—*contd.*

26. RENT AND REVENUE [illegible]

(c) NORTH-WESTERN [illegible]

by a Civil Court, but was exclusively [illegible] Court of revenue *Shimbhu* [illegible] *I. L R 2 All. 200,* approved. [illegible] RAM RATAN KUAR . I. L. R. [illegible]

76. ——— Suit for declaration of right as tenant—*Landholder and tenant*—[illegible]

[illegible] as a tenant, and in which the [illegible] relation between him and the plaintiff [illegible] and tenant, is not a suit which is [illegible] nizable in the Revenue Court. [illegible] SINGH v. RAMESHAR DIAL I. L. R. [illegible]

77. ——— Suit for rent where the right to receive it is disputed—[illegible] *Rent Act (XII of 1881), s. 148*—[illegible] *tenant—Third person.* In a suit for [illegible] landholder and a tenant under the [illegible] Act, 1881, where the right to receive [illegible] any rights which the landholder [illegible] against the third person, who [illegible] party to the suit, under s 148 of the [illegible] be enforced through the medium [illegible] by a suit for declaration of title [illegible] any rents improperly collected [illegible] *Held,* therefore, where in such [illegible] that the third person had actually [illegible] received the rent sued for, the [illegible] have been decreed against him [illegible] been dismissed. MADHO PRASAD [illegible]

I. L. R. [illegible]

78. ——— [illegible] *Act, 1881, s. 148—Landholder* [illegible] *person who has received rent* [illegible] *tion of Rent Court to pass decree* [illegible] *party—Question of title.* In a [illegible] for recovery of rent in which [illegible] to have received such rent [illegible] s 148 of the N.-W. P. Rent [illegible] question of title to receive [illegible] determined between the [illegible] but can only be litigated [illegible] sequent suit in the Civil Court [illegible] between the plaintiff and [illegible] party which can be determined [illegible] under s 148 is the actual [illegible] the rent. A party who is [illegible] the Rent Act cannot be [illegible] for rent so as to allow [illegible] against him, whether his [illegible] joyment of the rent is [illegible] person against whom suit [illegible] is the tenant. *Madho* [illegible] *5 All. 502,* referred to [illegible] that the intention of the [illegible]

JURISDICTION OF CIVIL COURT—*contd.*

26. RENT AND REVENUE SUITS—*contd.*

(c) NORTH-WESTERN PROVINCES—*contd.*

third person who claims under s. 148 of the Rent Act to be made a party to the suit may possibly have been that, by bringing him in, he may be bound by a declaration in the suit that he had in fact received the rent, so as to prevent him in the civil suit from denying the fact that he had received it. In a suit by landholder for recovery of rent, the defendants pleaded that they had paid the rent to a co-sharer of the plaintiff. The co-sharer made a deposition in which he alleged that he was entitled to the rent not only as a co-sharer, but also as appointed agent of the plaintiff. The Court thereupon made him a party to the suit under s. 148 of

I. L. R. [illegible] All. 551

79. ———— Occupancy-tenant—*Suit by landholder against successor of occupancy-tenant for arrears of rent which accrued during the lifetime of his predecessors—Act XII of 1881 (N.-W. P. Rent Act), ss. 9, 33, cl. (a), 112A, 161.* A suit against an occupancy-tenant in possession who has accepted the occupancy-holding, for arrears of rent not barred by limitation which

cognizable by a Court of Revenue. So *held* by the Full Bench, MAHMOOD, J., dissenting. The following cases were referred to:—*Jyeperkash* v. *Shewpurshad, 1 N.-W. P. S. D. A. (1861) 230; Mata Deen Doobey* v. *Chundee Deen Doobey, 6 N.-W. 118; Mata Deen* v. *Chundee Deen, 2 N.-W. 54; Wazir Muhammad* v. *Amanat Khan, All. Weekly Notes (1883), 172, Bhikhan Khan* v. *Ratan Kuar, I. L. R. 1 All. 512; Ahmud-ud din Khan* v. *Majlis Rai, I. L. R. 5 All. 438; Ashootosh Chuckerbutty* v. *Baneemadhub Mookerjee, 1 Rev. Civ. and Cr. Rep. 26; Benod Behary Mookhopadhaya* v. *Beer Narain Roy, 1 Rev. Civ. and Cr. Rep. 46; Hossein Ali Beg* v. *Ashruff Ali Beg, N.-W. P. S. D. A. (1865) 221; Gopal Pandey* v. *Parsotam Das, I. L. R. 5 All. 121; Mahadeo Singh* v. *Bachu Singh, I. L. R. 11 All. 221;* and *Waris Ali* v. *Muhammad Ismail, I. L. R. 8 All. 552.* LEKHRAJ SINGH v. RAI SINGH . I. L. R. 14 All. 381

80. Suit for contribution among pattidars for Government revenue. —*Revenue Court—N.-W. P. Land Revenue Act (XIX of 1873).* The question in the case was whether the plaintiff, a pattidar who had paid a sum on account of a demand for Government revenue, should sue to recover from the defendants his co-pattidars, the balance in excess of his own quota in the Civil or in the Revenue Court:—*Held,* (SPANKIE, J., dissenting), that the Civil Courts were competent to entertain suits of the nature. *Per* SPANKIE, J., *contra.* RAM DIAL v. GOLAB SINGH I. L. R. 1 All. 26

81. ———— Suit for determination of rights—*Record-of-rights, entries in—N.-W. P. Land Revenue Act (XIX of 1873), ss. 62, 91, 94, 241—Jurisdiction of Revenue Courts.* The Civil Courts are not competent to try suits to alter or amend a record-of-rights, or to give directions in respect of the same, but they are not debarred from entertaining and determining questions of right, merely because such questions have been the subject of entries in the record-of-rights, and because such determination may show that such entries are wrong and need correction. Conse-

record-of-rights adverse to the person claiming such right, was *held* to be maintainable. SUNDAR v. KHUMAN SINGH . I. L. R. 1 All. 614

82. ———— Suit for declaration of

83. ———— Suit for ejectment—*Act XII of 1881 (North-Western Provinces Rent Act), ss. 93, 97—Jurisdiction—Civil and Revenue Courts—Suit to eject as a trespasser a person who claimed to be entitled to succeed to the holding of a deceased occupancy tenant.* Upon the death of an occupancy

decision of the Court of Revenue allowing mutation of names in the defendant's favour could not operate as *res judicata* in respect of the present suit. *Subarni* v. *Bhagwan Khan, I. L. R. 19 All. 101,* distinguished. *Sheo Narain Rai* v. *Parmeshar Rai, I. L. R. 18 All. 270; Dukhna Kuar* v. *Unkar Pande, I. L. R. 19 All. 452;* and *Kaliani* v. *Dassu Pande, I. L. R. 20 All. 520,* referred to. BABU MAL v. NIADAR (1901)

I. L. R. 23 All. 360

JURISDICTION OF CIVIL COURT—*contd.*

26. RENT AND REVENUE SUITS—*contd.*

(c) NORTH-WESTERN PROVINCES—*contd.*

84. ——————— *Act XII of 1881 (North-Western Provinces Rent Act), ss. 93, 95—Act XIX of 1873 (North-Western Provinces Land Revenue Act), s. 102—Jurisdiction—Civil and Revenue Courts—Suit to eject as a trespasser a person who claimed to be entitled to the holding of a deceased occupancy tenant—Res judicata* Upon the death of an occupancy-tenant, a person, who alleged that he was entitled to succeed to the deceased's occu-

was properly brought in a Civil Court, and could not have been instituted in a Court of Revenue, and the decision of the Revenue authorities allowing mutation of names in the defendant's favour could not operate as *res judicata* in respect of such suit. *Subarni v Bhaguan Khan, I L. R. 19 All. 101*, distinguished. NIADAR *v.* BARU MAL (1901) I. L. R. 24 All. 153

85. ——————— Suit to enforce cess—*N.-W. P. Land Revenue Act (XIX of 1873), s 66.*

Court LALA *v.* HIRA SINGH I. L. R. 2 All. 49

86. ——————— Suit to dispute partition by Revenue Court—*Question of proprietary right decided by Revenue Court under Act XIX of 1873 (N.-W. P. Land Revenue Act), s 132—Omission by Revenue Court to frame decree—Decision of Revenue Court not open to attack by suit in Civil Court* A Revenue Court acting under the provisions of ss. 112 and 113 of the N.-W. P. Land

No decree was framed in accordance with this proceeding: *Held*, that, the proceeding of the Revenue Court was a decision by a Court of competent jurisdiction, and could not be interfered with by a suit in the Civil Court disputing its correctness. BHOLA *v.* RAMDHIN . I. L. R. 7 All. 894

See RANJIT SINGH *v.* ILAHI BAKSH I. L. R. 5 All. 520

87. ——————— Question of title arising on an application for partition, how to be determined.—*N.-W. P. Land Revenue Act (XIX of 1873), s. 113.* If a Revenue Court in disposing

suing in a Civil Court for a declaration of their right to partition NASRATULLAH *v.* MUJIB-ULLAH I. L. R. 13 All. 309

88. ——————— Suit after partition on reference to arbitration—*Co-sharers in sir land—Determination of rights.* An agreement to refer to arbitration the partition of a mehal provided that, if sir land belonging to one co-sharer were assigned to another co-sharer, the co-sharer to whom the same belonged should surrender it to the co-sharer to whom it might be assigned The arbitrator assigned certain sir land belonging to the defendants in this suit to the plaintiffs. The partition was concluded according to the terms of the award. The defendants refused to surrender such land to the plaintiffs The plaintiffs distrained the produce of such land, alleging that it was held by certain persons as their tenants and arrears of rent were due. The defendants thereupon sued the plaintiffs and such persons in the Revenue Court, claiming such produce as their own The Revenue Court held that such distress was illegal, as such land was in the possession and cultivation of the defendants as occupancy tenants under s. 125 of Act XIX of 1873 The plaintiffs subsequently sued the defendants in the Civil Court for possession of such land, basing such suit on the partition proceedings: *Held*, that the decision of the Revenue Court did not debar the Civil Courts from deter-

89. ——————— Suit for possession—

occupancy-tenant for possession of the mortgaged property against occupancy tenant and an alleged trespasser, and for a declaration. The plaintiff was the mortgagee from an occupancy tenant of some 34 odd bighas of land. When he attempted to take possession of the land under his mortgage,

JURISDICTION OF CIVIL COURT—*contd.*

26. RENT AND REVENUE SUITS—*contd.*

(c) NORTH-WESTERN PROVINCES—*contd.*

Civil Court was competent to grant the plaintiff a decree for possession, though it could not grant him the declaration asked for. *Ajudhia Rai* v. *Parmeshar Rai, I. L. R 18 All. 340 ; Subarni* v. *Bhagwan Khan, I L. R. 19 All 101, Dukna Kunwar* v. *Unkare Pande, I. L R 19 All. 452 ; Kaliani* v. *Dassu Pande, I. L R 20 All 520 ;* and *Baru Mal* v. *Niadar, All. Weekly Notes (1901), 127,* referred to. PADARATH *v.* RAM GHULAM (1901) . . . I. L. R. 23 All. 481

90. ———— Suit for possession of land assigned on condition of service—*Resumption and assessment of rent—N.-W. P. Land Revenue Act (XIX of 1873), ss 79 and 241.* The plaintiffs sued for possession of certain land in a village alleging that it had been assigned to a predecessor of the defendant to hold so long as he and his successors continued to perform the duties of village watchmen, and that the defendant had ceased to perform those duties and was holding as a trespasser. The defendant alleged that he and his predecessors had held the land rent-free for 200 years, and that he held it as a proprietor : *Held,* that the plaintiffs' claim was not one to resume such a grant or to assess rent on the land of which a Revenue Court could take cognizance under ss 30 and 95, cl (c), of Act XVIII of 1873, or ss 79 and 241, cl (h), of Act XIX of 1873, but one which was cognizable by the Civil Courts PURAN MAL *v* PADMA

I. L. R. 2 All. 732

91. ———— Resumption of rent-free grant—*Act XII of 1881, ss. 30, 95, cl. (c)—Act XIX of 1873, s. 241, cl (h).* A zamindar brought a suit to recover possession of certain land in the village which was held by the defendants rent-free in consideration of rendering services as khera-patis on the ground that he was entitled as zamindar to dispense with their services, and that therefore they no longer possessed any right to hold the land. The claim was resisted by the khera-patis on the ground that for many years they had been in possession of the land as muafi-holders : *Held,* that the dispute so raised was a matter which could form [illegible]

I. L. R. 3 All 191

92. ———— Suit for possession of rent-free and revenue-free tenures—*Assessment and settlement of revenue-free land—Act XIX of 1873 (N.-W. P. Land Revenue Act), s 241.* Certain land was settled with the defendants in this suit The Settlement Officer having declared that the plaintiffs in this suit had acquired a proprietary right to such land under the provisions of s. 82 of Act XIX of 1873 and were entitled to hold it rent-free, the defendants applied to the Settlement Officer to assess such land and to settle it with the plaintiffs as the persons in actual possession as proprietors This having been done by the settlement officer, the plaintiffs sued the defendants to be maintained in possession of such land free of revenue, and for the cancelment of the Settlement Officer's order : *Held,* that, under s. 241 of Act XIX of 1873, the suit was not cognizable in the Civil Courts. ZALIM SINGH *v* UJAGAR SINGH

I. L. R. 3 All. 367

93. ———— Suit for removal of trees —*Act XII of 1881 (North-Western Provinces Rent Act), s 93, cls. (b), (c) and (cc)—Suit by zamindar against tenant for removal of trees planted by tenant on tenant's holding—Jurisdiction—Civil and Revenue Courts.* The plaintiff alleged in his plaint that he being the zamindar, and the defendants being, respectively, tenant and sub-tenant, of [illegible] mandatory injunction directing the defendants to remove the trees and to restore the land to its original condition : *Held,* that the suit involved a dispute or matter in which a suit of the nature mentioned in s 93 of Act XII of 1881 might have been brought, and was therefore not cognizable by a Civil Court *Raj Bahadur* v *Birmha Singh, I. L. R 3 All 85,* declared to be no longer in force. *Amrit Lal* v. *Balbir, I. L R 6 All. 68, Gangadhar* v *Zahurriya, I L R 8 All. 446 ;* and *Prosonno Mai Debi* v *Mansa I. L. R 9 All 35,* overruled. *Deodat Tiwari* v *Gopi Misr, All. Weekly Notes (1882), 102, Chet Ram* v *Kokla, All. Weekly Notes (1892), 45 ;* and *Jai Kishen* v. *Ram Lal, I. L R. 20 All 519,* referred to. KANHAYA LAL *v.* HURIYAN (1901) . I. L. R. 23 All. 486

94. ———— Suit to recover excess [illegible]

JURISDICTION OF CIVIL COURT—*contd.*

26. RENT AND REVENUE SUITS—*contd.*

(c) NORTH-WESTERN PROVINCES—*contd.*

SINGH v SECRETARY OF STATE FOR INDIA (1903)
I. L. R. 25 All. 527
s.c. L. R 30 I. A. 172

95. ———— **Suit to set aside Collector's order for contribution**—*Malikana—Government revenue—N.-W. P. Land Revenue Act (Act XIX of 1873), s 241, cl (b)* At the settlement of a certain village, a malikana allowance of 10 per cent on the revenue was reserved for *C*, the talukhdar to whom the village belonged At the same settlement, the muafi-holding of *A* in the village was resumed, and assessed to revenue, but *A* refused to engage for it, and it was therefore merged for revenue purposes in the mehal of the village, though still held by *A*. In 1872, *A* obtained in the [illegible]

the proportion of the revenue assessed upon the [illegible]

declaring *A* to be liable to such contribution; and *A* then instituted a suit for cancelment of the Collector's order, for a declaration of his non-liability to contribute to the malikana allowance of the talukhdar, and for a refund of contribution already paid: *Held*, that, inasmuch as the decree of the Civil Court in 1872 and the proceedings of the Collector consequent thereon constituted the muafi-holding a "mehal" in the terms of s. 3, Act XIX of 1873, and by the terms of ss 53-55 of the [illegible]

[illegible] v KUTUB-UN-NISSA I. L. R. 6 All. 610

96. ———— **Suit for declaration of non-liability of land to assessment of revenue**—*Jurisdiction of Civil Court—Declaratory decree—Act XIX of 1873, s 241* Th Civil Courts are not debarred by s. 241 of Act XIX of 1873 (N.-W. P. Land Revenue Act) from taking cognizance of a suit for a declaration that land which the revenue officers seek, under the provisions of that Act, to assess to revenue, is included in an area which has already been permanently settled, and is therefore not liable to further assessment. *Government* v. *Raj Kishen Singh, 9 W. R. 427; Collector of Futtehpore* v. *Munglee Pershad, N.-W. P. S. D. A. (1854), 167; Raghunath Suhaee* v. *Bishen Singh, N.-W. P. S D A. (1855), 392; Zoolfikur Ali* v *Ghunsam Baree, N.-W. P. S. D. A. (1865), 92;* and *Uppu Lakshmi Bhayamma Garu* v *Purvis, 2 Mad. 167,* referred to. SECRETARY OF STATE FOR INDIA v. RAM UGRAH SINGH
I. L. R. 7 All. 140

97. ———— **Suit to recover land** [illegible]

In 1876 *H* purchased *B*'s rights and interests in the village, and in 1877 applied for partition [illegible]

HABIBULLAH v KUNJI MAL I. L. R. 7 All. 447

98. ———— **Suit to question legality of settlement by Collector**—*Annulment of settlement—Fresh settlement—Act XIX of 1873, s. 241.* A settlement of land belonging to *G* and which he had mortgaged having been annulled under s 158 of the N.-W. P. Land Revenue Act (XIX [illegible]

[illegible] liable in her hands for the mortgage, and the mortgagee was entitled to claim foreclosure against her. BABI BABU v GULAB CHAND
I. L. R. 7 All 454

99. ———— **Suit to resume a rent-free grant**—*Services—N.-W. P. Rent Act (XII of 1881), ss. 3 (2), 39, 95, cl. (c)—N.-W. P. Land Revenue*

JURISDICTION OF CIVIL COURT—*contd.*

26. RENT AND REVENUE SUITS—*contd.*

(c) NORTH-WESTERN PROVINCES—*contd.*

Act (XIX of 1873), ss. 3 (4), 79-89, 241, cl. (h)—Beng. Regs. VIII of 1793, s. 41, and XIX of 1793, s. 10. A suit was brought for the ejectment of the defendant from certain land, on the allegations that it was rent-paying land which had been

be held to be one to resume a rent-free grant, inasmuch as there was no rent-free grant at all in the sense of s 30 of the Rent Act, and that the Civil Court therefore had jurisdiction to entertain the suit: *Held*, by MAHMOOD, *J.*, that the land constituted a rent-free grant, that the claim was one for the resumption of such grant or subjecting it to assessment to rent, and that under these circumstances the suit was not cognizable by the Civil Court. *Per* OLDFIELD, *J.*—The definition of the term "rent" in s 3 of the Rent Act was intended to include services or labour rendered for the use of land, and the grantee in the present case was a tenant who rendered rent in this sense on account of the use of the land Further, there was no such

grants not only free from payment of rent in cash or kind, but free from payment of anything in lieu

JURISDICTION OF CIVIL COURT—*contd.*

26. RENT AND REVENUE SUITS—*concld.*

(c) NORTH-WESTERN PROVINCES—*concld.*

refer respectively to rent paid in cash, to rent

1793 is not limited to permanent rent-free grants, and the present suit was in respect of a matter

I. L. R. 2 All. 732 ; Tika Ram v *Khuda Yar Khan*, *I L. R. 7 All 191*, and *Forbes* v. *Meer Mahomed Tuquee, 13 Moo I A 438*, referred to WARIS ALI *v.* MUHAMMAD ISMAIL . **I. L. R. 8 All. 552**

(d) OUDE.

100. ——— **Suit for partition and account of talukhdari estate**—*Oude Rent Act*

co-sharer in the villages in the register kept under Act XVII of 1876, s 56, and then brought the first of the present suits for his share upon partition, both in that estate as it stood in 1865 and also with

the original estate, the claimant having been recorded in the revenue records as a shareholder therein, but could not be applied to the rest of the joint estate, and the Civil Court therefore had jurisdiction. PIRTHI PAL *v.* JOWAHIR SINGH

I. L. R. 14 Calc. 493
L. R. 14 I. A. 37

JURISDICTION OF CIVIL COURT—*contd*

27. REVENUE.

1. ———— **Suit to try liability to public revenue on land**—*Wrongful acts by executive officer of Government* The Civil Courts

done in enforcing payment of a revenue assessment sanctioned by Government does not, *per se*, preclude the jurisdiction of the Court to entertain the suit But acts done by Government through its executive officers, not contrary to any existing right according to the laws administered by the Municipal Courts, although they may amount to grievances, would afford no cause of action cognizable by the Civil Courts. UPPU LAKSHMI BHAYAMMA GARU *v* PURVIS . . . . . . 2 Mad. 167

s 55 *Per* INNES and KERNAN, *JJ.* (*dissentiert* THE CHIEF JUSTICE)—The High Court of Madras has jurisdiction to try original suits against revenue officer for acts *ultra vires* done in their official capacity The provision of the Letters Patent of the late Supreme Court, whereby such suits were excepted from the jurisdiction of the Supreme Court, has not been continued by the Letters Patent of the High Court so as to except such suits from the original jurisdiction of the High Court, but has been impliedly repealed by those Letters Patent *Per* KERNAN, *J*—The said provision was repealed by 59 Geo III, c. 155, ss. 99 and 100, except as to land revenue. *Per* INNES, *J* (*contra*). *Per* THE CHIEF JUSTICE and INNES, *J*—The District Court of

I. L. R. 1 Mad. 89

3. ———— **Payment of hak in respect of majumdari watan**—*Bom Act VII of 1863, s 32.* The payment of a hak in respect of a majumdari watan, though charged on villages, is not "a share of the revenues thereof" within the meaning of s. 32 of (Bombay) Act VII of 1863, and therefore a suit to recover majumdari watans resumed by Government is cognizable by the Civil Courts. GOVERNMENT OF BOMBAY *v.* DAMODHAR PARMANANDAS . . . . 5 Bom. A. C. 202

4. ———— **Land revenue**—*Toddy spirit—Bombay Revenue Jurisdiction Act (X of 1876), ss. 3, 4, 5—Bombay Abkari Act (V of 1878), ss 24, 29, 51, and 67—Land Revenue Code (Bom. Act V of 1879), s 82—Bom. Reg. XXI of 1827, s. 60.* The plaintiff sued to recover from the defendant, a farmer of abkari duties on the manufacture of spirits, under s 60 of Bombay Regulation XXI of 1817, a sum of money alleged to have been illegally levied by him as tax or rent through the mamlatdar in respect of certain cocoanut trees tapped by the plaintiff in 1877-78 and 1878-79: *Held*, that the Civil Courts have jurisdiction to entertain such a suit If the claim be held to be one in respect of land revenue, it falls within the exception contained in cl (*c*) of s 5 of Act X of 1876 If it is not, s 4 of the Act has no application. *Per* BIRDWOOD, *J.*—The expression "land revenue" as used in Act X of 1876 does not include either the duties leviable, under Regulation XXI of 1827, on the manufacture of spirits, or the taxes on the tapping of toddy trees, the levy of which in certain districts was legalized by s 24 of the Bombay Abkari Act (V of 1878) A farmer of duties on the manufacture of spirits is not authorized to levy a duty on any juice in trees, either under Regulation XXI of 1827, or Act X of 1876, or Bombay Act V of 1878. Juice in toddy-producing trees is not spirit, which includes toddy in a fermented state only NARAYAN VENKU KALGUTKAR *v* SAKHARAM NAGU KOREGAUMKAR I. L. R. 9 Bom. 462

5. ———— **Suit to recover possession of land added to estate paying revenue directly to Government**—*Act IX of 1847, ss 6 and 9* No suit will lie in a Civil Court to recover possession of lands which have been added to an estate paying revenue directly to Government by the revenue authorities after an inspection of maps under s. 6 of Act IX of 1847, although such lands have reformed on an old site of land belonged to another. DEWAN RAMJEWAN SINGH *v.* COLLECTOR OF SHAHABAD

14 B L. R. 221 note : 18 W. R. 64

RAM JEWAN SINGH *v.* COLLECTOR OF SHAHABAD 19 W. R. 127

6. ———— **Water rate**—*Irrigation Act (Bom. Act VII of 1879), s. 48—Bombay Revenue Jurisdiction Act (X of 1876), s. 4, cl (b)—Land revenue—Percolation of canal water—Opinion of the canal officer.* Where water-rate is levied under s. 48 of the Irrigation Act (Bom Act VII of 1879), the question as to the jurisdiction of Civil Courts in a suit for the determination of the legality or otherwise of such levy depends upon whether the incidence of the rate is authorized by the provisions of the section. Under it, the condition precedent to levying the rate is not the fact ascertained by evidence whether the

28 REVENUE COURTS.

(*a*) GENERALLY.

1. ———— **Suits which cannot be brought in Revenue Court for want of juris-**

JURISDICTION OF CIVIL COURT—*contd.*

28. REVENUE COURTS—*contd.*

(a) GENERALLY—*concld.*

diction. *Semble:* There is authority for holding that the Civil Courts may entertain suits which cannot be brought in a Revenue Court, although a portion of the claim is of a nature of which the exclusive cognizance is given to Revenue Courts. OOSMAN KHAN *v* CHOWDHRY SHEORAJ SINGH
5 N. W. 42

2. ———— **Claims to money in deposit with Collector**—*Civil Procedure Code, 1859, ss. 237, 242.* S. 237 of the Civil Procedure Code, 1859, gave no authority to a Civil Court to dispose of claims to money in deposit with a Collector, nor did s. 242 give such a Court authority to dispose of claims to money under attachment. *In the matter of* BROJONATH MITTER . . 13 W. R. 301

3. ———— **Suit containing items cognizable by Civil Court**—*Jurisdiction of Revenue Courts—Act X of 1859, ss. 23, 21* In districts where Act X of 1859 is still in force, the jurisdiction of the Civil Courts cannot be ousted, except in cases where the parties concerned and the matters in dispute come wholly and exclusively within the category of persons and subjects in respect of which

decisions of the Courts below, that such suit was properly so brought. KUMOOD NARAIN BHOOP *v.* PURNA CHUNDER ROY
I. L. R. 4 Calc. 547 : 3 C. L. R. 258

(b) PARTITION.

4. ———— **Suit to set aside partition**—*Question of title* There is nothing in the law which makes the order of a Collector in a batwara proceeding final as regards questions of title. OODOY SINGH *v.* PALUCK SINGH . 16 W. R. 271

5.———— **Suit for partition of land paying revenue.** Where the real object is to obtain a division of the lands of an estate paying revenue to Government, the suit is not maintainable in a Civil Court. DOORGA KRIPA ROY *v.* MOHESH CHUNDER ROY . . . . 15 W. R. 242

6. ———— **Suits for partition of estates paying revenue to Government**—*Beng. Reg. XIX of 1814, s. 3—Apportionment of revenue.* Regulation XIX of 1814, s. 3, which requires that the partition of estates paying revenue to Govern-

JURISDICTION OF CIVIL COURT—*contd.*

28. REVENUE COURTS—*contd.*

(b) PARTITION—*contd.*

owners of each of the parts of the original estate. A suit for partition in such a case may be entertained by the Civil Courts. SHAMA SOONDUREE DEBIA *v.* PURESH NARAIN ROY . . 20 W. R. 182

7. ———— **Suit to set aside partition under Beng. Reg. XIX of 1814 and for redistribution of shares in estate.** The plaintiffs and defendants were owners of an undivided estate. Besides their share as part owners, the plaintiffs held

plaintiffs held as tenants and as purchasers were allotted to co-sharers other than those under whom the plaintiffs held or from whom they purchased.

v. HURGOBINDO BURMON I. L. R. 4 Calc. 510

RADHA BULLUBH SINGH *v.* DHERAJ MAHTA CHAND . . . . 2 W. R. Mis. 51

8. ———— **Suit by allottee at private partition to stay proceedings and have his possession confirmed**—*Batuara—Proceedings under Beng. Reg. XIX of 1814—Partition by private arrangement.* An allottee under a private partition sued to stay subsequent proceedings

assignment of the revenue in proportion to the several portions of the land held by the shareholders, and the Civil Court was entitled to adjudicate on the plaintiff's claim to be in possession of lands as comprising his share in the estate, and, on his succeeding in proving his claim, to declare that those lands belonged to his divided share. JOYNATH ROY *v.* LALL BAHADUR SINGH
I. L. R. 8 Calc. 126 : 10 C. L. R. 146

9. ———— **Suit to establish share after rejection of portions** Where the Collector directs that a separate account should be opened

JURISDICTION OF CIVIL COURT— *contd.*

28. REVENUE COURTS—*contd.*

(*b*) PARTITION—*contd.*

division of their specific shares KHEDOO THAKOOR *v.* BHUGWUT LALL . . . 16 W. R. 9

10. ——— **Suit for partition of lands excluded by Collector** On partition of a certain mehal, lands belonging thereto were excluded by the Collector [illegible]

4 C. L. R. 58

11. ——— **Suit for declaration of right to share**.—There is nothing in the butwara law or in any other regulation to prevent the Civil Court from entertaining a suit for a declaration of the plaintiff's right to a larger share than that recorded in his name in the paper of partition. SPENCER *v.* PUHUL CHOWDRY SPENCER *v.* KADIR BUKSH . . 6 B. L. R. 658 : 15 W. R. 471

See AHMEDULLA *v.* ASHRUFF HOSSEIN 8 B. L. R. Ap. 73 note

12. ——— **Suit for partition**—*Revenue-paying estate—Partition—Civil Procedure Code (Act X of 1877), ss. 11, 265.* Where one of several co-sharers, owners of a piece of land defined by metes and bounds and forming part of a revenue-paying [illegible]

divided and to make a decree accordingly. CHUNDERNATH NUNDI *v* HUR NARAIN DEB I. L. R. 7 Calc. 153

13. ——— **Suit to have possession on private partition confirmed**—*Declaration against jurisdiction of Revenue Court to partition* [illegible]

declaration that certain plots, which were comprised in the estate, and which he alleged had been allotted to him on a private partition, were not liable to partition by the revenue authorities. The plaintiff also prayed for confirmation of his possession, and that certain orders made by the Collector in the batwara proceedings might be set aside. The Collector was not a party to the suit. The lower Court found that there had been a private partition, and, without taking evidence as to the plots alleged [illegible]

JURISDICTION OF CIVIL COURT— *contd*

28. REVENUE COURTS—*contd.*

(*b*) PARTITION—*contd.*

[illegible]

14. ——— **Suit by purchaser at revenue sale for possession of share**—*Partition suit* The purchaser at a sale, under Act XI of 1859, s. 54, of a share of an aymah estate sued for possession of the lands in the occupation of the sharer whose rights and interests he had purchased. The other sharers also defendants in the suit, who [illegible]

v SHUMSOODDEEN MULLICK . 18 W. R. 461

15. ——— **Suit for injunction to restrain partition.** A Civil Court cannot interfere by injunction to restrain a Collector's power of partition, but where, as between the several shareholders, the extent and nature of the share of each [illegible]

3 C. L. R. 453

16. ——— **Suit to enforce partition**—*Beng. Reg. VII of 1822—Act XIX of 1863.* An imperfect partition was made between *P* and *D*, and assented to by them and accepted by the Deputy Collector. In the instrument in which the parties [illegible]

Deputy Collector made enquiry, and held it proved that the lands parcelled to each were of unequal value, and, because *P* persisted in denying this, [illegible]

Courts had jurisdiction to entertain a suit by *P* to restore him to the possession of the land which fell to him on the partition made and assented to by the parties, and completed by the order of the Deputy Collector accepting it. DESRAJ *v.* DHUNI 7 N. W. 9

JURISDICTION OF CIVIL COURT—*contd.*

28. REVENUE COURTS—*contd.*

(*b*) PARTITION—*contd.*

17. ———— Suit for extra land after partition by revenue authorities—*Act XIX of 1863, s 53—N.-W. P. Land Revenue Act (XIX of 1873), s 135.* A partition was arranged by arbitrators, and carried into effect by an ameen who marked out the boundaries of the pattis into which the mouzah was divided, and was accepted on the 20th of April 1871 by the parties concerned, and was sanctioned by the Commissioner. In November 1872, one of the parties complained that, according to a gashwara map filed by the ameen on the 9th of June 1871, he was entitled to more abadi land than he had got The revenue authorities, considering that he had accepted the partition and that it had been confirmed, refused to entertain his complaint He accordingly sued in the Civil Court with a view to obtain the extra land to which he asserted himself entitled It was held that s. 53, Act XIX of 1863, would have precluded the suit, and it was equally barred by the spirit, if not by the letter, of s. 135, Act XIX of 1873. FIDA HOSSEIN *v.* GHOLAM JILANI . . 7 N. W. 346

18. ———— Suit to set aside erroneous settlement by Collector. A Civil Court may set aside a settlement of land erroneously made by the Collector as forming part of a resumed mehal, if the land has not actually been resumed. ABBOO BIBEE *v.* COLLECTOR OF BACKERGUNGE 1 W. R. 255

19. ———— Suit to set aside order under Act XIX of 1863. An order passed in the course of a partition under Act XIX of 1863 is open to revision under s 53 of that Act, but is not liable to be contested in a civil suit. ISHREE DYAL *v* BANYADEE TEWAREE . . . 4 N. W. 7

20. ———— Suit by parties declared out of possession by revenue Court for establishment of their rights—*Act XIX of 1863, ss. 8, 9, 10, 11.* Two of the parties in an application, under Act XIX of 1863, for the partition of a joint undivided estate were found to be out of

right of property in an estate, nor was there anything in those sections which empowered a Collector to determine questions of title He was only authorized to declare the nature and extent of the interest in actual possession of the parties LUCHMAN *v* SAIDHO . . . . 4 N. W. 169

21. ———— Suit to set aside order of Settlement Officer as to proportion of profits—*Beng. Reg VII of 1822, s. 10, cl. 1* The plaintiffs, biswadars, sued to set aside the order of a settlement officer, which determined the proportion in which the profits arising out of the limitation of the Government demand should be divided between them and the talukhdar:—*Held*, that, it being under cl. 1, s. 10, Regulation VII of 1822, the function of the Governor General in Council to determine such proportion, the suit was not cognizable by a Civil Court. JOGUL KISHORE *v* RAMPEETAB SINGH . . 4 N. W. 129

22. ———— Suit in Civil Court for ejectment—*Refusal of tenant to accept settlement after enhancement, under Beng Reg. VII of 1822, s 14, of rent of lands in a town* Where the Collector has issued due notice of enhancement, under s. 14 of Regulation VII of 1822, of the jama of lands situate in a town and subject to that Regulation, and on failure by the tenant to accept a settlement at the revised rate, an action in ejectment has been brought, the Civil Court has no power to consider whether the new rate of assessment is reasonable or in any way to interfere with the amount of the revised jama as fixed by the Collector. RAM CHUNDER BERA *v* GOVERNMENT 6 C. L. R. 365

23. ———— Suit to alter settlement—*Beng. Reg. VII of 1822, s 15.* Lakhirajdars whose

settlement made by the Collector, not only as against those who claimed the settlement before the revenue authorities, but against all who have claims. BISHOROOP HAZRAH *v.* DUMONOTEE DEBIA 15 W. R. 537

24. ———— Partition of mehal—*Application by co-sharer for partition—Notice by Collector*

s. 11 So far as ss. 111, 112, 113, 114, and 115 of

ments of an objection raising such a question under s. 113 or on appeal in those cases in which the Assistant Collector or Collector does decide upon

JURISDICTION OF CIVIL COURT—*contd.*

28 REVENUE COURTS—*contd*

(b) PARTITION—*contd.*

the Assistant Collector under s 111, and after an ameen had made an apportionment of lands among the co-sharers of the mehal, the original [illegible]

and confirmed by the Collector under s 131 —*Held,* that the objection was not one within the meaning of s. 113, that the remedy of the objectors was not an appeal from the Collector's decision under s 132, and that a suit by them in the Civil Court to establish their title to the land allotted to other co-sharers was not barred by s 241 (*f*), and with reference to s. 11 of the Civil Procedure Code was maintainable *Habibullah* v. *Kunji Mal, I L R 7 All 447,* distinguished *Sudar* v *Khuman Singh, I L R. 1 All 613,* referred to MUHAMMAD ABDUL KARIM *v* MUHAMMAD SHADI KHAN I. L R. 9 All. 429

25. ———— **Suit for partition**—*Revenue-paying estate—Proceedings under Beng. Act VIII of 1876, s 31, effect of* The jurisdiction of the Civil Court in matters of partition of a revenue-[illegible]

was no bar to a suit for a declaration that under a partial partition effected between the co sharers a portion of land had been separately allotted to the plaintiff. ZAHRUN *v.* GOWRI SUNKAR

I. L. R. 15 Calc. 198

26. ———— **Suit for partition and possession of a share in a particular plot in a pottah**—*Jurisdiction of Revenue Court—N.-W. P.* [illegible]

of the N.-W P. Land Revenue Act (XIX of 1873). *Ram Dayal* v *Megu Lal, I L. R 6 All. 452,* distinguished ISRAIL *v* KANHAI I. L. R. 10 All 5

27. ———— **Partition by Civil Court of a portion of a revenue paying estate**—*Civil Procedure Code (Act XIV of 1882), s. 265 —Revenue-paying estate, partition of, into several revenue-paying estates* The meaning of s 265 of the Code of Civil Procedure is that, where a revenue-paying estate has to be partitioned into several revenue-paying estates, such partition must be carried out by the Collector *Zahrun* v. *Gowri Sunkar, I. L. R. 15 Calc. 198,* approved. DEBI SINGH *v.* SHEO LALL SINGH

I. L. R. 16 Calc. 203

28. ———— **Fraudulent partition**—*Civil and Revenue Courts—Jurisdiction—Act XIX of 1873* (*North-Western Provinces Land-revenue Act*), *s. 241 (f)—Suit by person, not a party to the partition proceedings, to obtain in a Civil Court a declaration that a partition carried out in a Revenue Court was fraudulent and injurious to his interest* If, by a fraud practised upon outside parties, such as mortgagees, or by fraud practised upon the Revenue Court itself, a collusive and fraudulent partition is carried through in that Court, the person who is damnified by such fraudulent proceedings is not without a remedy in the Civil Court The Civil Court has no jurisdiction whatever to set aside a partition effected in the Revenue Court; but it is not without jurisdiction to investigate a question of [illegible] and *Barnesly* v *Powel, 1 Vesey (Senior) 283,* referred to *Muhammad Sadiq* v. *Laute Ram, I. L R. 23 All 291,* distinguished MAHADEO PRASAD *v* TAKIA BIBI (1902) . . I. L. R. 25 All. 19

(c) ORDERS OF REVENUE COURTS.

29. ———— **Suit to reverse order of Revenue Court.** Parties suing to reverse an order of the Revenue Courts may do so in the Civil Courts NANKU ROY *v* MAHABIR PRASAD

3 B. L R. Ap. 35 ; 11 W. R 405

(*Contra*) HASSAN ALLEE *v.* BUDDEROODDEEN

1 W. R. 141

MAHOMED FAZUL *v.* OOMAKANT SEIN

1 W. R. 159

30 ———— **Suit to set aside proceeding of Collector in execution.** A Civil Court cannot set aside the proceeding of a Collector in execution of a decree of his own Court. RAJ KISHORE MULLICK *v* BRINDABUN CHUNDER PODDAR . . . . . . 15 W. R. 119

31. ———— **Suit under Beng. Act VIII of 1865, s 13**—*Appeal to Collector.* An appeal to the Collector was not necessary as a condition precedent to a suit in the Civil Court under s 13, Bengal Act VIII of 1865. NUGENDRO CHUNDER GHOSE *v* MUSRUFF BIBEE

15 W. R. 17

32. ———— **Suit to question award of Collector under Act I of 1847**—*Boundaries.* An award of the Collector under Act I of 1847 in respect of boundaries was not final, even though undisturbed on appeal; nor was he competent to do more than demarcate by visible and tangible marks the boundaries between estates and fields. His award, therefore, was liable to be questioned by a suit in the Civil Court. RAM JEWUN SINGH *v.* RADHA PERSHAD SINGH . . 16 W. R. 109

JURISDICTION OF CIVIL COURT—*contd.*

28. REVENUE COURTS—*contd.*

(c) ORDERS OF REVENUE COURTS—*contd.*

33. ———— Suit to compel purchaser at sale for arrears of rent to furnish security—*Beng. Reg VIII of 1819, ss. 5 and 7.* A zamindar cannot bring a suit in the Civil Court to compel the purchaser of a patni in his estate sold by auction for arrears of rent to furnish security for the amount of half the yearly jama. If the purchaser of the patni is not willing to give

declared by s 7 to take all the risk of the attachment. This remedy of the zamindar is not affected by the grant by him of a dar-patni to a third party JOY KISHEN MOOKERJEE *v* JANKEENATH MOOKERJEE **17 W. R. 470**

34. ———— Order of Collector under s. 11, Act XI of 1859, power of Civil Court to interfere with *Quære* Whether the Civil Court can interfere with a Collector's order, under s. 11, Act XI of 1859, opening a separate account with the recorded sharer of a joint estate. SHURUFOONISSA BEBEE *v* HUSMUT ALI **9 W. R. 533**

35. ———— Suit to set aside order of Collector—*Act XI of 1859, s. 11.* The plaintiff and *A* and *B* were joint owners of an estate paying revenue to Government The names of *A* and *B* were alone recorded in the rent-roll of the Collector. *A* and *B* alienated certain specific portions of the lands of the estate to their wives, and applied to the Collector, under s 11 of Act XI of 1859, to open a separate account for payment of the proportionate share of the revenue payable in respect of the lands so alienated. The plaintiff objected to such separation on the ground that the lands had never been divided, but always held ijmali, and that *A* and *B* claimed a larger share than they owned; but his objection was rejected by the Collector on the ground that he was not a recorded proprietor, and the application of *A* and *B* was granted The plaintiff now sued in the Civil Court for a declaration of the extent of his share in the joint estate, and to have the order of the Collector set aside:—*Held,* that the Civil Court had jurisdiction to entertain such a suit, and that it was not necessary to make the Collector a party HARGOBIND DAS *v* BARODA PRASAD DAS . . **6 B. L. R. 614** **15 W. R. 112**

MADAN MOHUN MAZUMDAR *v.* BAISTAB CHANDRA MANDAL. PURNA CHANDRA GANGULI *v.* MADAN MOHAN MAZUMDAR **6 B. L. R. 617 note: 13 W. R. 67**

36. ———— Suit to set aside order of Revenue Court under Act XIX of 1863. A suit in the Civil Court did not lie to set aside the decision passed by the revenue authorities in the exercise of the power vested in them by s. 8, Act XIX of 1863. However irregular the proceedings be, and not in conformity to the provisions of that section, the proper course for the party aggrieved was by appeal in the manner prescribed by the Act. BUKHTA *v* GUNGA . . . **3 Agra 161**

37. ———— Interference with decrees of Revenue Court—*Fraud.* Proceedings held by the Revenue Courts in execution of their own decrees are final, and cannot be interfered with by the Civil Courts, unless on some special ground, like that of fraud BHOOJUNGA THAKOOR *v.* LUCHMEE NARAIN SAHEE . . . . **9 W. R. 80**

38. ———— Suit to set aside decree for fraud—*Act X of 1859, s 28.* The provisions of s 28, Act X of 1859, are no bar to the institution in the Civil Court of a suit by a raiyat, farmer, or tenant for maintenance of possession, nor to a suit to set aside a decree of a Revenue Court on the ground that it had been obtained by fraud RAMESWAR CHOWDHUREE *v.* NACKCHEDEE SINGH **3 Agra 357** **s. c. Agra F. B., Ed. 1874, 160**

39 ———— *Suit to set aside decree on kabuliat alleged to be false—Failure to show fraud.* Plaintiff had executed a kistbundi for arrears of rent decreed against him by a Revenue Court He then sued to set aside the decree and kistbundi on the ground that the decree had been based on a fraudulent and fictitious kabuliat. The

40. ———— Suit to set aside order of Collector refusing to sell for arrears of rent

41. ———— Suit to set aside order of Collector for registration of names A suit will not lie in the Civil Court to set aside an order by a Collector, made under s 27, Act X of 1859, for the registration of the names of the defendants as shikmi talukhdars in the plaintiff's serishta. MAHOMED NOOR BUKSH *v.* MOHUN CHUNDER PODDAR **6 W. R., Act X, 67**

42. ———— Suit to establish claim to tenure not requiring registration—*Transfer of tenure not requiring registration in zamindari serishta—Suit to establish claim to tenure.* The

JURISDICTION OF CIVIL COURT—*contd.*

28. REVENUE COURTS—*contd.*

(c) ORDERS OF REVENUE COURTS—*contd.*

tion under s. 27, Act X of 1859, and a suit will lie in the Civil Court in such a case by an unsuccessful claimant under s. 106 of that Act. KAPOO LALL THAKOOR *v.* LUCHMEEPUT DOOGUR 7 W. R. 15

43. ———— Suits to reverse summary awards for rent—*Question of title.* In a suit brought by raiyats to reverse summary awards for rent, the Court, instead of deciding the question of title between the co-defendants, should merely determine to whom the plaintiffs have paid rent in past years, and their liability for the present year, in accordance with their past payments and the [illegible]

W. R. F. B. 36

44. ———— Suit to set aside order of Revenue Court directing ejectment—*Cause of action—Res judicata* A Revenue Court having ordered a tenant to be ejected under s 10 of the Rent Recovery Act on the ground that he had refused to accept a pottah as directed by the Court, the tenant brought a suit in the Civil Court to set aside the order of the Revenue Court.—*Held*, that the suit would not lie. RAGAVA *v* RAJAGOPAL

I. L. R. 9 Mad. 39

45. ——— Order of ejectment—Suit to set aside such order—*Madras Rent Recovery Act (Mad. Act VIII of 1865), s 10. Held*, (DAVIES J. dissenting), that a tenant who has been ejected in pursuance of an order under Rent Recovery Act (Madras), s. 10, cannot maintain a suit to question the legality of that order. *Ragava v Rajagopal, I. L R. 9 Mad 39*, followed. MANICKA GRAMANI *v.* RAMACHANDRA AYYAR

I. L. R. 21 Mad. 482

46. ———— Suit for money paid as rent—*Rent paid twice.* The plaintiff sued to recover money which she had paid as rent to the zamindar, under a decree of the Revenue Court, after she had already paid her rent to his gomastah:—*Held*, that the suit was not cognizable by the Civil Court SAUDAMINI DASI *v* THAKOMANI DEBI

3 B. L. R. Ap. 114

47. ———— Suit after decision of Revenue Court under Act X of 1859, s. 77—*Question of title.* After a decision by a Revenue Court under s. 77, Act X of 1859, a Civil Court might determine the legal title to the rent; and, when determining such title, the Civil Court might also determine whether any rent which may have been lost to a party by the decision of the Revenue Court might not be recouped to him. KEFAET HOSSEIN *v.* SHUMSHARE ALI . 13 W. R. 458

48. ———— Enquiry into legality of proceedings of Collector—*Beng Act VII of 1868—Certificate under s. 18.* In a suit for arrears

[illegible]

notice before the certificate was issued was served

[illegible]

49. ———— Suit for execution of decree in summary suit for rent. A regular [illegible]

50. ———— Suit to enforce decree of Revenue Court As a general rule, a suit cannot be brought in a Civil Court to enforce a decree of a Revenue Court under Act X of 1859. Such decrees can be enforced only by execution, and the limitation for proceedings to execute them was defined by Act X itself. AGHORE CHUNDER MOOKERJEE *v.* WOOMA SOONDEREE DABEA . 7 W. R. 216

ODHESH COOMAR SINGH *v.* RAM GOBIND SINGH 9 W. R. 145

[illegible]

1 C. W. N. 447

52. ———— Suit for amount due under decree in rent suit. *J K D* instituted a suit before a Deputy Collector, under Act X of 1859 [illegible]

JURISDICTION OF CIVIL COURT—*contd.*

28. REVENUE COURTS—*contd.*

(c) ORDERS OF REVENUE COURTS—*contd.*

be due (R325) should be paid by instalments, and it was stipulated that, on failure to pay any instalment "the whole debt will be realized at once, and I

with the terms of the compromise" *J K D* assigned his interest under that decree to *R M D* *L N R* failed to pay an instalment. *R M D* then applied to the Deputy Collector to execute the decree for the whole amount with interest, but his application was refused Thereupon, *R M D*

to the compromise contemplated that the whole amount and interest should be realized only by process of execution to be issued out of the Revenue Court which was to be delayed till a failure to pay an instalment had taken place. On the refusal of the Deputy Collector to issue execution for the amount of the debt, the plaintiff should have appealed to the Commissioner. RAM MOHAN DAS *v.* LAKHI NARAYAN ROY

4 B. L. R. A. C. 207

s.c LUCKHEE NARAIN ROY *v.* RAM MOHUN DOSS . . . . . . 13 W. R. 151

53. ———— **Suit to set aside sale by order of Collector.** A Civil Court had no jurisdiction to entertain a suit to set aside a sale by order of a Collector, under Act X of 1859, in execution of a decree for arrears of rent due on the tenure of which the sale was made HARANUND DUTT *v* RAM DHUN SEIN . W. R. 1864, Act X, 122

54 ———— **Suit to set aside sale for arrears of Revenue**—*Act XI of 1859, s 33.* Plaintiff not having appealed to the Revenue Commissioner against the sale of his estate for arrears of Government revenue, the Civil Court was not competent, under s. 33, Act XI of 1859, to entertain a suit for the annulment of the sale. MOHUN LALL TAGORE *v* COLLECTOR OF TIRHOOT 1 W. R. 356

55 ——— **Suit by under-tenant to recover tenure sold for arrears of rent**—*Act X of 1859, s 105* An under-tenant might sue in the Civil Court to recover his under-tenure sold by his zamindar for arrears of rent, although he did not previously intervene in the Collector's Court under s. 106, Act X of 1859 MOOKTOKASHEE DASSIA *v.* BROJENDER COOMAR ROY

3 W. R., Act X, 156

56. ———— **Suit to set aside rent decree after failure to appeal against it.** Where the Deputy Collector refused plaintiff's application to set aside a rent decree passed against him upon

Collector under s 14, Bengal Act VI of 1862:— *Held*, that, having failed to do so, he had no right to bring a suit for the purpose in the Civil Court. RAJ KISHEN MOOKERJEE *v* MODHOO SOODUN MUNDLE

17 W. R. 413

57. ———— **Suit to recover land sold in execution of decree for rent** A suit lay in the Civil Court for the recovery of land, fraudulently sold in execution of a decree for rent, under Act X of 1859, against a party not in possession without suing specifically to set aside the sale. NOOR BUKSH *v* MEAN JAN 6 W R., Act X, 60

58. ———— **Suit to set aside sale of under-tenure**—*Act X of 1859, s. 108* The owner of an under-tenure might sue in the Civil Court for a declaration that the sale of his under-tenure under Act X of 1859 was illegal and void under s. 108 of that Act, and that he was entitled to possession of the land in suit notwithstanding such illegal sale. SHUROOP CHUNDER BHUTTACHARJEE *v.* KASHEESHUREE DOSSIA . 6 W. R., Act X, 55

59. ———— **Suit to set aside revenue sale on account of fraud.** An *ex-parte* decree

of the decree

gave them a decree setting aside the sale, and

defendants should not be allowed to take advantage of their own fraud, it was decreed (the purchase-money being still in deposit in the Collectorate) that the defendants should re-convey the property to the plaintiffs SHIBO SOONDUREE DOSSEE *v.* PANCHCOWREE CHUNDRA . 14 W. R. 158

60. ———— An action lies in the Civil Court to set aside a purchase fraudulently made at a sale in execution of a decree of a Revenue Court which has been obtained by fraud. NILMANI BURNICK *v.* PUDDO LOCHAN CHUCKERBUTTY

B. L. R. Sup., Vol. 379: 5 W. R., Act X, 20

AGHORE LALL SHAMUNT *v.* GYANANUND ROY

6 W. R., Act X, 11

JURISDICTION OF CIVIL COURT— *contd*

28 REVENUE COURTS—*contd*

(c) ORDERS OF REVENUE COURTS—*contd.*

BUCKLAND v ASHOO CHOWDHRAIN
9 W. R. 326

BROJENDRO COOMAR CHOWDHRY v. RAM COOMAR HOLDAR . . . . . 13 W. R. 32

DEEN DYAL SINGH v. DANEE ROY
13 W. R. 185

61. ———— **Suit to set aside sale of under-tenure under Act X of 1859**—*Fraud.* The purchaser of an under-tenure might sue in the Civil Court to set aside a sale of the under-tenure in execution of a decree for arrears of rent under Act X of 1859 on the ground that such decree was obtained by fraud subsequently to his purchase GUNGA DOSS DUTT v. RAMNARAIN GHOSE
B. L. R. Sup. Vol. 625
2 Ind. Jur. N. S. 111: 7 W. R. 183

SOUDAMINEE DOSSEE v. BHOLANATH SHAHA
9 W. R. 363

62. ———— **Suit to set aside sale in execution of decree**—*Act X of 1859, s. 105*—

BOSE
B. L. R. Sup. Vol. 382: 5 W. R., Act X, 22

63. ———— **Suit to set aside sale for arrears of rent**—*Act X of 1859, s 105*—*Fraud* A Civil Court had jurisdiction to entertain a suit by a tenant to recover possession of a tenure

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MUNSHI v. KUFRUNAMAYI DEBI . 8 B. L. R. 1

64. ———— **Suit to set aside sale by order of Revenue Court**—*Fraud.* A sale by order of a Revenue Court can be set aside by a

DEBIA v. GOPAL CHUNDER BANERJEE
9 W. R. 538

65. ———— **Suit to set aside illegal**

paid until fourteen days had elapsed, it was held that such allegations, if proved, would amount to illegalities, and that a suit to declare such a sale null and void would lie in the Civil Court. ALI BUKSH SHAH v NUBEE BUKSH . . 9 W. R. 600

See BALKRISHEN DAS v SIMPSON
I. L. R. 25 Calc. 833
2 C. W. N. 513

66. ———— **Suit by judgment-debtor to set aside sale by Revenue Court.** The Civil Court has jurisdiction to entertain a suit by judgment-debtor under a decree of the Revenue Court for confirmation of his right in immoveable property sold by his execution-creditor under an order of the Revenue Court for the sale of the rights and benefits of the judgment-debtor in the suit in which the order was made, and for a declaration that the sale was void CHANDRAKANT BHATTACHARJI v JADUPATI CHATTERJI 1 B. L. R. A. C. 177 : 10 W. R. 224

67. ———— **Suit to set aside Collector's sale and recover property**—*Costs of partition*—*Order of Collector for payment of proportionate share of costs by co-sharers*—*Suit to set aside sale.* The Civil Court decreed partition (batwara) of an estate in a suit brought by some of the co-sharers in the estate, and ordered the plaintiffs to pay the costs of the partition. The Collector, however, called upon

shares in the estate: *Held*, that the Collector acted *ultra vires*, and a suit was maintainable in a Civil Court to set aside the sale and for recovery of the property. BAIJ NATH SAHU v LALLA SITAL PRASAD 2 B. L. R. F. B. 1 ; 10 W. R. F. B. 66

68. ———— **Order of Collector setting aside sale for arrears of revenue**—*Revenue Sale Act (XI of 1859), s 33*—*Sale for arrears not due*—*Suit to set aside sale*—*Appeal to Commissioner*

F. B. 1 · 10 W. R, F. B. 66, followed. *Gobind Lal Roy v. Ramjanam Misser, I. L. R. 21 Calc. 70* distinguished and explained. HARKHOO SINGH v. BUNSIDHUR SINGH . I. L. R. 25 Calc. 876
2 C. W. N. 360

69. ———— **Suit to set aside sale when made without arrears of revenue being due**—*Sanction of Commissioner.* A suit to set aside a sale under Act XI of 1859, on the ground that no arrear of revenue was due, may be brought in the Civil Court without previous appeal to the Commissioner. THAKUR CHURN ROY v. COLLECTOR OF 24-PERGUNNAHS . . . 13 W. R. 336

JURISDICTION OF CIVIL COURT—*contd.*

29. SAMBALPUR.

Act (XII of 1887)—Central Provinces Civil Courts Act (II of 1904)—Bengal Act IV of 1906—High Court, jurisdiction of. Where a suit instituted in the Court of the Subordinate Judge of Sambalpur was disposed of before the 16th of October 1905

I. L. R. 34 Calc. 636

2. ——— *Jurisdiction—Second Appeal—High Court, jurisdiction of—Sambalpur—Bengal and Assam Laws Act (VII of 1905), s. 6.* An appeal was preferred to the High

date the Bengal and Assam Laws Act (VII of 1905) came into force, and the District of Sambalpur was added to the Province of Bengal by a Proclamation of the Governor-General On preliminary objec-

second appeal, if any, lay to the Judicial Commissioner of the Central Provinces under s 6 of Act VII of 1905 :—*Held*, that although the Central

Provinces, but now after the passing of the Bengal and Assam Laws Act (VII of 1905), to the High Court BALBHADRA *v.* BHOWANI (1907)

I. L. R. 34 Calc. 853

30 SANADS.

——— **Suit to cancel or set aside sanad as granted by mistake**—*Summary settlement—Sanad—Revocation of sanad—Garas—Wanta—Mazmun Narta—Bhagdari.* Where a sanad by way of summary settlement of land revenue has been granted by Government under Bombay Act VII of 1863, Government cannot reform or set it aside without the assent of all parties interested therein To do so would be an assumption by Government of the function of a Civil Court. A Civil Court cannot, on the ground that Government has by mistake granted such a sanad to a person not the owner of the land, reform or set aside the sanad. S. 7 of Bombay Act VII of 1863 renders the quit-rent fixed by the sanad, binding alike on Government and on the rightful owner of the land, but the latter may recover the land from the grantee of the sanad, subject to the quit-rent fixed by the sanad, and payable to Government; and such grantee will be declared to have taken the sanad as a trustee for the rightful owner. *Quære* ... by ... mist ... which may be found to exist in the sanads DOL-SANG BHAVSANG *v.* COLLECTOR OF KAIRA

I. L. R. 4 Bom. 467

31. SERVICES, PERFORMANCE OF

——— **Suit to enforce services by barbers**—*Cause of action.* A suit cannot be maintained in the Civil Courts to enforce the performance of certain services by barbers. RAJKISTO MAJEE *v.* NOBAED SEAL . . I. W. R. 351

32 SOCIETIES.

1. ——— **Suit to enforce admission as member of a society.** A suit will not lie to force the defendants to admit the plaintiff into their society. RADHOO NISSEE *v.* RAM JUNOO NISSEE . . . . 2 Hay 83

2. ——— **Suit for declaration of right to be member of a society**—*Exclusion from somaj—Beng. Reg III of 1793, s. 8.* In a suit for a decree declaratory of the right of a person to the membership of a somaj (society), upon the allegation that the other members have excluded

3. ——— **Suit on account of exclusion from invitation to dinners.** Civil Courts cannot compel Hindus, against their will, to ask other Hindus to their houses or their entertainments. JOY CHUNDER SIRDAR *v.* RAMCHURN

6 W. R. 323

33 STATUTORY POWERS, PERSONS WITH.

——— **Remedy by ordinary suit barred**—*Madras Forest Act (V of 1882), s. 10—Procedure.* Where by an Act of the Legislature powers are given to any person for a public purpose

JURISDICTION OF CIVIL COURT—*contd.*

28. REVENUE COURTS—*contd.*

(c) ORDERS OF REVENUE COURTS—*contd.*

BUCKLAND *v.* ASHOO CHOWDHRAIN 9 W. R. 326

BROJENDRO COOMAR CHOWDHRY *v.* RAM COOMAR HOLDAR . . . . . 13 W. R. 32

DEEN DYAL SINGH *v.* DANEE ROY 13 W. R. 185

61. ——— **Suit to set aside sale of under-tenure under Act X of 1859**—*Fraud.* The purchaser of an under-tenure might sue in the Civil Court to set aside a sale of the under-tenure in execution of a decree for arrears of rent under Act X of 1859 on the ground that such decree was obtained by fraud subsequently to his purchase. GUNGA DOSS DUTT *v.* RAMNARAIN GHOSE
B. L. R. Sup. Vol. 625
2 Ind. Jur. N. S. 111 : 7 W. R. 183

SOUDAMINEE DOSSEE *v.* BHOLANATH SHAHA 9 W. R. 363

62. ——— **Suit to set aside sale in execution of decree**—*Act X of 1859, s. 105—Fraud.* The Civil Court had jurisdiction to entertain a suit instituted by *A* to set aside a sale of his

BOSE
B. L. R. Sup. Vol. 382 : 5 W. R., Act X, 22

63. ——— **Suit to set aside sale for arrears of rent**—*Act X of 1859, s. 105—*

MUNSHI *v.* KURRUNAMAYI DEBI . 8 B. L. R. 1

64. ——— **Suit to set aside sale by order of Revenue Court**—*Fraud.* A sale by order of a Revenue Court can be set aside by a decree of the Civil Court, even if held directly under Act XI of 1859. In this case the sale had taken place under s. 110 of Act X of 1859. JOYDOORGA DEBIA *v.* GOPAL CHUNDER BANERJEE
9 W. R. 538

65. ——— **Suit to set aside illegal sale by Collector.** In a suit to set aside a sale by a Collector under Act X of 1859, on the allegations that, at the time of the sale, a warrant of execution previously obtained against the moveable property of the judgment-debtor still remained in force, and that the deposit on the purchase-money was not paid until fourteen days had elapsed, it was held that such allegations, if proved, would amount to illegalities, and that a suit to declare such a sale null and void would lie in the Civil Court. ALI BUKSH SHAH *v.* NUBEE BUKSH . . 9 W. R. 600

See BALKRISHEN DAS *v.* SIMPSON
I. L. R. 25 Calc. 833
2 C. W. N. 513

66. ——— **Suit by judgment-debtor to set aside sale by Revenue Court.** The Civil Court has jurisdiction to entertain a suit by judgment-debtor under a decree of the Revenue Court for confirmation of his right in immoveable property sold by his execution-creditor under an order of the Revenue Court for the sale of the rights and benefits of the judgment-debtor in the suit in which the order was made, and for a declaration that the sale was void. CHANDRAKANT BHATTACHARJI *v.* JADUPATI CHATTERJI 1 B. L. R. A. C. 177 : 10 W. R. 224

67. ——— **Suit to set aside Collector's sale and recover property**—*Costs of partition—Order of Collector for payment of proportionate share of costs by co-sharers—Suit to set aside sale.* The Civil Court decreed partition (batwara) of an

tion of the fees to the Ameen who effected the parti-

PRASAD 1 B. L. R. F. B. 1 ; 10 W. R. F. B. 66

68. ——— **Order of Collector setting aside sale for arrears of revenue**—*Revenue Sale Act (XI of 1859), s. 33—Sale for arrears not*

Baijnath Sahu v. *Lala Sital Prasad,* 2 *B. L. R. F. B.* 1 : 10 *W. R., F. B.* 66, followed. *Gobind Lal Roy* v. *Ramjanam Misser, I. L. R.* 21 *Calc.* 70 distinguished and explained. HARKHOO SINGH *v.* BUNSIDHUR SINGH . I. L. R. 25 Calc. 876
2 C. W. N. 360

69. ——— **Suit to set aside sale when made without arrears of revenue being due**—*Sanction of Commissioner.* A suit to set aside a sale under Act XI of 1859, on the

15 W. R. [illegible]

JURISDICTION OF CIVIL COURT—*contd.*

28. REVENUE COURTS—*contd.*

(c) ORDERS OF REVENUE COURTS—*contd.*

70. ——— Suit to question regularity of sale in execution under Collector's order. When a sale had taken place by order of the Collector in execution of a decree under Act X of 1859, a civil suit lay for the purpose of questioning the regularity and propriety of the proceeding. Where circumstances indicate not merely irregu-

WARDS . . . . . . [illegible]

dissenting from RUTTUN MONEE DOSSIA *v.* KALEEKISSEN CHUCKERBUTTY . W. R. F. R. 147

71. ——— Suit by person injured by sale of non-transferable tenure in execution of decree of Revenue Court. Where a

entitled to complain in the Civil Court and to ask protection against the probable injurious consequences to himself of the Collector's decree. JOYKISHEN MOOKERJEE *v.* HUREEHUR MOOKERJEE 9 W. R. 286

72. ——— Suit to set aside sale on ground other than fraud—*Act X of 1876, s. 4—Sale for arrears of revenue—Suit to set aside* S. 4, cl. (c), of Act X of 1876, excepts from the jurisdiction of the Civil Courts claims to set aside, on account of irregularity, mistake, or any other ground except fraud, sales for arrears of land revenue. *Quære:*

I. L. R. [illegible] Bom. [illegible]

73. ——— Suit for confirmation of execution-sale set aside by Collector—*Civil Procedure Code, 1882, s. 312—Onus probandi.* A

314, referred to *Azim-ut-din v Baldeo, I. L. R. 3 All 554,* followed In such a suit, where it is pleaded in defence that the property was sold for an inadequate price, it lies on the defendant to show that there has been a material irregularity in publishing or conducting the sale BANDI BIBI *v* KALKA . . . . I. L. R. 9 All. 602

74. ——— Sale in execution of decree—*Civil Procedure Code, ss 311, 313, 320, 322B, 322C, 322D—Transfer of execution to Collector—Application to Civil Court to set aside sale held by*

JURISDICTION OF CIVIL COURT—*contd*

28. REVENUE COURTS—*contd.*

(c) ORDERS OF REVENUE COURTS—*contd.*

EDGE, *C.J.*—The intention of the Legislature as expressed in s 320 and the following sections of the Civil Procedure Code was not to allow any

KESHABDEO *v.* RADHE PRASAD I. L. R. 11 All. 94

75. ——— Suit to cancel pottah of Government waste issued by Collector—*Power of Collector to cancel pottah granted by him—Standing order.* The plaintiff having obtained from the revenue officers of the district a pottah of Government waste sued for the cancellation of a pottah for the same land subsequently granted to

I. L. R. 12 Mad. 404

76. ——— Suit by auction purchaser to confirm sale set aside by the Collector—*Civil Procedure Code, 1882, ss 312 and 320—Civil Procedure Code Amendment Act (VII of 1888), ss 30 and 55—Decree transferred to Collector for execution—Right of suit.* A decree was transferred to the Collector for execution. A sale

OLDFIELD, *J.*, in the former case approved. *Madho Prasad v. Hansa Kuar, I. L. R. 5 All. 314,* referred to. SHIB SINGH *v.* MUKAT SINGH I. L. R. 18 All. 437

JURISDICTION OF CIVIL COURT—*contd.*

28. REVENUE COURTS—*contd.*

(c) ORDERS OF REVENUE COURTS—*contd.*

77. ———— *Civil Procedure Code, 1882, ss. 312 and 320—Act VII of 1888, ss 30 and 55—Execution of decree—Decree transferred to Collector for execution* At a sale of ancestral property held by a Collector executing a decree transferred to him under s. 320 of the Code of Civil Procedure the plaintiffs, decree-holders, were

tainable *Shib Singh v. Mukat Singh, I L R 18 All 437*, overruled *Ugar Nath Tiwari v Bhonath Tiwari, All Weekly Notes (1891) 41*, and *Diwan Singh v Bharat Singh, I L R 3 All 206*, referred to. SHIAM BEHARI LAL v RUP KISHORE

I. L. R. 20 All. 379

78. ———— **Suit for declaration con-**

sion to him The zamindars were made parties to this proceeding The Court of Revenue decided in favour of the applicant *S* The zamindars appealed on the revenue side, but their appeal was dismissed—*Held*, that no suit would lie in a Civil Court on

v BHAGWAN KHAN . . I. L. R. 19 All. 101

79. ———— **Decision of a Revenue Officer**—*Bengal Tenancy Act (VIII of 1885), ss 107 and 108—Landlord and tenant—Record of rights* An order made by a Revenue Officer under s. 107 of the Bengal Tenancy Act, determining the rent payable for a holding, has the force of a decree, and when not set aside by appeal or otherwise, cannot be questioned in a Civil Court *Joypal Dhobi v. Palukdhari Das, 2 C W N 491*, approved RAM AUTAR SINGH v SANOMAN SINGH

I. L. R. 27 Calc. 167

See GOKHUL SAHU v. JODU NUNDUN ROY

I. L. R. 17 Calc. 721

80. ———— **Order of Revenue Court granting sale under certificate**—*Public Demands Recovery Act (Beng Act VII of 1880), s. 2—Limitation—Suit to set aside sale—Order of Revenue Court setting aside sale* A sale was held on the 9th September 1893, in execution of a certificate under the Public Demands Recovery Act

JURISDICTION OF CIVIL COURT—*contd.*

28. REVENUE COURTS—*concld.*

(c) ORDERS OF REVENUE COURTS—*concld.*

(Bengal, Act VII of 1880). On the 2nd January 1894, an appeal was preferred to the Commissioner under s 2 of Act VII of 1868 for setting aside the sale after expiry of sixty days prescribed for

missioner and decided by the lower Court after the

follow in the suit (ii) As regards the contention that the Commissioner had no jurisdiction to

L R 8 I A 123 11 C L R 113, referred to.

GUNESSAR SINGH v GONESH DASS

I. L. R. 25 Calc. 789

81. ———— **Commutation of rent**—*Bengal Tenancy Act (VIII of 1885), s 40* An

RAMGIR . . . 3 C. W. N. 311

82. ———— **Suit to set aside sale for arrears of cesses**—*Public Demands Recovery Act (Beng Act VII of 1880), ss 2, 8, 10.* A suit to set aside a sale held for arrears of cesses on the

MUKERJEE v. SECRETARY OF STATE FOR INDIA

I. L. R. 27 Calc. 698

4 C. W. N. 586

JURISDICTION OF CIVIL COURT—*contd.*

29. SAMBALPUR.

1. ———— **Second appeal**—*Jurisdiction—Appeal—Sambalpur—Court to which appeal lies—Bengal and Assam Laws Act (VII of 1905), ss. 2, 3, 6—Bengal and North-West Provinces Civil Courts Act (XII of 1887)—Central Provinces Civil Courts Act (II of 1904)—Bengal Act IV of 1906—High Court, jurisdiction of.* Where a suit instituted in the Court of the Subordinate Judge of Sambalpur was disposed of before the 16th of October 1905

was nothing in Bengal Act IV of 1906 to effect the jurisdiction of the High Court to entertain such appeal. HARABATI *v.* SATYABADI BEHARA (1907) **I. L. R. 34 Calc. 636**

2. ———— *Jurisdiction—Second Appeal—High Court, jurisdiction of—Sambalpur—Bengal and Assam Laws Act (VII of 1905), s. 6.* An appeal was preferred to the High

date the Bengal and Assam Laws Act (VII of 1905) came into force, and the District of Sambalpur was added to the Province of Bengal by a Proclamation of the Governor-General. On preliminary objections being taken that no second appeal lay in the case under the provisions of s. 15 of the Central Provinces Courts Act (II of 1904), and that the second appeal, if any, lay to the Judicial Commissioner of the Central Provinces under s. 6 of Act VII of 1905:—*Held*, that although the Central

I. L. R. 34 Calc. 663

30 SANADS

—— **Suit to cancel or set aside sanad as granted by mistake**—*Summary settlement—Sanad—Revocation of sanad—Garas—Wanta—Mazmun Narva—Bhagdari.* Where a sanad by way of summary settlement of land revenue has been granted by Government under Bombay Act VII of 1863, Government cannot reform or set it aside without the assent of all parties interested therein. To do so would be an assumption by Government of the function of a

JURISDICTION OF CIVIL COURT—*contd.*

30. SANADS—*concld.*

Civil Court. A Civil Court cannot, on the ground that Government has by mistake granted such a sanad to a person not the owner of the land, reform or set aside the sanad. S. 7 of Bombay Act VII of 1863 renders the quit-rent fixed by the sanad, binding alike on Government and on the rightful owner of the land, but the latter may recover the land from the grantee of the sanad, subject to the quit-rent fixed by the sanad, and payable to Government; and such grantee will be declared to have

mistakes other than those relating to ownership which may be found to exist in the sanads. DOLSANG BHAVSANG *v.* COLLECTOR OF KAIRA **I. L. R. 4 Bom. 467**

31 SERVICES, PERFORMANCE OF.

———— **Suit to enforce services by barbers**—*Cause of action.* A suit cannot be maintained in the Civil Courts to enforce the performance of certain services by barbers. RAJKISTO MAJEE *v.* NOBADE SEAL . . **1. W. R. 351**

32. SOCIETIES.

1. ———— **Suit to enforce admission as member of a society.** A suit will not lie to force the defendants to admit the plaintiff into their society. RADHOO NISSEE *v.* RAM JUNOO NISSEE . . . . **2 Hay 83**

2. ———— **Suit for declaration of right to be member of a society**—*Exclusion from somaj—Beng Reg III of 1793, s. 8.* In a suit for a decree declaratory of the right of a person to the membership of a somaj (society), upon the allegation that the other members have excluded

member or not. S. 8, Regulation III of 1793, commented on. SUDHARAM PATAR *v.* SUDHARAM **3 B. L. R. A. C. 91: 11 W. R. 457**

3. ———— **Suit on account of exclu-**

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6 W. R. 323

33. STATUTORY POWERS, PERSONS WITH.

———— **Remedy by ordinary suit barred**—*Madras Forest Act (V of 1882), s. 10—Procedure.* Where by an Act of the Legislature powers are given to any person for a public purpose

JURISDICTION OF CIVIL COURT—*concld.*

33. STATUTORY POWERS, PERSONS WITH —*concld.*

from which an individual may receive injury, if the mode of redressing the injury is pointed out by the statute, the ordinary jurisdiction of the Civil Courts is ousted, and in the case of injury [illegible]

certain land, a claim to which had been rejected under the said section:—*Held*, that the Munsif had no jurisdiction to entertain the suit. RAMACHANDRA v. SECRETARY OF STATE FOR INDIA
I. L. R. 12 Mad. 105

34 SURVEY AWARDS

———— Suit to set aside survey award—*Beng. Reg IX of 1833, s. 9* S 9 of Regulation IX of 1833 referred only to decisions of punchayets, and did not bar a suit in the Civil Court to set aside an award of survey authorities as null and void RAJ KISHEN ROY v. SURUT CHUNDER CHUCKERBUTTY . . . . 4 W. R. 79

IKRAM-OOLLAH v SHEO PERSHAD . 2 Agra 340

SIKUNDAR ALI v. PURWURUSH ALI
3 N. W. 132

35 TRESPASS

——— Suit to have door closed on account of apprehended trespass. *Held*, that a suit for the closing of a door on account of apprehended trespass will not lie in the Civil Courts. PARUM SOOKH v. SITA RAM . . 2 Agra 119

JURISDICTION OF CRIMINAL COURT.

JURISDICTION OF CRIMINAL COURT —*contd.*

See APPEAL IN CRIMINAL CASES—ACTS.
I. L. R. 4 Calc. 667
I. L. R. 15 Bom. 505

See CENTRAL PROVINCES TENANCY ACT (XI OF 1898), ss 45, 46, 47, 95.

See COMMISSION—CRIMINAL CASES.
I. L. R. 5 Bom. 338

See CRIMINAL PROCEDURE CODE, 1898, ss. 145, 192 (2), 529.
I. L. R. 36 Calc. 370

See CRIMINAL PROCEDURE CODE, s. 531.
I. L. R. 30 Mad. 94

See DISPUTE RELATING TO LAND.
I. L. R. 35 Calc. 774

See HIGH COURT, JURISDICTION OF—CRIMINAL.

See INSANITY . I. L. R. 2 Calc. 356

See JURISDICTION OF MAGISTRATES.

See MAGISTRATE—

GENERAL JURISDICTION;

POWERS OF MAGISTRATES;
I. L. R. 29 Calc. 885

RE-TRIAL OF CASES
I. L. R. 29 Calc. 412

See MAINTENANCE, ORDER OF CRIMINAL COURT AS TO . I. L. R. 25 All. 545

See OFFENCE COMMITTED ON THE HIGH SEAS . . 1 B. L. R. O. Cr. 1
7 Bom. Cr. 89
8 Bom. Cr. 63
I. L. R. 14 Bom. 227
I. L. R. 21 Calc. 782

See POSSESSION, ORDER OF CRIMINAL COURT AS TO—

CASES IN WHICH MAGISTRATE CAN DECIDE AS TO POSSESSION
5 C. W. N. 105

LIKELIHOOD OF BREACH OF THE PEACE. I. L. R. 28 Calc. 446

See PROCLAMATION.
I. L. R. 35 Calc. 701

JURISDICTION OF CRIMINAL COURT —*contd.*

See Revision—Criminal Cases—Discharge of Accused.
I. L. R. 27 Bom. 84

See Sanction for Prosecution—Revocation of Sanction.
I. L. R. 30 Calc. 394

See Security for Good Behaviour.
I. L. R. 29 Calc. 455

See Supreme Court, Calcutta.
1 Moo. I. A. 67

See Tolls . I. L. R. 36 Calc. 986

See Witness—Criminal Cases—Summoning Witnesses
I. L. R. 30 Calc. 508 ; 508n

———— **Magistrate can not split up offences in order to give himself jurisdiction—**

See Robbery . . 5 C. W. N. 372

—— **in Native State—**

See Foreign Jurisdiction Act, 1879 ss. 4, 6 and 8 I. L. R. 26 Mad. 607

1. GENERAL JURISDICTION.

1. —— **Presumption of jurisdiction** —*Objection to jurisdiction* The High Court being a Court of superior jurisdiction, the want of jurisdiction is not to be presumed, but the contrary.

2. ———**Resistance of process of Civil Court** The resistance of process of a Civil Court ... inal Procedure ... *In re Chun-* ... *63*, overruled.

2 B. L. R. F. B. 21 : 10 W. R. Cr. 43

3. ——— **Questions of title**—*Construction of documents. It is at all times desirable that* questions of title should not be tried in Criminal Courts, and more especially where such questions depend on the construction of obscure documents, or fall to be decided in reference to transactions of which at the best but an imperfect record is preserved. Queen v Kishen Pershad

2 N. W. 202

4. ——— **Special law, effect of, on general jurisdiction**—*Criminal breach of trust by trustee of temple—Mad. Reg VII of 1817—Act XX of 1863.* The ordinary criminal law is not excluded by Regulation VII of 1817 or Act XX of 1863. Anonymous Case . I. L. R. 1 Mad. 55

5.
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Procedure (Act X of 1882) does not affect any special jurisdiction or power conferred by any law in force at the time when the Code came into force Queen-Empress v Gustadji Barjorji

I. L. R. 10 Bom. 181

such order or notification until an attempt is made to enforce the exaction of a penalty against a person committing a breach of such order or notification. It then becomes the duty of the judicial authority to consider whether the order is properly made or not. *In the matter of the petition of* Surjanarain Dass. Empress v Surjanarain Dass

I. L. R. 6 Calc. 88

7. ——— **Obstruction to right of way** —*Erection of building on public way.* Where a party residing on one side of a public lane encroaches on the lane by building and narrows the passage

against the other Abdul Hye v. Ram Churn Singh . . . . 11 W. R. 445

8. ——— **Suit for closing new road and opening old one.** In a suit for closing a new

Charan Chatterjee

3 B. L. R. A. C. 351 : 12 W. R. 275

9. ——— **Offence committed on the high seas**—*12 & 13 Vict., c. 96—23 & 24 Vict, c. 88.* An offence committed on the high seas, but within three miles from the coast of British India, as being committed within the territorial limits of

JURISDICTION OF CRIMINAL COURT —*contd.*

1. GENERAL JURISDICTION—*contd.*

sallied out in boats and pulled up and removed a number of fishing stakes lawfully fixed in the sea within three miles from the shore by the villagers of a neighbouring village, it was *held* that a Magistrate in the Thana district had jurisdiction over the offenders; and that the Penal Code was the substantive law applicable to the case REG *v.* KASHYA RAMA . . . . . 8 Bom. Cr. 63

10. ———————— *Conversion of goods at foreign port entrusted to be carried from and to a British Indian port—Stats 12 & 13 Vict., c. 96, and 23 & 24 Vict., c. 88* B entrusted with

BAPU DALDI *v.* QUEEN . I. L. R. 5 Mad. 23

Mohurbhunj in the Tributary Mehals On an

jurisdiction *Per* CUNNINGHAM, J—The Tributary Mehals are now, as they were in 1874, a portion of British India, which the Government of India has

jurisdiction than that created by the law *Per* PRINSEP, J.—The territory of Mohurbhunj is a

India, unless expressly extended to them, the orders of Government conferring powers on particular officers over criminal offences committed within those mehals are *ultra vires.* HURSEE MAHAPATRO *v.* DINOBUNDO PATRO

I. L. R. 7 Calc. 523 : 9 C. L. R. 93

12. ———————— *Code of Criminal Procedure (Act X of 1872), s. 70—Foreign Jurisdiction and Extradition Act (XXI of 1879), s 9—Beng Regs XII, XIII, and XIV of 1805.*

India; but, under the provisions of s 9 of Act XXI of 1879, a conviction in British India for an offence committed without the limits of British India is good *Per* MITTER, J—Mohurbhunj is within the limits of British India, but seeing that the Tributary Mehals constitute a "district" within the meaning of the Criminal Procedure Code, and that the Superintendent of those mehals has been vested with the powers of a Sessions Judge under an order of the Government of India, a conviction under the Penal Code (having regard to the provisions of s 70 of the Criminal Procedure Code) ought not to be set aside. *Per* PRINSEP, J—Mohurbhunj is within the limits of British India, but the Acts which extend to British India do not extend to Mohurbhunj The territory having been expressly placed beyond the ordinary legislation, the law in force in British India cannot come into operation there until this exemption has been removed EMPRESS *v* KESHUB MOHAJAN. EMPRESS *v* UDIT PRASAD

I. L. R. 8 Calc. 985 : 11 C. L. R. 241

13. ———— **Uncertainty as to the situation of the scene of offence.** *Criminal Procedure Code (Act X of 1882), s 182—Local area.* When there is an uncertainty as to whether a particular spot, where an offence has been committed, is situated within one district or another, the case is governed by s 182 of the Criminal Procedure Code (Act X of 1882), and the offence is triable in the Court of either district The expression "local area" includes, and was intended to include a "district" PUNARDEO NARAIN SINGH *v* RAM SARUP ROY I. L. R. 25 Calc. 858

2 C. W. N. 577

14. ———————— *Kheonjur—"Local area"—Code of Criminal Procedure (Act*

Cuttack district, and the others residents of Kheonjur were charged before the Deputy Magistrate of

JURISDICTION OF CRIMINAL COURT —*contd.*

1. GENERAL JURISDICTION—*contd.*

Held, further, that ss 182 and 531 of the Criminal Procedure Code had no application to the case. The words "local area" used in s. 182 only apply to a "local area" over which the Criminal Proce-

...NUND DASS *v.* BHUGGUT PERI *In the matter of* BICHITRANUND DASS *v.* DUKHIA JANA . I. L. R. 16 Calc. 667

15. ———— Offence committed in foreign territory—*Criminal Procedure Code, s. 188 —Trial without certificate of the Political Agent —Magistrate who is also Political Agent, jurisdiction of.* A District Magistrate instituted criminal proceedings in British India against a Native Indian

Code. The accused was committed to the Sessions

commitment should be quashed. QUEEN-EMPRESS *v.* KATHAPERUMAL . . I. L. R. 13 Mad. 423

16. ———— Jurisdiction of the British Consular Court at Zanzibar over foreign subjects enjoying British protection—*Order in Council, dated the 29th November 1884, s 6—Greek subjects.* The Greek residents at Zanzibar, having been by international action placed under British protection, are liable to the British criminal law in force at Zanzibar. The accused, who was a Greek under British protection at Zanzibar, was convicted by the British Consular Court at Zanzibar of culpable homicide not amounting to murder, and sentenced to ten years' rigorous imprisonment under s. 304 of the Indian Penal Code (Act XLV of 1860) He appealed to the High Court of Bombay, contending (*inter alia*) that he was a Greek subject,

ing British protection in so far as by treaty, capitulation, grant, usage sufferance, or other lawful means, Her Majesty had jurisdiction at Zanzibar in relation to such persons; and that the prisoner, being a British protected person within the meaning of s. 4, cl (*b*) of the Order, was amenable to the jurisdiction of the Consular Court QUEEN-EMPRESS *v.* REGO MONTOPOULO

I. L. R. 19 Bom. 741

17. ———— Jurisdiction of Consular Court over persons not resident within a British Protectorate—*Aiding the waging of war against a friendly power—Africa Orders in Council, 1889, 1892, 1893* Two natives of a German Protectorate were convicted by the English Consular Court of Uganda of aiding and abetting the King of Unyoro in waging war against the King of Uganda and the Queen-Empress under ss. 48 and 50 of the Africa Order in Council of 1889 as

I. L. R. 22 Bom. 54

authority for the exercise of criminal jurisdiction by the Government of India upon lands within the limits of the Hyderabad State Railway is derived

JURISDICTION OF CRIMINAL COURT
—*contd.*

1. GENERAL JURISDICTION—*contd.*

those lands, and not having been connected with the railway. MUHAMMAD YUSUF-UD-DIN *v.* QUEEN-EMPRESS . . . I. L. R. 25 Calc. 20
L. R. 24 I. A. 137
2 C. W. N. 1

19. ———— **Power of Indian Legislature**—*Act XXII of 1869, s 9—Indian Councils Act—24 & 25 Vict., c. 67, s 22—24 & 25 Vict, c. 104, ss. 9, 11, 13—Delegation, power of.* By Act XXII of 1869 certain districts were removed from the jurisdiction of the High Court, and by s 5 the administration of civil and criminal justice was vested in such officers as the Lieutenant-Governor of Bengal should appoint By s 9 the Lieutenant-Governor was empowered to extend all or any of the provisions of the Act to the Cossyah and Jynteeah Hills By a notification in the *Calcutta Gazette* of 4th October 1871, the Lieutenant-Governor extended the provisions of the Act to the Cossyah and Jynteeah Hills, and directed that the Commissioner of Assam should exercise the powers of the High Court in the civil and criminal cases triable in the Courts of that district The two prisoners were tried for murder in April 1876, and were on conviction sentenced by the Chief Commissioner of Assam to transportation for life. On appeal by the prisoners to the High Court.—*Held*, by the majority of a Full Bench (GARTH, *C. J*, MACPHERSON and PONTIFEX, *JJ*., dissenting), that the High Court had jurisdiction to entertain the appeal, and such jurisdiction was not taken away by Act XXII of 1869. *Per Curiam* The Governor General in Council had power by legislation to remove the districts from the jurisdiction of the High Court, *Per* JACKSON, AINSLIE, and MARKBY, *JJ* (KEMP, *J*., concurring)—The Governor General in Council

PEX, *J*, concurring)—Such delegation is nowhere expressly prohibited, and does not bring the Act under any of the restrictive provisions of the Indian Councils Act. *Per* GARTH, *C J*, and MACPHERSON, *J*. (PONTIFEX, *J*, concurring)—The power of delegation now questioned had been exercised in

J. (PONTIFEX, *J*, concurring)—The High Court has no such power if satisfied that the Act is not within

JURISDICTION OF CRIMINAL COURT
—*contd.*

1. GENERAL JURISDICTION—*contd.*

any of the prohibitions of the Indian Councils Act. EMPRESS *v.* BURAH
I. L. R. 3 Calc. 63 : 1 C. L. R. 161

Held, by the Judicial Committee of the Privy Council that the decision of the majority of the High Court was erroneous and rested on a mistaken

fidence, is not uncommon, and in many circumstances may be highly convenient. By the terms of the Act 24 & 25 Vict, c. 104, the exercise of jurisdiction in any part of Her Majesty's Indian territories by the High Courts was meant to be subject to, and not exclusive of, the general legislative power of the Governor General in Council An

under that statute EMPRESS *v* BURAH
I. L. R. 4 Calc. 172 : 3 C. L. R. 197
L. R. 5 I. A. 178

20. ———— **Trial by jury**—*Commissioner of Cooch Behar.* The Commissioner of Cooch Behar had no power to hold a trial by jury in the Gowalpara district QUEEN *v.* BHAGIDHONE KATCHARI
8 W. R. Cr. 53
QUEEN *v* KHOODERAM . 8 W. R. Cr. 39

21. ———— **Offence committed on the high seas**—*Jurisdiction—High seas—Procedure—Penal Code (Act XLV of 1860)—37 & 38 Vict.*

22 ———— **Offence committed out of British India**—*Criminal Procedure Code, s 188—Offence committed outside British India by Native Indian subject of His Majesty—Certificate of*

JURISDICTION OF CRIMINAL COURT —*contd.*

I. GENERAL JURISDICTION—*contd.*

commitment to the Court of Session must be quashed, notwithstanding that the necessary certificate [illegible] the committing Magistrate. EMPEROR *v.* KALI CHARAN (1902) . . I. L. R. 24 All. 256

23. ———— Information of a cognizable and a non-cognizable offence—*Prosecution—Police reporting the case as non-cognizable—Magistrate's acceptance of the report—Magistrate's subsequent order calling for a charge sheet from the Police for the cognizable offence—Illegality* Where, on an information having been lodged before the [illegible]

24. ———— Appeals—*Criminal Procedure Code, ss. 408, 435—Jurisdiction—Appeal from First-class Magistrate lies to the Sessions Court,* [illegible]

word 'situate' in s. 435 of the Code of Criminal Procedure refers to the place where the inferior Courts mentioned therein ordinarily sit. The principle laid down in s. 435 in regard to revisional powers, must, in the absence of any indication to the contrary in the Code, be followed in the case of appeals under s. 408 VALIA AMBU PODUVAL *v.* EMPEROR (1906) . . I. L. R. 30 Mad. 136

25. ———— Criminal Procedure Code (Act V of 1898), s. 144—*Jurisdiction of Magistrate—Interlocutory orders—Rule issued by High Court—Seisin of case—Extension of time—Rival hâts.* A Magistrate cannot by passing successive orders under s. 144, Criminal Procedure Code, extend the operation of an order indirectly beyond the time limited by sub-s. (5) of s. 144. Where the first and initial order passed by a Magistrate was in substance and form an order under sub-s. (2) and forbade certain persons from establishing a *hât* at a certain place and gave a

JURISDICTION OF CRIMINAL COURT —*contd.*

I. GENERAL JURISDICTION—*concld.*

vague direction to them forbidding interference with the trade of another *hât*: *Held*, that the order was irregular and vague and could not stand. As long as an order under s. 144 has legal operation, no intermediate or interlocutory order not contemplated by sub-s (4) can be passed. When the High Court has issued a rule in any case, it takes full seisin of the case, and it is the High Court alone that can pass *ad interim* orders in the case. The Magistrate against whose order the rule is issued has no such jurisdiction. The most appropriate section of the Code to deal with cases of rival *hâts* which may cause a breach of the peace is s 107, Criminal Procedure Code. SATISH CHUNDER ROY *v.* EMPEROR (1906) . . 11 C. W. N. 79

26. ———— Security to keep the peace —*District Magistrate—Appellate Court, power of, to direct security to keep the peace in conviction by a second or third class Magistrate—Criminal Procedure Code (Act V of 1898), s 106 (3)* An Appellate Court cannot exercise the power given by s 106 (3) of the Criminal Procedure Code, where the conviction has not been by a Court specified in sub-s (1) *Muthiah Chetti* v. *Emperor, I. L. R 29 Mad. 190*, *Paramasiva Pillai* v. *Emperor, I. L. R 30 Mad 48*; and *Mahmud Sheikh* v. *Aji Sheikh, I. L R. 21 Calc. 622*, referred to. EMPEROR *v.* MOMIN MALITA (1908)
I. L. R. 35 Calc. 434

27. ———— Competence of Magistrate who issued process, but did not take cognizance or direct a local investigation, to hear appeal on conviction—*Trial of Summons Case—Conviction of Assault and mischief on summons for Criminal Trespass—Transfer—Irregu-* [illegible] when the Magistrate is not empowered under s. 192 to do so is cured by s. 529 (*f*). DASARATH RAI *v.* EMPEROR (1909) . I. L. R. 36 Calc. 869.

2. EUROPEAN BRITISH SUBJECTS.

1. ———— Sessions Court, Bellary—*Treaty by Rajah of Sundoor with Government.* The

JURISDICTION OF CRIMINAL COURT
—*contd.*

2. EUROPEAN BRITISH SUBJECTS—*contd.*

entered into by the late Rajah of Sundoor with the Government of Madras contained the following stipulation. "It being probable that, as European officers take up their residence on the said hill, many servants, tradesmen, private persons, and others will reside there, I have relinquished to the Company's Government the police and magisterial functions of maintaining peace, and trying and punishing offences committed by such people, such as violence, petty crimes, thefts, murder, etc. The Collector is

they deemed right for the trial and punishment of offences committed by such persons. QUEEN *v* VENCANNA . . . . . 3 Mad. 354

2. ——— Power to legislate for European British subject in mofussil—*Legislature, Power of—Bom. Act VII of 1867 (District Police Act)—3 & 4 Will. IV, c 123—53 Geo III, c. 155, s 105—37 Geo III, c. 142, s. 10.* Although the old East India Company had power, under

limited power of legislating as regarded the local limits of the presidency town), no authority expressly granting power to the East India Company or the Indian Government to legislate for British-born subjects can be found. *Semble* That neither the East India Company nor any Indian Government (with the like exception) possessed such power from the year 1709 till the passing of the 3 & 4 Will IV, c 122. With the exception of

late Supreme Court, and is now exercised by the High Court, with the like exception, and some further exceptions introduced by subsequent Acts

JURISDICTION OF CRIMINAL COURT
—*contd.*

2. EUROPEAN BRITISH SUBJECTS—*contd.*

possesses over British-born subjects in the mofussil, which jurisdiction is exclusive except in so far as it is limited by Stat 53 Geo III, c 155, s 105, and certain subsequent Acts of the Government of India. REG *v* REAY . . 7 Bom. Cr. 6

3. ——— Power to try European British subject—*Criminal Procedure Code (Act X of 1872), ss 71-88—Power of Indian Legislature—24 & 25 Vict. c 67 (Indian Councils Act), ss. 22 and 42.* A European British subject in the

powers of the Governor General in Council, and therefore the Magistrate had jurisdiction to try the case QUEEN *v* MEARES
14 B. L. R. 106 : 22 W. R. Cr. 54

4. ——— *Criminal Procedure Code, 1882, s 4, cl (i), and ss. 453 and 454—Privilege—Waiver—Jurisdiction of High Court over European British subjects in Sind—Bom Act XII of 1866* Where a European British sub-

cedure (Act X of 1882), including the right to have the proceedings in his case reviewed by a Presidency High Court, if another Court exercises the highest revisional jurisdiction under the Code in cases other

not with reference to proceedings generally against Europeans, including proceedings in which they waive their rights under that chapter. If therefore in any particular case the special rules contained in Ch XXXIII of the Code cease to have any

JURISDICTION OF CRIMINAL COURT—*contd.*

2. EUROPEAN BRITISH SUBJECTS—*contd.*

European British subject, was tried before the City Magistrate of Karachi and convicted of criminal breach of trust under s 409 of the Indian Penal C...

tion of the High Court. The accused not having been tried under the special procedure laid down for the trial of European British subjects, the Sudder Court in Sind, which, under Bombay Act XII of 1866, was the highest Court of Appeal in all civil and criminal matters in Sind had the revisional powers of a High Court in the present case by virtue of the latter part of s 4, cl (i), of the Code of Criminal Procedure. QUEEN-EMPRESS *v* GRANT

I. L. R. 12 Bom. 561

5. ——— *Jurisdiction of High Court—Foreign Jurisdiction Act, 1879, Ch. II—European British subjects in Bangalore—Justices of the Peace for Mysore.* The civil and military station of Bangalore is not British territory, but a part of the Mysore State, and the Code of Criminal Procedure is in force therein by reason of declarations made by the Governor General in Council in exercise of powers conferred by the Foreign Jurisdiction and Extradition Act, 1879. Justices of the Peace for the State of Mysore are also *Justices of the Peace for Bangalore, and both* the Civil and Sessions Judge and the District ...

European British subject from the Court of the District Magistrate of the civil and military station of Bangalore to the Court of a Presidency Magistrate at Madras. *In re* HAYES . I. L. R. 12 Mad. 39

6. ——— *Criminal Procedure Code, (Act X of 1872), ss 74, 83. B,* who was charged before a Magistrate who was competent to enquire into a complaint against a European British subject with an offence triable by him, claimed to be dealt with as a European British subject. *B* did not state the grounds of such claim. ...

...ceeded with ... were not a European British subject, and sentencing him to ...

...edure Code, whether *B* was or was not a European British subject The Magistrate having decided that *B* was a European British subject ;—*Held*, that this being so, and it appearing that the Magistrate had dealt with *B* as other than a European British subject, *B's* trial was void for want of jurisdiction. EMPRESS *v* BERRILL

I. L. R. 4 All. 141

JURISDICTION OF CRIMINAL COURT—*contd.*

2. EUROPEAN BRITISH SUBJECTS—*contd.*

7. ——— *European British soldier—Jurisdiction of Military authorities—Beng. Regs. XX of 1825 and XIII of 1833—4 Geo. IV,* ... A British born European soldier ...

Upon an application to have the commitment quashed and the prisoner handed over to the Military authorities in accordance with Regulation XX of 1825, it was *held* that the provisions of Regulation XX of 1825 as to the course to be taken in dealing with European British subjects who have committed offences were rescinded in Hazaribagh by Regulation XIII of 1833, s 3, as being rules for the administration of criminal justice within the meaning of that section Assuming the regulation was in force :—*Held*, that 4 Geo IV, c. 81, and ...

8. ——— *Mutiny Act, s. 101—Offence committed by British soldier.* S. 101 ...

their jurisdiction dependent upon the sanction of the Commander-in-Chief. The section is merely permissive of a military trial being held. EMPRESS *v*. MAGUIRE

I. L. R. 5 Calc. 124 : 4 C. L. R. 432

9. ——— *Proof of status—Question of fact* Whether or not an accused is a European British subject is a matter of fact to be determined judicially by the Court of Session on the evidence, in the event of the prisoner raising that question. QUEEN *v*. PARKS . 10 W. R. Cr. 6

10. ——— *Proof of status.* The prisoner pleaded that he was a British-born subject, and therefore not amenable to the jurisdiction of the Sessions Judge of Tellichery, by whom ...

incomplete :—*Held*, that the plea to the jurisdiction was not made out. QUEEN *v* TURNBULL

6 Mad. 7

JURISDICTION OF CRIMINAL COURT —contd.

2. EUROPEAN BRITISH SUBJECTS—contd.

11. ———— *Offence committed within the territories of Native Prince in alliance with Government* The defendant, a European British subject, was charged with having committed three offences at Bangalore, punishable under the Penal Code:—*Held*, that the High Court has the same criminal jurisdiction which the late Supreme Court had, and that, Bangalore being within the territories of the Maharajah of Mysore, a Native Prince in alliance with the Government of Madras, the defendant was subject to the jurisdiction of the High Court in respect of criminal offences committed in the territory of Mysore REG v. WATKINS
2 Mad. 444

12. ———— *Madras Police Act (XXIV of 1859), s 48.* A European British subject was convicted by the Cantonment Magistrate under s 48 of the Police Act (Act XXIV of 1859):—*Held*, that the Magistrate had no jurisdiction. ANONYMOUS CASE . **5 Mad. Ap. 25**

13. ———— *Judicial Commissioner of Mysore.* A European British subject committed by a Justice of the Peace in Mysore for trial by the Judicial Commissioner of Mysore on a charge under s 348 of the Penal Code was convicted on 10th March 1880:—*Held*, that the commitment and conviction were illegal *Quære* Whether,

14. ———— *Justice of the Peace—Illegal conviction* Where a Magistrate, being also a Justice of the Peace, convicted a British-born subject of mischief under s. 426 of the Penal

15. ———— *Officer invested with special powers—Ss 30, 34, and 209, Code of Criminal Procedure (Act X of 1882)* An officer invested with special powers under s. 35 of the Code of Criminal Procedure should rarely, if ever, try a case himself under s 209 of the Code of Criminal

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PARAMANANDA
I. L. R. 10 Calc. 85 : 13 C. L. R. 375

16. ———— *Criminal Procedure Code, s 451 (1)—Right of European British subject to be tried by a jury—Such right claimable at any time before accused has entered upon his defence notwithstanding previous waiver.* One Sullivan was sent for trial to the District Magistrate of Meerut, the offence alleged against him being one under

tion for a jury was presented on behalf of the accused. The Magistrate disallowed this application: *Held*, that the fact that the accused, before the trial had begun, had stated that he did not wish for a jury, did not prevent him from afterwards claiming a jury within the time allowed by s. 451 (*1*) of the Code of Criminal Procedure, and that the Magistrate was wrong in disallowing the application EMPEROR v SULLIVAN (1902)
I. L. R. 24 All. 511

17. ———— **Court of Magistrate of Tellichery** The Joint Magistrate of Tellichery has no jurisdiction to try a resident of Mysore for criminal acts done in Mysore. ANONYMOUS CASE
6 Mad. Ap. 3

3. NATIVE INDIAN SUBJECTS.

———— **Native Indian subject of Her Majesty**—*Criminal Procedure Code (Act X of 1882), s. 188—Offence committed by an alien outside British India—Jurisdiction of Courts in British India to try such an offence* The accused was Talati of Kalol in British territory. His family belonged to the village of Bakrol in the Baroda State. His father entered the service of the British Government and lived almost entirely at Kalol, but he does not appear to have given up his intention of returning to his family residence at Bakrol. The accused was born at Dubhai in the Baroda territory. He was educated partly at Kolal and partly at Baroda. He entered the Revenue Survey Department in the Panch Mahals His services

arrested. The Sessions Judge reversed the conviction on the ground that the Magistrate had no jurisdiction to try the accused: *Held*, that the accused was not a "Native Indian subject of Her Majesty" within the meaning of s. 188 of the Code of Criminal Procedure; and though as a "servant of the Queen" he was subject to punishment under s. 4 of the Penal Code, the Magistrate of Ahmedabad, in whose jurisdiction he was "found," had no jurisdiction under that section to try him for an offence committed in a foreign

JURISDICTION OF CRIMINAL COURT —*contd.*

3. NATIVE INDIAN SUBJECTS—*concld.*

State. *Per* PARSONS, *J.*—The expression "Native Indian subject of Her Majesty" in s. 188 of the Code of Criminal Procedure (Act X of 1882) must be construed strictly, and cannot be held to include "servants of Her Majesty" QUEEN-EMPRESS *v.* NATWARAI . . . I. L. R. 16 Bom. 178

4. OFFENCES COMMITTED ONLY PARTLY IN ONE DISTRICT.

(*a*) GENERALLY.

1. ———— **Offence begun in one place and completed in another**—*Stat. 9 Geo. IV, c. 74, s. 56* S. 56 of the Stat 9 Geo. IV, c 74 (applying and extending to the British territories in India the provisions then recently made for England with respect to offences committed in two different places or partially committed in one place and accomplished in another) applies only to the cases of persons amenable to the Supreme Court at Calcutta beginning to commit offences in one place which are afterwards completed in another, and not to a case where the persons committing the offence were not amenable to the said Court, and where the whole offence which has been committed was within one jurisdiction. The term "within the limits of the Charter of the said United Company," construed to mean within the limits of the Trading Charter of the East India Company NGA HOONG *v* QUEEN . 4 W. R. P. C. 109
7 Moo. I. A. 72

2. ———— **Offence committed in British territory, instigated by foreign subject resident in foreign territory**—*Criminal Procedure Code, 1872, s. 66.* Where a foreign subject, resident in foreign territory, instigated the commission of an offence which in consequence was committed in British territory:—*Held,* that the instigation not having taken place in any district created by the Code of Criminal Procedure the instigator was not amenable to the jurisdiction of a British Court established under that Code. s 66 REG. *v.* PIRTAL . . 10 Bom. 356

3. ———— **Acts done partly within and partly without British territories**—*Offence under Penal Code.* A person who is admittedly a subject of the British Government is liable to be tried by the Courts of this country for acts done by him, whether wholly within or wholly without, or partly within and partly without, the British territories in India, provided they amount to an offence under the Penal Code.* QUEEN *v.* AHMED-OOLLAH . . . 2 W. R. Cr. 60

(*b*) ABETMENT.

4. ———— **Abetment in British India of an offence committed in foreign territory not an offence under the Penal Code**—

JURISDICTION OF CRIMINAL COURT —*contd.*

4. OFFENCES COMMITTED ONLY PARTLY IN ONE DISTRICT—*contd.*

(*b*) ABETMENT—*contd.*

Abetment of murder—Rioting—Penal Code (Act XLV of 1860), ss. 109, 115, 147, and 302—Criminal Procedure Code (1882), s. 188. An abetment in British India by a British subject of an offence committed in foreign territory is not an offence punishable under the Indian Penal Code (XLV of 1860), and cannot therefore be tried by a Court in British India. *Regina* v. *Elmstone, 7 Bom. H. C. Cr. 89,* and *Empress* v. *Moorga Chetty, I. L R. 5 Mad. 338,* followed. The accused, a Native Indian subject of Her Majesty, was committed to the Court of Session for abetting the commission of murder or of rioting under ss. 302 and 147 of the Indian Penal Code The alleged abetment consisted of words spoken in British territory by the accused inciting certain Portuguese subjects to kill one Bhana, if he attempted to remove the produce of certain lands situate in the Portuguese territory of Daman. A disturbance afterwards occurred at Daman in connection with this matter, in which one man was killed and another wounded. Thereupon the Governor General of Portuguese India moved the Government of Bombay to bring the accused to justice as the instigator of the murder The Government of Bombay, being of opinion that s. 188 of the Code of Criminal Procedure (Act X of 1882) was applicable to the case, passed a Resolution in the Political Department directing the District Magistrate to take the necessary action in the matter. The District Magistrate thereupon committed the accused to the Court of Session on a charge of abetment of murder or of rioting: *Held,* quashing the commitment, that the alleged abetment was not an offence punishable

v. GANPATRAO RAMCHANDRA
I. L. R. 19 Bom. 105

5. ———— **Offence committed out of British India**—*Penal Code (Act XLV of 1860), ss. 108A, 372—Disposing of a minor for immoral purposes—Offence not triable except with the certificate of Political Agent or sanction of Government—Criminal Procedure Code (Act V of 1898),*

JURISDICTION OF CRIMINAL COURT —contd

4. OFFENCES COMMITTED ONLY PARTLY IN ONE DISTRICT—contd.

(b) Abetment—concld.

sentenced them each to six months' rigorous imprisonment: *Held*, that, as the offence of the disposal of the minor took place out of British India, the Magistrate had no jurisdiction to try the offence in the absence of a certificate of the Political Agent or the sanction of the Local Government as required by s 188 of the Code of Criminal Procedure (Act V of 1898): *Held*, also, that, as no offence was committed in British India, accused No. 2 was not guilty of abetment, and s 108A of the Penal Code had not application to the present case. Mere *intention not followed by any act cannot constitute* any offence, and an indirect preparation which does not amount to an act which amounts to a commencement of the offence does not constitute either a principal offence or an attempt or abetment of the

EMPRESS v. BAKU

(c) Abetment of Waging War.

9 B. L. R. 36 : 17 W. R. Cr. 15

(d) Adulteration.

7. ——— **Adulteration of cotton**—*Possession of cotton adulterated in foreign territory—Cotton Frauds Act, ss. 6 and 14.* Cotton supposed to have been adulterated in foreign territory was seized in British territory: *Held*, that the Magis-

is immaterial where the adulteration takes place. EMPRESS v. KHIMCHAND NARAYAN

I. L. R. 3 Bom. 384

JURISDICTION OF CRIMINAL COURT —contd.

4 OFFENCES COMMITTED ONLY PARTLY IN ONE DISTRICT—contd.

(e) Criminal Breach of Contract.

8. ——— **Contract made in foreign territory to be performed in British territory**—*Breach—Arrest in foreign territory—Act XIII of 1859.* *B*, having contracted in foreign

BILIGIRI . . I. L. R. 7 Mad. 354

9. ——— **Breach of contract to labour in foreign territory** *V*, having received an advance of money from *G*, contracted to labour for him in foreign territory. Having broken the contract, *V* was prosecuted under Act XIII of 1859, ordered to repay, and sentenced to *imprisonment* in default. *Held*, that the order was illegal as having been made without jurisdiction. GREGORY v. VADAKASI KANGANI . . I. L. R. 10 Mad. 21

See SIDDHA v BILIGIRI . I. L. R. 7 Mad. 354

(f) Criminal Breach of Trust.

10. ——— **Liability of native Indian subjects for offences committed out of British India**—*Criminal Procedure Code, 1882, s 188* The accused were charged under *s* 407 *of* the Indian Penal Code (Act XLV of 1860) with committing criminal breach of trust in respect of

11. ——— **Place where consequence of act ensued**—*Criminal Procedure Code (1882), ss. 179 and 185—Penal Code (Act XLV of 1860), s 408.* *B*, an employé of a company the office of which was at Cawnpore, was charged with the offence punishable under s. 408 of the Penal Code. The complainant alleged that *B*, being in charge, on behalf of the company at a place in Bengal, of

into the charge, inasmuch as the consequence of *B's* acts, namely, loss to the company, occurred in Cawnpore. QUEEN-EMPRESS v. O'BRIEN

I. L. R. 19 All. 111

(g) Dacoity.

12. ——— **Dacoity committed out of British territory**—*Concealment of property*

JURISDICTION OF CRIMINAL COURT —*contd.*

4. OFFENCES COMMITTED ONLY PARTLY IN ONE DISTRICT—*contd.*

(*g*) DACOITY—*concld.*

British territory—Criminal Procedure Code, 1872, s. 67. Where dacoity was committed at Velanpore, a village in the territory of His Highness the Gayakwad, and a part of the stolen property found where it had been concealed by the accused in British territory, it
could not be
offence compl

have coalesced with the first and principal one so as to give jurisdiction under s 67 of the Code of Criminal Procedure in each district into which the property was conveyed. But on a conviction of retaining stolen property, the sentences awarded could, it was *held*, be sustained, the retaining having taken place in British territory. REG *v* LAKHYA GOVIND . . **I. L. R. 1 Bom. 50**

13. ——— **Dacoity committed in British territory**—*Criminal Procedure Code, s 180—Dishonest receipt of stolen property in foreign territory* Certain persons, who were not proved to be British subjects, were found in possession, in a Native State, of property the subject of a dacoity committed in British India They were not proved to have taken part in the dacoity, and there was no evidence that they had received or retained any stolen property in British India. They were convicted of offences punishable under s 412 of the Penal Code: *Held*, that no offence was proved to have been committed within the jurisdiction of a British Court QUEEN-EMPRESS *v* KIRPAL SINGH **I. L. R. 9 All. 523**

(*h*) EMIGRANTS, RECRUITING, UNDER FALSE PRETENCES

14. ——— **Place where false pretences were held out**—*Jurisdiction to try recruiters of emigrants under s. 71, Act XIII of 1864.* Recruiters of emigrants charged under s. 71, Act XIII of 1864, must be tried by the Magistrate within whose jurisdiction the holding out of false pretences to the labourers took place. ANONYMOUS **4 Md. Ap. 4**

(*i*) ESCAPE FROM CUSTODY.

15. ——— **Place of trial**—*District in which escape took place.*

(*j*) KIDNAPPING

16. ——— **Offences committed in different districts in the course of the same**

JURISDICTION OF CRIMINAL COURT —*contd*

4. OFFENCES COMMITTED ONLY PARTLY IN ONE DISTRICT—*contd.*

(*j*) KIDNAPPING—*concld.*

transaction—*Criminal Procedure Code (1882), s. 180—Penal Code (Act XLV of 1860), ss 366 and 368—Kidnapping—Commitment where to be made.* *R*, *C*, *P*, and *K* were committed by the Joint Magistrate

sons had committed the offence punishable under s 368 of the Indian Penal Code in the district of

transferred for trial to the Court for the trial of sessions
that of
Sama
Empres
not followed. *Queen-Empress* v. *Ingle, I L. R. 16 Bom. 200,* and *Queen-Empress* v. *Abbi Reddi, I. L R 17 Mad. 402,* referred to. *Queen-Empress* v *Thaku, I. L. R. 8 Bom. 312,* followed QUEEN EMPRESS *v* RAM DEI . **I. L. R. 18 All. 350**

17. ——— **Offences committed outside British territory**—*Criminal Procedure Code (1882), s 188—Certificate of Political Agent—Kidnapping.* The absence of the certificate of the Political Agent required by s. 188 of the Code of Criminal Procedure is an absolute bar to the trial of a case to which the provisions of that section apply. QUEEN-EMPRESS *v.* RAM SUNDAR **I. L. R. 19 All. 109**

(*k*) MURDER.

18. ——— **Offence committed in Cyprus**—*Foreign Jurisdiction and Extradition Act (XI of 1872), ss 3, 9—Liability of Native Indian British subject for offence committed in Cyprus—"Native State"—Legislative powers of Governor General in Council*

"Native State," in reference to Native Indian subjects of Her Majesty, within the meaning of that Act. *Per* STUART, C.J.—The power of the Governor General of India in Council to make laws for the

JURISDICTION OF CRIMINAL COURT —*contd*

4. OFFENCES COMMITTED ONLY PARTLY IN ONE DISTRICT—*contd.*

(*k*) Murder—*contd.*

trial and punishment in British India of offences committed by British Indian subjects in British territories other than British India discussed A Division Court of the High Court ordered the Magistrate who had refused to enquire into a charge of murder on the ground that he had no jurisdiction [illegible]

[illegible]

determining whether such sentence should be confirmed, the Full Court was not precluded by the [illegible]

SARMUKH SINGH . . I. L. R. 2 All. 218

19. ———— Murder committed in Island of Perim—*Criminal Procedure Code, 1882, s 7—Law in force at Perim—Aden, jurisdiction of Court of Political Resident at—Act II of 1864, s 29—Appeal from sentence of Political Resident at Aden to High Court of Bombay in cri-* [illegible]

[illegible]

empowering the officer from time to time command- [illegible]

[illegible]

in existence at the date of the above notification when the limits thereof were altered by the inclusion of the Island of Perim A prisoner charged with having committed murder in the Island of Perim was committed by the Magistrate at Perim to be tried before the Political Resident at Aden. [illegible]

EMPRESS *v.* MANGAL TEKCHAND I. L. R. 10 Bom. 258

[illegible]

at Aden, that the Court of the Political Resident at Aden had no jurisdiction over the Island of Perim, and that the Political Resident at Aden was not a Judge of a Court of Session for that island. Where, therefore, a person charged with having [illegible]

[illegible]

are not commensurate. QUEEN-EMPRESS *v.* MANGAL TEKCHAND . . I. L. R. 10 Bom. 263

(*l*) Receiving Stolen Property.

20. ———— Receiving outside British territory—*Criminal Procedure Code, 1861, s. 31—Subject of foreign State—Offence committed out of British territory.* S 31 of the Criminal Procedure Code does not confer jurisdiction upon a Magistrate to try a subject of a foreign State for "receiving stolen property," when the offence of receiving such property has been committed outside the British territories. REG. *v.* BECHAR MAVA 4 Bom. Cr. 38

21. ———— Property stolen in one place and received at another. To make it

JURISDICTION OF CRIMINAL COURT —*contd.*

4. OFFENCES COMMITTED ONLY PARTLY IN ONE DISTRICT—*contd.*

(*g*) DACOITY—*concld.*

British territory—Criminal Procedure Code, 1872, ... committed at Velanpore

territory, it was *held* that a conviction of dacoity could not be sustained, that being a substantive offence completed as soon as perpetrated at Velanpore, although, had Velanpor been in British territory, the subsequent acts in the process of taking away the property might, in the legal sense, have coalesced with the first and principal one so as to give jurisdiction under s 67 of the Code of Criminal Procedure in each district into which the property was conveyed. But on a conviction of retaining stolen property, the sentences awarded could, it was *held*, be sustained, the retaining having taken place in British territory REG. *v* LAKHYA GOVIND . . **I. L. R. 1 Bom. 50**

13. ———— **Dacoity committed in British territory**—*Criminal Procedure Code, s. 180—Dishonest receipt of stolen property in foreign territory.* Certain persons, who were not ... found in posses-

convicted of offences punishable under s 412 of the Penal Code: *Held*, that no offence was proved to have been committed within the jurisdiction of a British Court QUEEN-EMPRESS *v.* KIRPAL SINGH **I. L. R. 9 All. 523**

(*h*) EMIGRANTS, RECRUITING, UNDER FALSE PRETENCES

14. ———— **Place where false pretences were held out**—*Jurisdiction to try recruiters of emigrants under s. 71, Act XIII of 1864.* Recruiters of emigrants charged under s. 71, Act XIII of 1864, must be tried by the Magistrate within whose jurisdiction the holding out of false pretences to the labourers took place. ANONYMOUS **4 Md. Ap. 4**

(*i*) ESCAPE FROM CUSTODY.

15. ———— **Place of trial**—*District in* ...

(*j*) KIDNAPPING.

16. ———— **Offences committed in different districts in the course of the same**

JURISDICTION OF CRIMINAL COURT —*contd.*

4. OFFENCES COMMITTED ONLY PARTLY IN ONE DISTRICT—*contd.*

(*j*) KIDNAPPING—*concld.*

transaction—*Criminal Procedure Code (1882), s. 180—Penal Code (Act XLV of 1860), ss. 366 and 368—Kidnapping—Commitment where to be made.* R, C, P, and K were committed by the Joint Magistrate of Muzaffarnagar to the Court of the Sessions Judge of Saharanpur. Upon the case which was before the Joint Magistrate, it ...

sessions cases arising in the Bijnor district, namely, that of the Sessions Judge of Moradabad. *Reg.* v. *Samia Kaundan, I. L. R 1 Mad 173,* and *Queen-Empress* v. *Surja, All Weekly Notes, (1883), 164,* not followed. *Queen-Empress* v. *Ingle, I. L R. 16 Bom 200,* and *Queen-Empress* v *Abbi Reddi, I. L. R 17 Mad. 402,* referred to. *Queen-Empress* v. *Thaku, I. L. R 8 Bom. 312,* followed. QUEEN EMPRESS *v* RAM DEI . **I. L. R. 18 All. 350**

17. ———— **Offences committed outside British territory**—*Criminal Procedure Code (1882), s 188—Certificate of Political Agent—Kidnapping.* The absence of the certificate of ... of the Code ... the trial ... section

I. L. R. 10 All. 109

(*k*) MURDER.

18. ———— **Offence committed in Cyprus**—*Foreign Jurisdiction and Extradition Act (XI of 1872), ss. 3, 9—Liability of Native Indian British subject for offence committed in Cyprus—"Native State"—Legislative powers of Governor* ...

... accused

JURISDICTION OF CRIMINAL COURT —*contd.*

5. OFFENCES COMMITTED DURING JOURNEY—*concld.*

charged with drunkenness while as guard or under-guard in charge of a railway train where he was removed from his post at a place outside the local limits, although the train thereupon proceeded with him to Madras. QUEEN *v* MALONY QUEEN *v* JONES . . . . . 1 Mad. 193

2. ——— **Offence committed on interrupted journey**—*Criminal Procedure Code (Act X of 1872), s 67, Ill (a)* Where an offence was alleged to have been committed during a journey from Bombay to Calcutta, and was in fact committed between Bombay and Allahabad, at which latter place the complainant and the person by

have been continuous from one terminus to the other without any interruption by either party QUEEN *v* PIRAN . . 13 B. L. R. Ap. 4

s c PEERUN *alias* KUREEMUN AYAH *v*. FIELD 21 W. R. Cr. 66

3. ——— **Theft of box during journey** —*Criminal Procedure Code, 1872, s. 67.* A box containing money having been missed during a halt at Sumbhoogunge, from a boat which was on the way to Chittagong, and a question having been raised whether the charge of theft which was based on the loss should be tried at Tipperah or Chittagong:—*Held,* that the journey was not broken by the halt, and that, under s 67, Criminal Procedure Code, the case could be tried at Chittagong QUEEN *v* ABDUL ALI . . 25 W. R. Cr. 45

6 DISPUTES CONCERNING IMMOVEABLE PROPERTY

1. ——— **Omission to state the grounds of the apprehension of a breach of the peace**—*Jurisdiction of Magistrate—Dispute*

...tion, which has been reduced into writing, reference can be made to the materials upon which the Magistrate acted, to ascertain where there were

JURISDICTION OF CRIMINAL COURT —*contd.*

6. DISPUTES CONCERNING IMMOVEABLE PROPERTY—*contd.*

in fact grounds upon which he might have acted, but even then it is his duty to state the grounds, upon which he was satisfied that there was a likelihood of a breach of the peace *Queen-Empress v. Gobind Chandra Das, I. L R 20 Calc. 520;*

I. L. R. 32 Calc. 711

2. ——— **Title**—*Immoveable property, dispute as to—Bundh—Possession—Title—Costs —Damages—Criminal Procedure Code (Act V of 1898), ss. 145, 148* Proceedings under s. 145 of the Criminal Procedure Code were instituted with reference to a *bundh* erected by the second party upon land claimed both by the first and second parties The Magistrate treated the case as if it were solely one of title and made an order directing the removal of the *bundh,* and he further awarded one of the parties R50 for the damage done to his crops as well as for costs in the case:—*Held,* that the entire order was illegal and should be set aside, including the order as to costs PRAYAG MAHATON *v.* GOBIND MAHATON (1905)

I. L. R. 32 Calc. 602

3. ——— **Possession given by Civil Court**—*Criminal Procedure Code (Act V of 1898), ss 145, 146—Practice.* Where the petitioner had eight days before the institution of proceedings under s. 145 of the Criminal ...

decree of the Civil Court. The order so far as it directs the attachment of the disputed land covered by that decree is without jurisdiction. GULRAJ MARWARI *v.* SHEIK BHATOO (1905)

I. L. R. 32 Calc. 796

4. ——— **Manager**—*Jurisdiction of Magistrate—Criminal Procedure Code (Act V of 1898), s 145—Parties—Title—Possession—Encroachment.* The fact that the manager, and not his employer, the zamindar, has been made a party to a proceeding under s. 145 of the Criminal Procedure Code is a mere irregularity, or at most an error of law, which does not affect the Magistrate's jurisdiction. *Dhondhai Singh v. Follet, I. L. R. 31 Calc. 48,* referred to Where a party claims no easement or customary right, any intermittent acts of encroachment on his part, such as cutting a few

JURISDICTION OF CRIMINAL COURT —*contd.*

6. DISPUTES CONCERNING IMMOVEABLE PROPERTY—*contd.*

Cas. 773, referred to. BHOLANATH SINGH *v.* WOOD (1905) . . . **I. L. R. 32 Calc. 287**

5. ———— **Omission to record initiatory order**—*Magistrate—Criminal Procedure Code (Act V of 1898), s 145, cls (1), (6)—Arbitration, reference to.* Where proceedings under s 107 of the Criminal Procedure Code were instituted against the parties and on their appearance the Magistrate, considering that the dispute came within s 145 of the Code, treated the case as one instituted under the latter section, and adjourned it for the evidence of their respective claims to

[illegible]

[illegible] S. 145 does not contemplate that the [illegible]

[illegible]

MUKERJEE *v.* HRIDAY CHAKRAVARTI (1905) **I. L. R. 32 Calc. 552**

6. ———— **Order on written statements without any evidence**—*Jurisdiction—Dispute concerning land—Jurisdiction of Magistrate—High Court, jurisdiction of—Criminal Procedure Code (Act V of 1898), s. 145, sub ss (1), (4)* Sub s. [illegible]

[illegible]

vention of which affects his jurisdiction, and so gives the High Court power to interfere. Where the Magistrate passed an order under s. 146 of the Code, only upon the written statements of the parties and without taking any evidence:—*Held*, that the order was without jurisdiction, and that the High Court had power to set it aside *Surjya Kanta Acharjee* v. *Hem Chunder Choudhry, I. L R. 30 Calc 508*, followed. *Sukh Lal Sheikh* v. *Tara Chand Ta, I. L. R. 33 Calc. 68*, explained. KOLHA KOER *v* MUNESWAR TEWARI (1907) **I. L. R. 34 Calc. 840**

7 [illegible] Magistrate [illegible] possession [illegible] *1898), s. 145,* [illegible] s. 145 of the [illegible] pect of a dispute concerning land the Magistrate finds that one party has been in possession of a portion of the land in dispute, and the other party in possession of the rest, and the possession of the one is likely to interfere with the enjoyment of the possession of the remaining portion by the other, the Magistrate can, in the exercise of jurisdiction vested in him under s. 145, Criminal Procedure Code, maintain both the parties in possession of their respective portions. *Katras Jherria Coal Company* v. *Shib Kristo Daw, I. L. R. 22 Calc. 297*, distinguished. KANGALI DAS BAIRAGI *v* MUTI LAL BAGDI (1906) **11 C. W. N. 743**

8. ———— **Review**—*Criminal Procedure Code (Act V of 1898), ss. 145, 369.* A Magistrate has no jurisdiction to review a final order passed by himself under s 145 of the Criminal Procedure Code PARBATI CHARAN ROY *v.* SAJJAD AHMAD CHOWDHURY (1908) . **I. L. R. 35 Calc. 350**

7. OFFENCES UNDER THE CATTLE TRESPASS ACT.

———————— *Jurisdiction—Cattle Trespass Act (I of 1871), s. 20—Illegal seizure of cattle—"Offence"—Power of District or* [illegible]

[illegible]

Sch. II, last clause. The illegal se[illegible]

[illegible]

any Subordinate Magistrate for trial *Shama* v. *Lechhu Shekh, I. L R. 23 Calc 300*, and *Raghu Singh* v. *Abdul Wahab, I. L. R 23 Calc 442*, declared obsolete. BUDHAN MAHTO *v.* ISSUR SINGH (1907) . . **I. L. R. 34 Calc. 926**

JURISDICTION OF HIGH COURT.

See CIVIL PROCEDURE CODE, 1882, ss 244, 295, 622 **I. L. R. 36 Calc. 130**

See CRIMINAL PROCEDURE CODE (ACT V OF 1898), s. 476 **I. L. R. 35 Calc. 909**

See HIGH COURT, JURISDICTION OF.

See JURISDICTION **I. L. R. 36 Calc. 233**

See PROCLAMATION **I. L. R. 35 Calc. 701**

———— **in its appellate jurisdiction**—

See INSOLVENCY **I. L. R. 36 Calc. 512**

———————— *Power of High Court to restrain by injunction a person from proceeding with a suit in the Small Causes Court.* The High Court of Bombay has inherent power to restrain by injunction a defendant in a suit filed in the High

JURISDICTION OF HIGH COURT—*contd*

— . . — the Small Cause Court at

I. L. R 27 Bom 357, not followed UDERAM KESAJI v HYDERALLY (1908)
I. L. R. 33 Bom. 469

JURISDICTION OF MAGISTRATES.

See CRIMINAL PROCEDURE CODE (ACT V OF 1898), ss 145, 146
I. L. R. 34 Calc. 840

See CRIMINAL PROCEDURE CODE, ss 145, 192 (2), 523
I. L. R. 36 Calc. 370

See JURISDICTION

See JURISDICTION OF CRIMINAL COURT

See MAGISTRATE

See TOLLS . **I. L. R. 36 Calc. 986**

JURISDICTION OF REVENUE COURT.

See ABETMENT OF RENT
1 B. L. R. A. C. 87

See APPEAL—N.-W P ACTS
I. L. R. 13 All. 364

See JURISDICTION OF CIVIL COURT—OFFICES, RIGHT TO
I. L. R. 13 Mad. 41

See JURISDICTION OF CIVIL COURT—RENT AND REVENUE SUITS, BOMBAY, MADRAS AND N.-W. PROVINCES

See NORTH-WESTERN PROVINCES RENT ACT (XII OF 1881), ss 42, 95 AND 206
I. L. R. 24 All. 517

See POSSESSION, ORDER OF CRIMINAL COURT AS TO—ATTACHMENT OF PROPERTY . . **I. L. R. 15 All. 394**

See RES JUDICATA—COMPETENT COURT—REVENUE COURTS

See RENT, SUIT FOR.
I. L. R. 28 Calc. 485

See RES JUDICATA—COMPETENT COURT—REVENUE COURTS

1. BOMBAY REGULATIONS AND ACTS

1. ———— **Collector of Bombay**—*Bom. Reg. XIX of 1827, s. 2.* The Revenue Court under s 2 of Regulation XIX of 1827, had not exclusive jurisdiction over the Collector of Bombay for all acts done by him in his official capacity. NARAYAN KRISHNA LAUD v NORMAN
5 Bom. O. C. 1

2. ———— **Suit for rent**—*Suit under Bom Reg. XVII of 1827, s 31, cl. 3—Act XVI of 1838, s 1, cl 1* In a suit to recover rent in a Revenue Court, under Regulation XVII of 1827, s 31, cl 3:—*Held*, that the proper questions to determine were whether the defendant occupied the land as tenant of the plaintiff during the period alleged, and if so, what rent was due; and that a defendant so sued could not deprive the Court of jurisdiction by setting up a title in himself, nor did the suit by such defence become one "in which the right to possession of land is claimed" within the meaning of s 1, cl 1, of Act XVI of 1838. BAI MAHALAKSHMI v AUDHARU KESHAVRAM NARASIRAM
2 Bom. 193 : 2nd Ed. 185

3. ———————— *Assignment by mortgagee—Redemption—Suit for rent by assignee.*

relation of landlord and tenant never existed be-

4. ———— **Mamlatdar's order under Bom. Act V of 1864**—*Possession—Act XVI of 1838, s. 1, cl 2—Questions of title—Civil Courts, jurisdiction of* A Mamlatdar's order under Bombay Act V of 1864 is not conclusive evidence of the fact of possession and dispossession between the parties S 1 of that Act gives to Mamlatdars' Courts jurisdiction in case of dispossession within six months from the date of such dispossession, and relates to immediate possession; and under s. 15, the party to whom such immediate possession is given by the Mamlatdar, or whose possession he shall maintain, shall continue in possession until ejected by a decree of a Civil Court. The power reserved to the Revenue Courts by s 1, cl. 2, of Act XVI of 1838, to determine the facts of possession and dispossession, was so reserved merely for the temporary purpose of enabling those Courts

JURISDICTION OF REVENUE COURT —*contd.*

1. BOMBAY REGULATIONS AND ACTS—*concld.*

the rights of disputants. The decisions of the Revenue and the Mamlatdar's Courts as to possession and dispossession do not bind the Civil Courts, the proceedings in the former Courts being of a summary character. The Civil Courts alone can entertain the question of title. BASAPA BIN MURTIAPA *v.* LAKSHMAPA BIN MARITAMAPA

I. L. R. 1 Bom. 642

2. MADRAS REGULATIONS AND ACTS.

1. ———— **Suit for rent of land**—*Mad. Act VIII of 1865—Power of Head Assistant Collector—Act XI of 1865.* At the date of the enact-

2. ———— **Suit for possession of land after wrongful ejectment**—*Mad Act VIII of 1865, s 12* Plaintiffs sued under s 12 of Madras Act VIII of 1865, to be reinstated in the possession of certain lands from which they alleged they had been wrongfully ejected by the defendant a zamindar. Defendant pleaded that the suit was

3. ———— **Suit for a pottah**—*Madras Rent Recovery Act (Mad. Act VIII of 1865), ss. 8, 9, 10—Denial of tenancy by landlord—Question of title.* In a summary suit brought under the Madras Rent Recovery Act to compel the defendant to give a pottah to the plaintiff for certain land which plaintiff claimed to hold from him, the defendant denied that the plaintiff was his tenant:—*Held*, that the Collector was bound to try the question so raised, and not to refer the parties to a regular suit for its determination. NARAYANA CHARIAR *v.* RANGA AYYANGAR

I. L. R. 15 Mad. 223

4. ———— **Suit to enforce acceptance of pottah**—*Madras Rent Recovery Act (Mad. Act VIII of 1865), ss. 9 and 10—Bonâ fide denial by defendant of plaintiff's title—Question of title* The plaintiff obtained a permanent lease of inam lands attached to a mosque from the four owners thereof. The defendant was a cultivating tenant on the lands, and the plaintiff duly offered the de-

JURISDICTION OF REVENUE COURT —*contd.*

2. MADRAS REGULATIONS AND ACTS—*concld.*

fendant a pottah The defendant refused to execute a *corresponding muchilika* on the ground that the plaintiff was not his landlord, since the first of the aforesaid owners had granted a lease for 35 years to a person who had sublet the land to the defendant. The plaintiff thereupon brought a suit to enforce acceptance of a pottah under s. 9 of Madras Act

Courts; and, with regard to s 10 of the Act whenever a Court is invested with jurisdiction to determine the existence of a particular legal relation the intention must be taken to be to authorize it to adjudicate on every matter of fact or of law incidental to such adjudication *Narayana Chariar* v. *Ranga Ayyangar, I. L R 15 Mad 223,* and *Ayappa* v. *Venkata Krishnamarazu I. L R. 15 Mad 485,* cited and followed. ABDUL RAHMAN SAHIB *v* ANNAPILLAI . I. L. R. 17 Mad. 140

3 N.-W. P. RENT AND REVENUE CASES.

1. ———— **Nature of defence**—*Effect of, on jurisdiction of Court* The jurisdiction of a Revenue Court under the Rent Act, 1859, was not affected by

CHUNDER

CHUNDER KOOMAR MUNDUL *v* BAKER ALI KHAN . . . . . . 9 W. R. 598

2. ———— **Denial of relation of landlord and tenant**—*Issue as to relationship of landlord and tenant existing or not* If in a suit

denial) should judicially determine the fact, and take jurisdiction or not according to the result. HUREE PERSAD MALEE *v* KOONJO BEHARY SHAHA

W. R. F. B. 29 : 1 Ind. Jur. O. S. 20

Marsh. 99 : 1 Hay 238

KALLEE SINGH *v* MOORLEE RAM 1 W. R. 135

SANDES *v.* SUROOP CHUNDER BISWAS

2 W. R., Act X, 11

NUSRUN BEBEE *v* WATSON . 3 W. R. 215

POORNO DOSS *v* OOJOODHIAPROSAD

3 W. R., Act X, 16

3. ———— **Questions of title**—*Jurisdiction of Civil Court.* It is not the province of a

JURISDICTION OF REVENUE COURT —*contd.*

3. N.-W. P. RENT AND REVENUE CASES— *contd.*

Revenue Court to decide questions of title between contending claimants, such questions being within the province of the Civil Courts JUGUT SHOBHUN CHUNDER *alias* DOOLAL CHUNDER. DEHINGUR GOSSAMEY *v.* BINAUD CHUNDER *alias* SODA SHOBHUN CHUNDER DEHINGUR GOSSAMEY

I. L. R. 9 Calc 925

4. ———— *Boundary question.* The Revenue Courts have no jurisdiction to decide a boundary question between two estates A landlord must first obtain a declaration in the Civil Court that the land in dispute is within the limits of his estate, after which he may proceed to assess revenue upon it in the usual course under Act X of 1859. AMINA *v.* RAMZAN ALI

W. R. 1864, Act X, 116

RUGHOONATH SAHOY *v.* BOONDIR MUNDIR

1 W. R. 36

5. ———— *Plea of proprietary title* *Held,* that where a proprietary title is pleaded in respect to land whereof rent is claimed it can be adjudicated upon by the revenue authorities, who, so far from being prevented by law from taking cognizance of such pleas, are competent to dispose of all such pleas when raised in bar of a claim for rent, as is evident from s 153, Act X of 1859 KASHI RAM *v.* MENDEE SINGH

2 Agra Rev. 8

6. ———— *Question of title incidentally raised—Suit for rent.* In cases in which the determination of title is incidental to the decision of suits properly brought in the Revenue Court, that Court is bound to enquire into the title Where a person ostensibly in possession as proprietor institutes a suit for rent, and the alleged tenant pleads that he is in possession as a proprietor, the Revenue Court is bound to raise and decide the issue respecting title. RAMGUT SINGH *v.* RAM SARUN SINGH . . . . . . **3 N. W. 141**

7. ————**Set-off—Suit for rent.** A Court of Revenue cannot entertain a claim to a set-off unless such claim, if made the subject of a suit, would fall within its jurisdiction *Held,* that in a Court of Revenue by a lumbardar to recover rent, defendant was not competent to plead as a set-off that certain arrears of malikana were due to him by the plaintiff. BENI MADHO *v.* GAYA PRASAD . . . **I. L. R. 15 All. 404**

8. [illegible]

only can make an order for the defendant's ejectment or for determining the nature and class of his tenure, that is to say, whether he is a tenant at fixed rates within the meaning of s 4 of Act XVIII of 1873, or an ex-proprietary tenant, or an occupancy-tenant, or a tenant without a right of occupancy. MUHAMMAD ABU JOFAR *v.* WALI MUHAMMAD

I. L. R. 3 All. 81

9. ———— **Status of cultivator**—*Suit for enhancement—Plea that defendant is proprietor—Act X of 1859, s 153.* The Revenue Court has jurisdiction to try the question whether the de- [illegible]

10. ———— **Application for partition of orchards**—*Act XIX of 1863.* An application for partition of orchards not liable for a quota of the village assessment was not one cognizable by the Revenue Court under Act XIX of 1863 but by the Civil Court. OODEY RAM *v.* SIRAJOOL HUSSUN

2 Agra 241

11. ———— **Suit to make up deficiency of sir land**—*Suit for partition and separation of* [illegible] revenue suit for partition and separation of his share. GOLAM GHOUS *v.* FUREED ALUM

1 Agra 246

12. ———— **Suit for ejectment and for** [illegible] stance that a claim for mesne profits is added to the claim for ouster does not give the Civil Court jurisdiction in such cases RAM AUTAR RAI *v.* TALIMUNDI KUAR . . . . . **7 N. W. 49**

13. ———— **Suit to determine rate of** [illegible] JEOLAL SINGH . . . [illegible]

14 ———— **Suit for arrears of rent for period prior to order**—*Determination of rent by Settlement Officer—Jurisdiction in such suit to determine rent for such period on N. W. P. Land Revenue Act (XIX of 1873), ss. 72, 77—N.-W. P. Rent Act (XII of 1881), s 95 (l).* The jurisdiction to determine or fix rent payable by a tenant is given exclusively to the Revenue Court, either by order of the Settlement Officer or by application under s. 95

JURISDICTION OF REVENUE COURT —*contd.*

3. N.-W. P. RENT AND REVENUE CASES— *contd.*

(*l*) of the N.-W. P. Rent Act (XII of 1881); and

occupancy-tenant was fixed by the Settlement Officer under s. 72 of Act XIX of 1873 (N. W P. Land Revenue Act) In 1885, the landholder brought a suit to recover from the tenant arrears of rent at the rate so fixed for a period antecedent to the Settlement Officer's order, as well as for the period subsequent thereto The lower Appellate Court dismissed the claim for rent, prior to the 1st July 1884, and decreed such as was due subsequently to that date, but without interest. *Held*, that the rent could not be fixed in the present suit, neither the Court of first instance nor the High Court having jurisdiction to fix it, and that the claim for rent for the period in question must therefore be dismissed *Ram Prasad* v *Dina Kuar, I L. R 4 All 515*, *Special Appeal No 914 of 1879*, and *Phulahra* v *Jeolal Singh, I L R 6 All 52*, referred to RADHA PRASAD SINGH v JUGAL DAS . . . . . **I. L R. 9 All. 185**

15. ——— **Suit for arrears of rent in kind**—*N.-W P Rent Act (XVIII of 1873), s. 93—Bhouli. Held* (PEARSON, *J*, dissenting), that suit for the money equivalent of arrears of rent payable in kind is a suit for arrears of rent within the meaning of s 93 of Act XVIII of 1873, and therefore cognizable by a Revenue Court *Per* PEARSON, *J.*—Such a suit, being a suit for damages for breach of contract, is cognizable by a Civil Court. TAJ-UD-DIN KHAN v RAM PARSHAD BHAGAT

I L. R. 1 All. 217

16. ——— **Suit partly cognizable in Revenue Court and partly in Civil Court**—*N.-W. P. Rent Act (XII of 1881), ss. 206, 207. A co-sharer sued in a Court of Revenue (i) for his* share of the profits of a mehal, and (ii) for money payable to him for money paid for the defendant on account of Government revenue An objection was taken in the Court of first instance that the suit, as regards the second claim, was not cognizable in a Court of Revenue. The lower Appellate Court allowed the objection, and dismissed the suit as regards such claim on the ground that the Court of first instance had no jurisdiction to try it *Held*, that the objection being in effect "an objection that the suit was instituted in the wrong Court," within the meaning of ss 206 and 207 of Act XII of 1881, the defect of jurisdiction was cured by those *sections*, and the procedure prescribed in s 207 should have been followed LACHMI NARAIN v BHAWANI DIN . . **I. L. R. 4 All. 379**

17. ——— *Act XII of 1881 (N.-W. P. Rent Act), ss. 206, 207.* A suit was instituted in a Court of Revenue which was partly cognizable in the Civil Courts. *Held*, on the question raised on appeal, whether the Revenue Court had jurisdiction to entertain the suit, that the provisions of ss. 206 and 207 of the Rent Act (N.-W. P.), 1881, rendered the plea in respect of jurisdiction ineffective BADRINATH v. BHAJAN LAL

I. L. R. 5 All. 191

18. ——— **Suit for arrears of malikana**—*Jurisdiction of Civil Court* Suits for arrears of malikana are cognizable by Revenue not by Civil Courts RAM CHURN v GUNGA PERSHAD . . . . . **2 N. W. 228**

19 ——— **Suit by mortgagor for profits**—*Act XIV of 1863.* Where a mortgagor *obtaining possession of the mortgaged property by* redemption sued the mortgagee for the profits of certain years as due to him by the latter:—*Held*, that the question, being not between co-sharers, but between mortgagor and mortgagee, was not cognizable by the Revenue Court under Act XIV of 1863 PRAIM SOOKH v ABBAS ALY . **2 Agra Rev. 4**

20. ——— **Suit by lambardar for share of profits**—*Suit against lambardar.* A suit by lambardar for his share of the profits against another lambardar is cognizable by the Revenue Courts. MOHAMED GHOUS v. KURREEMOONISSA

1 Agra Rev. 52

21. ——— **Suit for profits taken by**

22. ——— **Suit against lambardar for profits**—*Jurisdiction of Civil Court* A lambardar is not chargeable in the Revenue Court in respect of profits payable at a time prior to his

the Revenue Court MATA DEEN v CHUNDEE DEEN . . . . . **2 N. W. 54**

See MATA DEEN DOOBEY v. CHUNDEE DEEN DOOBEY . . . . **6 N. W. 118**

23 ——— *Act XIV of 1863, s 1, cl 2* A suit lies in the Revenue Court under cl. 2 of s 1 of Act XIV of 1863 for a share of profits against the lambardar, although plaintiff collects her own rents, and pays in separately her quota of the Government revenue SALAMUT BIBEE v. BHUGWAN DOSS . . . **2 N. W. 33**

24 ——— **Suits by co sharers for hare of profits**—*Act XIV of 1863, s 1, cl. 2—Suits by lambardar.* Construction of cl 2, s. 1 of Act XIV of 1863 Suits by co-sharers against co sharers who

JURISDICTION OF REVENUE COURT —*contd.*

3. N.-W. P. RENT AND REVENUE CASES—*contd.*

are not lambardars for a share of the profits are cognizable in the Revenue Courts Such suits may also

can maintain a suit in the Revenue Courts for his lambardari allowance, as well as for his ordinary profits as a co-sharer HUR NARAIN v. SHIAM SOONDER

1 N. W. 211 : Ed. 1873, 264 : s c. Agra F. B. Ed. 1874, 188

25. ———————— *Possession*

could not be said to have been at any time out of

26. ———— **Suit by ex-co-sharer for share of profits**—*Possession* An ex-co sharer may sue in the Revenue Court for his share of the profits during the time he was in possession HUR NARAIN v. SHIAM SOONDER **3 N. W. 112**

27. ———— **Suit to determine obligation of plaintiff to contribute to revenue on alluvial lands and right to share in profits.** Where the possession of the plaintiff in a share in a village is admitted, the Revenue Courts have

whe-

o the

and

RAM

SHUNKER v. SHEO PERSHAD . **5 N. W. 7**

28. ———— **Gaondars**—*Suit under Act XIV of 1863, s 1, cl 2, for profits* Gaondars, or

XIV of 1863. SHEO PERTAB NARAIN SINGH v. HURSHUNKER PERSDAD SINGH . **5 N. W. 40**

29. ———— **Suit for profits by co-sharer**—*Act XIV of 1863, s. 1, cl 2—Sharer in posses-*

KOOER . . . . . .

30 ———————— *Act XIV of 1863, s. 1, cl. 2* The plaintiffs, recorded proprietors of a certain share, sued. after their father died, under cl 2, s. 1 of Act XIV of 1863, to recover profits which had accrued before their father's death. *Held* (*per* STUART, *C J*, SPANKIE, *J.*, *dissentiente*), that the profits were recoverable in a Civil and not in a Revenue Court MATADEEN DOOBEY v. CHUNDEE DEEN DOOBEY . . **6 N. W. 118**

31. ———————— *N.-W. P Rent Act (XVIII of 1873), ss 93, 206, 207—Suit for share of profits from lambardar.* *Held*, by the Division Bench, following the ruling of the majority of the Full Bench in *Ashraf-un-nissa* v. *Umrao Begum*, that a suit by a co-sharer in an undivided

Observations on the application of ss 206 and 207 of Act XVIII of 1873 BHIKHAN KHAN v RATAN KUAR . . . **I. L. R. 1 All. 512**

32. ———— **Suit by heirs of deceased co-sharer against heirs of deceased lambardar for profits**—*Lambardar and co-sharer—Act XII of 1881, ss. 93 (h), 208* A suit by the heirs of a deceased co sharer against the heirs of a deceased lambardar for money claimed as profits due to the deceased co-sharer by the deceased lambardar is a suit which is cognizable in the Civil, and not the Revenue Courts *Mata Deen Doobey* v. *Chundee Deen Doodey, 6 N W. 118 ; Mata Deen* v *Chundee Deen, 2 N W 54 ;* and *Bhikhan Khan* v. *Ratan Kuar, I. L. R 1 All. 512,* observed on by STUART, *C.J.* AHMADUDDIN KHAN v MAJHI RAI **I. L. R. 5 All. 438**

and therefore a suit by a lambardar against the

DALMARDAN GIR . . **I. L. R. 3 All. 144**

34. ———————— *N.-W. P. Rent Act (XII of 1881), s 93 (g).* *Held*, that a suit against a co-sharer and the transferees of his share for arrears of Government revenue which became due before such transfer, the plaintiff claiming as lambardar and as heir to the deceased lambardar during whose incumbency such arrears became due, was cognizable in the Revenue Courts. The principle laid down in *Bhikhan Khan* v. *Ratan Kuar, I. L R. 1 All. 512*, followed. WAZIR MUHAMMAD KHAN v. GAURI DUT . **I. L. R. 4 All. 412**

JURISDICTION OF REVENUE COURT —*concld.*

3. N.-W. P. RENT AND REVENUE CASES —*concld.*

35. ———— *N.-W. P. Rent Act (XII of 1881), ss. 93 (g), 205*—" *Proprietor* "—" *Co-sharer.*" Where a lambardar brought a suit for arrears of land revenue payable by the proprietors against several defendants of whom some were

against all the defendants. LACHMAN SINGH *v.* GHASI . . . . I. L. R. 15 All. 137

36. ———— **Suit by lessee of occupancy tenant for recovery of possession**—*N.-W. P. Rent Act (XII of 1881), s. 95 (n).* S 95 (*n*) of the N.-W. P. Rent Act (XII of 1881) is applicable to a suit by the lessee of an occupancy-tenant to recover possession of the land under the lease from which the lessor has ejected him, and such a suit is exclusively cognizable by the Revenue Courts. *Muhammad Zaki v. Hasrat Khan, All. Weekly Notes (1882) 61,* and *Ribban v Partab Singh, I. L. R 6 All. 81,* distinguished. CHHIDDU *v.* NARPAT . . . . . I. L. R. 8 All. 62

4. OUDE RENT AND REVENUE CASES.

———— **Liability of lessees in the position of under-proprietors not entitled to sub-settlement**—*Oude Rent Act (XIX of 1868), ss. 41 and 83, cl (4)*—*Oude Sub-Settlement Act (XXVI of 1866)*—*Oude Land Revenue Act (XVII of 1876), s 158.* A decree, in 1869, of a Settlement Court, upon the compromise of a claim made by village co-parcenary occupiers, to an order for sub-settlement as against the talukdar, declared the claimants to be entitled to a heritable, but not transferable, lease of the village, at a rent, leaving twelve per cent. profit to the lessees. For default in payment of rent this lease was decreed to be in future liable to cancellation "by the decree of any competent Court, according to any law which may be in force in Oude with respect to persons holding an under-proprietary right in land." Afterwards, in 1879, the parties agreed that the lessees might be dispossessed for non-payment of rent. Default occurred, decrees for arrears were made in 1882 and 1883, and remained unsatisfied. In a rent-suit brought by the talukdar :—*Held,* that he could not sue in a Revenue Court to have the lease cancelled under the terms of the Oude Rent Act (XIX of 1868), either by virtue of the decree or of the subsequent agreement MADHO SINGH *v* AJUDHIYA SINGH
I. L. R. 15 Calc. 515
L. R. 15 I. A. 77

JURY.

See CHARGE . I. L. R. 36 Calc. 287

See CHARGE TO JURY.

See CRIMINAL PROCEDURE CODE, 1898, s. 133 . . . 9 C. W. N. 72
I. L. R. 30 All. 364

See CRIMINAL PROCEDURE CODE, ss. 274, 451 . I. L. R. 26 All. 211

See PENAL CODE, ss. 114, 199 AND 466.
9 C. W. N. 69

See PUBLIC NUISANCE.

See THUMB-IMPRESSIONS
9 C. W. N. 520

See VERDICT OF JURY.

———— **failure to return verdict**—

See CRIMINAL PROCEDURE CODE, s. 133
13 C. W N. 367

———— **heads of charge to jury when to be recorded**—

See CRIMINAL PROCEDURE CODE, s. 367.
13 C. W. N. 197

———— **jury under nuisance sections of Criminal Procedure Code**—

See NUISANCE—UNDER CRIMINAL PROCEDURE CODE—REMOVAL OF PROSTITUTES . . . 5 C. W. N. 566

See VERDICT OF JURY.
6 C. W. N. 886

———— **opinion of, in case of divided verdict**—

See REFERENCE TO HIGH COURT.
I. L. R. 36 Calc. 629

———— **right to claim**—

See JURISDICTION OF CRIMINAL COURT—EUROPEAN BRITISH SUBJECTS.
I. L. R. 24 All. 511

———— **trial by**—

See APPEAL IN CRIMINAL CASES—PRACTICE AND PROCEDURE.
6 Bom. Cr. 47
I. L. R. 21 Calc. 955
I. L. R. 25 Bom. 680

See CRIMINAL PROCEDURE CODE, 1898, s. 209 . . I. L. R. 33 Bom. 423

See JUDGMENT—CRIMINAL CASES.
23 W. R. Cr. 32

See JURISDICTION OF CRIMINAL COURT—GENERAL JURISDICTION.
8 W. R. Cr. 39; 53

JURY—*contd.*

——— trial by—*concld.*

See MAGISTRATE, JURISDICTION OF—POWER OF MAGISTRATES I. L. R. 9 All. 420

See REVISION—CRIMINAL CASES—VERDICT OF JURY, AND MISDIRECTION.

——— trial of case by jury, properly triable with assessors—

See ASSESSORS . I. L. R. 3 Calc. 765
I. L. R. 25 Calc. 555
24 W. R. Cr. 18

1 CIVIL CASES.

1. ——— Trial of civil cases by jury —*Illegal procedure* The Civil Procedure Code nowhere empowers a Judge to try a case with the aid of a jury. DOONGUR RAI *v.* DOORGA RAI
2 N. W. 97

See MODY *v.* QUEEN INSURANCE CO
I. L. R. 25 Bom. 332
4 C. W. N 781

2 JURY UNDER HIGH COURTS' CRIMINAL PROCEDURE

1. ——— Special jury—*Power of Clerk of Crown—Drawing up list of special jurors* The drawing up of the list of special jurors is entirely in the discretion of the Clerk of the Crown, and the Court will not interfere *In the matter of* SHAMCHAND MITTER . 1 Ind. Jur. N. S. 106

2. ——— Ballot for selection of jury—*High Courts' Criminal Procedure—Criminal Procedure Code, 1882, ss 274, 276 (Act X of 1875, s. 33)—Constitution of jury—Balloting* Act X of 1875, s 33, contemplates that the names of the jury to be "chosen by lot" shall be drawn out of one box containing the names of all persons summoned to act as jurors REG. *v.* VITHALDAS PRANJIVANDAS . . I. L. R. 1 Bom. 462

3. ——— Constitution of jury—*High Courts' Criminal Procedure—Criminal Procedure Code, 1882, ss 267, 450 (Act X of 1875, ss. 31, 37)*

[illegible]

Europeans or Americans. REG *v* LALUBHAI GOPALDAS . . I. L. R. 1 Bom. 232

4 ——— [illegible]

[illegible]

misdemeanour it was in the discretion of the Judge

JURY—*contd.*

2. JURY UNDER HIGH COURTS' CRIMINAL PROCEDURE—*concld.*

whether they should be kept together or allowed to return to their homes for the night, the latter

[illegible]

have been felony or a misdemeanour. REG. *v.* DAYAL JAIRAJ . . . 3 Bom. Cr. 20

3 JURY IN SESSIONS CASES.

1. ——— Qualification of juror—*Selection of jury.* In forming a jury a Sessions Judge should endeavour to obtain persons of an independent position in life, and men of judgment and experience. QUEEN *v.* RAM DUTT CHOWDHRY
23 W. R. Cr. 35

2. ——— *Clerk in office of Magistrate.* The fact that a person is a clerk in the office of the Magistrate of the district is not sufficient to disqualify him from sitting on a jury. *In the matter of the petition of* ROCHIA MOHATO. EMPRESS *v.* ROCHIA MOHATO
I. L. R. 7 Calc. 42 : 8 C. L. R. 273

3. ——— Objection to juror—*Criminal Procedure Code, 1861, s. 344, cl (3).* The allowing of an objection to a juror coming within the third clause of s 344 of the Code of Criminal Procedure is in the discretion of the Court; and although the Judge is not bound to admit the objection, yet he should not treat it as frivolous. QUEEN *v* KRISNO CHURN . . . . 16 W. R. Cr. 66

4. ——— Swearing jury—*Necessity to swear jurors. Held*, that it was not necessary in a trial by jury before a Court of Session under the provisions of the Code of Criminal Procedure that the jurors should swear. REG. *v.* LAKSHUMAN RAM CHUNDRA . . . . 3 Bom. Cr. 56

5. ——— Omission to swear jury in sessions case. *Quære:* If the jury in a sessions case are not sworn, is the omission one which would be covered by s 13 of the Oaths Act, 1873? QUEEN *v* RAMSODOY CHUCKERBUTTY
20 W. R. Cr. 19

6. ——— Withdrawal of case from jury—*Improper acquittal.* In a case in which the prisoner was charged with murder, and he made a confession that he did strike the deceased with a stick, the Sessions Judge, after considering the evidence, discredited the confession and all the

[illegible]

. . . 10 W. R. Cr. 20

JURY—*contd.*

3. JURY IN SESSIONS CASES—*contd*

7. ——— Trial by jury or assessors—*Deputy Commissioner of non-regulation provinces* *Held*, with reference to the provisions of ss 445A and 445B of Act VIII of 1869, that the chief executive officer of a non-regulation province is bound to proceed under the provisions of Act XXV of 1861 in the trial of offences punishable by a Court of Session, and that he must try the prisoners with a jury or assessors, even if one of the counts of the charge against the prisoners be in respect of an offence not triable by a Court of Session. QUEEN *v.* KISHTORAM DASS . . **13 W. R. Cr. 59**

8. ——— Irregularity in trial—*Offence under s. 91, Registration Act, 1866* An offence under s 91 of the Registration Act ought not to be tried with the assistance of a jury. Where, however, such offence was tried with the assistance of a jury, and the verdict of the jury, who were unanimous in convicting the prisoner, was approved of by the Sessions Judge, the High Court considered it unnecessary to quash the proceedings QUEEN *v.* ABDOOL KURREEM . **14 W. R. Cr. 32**

9. ——— *Case tried by jury to which trial by jury had not been extended —Invalidity—Appeal.* Where a case to which Government had not extended trial by jury was tried by jury, the trial was not considered invalid on that ground; but the Judge's charge was treated as his judgment in the case, and the prisoner's appeal was heard on the facts. QUEEN *v* DOORGA CHURN SHOME . . . . . **24 W. R. Cr. 30**

10. ——— *Trial by jury of case triable by assessors—Adultery—Criminal Procedure Code 1872 s 233*

11. ——— Trial of charges partly triable by assessors—*Power of Judge in dealing with verdict—Criminal Procedure Code, 1872, s 233,*

guilty on all the charges. *Held*, that it was not competent to the Judge, who disagreed with the verdict, to treat the trial so far as it dealt with the latter charges, as a trial with the aid of assessors, and concurring with the minority to convict and sentence the accused persons It was the duty of

12. ——— Trial by jury of an offence triable with assessors—*Criminal Procedure Code (Act X of 1882), ss 306, 307, 306* The accused was tried by a jury for an offence triable

of assessors. *Held*, that the conviction was bad, inasmuch as the case was validly "tried by a jury" within the meaning of s 536 of the Criminal Procedure Code (Act X of 1882), and the trial was complete when the jury had returned their verdict; and that the Judge was bound, under the circumstances, either to give judgment in accordance with the verdict or, if he disagreed with it, to submit the case for orders of the High Court, as provided by ss 306 and 307 of the Code. *In the matter of Bhooth Nath Dey, 4 C. L R. 405,* followed SURJA KURMI *v.* QUEEN EMPRESS **I. L. R. 25 Calc. 555**

See QUEEN-EMPRESS *v* JEYRAM HARIBHAI **I. L. R. 23 Bom. 696**

13. ——— Order directing trial by jury—*Criminal Procedure Code, 1898 ss. 269 (1), 535 (2)—"Particular class of offences"—Revocation of order—Jury case tried by assessors—Omission to take objection before finding recorded—Validity of trial.* By s 269 of the Code of Criminal Procedure the local Government may, with the previous sanction of the Governor General in Council,

as by orders previously made the trial of persons

after be similarly committed in connection therewith, the Governor in Council, with the previous

Certain persons having been so tried for offences

whereupon the objection was taken, on appeal, in the High Court, that the trial should have been

Court had recorded its findings was fatal to the contention now urged that the trial was invalid. *Held*

JURY—*contd.*

3 JURY IN SESSIONS CASES—*contd.*

vernment, with the consent of the Governor General in Council, to revoke the previous notification so far as it related to that class QUEEN EMPRESS *v.* GANAPATHI VANNIANAR . **I. L. R 23 Mad. 632**

14. ———— **Choosing jury**—*Criminal Procedure Code (Act V of 1898), ss 276 to 279, 326, 337—Jury, selection of, how made—Selection by lot, object of—Irregularity in selection affecting the constitution of the Court, whether curable—Right of accused to be tried by a properly selected jury—Exemption of juror, when proper* The object of the provisions in ss 326 and 276-279 of the Criminal Procedure Code is to secure an impartial trial by rendering impossible any intentional selection of jurors to try a particular case; and an accused person has a right to claim to be tried by a jury chosen with strict regard to all the safeguards provided therein to secure perfect impartiality S 326, Criminal Procedure Code, provides that those who are to be summoned to act upon the jury are to be drawn by lot from among the whole body of persons who are liable to serve as jurors, and s. 276 provides that those again who are to try a particular case are to be similarly chosen by lot from amongst the persons so summoned, or, when there is a deficiency of persons summoned, from amongst such other persons as might be present in Court When a Judge fails to obtain a panel in this manner, it is his duty to postpone the trial until the requisite number of jurors have been obtained in the manner provided by law Where instead of

their own representation, and tried the accused with the rest; and where it further appeared that the persons summoned to serve as jurors had not been selected in the manner provided by s 326,

KING-EMPEROR (1902) . **7 C. W. N. 188**

15. ———— **Jurors as assessors**—*Criminal Procedure Code (Act V of 1898), ss. 69 (3), 309—Sessions Judge sitting with jury—Charges of theft and administering drug—Opinion of only two jurors taken as assessors on second charge—Validity* At the trial of an accused, before a Sessions Judge and a jury, for theft in a building (an offence triable by a jury), and for administering a noxious substance (an offence triable by assessors), the Judge took the verdict of the jury on the former charge, and

JURY—*contd.*

3. JURY IN SESSIONS CASES—*contd.*

took the opinion of only two of them (as assessors) on the latter. *Held* that, under ss 269 (*3*) and 309 of the Code of Criminal Procedure, the

I. L. R. 26 Mad. 598

16. ———— **Summons on juror**—*Criminal Procedure Code (Act V of 1898), s 332—Summons upon a juror—Absence from home—Service, by fixing on door—Non attendance of juror—Fine.* Where summons was served by fixing the duplicate on the door of the dwelling house of a juror who at the time was living away from home and had no knowledge of such service of the summons: *Held*, that he was not liable to fine for non-attendance, and that the law does not contemplate the imposition of any obligation on persons on the jury list, either to

6 C. W. N. 887

17. ———— **Power of the Judge to question the jury**—*Criminal Procedure Code (Act V of 1898), ss 303, 304—Judge—Misunderstanding the law—Verdict mistaken or ambiguous.* S 304 of the Criminal Procedure Code (Act V of 1898) obviously contemplates cases where the verdict delivered is not in accordance with what was really intended by the jury. It has no applica-

corrected only by the Judge disagreeing with the jury and referring the case under s 307 of the Code to the High Court. *Per Curiam*—"There is not provision in the Code of Criminal Procedure (Act

in ambiguous terms or with uncertain sound their meaning is not clear EMPEROR *v.* KONDIBA (1904) **I. L. R. 28 Bom. 412**

18. ———— *Criminal Procedure Code, s. 307—Jury not to be questioned as to reasons for verdict.* When the jury return a verdict on the general issue of guilty or not guilty and there is no ambiguity as to the precise offence of which the accused are convicted or acquitted, the Sessions Judge has no power, under s. 307 of the Code of Criminal Procedure, to question the jury as to rea-

JURY—*contd.*

3. JURY IN SESSIONS CASES—*concld.*

sons or their verdict. EMPEROR *v* SIRANADU (1907)
I. L. R. 30 Mad. 469

19. ———— **Misdirection**—*Culpable homicide—Proper charge in case of culpable homicide—Direction as to truth of plea of accused—Misrepresentation as to the effect of medical evidence—Expression of opinion by Judge.* The omission by the Judge to lay specifically before the Jury in a case of culpable homicide, the question whether in causing death the accused had the intention to cause death or such injury as was likely to cause

the jury to consider the truth of the plea of some of the accused that they were not present at the occurrence, before convicting them, is a misdirection. Misrepresentation of the effect of the medical evidence is a misdirection. It is a misdirection for

20. ———— **Depositions of witnesses if must be read out to.** It is not incumbent on the Judge to read out the whole of the depositions of the witnesses to the jury FANINDRA MOHAN BANERJI *v.* THE KING-EMPEROR (1908)
13 C. W. N. 197

4. JURY UNDER NUISANCE SECTIONS OF CRIMINAL PROCEDURE CODE.

1. ———— **Appointment of jury**—*Criminal Procedure Code, 1872, s. 523—Discretion of Magistrate.* A Magistrate acting under Act X of 1872, s 523, should exercise his own independent discretion in selecting the members of the jury, and the persons so selected by him should not be nominees of the party interested in upholding the Magistrate's order. SHATYANUNDO GHOSAL *v.* CAMPERDOWN PRESSING COMPANY
21 W. R. Cr. 43

2. ———— *Jury improperly constituted—Criminal Procedure Code, 1861, s. 310* A jury appointed under s. 310 is not properly constituted when only the foremen is appointed by the Magistrate and the rest of the members by the parties. QUEEN *v* HARGOBIND PAL
7 B. L. R. Ap. 57

S. C. DINO NATH CHUCKERBUTY *v.* HURGOBIND PAL . . . . . . **16 W. R. Cr. 23**

3. ———— *Order for removal of obstruction in public way—Jury appointed to consider reasonableness of order—Magistrate deciding contrary to verdict of jury—Criminal Procedure Code, 1882, ss. 133, 135, 138, and 139.* One *K R*, having been ordered by a Magistrate

JURY—*contd.*

4. JURY UNDER NUISANCE SECTIONS OF CRIMINAL PROCEDURE CODE—*contd.*

under s. 133 of the Code of Criminal Procedure

sions Judge under s. 438 of the Code: *Held,* that the last order of the Magistrate should be set aside, and the case remanded for consideration by a fresh jury. QUEEN-EMPRESS *v.* KHUSHALI RAM
I. L. R. 18 All. 158

4. ———— *Criminal Procedure Code (Act V of 1898), s. 138—Use of discretion in nomination of jurors by Magistrate.* In

CHUNDER SEN *v.* RAM LALL MITTRA
I. L. R. 26 Calc. 869

5. ———— *Constitution of jury—Criminal Procedure Code, 1882, ss 133 to 138—Nomination of jury by Magistrate.* In the nomination of those members of the jury, the nomination of whom devolves upon the Magistrate under the provisions of s 138 of the Criminal Procedure Code, it is his duty to exercise his own independent discretion, and not merely to accept persons who may be put forward by the party opposed to the applicant. A jury constituted in violation of the provisions of s 138 is not legally constituted, and is incapable of making a legally binding award. *Dino Nath Chuckerbutty* v. *Hur Gobind Pal, 16 W. R Cr. 23,* and *Shatyanundo Ghosal* v. *Camperdown Pressing Co, 21 W. R. Cr. 13,* followed. UPENDRA NATH BHUTTACHARJEE *v.* KHITISH CHANDRA BHUTTACHARJEE . . **I. L. R. 23 Calc. 499**

6. ———— *Jury improperly constituted—Criminal Procedure Code, 1872, s. 523.* In a case in which a party on whom an order had

former a foreman, and the latter two of the members, of the jury. *Held*, that the jury so constituted by

7. ———— **Juror refusing to act**—*Criminal Procedure Code (Act X of 1882), ss. 133, 138, 139—Jury illegally constituted.* One out of five jurors appointed under s. 138, Act X of 1882, declined to act on the jury. Two out of the remainder

JURY—*contd.*

4. JURY UNDER NUISANCE SECTIONS OF CRIMINAL PROCEDURE CODE—*contd.*

of the jury were in favour of a temporary order

jurors did not find the temporary order to be reasonable and proper, and he therefore struck off the case *Held*, that the course taken by the Deputy Magistrate was irregular, and ordered that a fresh jury be summoned, and the case enquired into anew UMA CHURN MUNDLE *v.* JOSHFIN SHEIKH

I. L. R. 11 Calc. 84

8. ———— **Appointment of second jury**—*Criminal Procedure Code, 1872, s 523.* Where a jury appointed by a Magistrate under s. 523, Criminal Procedure Code, had fully entertained and considered the matter submitted to it, and the individual members of the jury had given in their opinion to the foreman to report to the Magistrate, and the only delay was in the foreman's making the report, it was *held* that the Magistrate could not appoint a second jury to consider the matter afresh but ought to have acted on the report of the first jury which had been given in before he made his final order in the matter NOZUMUDDY *v* HASIM KHAN 21 W. R. Cr. 54

9. ———— **Question for jury**—*Criminal Procedure Code, 1872, s 523—Procedure* In a case in which a Magistrate ordered a person either to remove an obstruction to a path leading to a road or to show cause why such order should not be enforced and in which subsequently the Magistrate, on the application of the party charged, appointed a jury under s 523, Criminal Procedure Code it was *held* that the question the jury should have been told to try was the question whether the first order of the Magistrate was reasonable and proper, and for that purpose to consider whether there was a *bonâ fide* question between the parties as to the right of way over this particular piece of land OMESH CHUNDER SEN *v.* ICHANATH MOZUMDAR . 21 W. R. Cr 64

10. ———— **Fixing time for award of jury**—*Criminal Procedure Code, 1861, s 310* In referring a case regarding a nuisance to arbitrators under s. 310, Code of Criminal Procedure, a Magistrate should fix a time within which the arbitrators are to send in their award; and this must be

matter of SHAMA KANT BUNDOPADYHA

14 W. R. Cr. 69

11. ———— **Award delivered after time fixed, effect of**—*Criminal Procedure Code (Act VIII of 1869), s. 310—Act X of 1872, s 523.* A Magistrate cannot receive and enforce the award of a jury under s. 310 of the Criminal Procedure

JURY—*contd.*

4. JURY UNDER NUISANCE SECTIONS OF CRIMINAL PROCEDURE CODE—*concld.*

Code, delivered long after the day fixed for the purpose. QUEEN *v* HARGOPIND PAL 7 B. L. R. Ap. 57
S C DINONATH CHUCKERBUTTY *v.* HURGOBIND PAL . . . . . . 16 W. R. Cr. 23

12. ———— **Decision of jury, effect of**—*Finality of decision so far as Magistrate is concerned* Where a jury is appointed under s 310 of the Code of Criminal Procedure to try whether an order passed by a Magistrate for the removal of a nuisance or obstruction is reasonable or not the Magistrate is bound under that section to be guided by the decision of the jury. QUEEN *v.* POROLEE MULLICK . . 12 W. R. Cr. 28

13. ———————— *Criminal Procedure Code (1882), ss. 133, 135—Order of Magistrate for removal of unlawful obstruction—Application for appointment of a jury.* Where a person against whom an order has been made under s. 133

in the exercise of a *bonâ fide* claim of right. *In the matter of the petition of* LACHMAN

I. L. R. 22 All. 267

14. ———— **Report of majority of jury**—*Criminal Procedure Code, 1872, s. 523—Duty of Magistrate.* Where under s 523 of the Criminal Procedure Code, a Magistrate receives the report of a jury, he is bound to act according to the recommendation of the majority. When a number of jurors do not agree with one another in every respect, but all agree that a certain order passed by a Magistrate taken as a whole, is not necessary such jurors should be counted together as objecting to the order. QUEEN *v.* NAKORI PAROEE . 25 W. R. Cr. 31

15. ———————— *Criminal Procedure Code, s 133—Public way—Nuisance—Removal of obstruction—Refusal of minority of jury to act.* When a minority of a jury appointed under the provisions of s. 133 of the Criminal Procedure Code do not act, the Magistrate cannot proceed under that section upon a report submitted by the majority. *In the matter of* DURGA CHARAN DAS *v.* SASHI BHUSAN GUHO . I. L. R. 13 Calc. 275

16. ———— **Verdict on inspection of locality without taking evidence.** A jury cannot decide a matter referred to them merely on inspection of the locality without taking any evidence. KAILASH CHUNDER SEN *v.* RAM LALL MITTRA . . . . I. L. R. 26 Calc. 869

5. WITHDRAWAL OF CASE FROM JURY.

——— **No power of withdrawal in Court of Session.** Under the present Code of Criminal Procedure, a Court of Session does not possess the power to withdraw a case from the jury on any ground whatsoever. Where the case is such that the

JURY—*conc'd.*

5. WITHDRAWAL OF CASE FROM JURY—*concld.*

Sessions Judge would, if he possessed the power of withdrawing the case from the jury, exercise that power, the High Court will exercise its powers of revision. JOGESHWAR GHOSE *v.* KING-EMPEROR (1901) . . . . . **5 C. W. N. 411**

JUS DISPONENDI.

See CONTRACT . **I. L. R. 34 Calc. 173**

JUS TERTII.

See CONTRACT—BREACH OF CONTRACT **8 B. L. R. 581**

See ESCHEAT . **1 B. L. R. P. C. 44**

JUST CAUSE.

See PROBATE AND ADMINISTRATION ACT, s. 50 . . . **10 C. W. N. 955**

JUSTICE, EQUITY, AND GOOD CONSCIENCE, DOCTRINE OF.

See BURMA COURTS ACT, 1889, s. 4. **I. L. R. 26 Calc. 1**

See CIVIL PROCEDURE CODE, 1882, s. 102. **I. L. R. 22 Calc. 8**

See COMPANY—WINDING UP—COSTS AND CLAIMS ON ASSETS **I. L. R. 16 All. 53**

See HINDU LAW—INHERITANCE—ILLEGITIMATE CHILDREN **I. L. R. 13 All. 573**

JUSTICE OF THE PEACE.

See FOREIGN JURISDICTION ACT, 1879, ss. 4, 6 AND 8 **I. L. R. 26 Mad. 607**

See HIGH COURT, JURISDICTION OF—MADRAS—CRIMINAL **I. L. R. 12 Mad. 39**

See JUDICIAL NOTICE **1 B. L. R. O. Cr. 15**

See JURISDICTION OF CRIMINAL COURT—EUROPEAN BRITISH SUBJECTS **7 Bom. Cr. 1** **I. L. R. 5 Mad. 33**

JUSTICES, SUIT AGAINST.

See CALCUTTA MUNICIPAL ACT, 1863, s. 226 . . . **8 B. L. R. 265**

——— **justification plea of—**

See LIBEL . **I. L. R. 36 Calc. 883**

K

KABULIAT.

See ACQUIESCENCE . **7 C. W. N. 170**

See BENGAL TENANCY ACT, s. 29 (5). **9 C. W. N. 265**

See CO-SHARERS—SUITS BY CO-SHARERS WITH RESPECT TO THE JOINT PROPERTY—KABULIATS.

See EVIDENCE—PAROL EVIDENCE—EXPLAINING WRITTEN INSTRUMENTS AND INTENTION OF PARTIES. **6 C. W. N. 242**

See EVIDENCE ACT (I OF 1872), s. 91 **11 C. W. N. 62**

See INTEREST . **I. L. R. 32 Calc. 258**

See LANDLORD AND TENANT **I. L. R. 32 Calc. 41; 395**

See RENT . . **I. L. R. 33 Calc. 140**

VARYING OR CONTRADICTING WRITTEN INSTRUMENTS . **6 C. W. N. 60**

See JOINT TENANCY . **6 C. W. N. 111**

See JUNGLEBURI LEASE **I. L. R. 31 Calc. 960**

See LEASE.

See SPECIFIC PERFORMANCE—SPECIAL CASES **I. L. R. 3 Calc. 464**

——— **suit for—**

See CO-SHARERS—SUITS BY CO-SHARERS WITH RESPECT TO JOINT PROPERTY—KABULIATS

——— **suit to set aside—**

See BENGAL TENANCY ACT, s. 29 **I. L. R. 28 Calc. 90**

——— **without a lease—**

See LANDLORD AND TENANT. **I. L. R. 31 All. 276**

1. FORM OF KABULIAT.

1. ——— Date for commencement of kabuliat—*Discretion of Court—Suit for kabu-* [illegible]

term. POORNO CHUNDER ROY *v.* STALKART **10 W. R. 362**

See GHOLAM MAHOMED *v.* ASMUT ALI KHAN CHOWDHRY . . **B. L. R. Sup. Vol. 974**

2. ——— Omission of specification of boundaries in kabuliat—*Act X of 1859, s. 2.*

KABULIAT—*contd*

1. FORM OF KABULIAT—*concld.*

The want of specification of boundaries in a kabuliat is no ground for dismissing a suit for a kabuliat, *when all the particulars of area are given as required* by s 2 of Act X of 1859 RAMNATH RAKHIT *v* CHAND HARI BHUYA

6 B. L. R. 356 : 14 W. R. 432

2 IN RESPECT OF WHAT SUIT LIES

1. ——— Suit for kabuliat for portion of land—*Land included in an entire holding* A suit for a kabuliat will not lie for a portion only of the land included in an entire holding RAM DOSS BHUTTACHARJEE *v* RAMJEEBUN PODDAR

6 W. R., Act X, 103

ABDUL ALI *v* YAR ALI KHAN CHOWDHRY

8 W. R. 467

2. ——————— *Land held under istemrari tenures* A landlord cannot sue for a kabuliat in respect of a portion of the land held under an istemrari pottah DOORGAKANT MOZOOMDAR *v* BISHESHUR DUTT CHOWDHRY

W. R. 1864, Act X, 44

3. ——————— *Proprietor of fractional share in estate* The question was referred to a Full Bench "whether a suit by the owner of a fractional share of an undivided estate for a kabuliat will lie" NORMAN, *J*, was of opinion that, as a general rule, the holder of a tenure cannot be sued by owners of fractional shares in the superior tenure for separate kabuliats according to the proportions to which they allege themselves to be entitled in the superior tenure. A tenure is an entire thing, and cannot be sub-divided against the will of the tenant LOCH, BAYLEY, MACPHERSON, and MITTER, *JJ*, did not answer the question on the ground that it did not arise in the suit INDAR CHANDRA DUGAR *v*. BRINDABUN BHARA

8 B. L. R. 251 : 15 W. R. F. B. 21

4. ——————— *Uncultivated lands brought into cultivation* A separate kabuliat cannot be claimed for uncultivated lands already comprised in a lease on the ground that such uncultivated lands have since been brought into cultivation MAHOMED KALOO CHOWDHRY *v* FEDAYE SHIKDAR . . . . **8 W. R. 219**

5. ——— Right of fishery A suit for a kabuliat will not lie for a right to fish in certain waters MOHUN GOBIND SEIN *v* NITTAYE HALDAR

6 W. R., Act X, 101

6. ——— Suit for etmami kabuliat—*Jurisdiction.* A suit by a proprietor of land for an

11 W. R. [illegible]

7. ——— Land occupied by buildings—*Jurisdiction—Building used as dwelling-house, manufactory, or shop* Where the land in respect of which a kabuliat is demanded is occupied by a

PANDOO *v* INNAYUT ALI

3 Agra 49 : s.c. Agra F. B. Ed. 1874, 131

8. ——— Suit by mutwali to obtain kabuliat from khadim—*Jurisdiction.* A suit by the mutwali of a mosque to obtain a kabuliat from a khadim, or subordinate servant attached to the mosque, will not lie under the Rent Act HIDDUT ALI *v* KOBEEMALLA MUEAJEE

6 W. R., Act X, 9

9. ——— Suit to set aside Collector's order for kabuliat—*Jurisdiction* A suit to set aside a decree passed by a Deputy Collector for exe-

3 RIGHT TO SUE

1. ——— Requisites for maintenance of suit—*Evidence of relationship of landlord and*

JAIHA *v* KOYLASH CHUNDER DEY

10 W. R. 407

CHUNDER NATH NAG CHOWDHRY *v* ASANOOLLAH MUNDUL . . . . **10 W. R. 438**

SREEMUNTO KOONDOO *v*. BRIJONATH PAUL CHOWDHRY . . . . . **16 W. R. 298**

KEISURYA *v* CHOTOO **1 N. W. 78 : Ed. 1873, 131**

MUHESH DUTT PANDEY *v*. SEETUL SONAR

1 N. W. Ed. 1873, 146

2. ——— Agreement fixing rent—

3. ——— Allegation of tenancy. *Quære:* Whether a suit for a kabuliat on an allegation that the defendant is holding a specific

KABULIAT—*contd.*

3. RIGHT TO SUE—*concld.*

quantity of land under the plaintiff will lie. YAKOOB ALI v. KAEMOOLLAH . **8 W. R. 329**

4. ——— **Proof of right to assess as tenant** Until the right to assess has been properly determined, a suit for a kabuliat will not lie under Act X of 1859. RAMNATH SINGH v HURO LALL PANDEY . . . **8 W. R. 188**

5. ——— **Suit for resumption**—*Land claimed to be lakhiraj—Obligation of landlord to sue for resumption.* A landlord is not bound to sue for resumption before bringing a suit for a kabuliat in respect of lands which the defendant claims to hold as lakhiraj. FUZLON v ABDULLAH **7 W. R. 169**

6. ——— **Proof of right to rent**—*Decree* [illegible]

tained in that suit MODHOOSOODUN CHOWDHRY v RAM MOHUN GHUR . . . **8 W. R. 473**

7. ——— *Proof of right to rent—Suit for declaration of liability to assessment and for kabuliat.* A suit for a kabuliat cannot be maintained where the parties are not related to each other as landlord and tenant But a landlord may legally sue for a declaration of the amount of rent with which his land ought to be assessed, and should the occupant not agree to the rent assessed by the Court, the landlord may sue him for use and occupation, or for ejectment, or for both. SHUNTO DOSS *AUTITH v HUREEHUR MUKERJEE* **20 W. R. 268**

8. ——— *Proof of right to rent—Trespasser—Decree in summary suit for possession.* A zamindar cannot compel a trespasser on his land to become his raiyat and execute a kabuliat [illegible] land HEMALEE v KUMLA KANT BANERJEE **16 W. R. 133**

4 REQUISITE PRELIMINARIES TO SUIT

1. ——— **Notice of enhancement.** A suit for a kabuliat at an enhanced rate, to take effect prospectively from the date of suit, may be instituted without any preliminary notice of enhancement, and at any time during the tenancy. BRAE v. KUMUL SHAHA . **4 W. R., Act X, 5**

2. ——— *Landlord and tenant* [illegible]

KABULIAT—*contd.*

4. REQUISITE PRELIMINARIES TO SUIT—*contd.*

before suing for a kabuliat, tender a pottah to the tenant *Per* PEACOCK, *C.J.*—The question did not arise in the case The relationship of landlord and tenant did not exist between the parties. RAM KANTH CHOWDHRY v. BHUBUN MOHUN BISWAS **B. L. R. Sup. Vol. 25: W. R. F. B. 183**

WOOLFUT HOSSEIN v. JUMOONA DASS **W. R. 1864, Act X, 60**

DOORGA PERSHAD DOSS v. KALEE KINKUR ROY **5 W. R., Act X, 88**

3. ——— *Act X of 1859, ss. 9 and 13* Held, by the majority of a Full Bench, that a landlord can sue for a kabuliat at an enhanced rate without first having given notice of enhancement under s 13, Act X of 1859. He can also sue without having first tendered a pottah. *Per* PEACOCK, *C.J*—He can sue if he has given notice of enhancement *Per* NORMAN, *J*—A suit for a kabuliat is not maintainable except in cases provided for by s 9, Act X of 1859. THAKOORANEE DASSEE v. BISHESHUR MOOKERJEE **B. L. R. Sup. Vol. 202: 3 W. R., Act X, 29**

SUFFER ALI v. FUTTEH ALI **W R. 1864, Act X, 2**

TARINEE CHURN BOSE v. KASHINATH SINGH **W. R. 1864, Act X, 37**

4. ——— **Tender of pottah**—*Decree contingent on offer of pottah.* The previous tender of a pottah is not absolutely necessary to entitle a landlord to a decree for a kabuliat The decree may make the obtaining of the kabuliat contingent on the offering of a corresponding pottah MUNSOOR ALI v. BUNOO SINGH . **7 W. R. 282**

NITYANUND GHOSE v KISSEN KISHORE **W. R. 1864, Act X, 82**

MAHOMED YACOOB HOSSEIN v. CHOWDHRY WAHED ALI **4 W. R., Act X, 23: 1 Ind. Jur. N. S. 29**

GOVIND CHUNDER ADDY v AULOO BEEBEE. **1 W. R. 49**

MODHOOSOODUN CHOWDHRY v RAM MOHUN GHUR . . . . . **8 W. R. 473**

5. ——— *Landlord and tenant* In order to entitle a landlord to sue for a kabuliat, he must tender a pottah. AKHOY SUNKUR CHUCKERBUTTY v. INDRO BHUSAN DEB ROY **4 B. L. R. F. B. 58** **12 W. R. F. B. 27**

PERTAB CHUNDER BANERJEE v PHILLIPPE **2 W. R., Act X, 56**

TROYLUCKHONATH CHOWDHRY v. KALEEMA BIBEE **2 W. R., Act X, 96**

UMBICA CHURN POTTRO v. BOIDANATH POTTRO **1 W. R. 82**

6. ——— *Act X of 1859, s. 9.* A landlord is not entitled under Act X of

KABULIAT—*contd.*

4. REQUISITE PRELIMINARIES TO SUIT—*concld.*

1859, s. 9, to require his tenant to give him a kabuliat unless the tenant holds under a pottah, or the landlord has tendered a pottah GOBINLALL SEAL v KINOO KOYAL . . Marsh. 400

DOORGA KANT MOZOOMDAR v BISHESHUR DUTT CHOWDHRY W. R. 1864, Act X, 44

7. ———— *Issues—Intervenors.* Where a suit is brought for a kabuliat after service of the proper notice, the first and main question is whether, as a matter of fact, the plaintiff can establish that he or some person from whom he derives title, put the defendant into possession of all the lands in respect of which the kabuliat is de-

which the kabuliat is demanded belongs in reality to the plaintiff or to third parties, and the Court

5. PROOF NECESSARY IN SUIT.

1. ———— Evidence of quantity of land—*Failure to prove quantity* In a suit for obtaining a kabuliat, failure to prove the exact quantity of land for which the kabuliat is sought to be obtained renders the suit liable to dismissal. SHIB RAM GHOSE v PRAN PIRIA

4 B. L. R. Ap. 89 · 13 W. R 280

2. ———— Proof of reasonable rent—*Proof of holding land in suit—Onus of proof* A landlord suing a raiyat for a kabuliat is bound to make out the reasonableness of the rent which he demands, and *à fortiori* that the defendant is holding the particular land specified in his suit SHIB CHUNDER BOSE v RAM CHUND CHUND

9 W. R. 521

3. ———— Rate of rent, evidence of—*Customary rate of rent* A landlord is bound to prove that the rate of rent at which he claims a kabuliat is the rate that he has been in the habit of receiving from the tenant. RAM JEEBUN CHUCKERBUTTY v. KHOODEERAM CHATTERJEE

17 W. R. 388

4. ———— *Failure to prove rate of rent—"Probable rent."* In a suit for a kabuliat for certain resumed lakhiraj where it was found that the quantity of land in the defendant's possession was less than that alleged by the plaintiff, and that the rates of rent deposed to were less than those claimed:—*Held,* that the suit was rightly dismissed, and that the mere use of the word "probable" in describing the rate of rent claimed ought not, under the circumstances, to better the position of the plaintiff; the entire gist of the

KABULIAT—*contd.*

5. PROOF NECESSARY IN SUIT—*contd.*

19 W. R. 262

5 ———— *Landlord and tenant—Enhancement—Plaint—Decree.* A landlord,

B L. R. Sup. Vol. 974; 10 W. R. F. B. 14

HAMID ALEE v. AFEEOODEEN

1 B L. R. S. N. 14; 10 W. R. 213

DINDAYAL PARAMANIK v SURENDRANATH ROY

3 B. L. R. A. C. 78 note; 10 W. R. 77

6. ———— *Failure to prove rate of rent—Tenure invalid lakhiraj* *Held,* that the principle of the Full Bench decision in the case decided on the 19th March 1868, *Gholam Mohamed v. Asmut Ali Khan Chowdhry, B L R. Sup. Vol. 974 10 W R. F B. 14,* applies as much to cases, in which defendant has held under an invalid lakhiraj as to raiyats whose rents are to be enhanced. IMDAD HOSSEIN v STACK . . 12 W. R. 454

7. ———— *Suit for kabuliat at rate other than fair and equitable* A suit for a kabuliat at a given rent, where the rent

8. ———— *Failure to prove rate of rent—Right to kabuliat at fair rent after notice of enhancement*

KABULIAT—*contd.*

5. PROOF NECESSARY IN SUIT—*contd.*

L. R. Sup. Vol. 974 : 10 W. R. F. B. 14, not applying to a case where notice of enhancement has been given. GOPEENATH JANNAH *v.* JETOO MOLLAH

18 W. R. 272

9. ——————— *Failure to prove rate of rent—Suit for kabuliat and assessment after resumption* A party, having obtained a decree for resumption declaring that he was entitled to assess rent upon certain land, brought a suit for a kabuliat. The first Court found that the extent of the land was less than that alleged in the plaint, and the rate of rent to which the plaintiff was entitled, lower than that claimed Accordingly it decreed a kabuliat for the proper quantity of land at the proper rate. The lower Appellate Court dismissed the suit on the ground that the plaintiff had not proved the claim stated in the plaint *Held* that the District Judge had rightly applied the decision in *Gholam Mahomed* v. *Asmut Ali Khan, B L. R. Sup Vol. 974 10 W. R F. B 14,* which was equally applicable to cases in respect of lands for the first time resumed and assessed JELLOR RUHMAN *v* SEETARAM DUTT . . . **21 W. R. 224**

10. ——————— *Enhancement of rent—Presumption of landlord's willingness to grant pottah* In order to entitle a landlord to sue a tenant for a kabuliat at a certain rate of rent, he should either have tendered a pottah to the tenant at the rate of rent mentioned in the kabuliat, or he should be willing to grant a pottah at that rate, and if the Court considers that the rent which he claims is the correct amount, it will presume that he is ready to grant a pottah at that rate, and will give him a decree for the kabuliat But this presumption will not hold if the Court thinks that the rate claimed is too high, and in such a case, therefore, the presumption having failed, the landlord will not be entitled to a kabuliat at such lower rate as the Court may think just, but his suit will be dismissed *Golam Mahomed* v. *Asmut Ali Khan Chowdhry, B L R. Sup. Vol 974 10 W R F B 14,* followed *Gopeenath Jannah* v. *Jetoo Mollah, 18 W R, 272,* dissented from. GOGON MANJI *v* KASHISHWARY DEBI . . . . . **I. L. R. 3 Calc. 498**

s.c. GOGON MANJI *v* GOBIND CHUNDER KHAN

1 C. L. R. 241

11. ——————— *Enhancement of rent—Pottah, Tender of—Form of decree.* If a plaintiff brings a suit for a kabuliat at an enhanced rate against a tenant holding a mouzah under him at a wholly insufficient rent, and the tenant sets up a

KABULIAT—*concld.*

5. PROOF NECESSARY IN SUIT—*concld.*

he is entitled, his suit must be dismissed with costs. BROJO KISHORE SINGH *v* BHARRUT SINGH MOHAPUTTUR . . . . **I. L. R. 4 Calc. 963**

MAHOMED ASSUR *v.* POGOSE . **2 C. L. R. 8**

6. DECREE FOR KABULIAT.

1. ——— **Form of decree**—*Specification of duration of kabuliat—Decree in suit for kabuliat.* In a decree for a kabuliat the term for which it is to remain in force should not be fixed. SWARNAMAYI *v* GAURI PRASAD DAS

3 B. L. R. A. C. 270

2. ——————— *Kabuliat, Decree for, without fixing term, effect of.* Where a suit for a kabuliat at an enhanced rent is decreed without any term being fixed by the Court, the kabuliat executed is inoperative beyond the year of demand. KRISTO CHUNDER MURDRAJ *v.* POOROSUTTUM DASS

15 W. R. 424

MODHOO RAM DEY *v.* BOYDONATH DASS

9 W. R. 592

KADIM HAKS.

See INAMDAR . **I L. R. 28 Bom. 276**

KAMAT LAND.

See BENGAL TENANCY ACT, 1885, s. 116

12 C. W. N. 904

KANOM.

See MALABAR LAW.

I. L. R. 27 Mad. 26 ; 373

——————— *Transfer of Property Act (IV of 1882), ss. 59, 98—No notice necessary to determine kanom right—Renewal of kanom can be*

twelve years and thus hold the *kanom*" and the corresponding *kychit* of the demise contained at the end the words; "I shall obtain a renewed demise on the expiration of every twelve years and thus hold the lands." No mention was made of the rent payable on such renewals No such renewal was made by a registered instrument although the demisee alleged that he had paid the renewal fees. In a suit by the demisor to redeem the *kanom*:—*Held*, that the document contained no covenant for perpetual renewal *Held*, also, that the transaction was not a mere lease, but was an anomalous mortgage under s 98 of the Transfer of Property Act, and no notice was required as in the case of leases to determine it. *Held*, further,

KANUNGO.

See Penal Code, s. 186.
6 C. W. N. 120

KANYA.

See Hindu Law—Inheritance
I. L. R. 31 Bom. 495
I. L. R. 36 Calc. 86

KARNAM.

See Hereditary Offices Regulations
5 Mad. 360

See Hindu Law—Inheritance—Special Heirs—Males—Daughter's Son
I. L. R. 18 Mad. 420

See Madras Regulation XXIX of 1802
4 Mad. 234
I. L. R. 9 Mad. 214; 283
I. L. R. 10 Mad. 226
I. L. R. 11 Mad. 196
I. L. R. 18 Mad 420

See Madras Revenue Recovery Act, s 52 . **I. L. R. 15 Mad. 35**

See Public Servant
I. L. R. 15 Mad. 127

See Right of Suit—Office or Emolument . . **I. L. R. 10 Mad. 226**
I. L. R. 15 Mad. 284
I. L. R. 21 Mad. 47
I. L. R. 23 Mad. 47

See Small Cause Court, Mofussil—Jurisdiction—Government, suits against . **I. L. R. 18 Mad. 395**

1. ———— **Right of women to hold office of karnam.** Women are incapacitated from holding the office of karnam *Alymalammal* v. *Venkataramayyan, S D A. Mad (1844) 85*, followed Venkataratnamma v Ramanujasami
I. L. R. 2 Mad. 312

2. ———————— *Office of karnam* [illegible]

3. ———— **Rights of de facto karnam**—*Presumption of appointment from long tenure—Limitation.* *A* filed a plaint on 28th June 1882 for [illegible]

the dues as *de facto* karnam, and his claim was not barred in respect of any of the arrears claimed Ganapathi v. Sitharama . **I. L. R. 10 Mad. 292**

4. ———— **Karnam in permanently-settled estate**—*Mad Reg. XXXV of 1802, ss. 8 and 11—Mad Reg XXIX of 1802, s. 5—Right to sue for removal of karnam—Delegation of such right to lessees of zamindari—Damages accrued by a karnam's neglect of a statutory duty.* The

KARNAM—*contd.*

lessees of a zamindari are not entitled to sue for the removal of a karnam from office, though their lease contains a provision purporting to authorize them to appoint and remove karnams, but if they suffer any loss from the karnam's neglect of his statutory duty, they are entitled to bring an action for damages against him Kumarasami Pillai v. Orr . . . . **I. L. R. 20 Mad. 145**

KARNAVAN.

See Malabar Law
I. L. R. 27 Mad. 375
I. L. R. 29 Mad. 206

See Malabar Law—Endowment.

See Malabar Law—Joint Family.

See Malabar Law—Maintenance.

KATHIAWAR STATES, WHETHER BRITISH TERRITORY.

See Native States . **10 C. W. N. 361**

KATTUBADI.

See Rent . . **I. L. R. 22 Mad. 12**

KAZI.

See Collector . **I. L. R. 18 Bom. 103**

See Hereditary Offices Act, s. 13.
I. L. R. 18 Bom. 103
I. L. R. 19 Bom. 250

See Mahomedan Law—Custom.
I. L. R. 1 Bom. 633

See Mahomedan Law—Kazi.

———— **of Bombay.**

See Mahomedan Law—Endowment.
I. L. R. 18 Bom. 401

KEITIMA ADOPTION.

See Burmese Law.
I. L. R. 32 Calc. 219

KHAIRAT BISHANPRIT.

See Grant . **I. L. R. 31 Calc. [illegible]**

KHAMAR LAND.

See Civil Procedure Code (Act XIV of 1882), s. 211 . **12 C. W. N. 285; [illegible]**

KHARWA COMMUNITY OF BROACH.

See Husband and Wife.
I. L. R. 31 Bom. [illegible]

KHATA.

See Civil Procedure Code, 1882, s. 257A . **I. L. R. 29 Bom. [illegible]**

KHAZANCHI.

See Criminal Procedure Code, s. [illegible] (1872, s. 90) . **I. L. R. 4 Calc. [illegible]**

KHOJA MAHOMEDANS.

See Hindu Law—Custom—Inheritance and Succession 12 Bom. [illegible]
I. L. R. 2 Bom. [illegible]

KHOJA MAHOMEDANS—*contd.*

See Religious Community.
12 Bom. 323

See Will . . I. L. R. 29 Bom. 133

1. ——— Distinction between ancestral and self-acquired property among

Mahomedans a son is entitled to obtain partition of ancestral estate in his father's lifetime without his father's consent By the law and customs of Khoja Mahomedans there is a distinction between ancestral and self-acquired property in reference to the power of the owner to devise or make a gift thereof similar to that which obtains under the ordinary Hindu law The presumptions of the Hindu law apply to Khoja Mahomedans, and the burden of proving propositions opposed to that law lies on him who alleges them. Therefore in a suit for partition

property in the father's hands, whether ancestral or self-acquired:—*Held*, that the burden of proving the issues framed upon these allegations lay on the defendant. In considering the question of the alleged custom and usages the Court adhered to the less stringent rule of proof applied in *Hirbai* v. *Gorbai, 12 Bom 294* In the same suit where the defendant, having failed to establish the existence of the special custom and usages abovementioned, yet resisted the plaintiff's claim to partition on the ground that the property claimed was not ancestral:—*Held*, that the onus was on the plaintiff in the first instance to give evidence that the property was ancestral. In such cases the amount of the evidence required to shift upon the defendant the burden of displacing it depends on the circumstances of each case. Cassumbhoy Ahmedbhoy *v* Ahmedbhoy Habibhoy I. L. R. 12 Bom. 280

Held, on appeal, that the rule that Hindu law as administered in the Bombay Presidency, in the absence of proof of customs to the contrary, is the law applicable to Khoja Mahomedans, is not to be understood in its widest sense, but as confined to simple questions of inheritance and succession. The right of a son to partition in the lifetime of his father, more especially where moveable property is concerned, is one upon which the greatest doubt and difference of opinion has always prevailed, and consequently there is no presumption in favour of its inclusion in the Hindu law, which, in the absence of proof of custom to the contrary, is applicable to Khoja Mahomedans. The onus is on the party

it was proved to be customary in Kathiawar and

KHOJA MAHOMEDANS—*concld.*

Cutch for a father to give a son who wished for it his share of the family property, both ancestral and self-acquired. *Held*, also, on the evidence, that there was no sufficient proof of the property, of which the plaintiff sought partition, being ancestral property in the hands of his father. Where wealth amassed by an individual in trade is said to be ancestral in the hands of that individual, it is not enough to show that he inherited some property; it must be shown that the property inherited contributed in a material degree to the wealth so amassed. Ahmedbhoy Hubibbhoy *v.* Cassumbhoy Ahmedbhoy . . I. L. R. 13 Bom. 534

2. ——— Succession and inheritance—*Marriage by Mahomedan rites—Hindu Law—Widow—Maintenance.* Although a Khoja and his wife are married according to Mahomedan rites, yet at the time of his death, so far as regards the succession of his property he is a Hindu. If his brothers lived joint with him, his widow would be entitled to maintenance out of his estate, while his property devolved on them. According to Vyavahar Mayukh, which governs Khojas for the purpose of inheritance and succession, when a person inherits the estate of the deceased, he takes it as an *universitas* with all the rights and liabilities annexed to it Maintenance of those whom the deceased was bound to maintain and payment of his debts are liabilities, which are annexed to the estate in the hands of those who take it. Rashid *v* Sherbanoo (1905)
I. L. R. 29 Bom. 85

KHORPOSH GRANT.

See Grant . . . 9 C. W. N. 1073

——— lease—

See Khorposh Grant.
I. L. R. 33 Calc. 363

Chutia Nagpur Encumbered Estates Act (VI of 1876) Subsequently, when his disability ceased, he ratified the lease. *Held*, that it was quite competent for a person emerging from a state of disability to

KHOTI ACT (BOM. ACT I OF 1865).

See Bombay Survey and Settlement Act.

KHOTI SETTLEMENT ACT (BOM. ACT I OF 1880).

See KHOTI TENURE.
I. L. R. 8 Bom. 525
I. L. R. 13 Rom 373

See KHOTS.

See LEASE—CONSTRUCTION.
I. L R. 13 Bom. 373

See STATUTES, CONSTRUCTION OF
I. L. R. 18 Bom. 133

———— ss. 3 (5) 9, 10—*Privileged occupant—Dharikari, quasi-dharikari, Occupancy tenant—Transfer of land to another on sale—Not a resignation so as to be at the disposal of the Khot.* By transferring his land on sale, an occupant does not resign it within the meaning of s. 10 of the Khoti Act (Bom Act I of 1880), so as to place the land at the disposal of the Khot. RAMCHANDRA *v.* DATTATRAYA (1907)
I. L. R. 31 Bom. 267

———— ss. 6, 7, 8, 9, 11—*Khot—Occupancy-tenant—Mortgage by occupancy-tenant—Forfeiture.* There is no authority for saying that an occupancy-tenant, whose tenancy is not determined, forfeits his tenancy by parting temporarily with the possess[illegible]

khot cannot claim to treat the person in possession, under a right derived from the occupancy-tenant, either as a tres[illegible]

(1905) . . . I. L. R. 30 Bom. 290

———— s. 8—*Khot—Khot in isbat lands—Settlement Officer—Thal—Occupancy-tenants—Rents* [illegible]

[illegible] the khot at the same rates as are paid by occupancy tenants KRISHNOVA NAYAK *v.* KESHAV BALKRISHNA (1902) . I. L. R. 27 Bom 71

1. ———— s. 16—*Mortgagee of a co-sharer in the khoti settlement register, preparation of—Survey officer's authority to determine the title of persons claiming as mortgagees only from a co-sharer* The word "khot" as [illegible]

KHOTI SETTLEMENT ACT (BOM. ACT I OF 1880)—*contd.*

———— s. 16—*concld.*

determine whether an alleged mortgage of a share has been redeemed or is still subsisting DATTATRAYA GOPAL *v* RAMCHANDRA VISHNU
I. L. R. 24 Bom. 533

2. ———— ss 16 and 17—*Entry in the* [illegible]

village, though prepared in the form of the statement published at p 584 of the "General Rules of the Revenue Department," edition of 1893, and labelled "hot khat" cannot be [illegible]

KHAN SARGURO *v* SAKHYA I. L. R. 20 Bom. 729

1. ———— s. 17—*Entry in Survey officer's record—Land Revenue Code (Bom. Act V of 1879), s. 108—Evidence Act (I of 1872), s. 40—Res judicata* An entry of a record prepared under s. 108 of the Land Revenue Code [illegible]

evidence of a prior decision otherwise relevant under s. 40 of the Evidence Act as proof of *res judicata* [illegible]

2. ———— ss. 17, 20 and 21—*Entry* [illegible]

[illegible]

3. ———— ss. 17, 16 and 33—*Entries made by Settlement Officer in a form headed as issued under Bombay Survey and Settlement (Khoti) Act (Bom. Act I of 1865) when Bom. Act I of 1880* [illegible]

KHOTI SETTLEMENT ACT (BOM. ACT I OF 1880)—*contd*

——— ss. 17, 16 and 33—*contd.*

in a form which was headed as being issued under Act I of 1865, entries of rent payable by the occupancy-tenant to the *khot* with regard to some

RAGHUNATH *v.* BAL BIN RAGHOJI
I. L. R 21 Bom. 235

4. ——— ss. 17, 20, 21, and 33—*Entry in the Settlement Officer's record, effect of.* An entry by a survey officer that an occupancy-

distinguished. VITHAL ATMARAM *v.* YESA
I. L. R. 22 Bom. 95

5. ——— ss. 17, 21 and 33—*Bombay Land Revenue Code (Bom Act V of 1879), ss. 108 and 110—Entry made by Survey officer—Conclusive and final evidence—Entry specifying the amount and nature of rent* Under the Khoti Act

made under s 17, that is declared to be final and conclusive evidence. An entry of a survey officer specifying that an occupant, who was found to be not a dharikari or privileged occupant, should pay assessment and local fund cess only for the lands

NAJI NARASINVA *v.* KRISHNAJI NARAYAN JOSHI
I. L. R. 21 Bom. 467

6. ——— ss. 17, 21 and 33—*Bombay Land Revenue Code (Bom. Act V of 1879), s 108—Decision of Survey officer as to tenure—Power of Court to reverse or modify it* The decision of a survey officer determining the tenure on which a survey number is held is not final under the Khoti Act (Bombay Act I of 1880), and it can be reversed or modified by a competent Court. ANTAJI KASHINATH *v* ANTAJI MADHAV BHAVE
I. L. R. 21 Bom. 480

7. ——— ss. 17, 21 and 33—*Survey register—Defendants entered by Survey authorities as occupancy-tenants—Suit by plaintiffs, for reversal of Survey officer's decision and for declaration that*

KHOTI SETTLEMENT ACT (BOM. ACT I OF 1880)—*contd*

——— ss. 17, 21 and 33—*concld.*

defendants were ordinary tenants—Decision of Survey officer as to tenure—Right of suit—Khot holding dhara land. A survey officer under the Khoti Settlement Act (Bombay Act I of 1880) having determined and entered in the survey register that the defendants held the lands in

dhara tenure, and that the defendants were ordinary

as to tenure was not final, and that a suit like the present would lie A khot of a village can hold dhara lands. GOPAL SADASHIV PALEKAR *v.* NAGESHWAR SITARAM PHANSALKAR
I. L. R. 21 Bom. 608

8. ——— ss. 17, 33—*Bombay Land Revenue Code (Bom. Act V of 1879), s. 211—Determination by the Settlement Officer of the liability of the defendant to khot—Entry in the settle-*

tered in the record made under s 17 of the Act, notwithstanding that in the settlement register

(Bombay Act V of 1879) by the authorities therein mentioned. GOPAL RAMCHANDRA NAIK *v.* DASHRATHSHET . . I. L. R. 21 Bom. 244

——— s. 20.

See LIMITATION ACT, 1877, Sch II, ART. 14 . . I. L. R. 18 Bom. 244

KHOTI SETTLEMENT ACT (BOM. ACT I OF 1880)—*concld.*

———— s. 20—*concld.*

1. ———— **ss. 20 and 21**—*Effect of decision of a Survey officer as to tenure—Burden of proof* S 20 of the Khoti Settlement Act (Bombay Act I of 1880) throws upon the survey officer the duty of investigating and determining disputes as to any matter which he is bound to record The tenure upon which any particular survey number is held is one of such matters which he has to deter-

arties

final

proof

in such case lies upon the party seeking to vary the decision MADHAVRAO APPAJI SATHE v DEONAK

I. L. R. 21 Bom. 695

2 ———— **ss. 20, 21 and 22**—*Jurisdiction of Civil Court—Order or act of Settlement Officer—Power of Collector* Under ss 20 and 21 of the Khoti Settlement Act, it is the "decision" on the rival claims of the parties which is open to reversal by the Civil Court, and not the consequences of that decision, which as provided by s 22 are left to the Collector himself to undo or modify in accordance with the decision of the Civil Court. S 21 does not contemplate any "order" being made by the survey officer between the

GULAM MOHIDIN v SAJNAK

I. L. R. 18 Bom. 244

———— **s. 33**—

See RES JUDICATA—MATTERS IN ISSUE—SUIT FOR RENT **I L. R. 26 Bom. 25**

———— *Khot—Occupancy tenants—Thal—Thal to be determined by Survey officer and not by Civil Court—Rent suit* Under s 33 of the Bombay Khoti Act (Bombay Act I of 1880), it is the duty of the survey officer to determine the thal or customary rent payable to a khot by an occupancy-tenant Until a new determination has been made by the survey officer under s 33 of the rent payable to the khot, a Civil Court must award rent to the old rate legally fixed. BAPUJIRAO v. GANU

I. L. R. 24 Bom 489

KHOTI TENURE.

See CO-SHARERS—GENERAL RIGHTS IN JOINT PROPERTY . **8 Bom. A. C. 1**

See FOREST ACT, SS 75 AND 76 **I. L R. 18 Bom. 670**

See KHOTI SETTLEMENT ACT.

See KHOTS.

See LANDLORD AND TENANT—LIABILITY FOR RENT . **I. L. R. 19 Bom. 528**

See RIGHT OF OCCUPANCY—LOSS OR FORFEITURE OF RIGHT. **I. L. R. 17 Bom. 677**

KHOTI TENURE—*contd.*

1. ———— **Proprietary rights**—*Ownership of wood on village lands—Forest rights.* The plaintiff sought to raise the question whether in virtue of his being izafadar and khot of three-fourths of a village, he was or was not proprietor of three-fourths thereof and entitled, as such proprietor, to three-fourths of the wood, including teak as well as izaili wood, growing on the village lands His rights under the izafati title depended on two documents: one, an imperial sanad, dated in A D 1653; the other, a Marathi document, dated in A.D 1722. The first was construed to confer upon the grantee, as collector of the revenue, certain perquisites, and to make hereditary right which before had been only a personal right, with reversion to the sover-

izafati title did not carry with it the proprietary right On the question as to the khoti, it was *held*, without the expression of any opinion, that no khot is or can be the proprietor of the soil; that such a right is not vested in every khot This khot of

reserves marked by survey numbers, and all the teak trees in the village. He had admitted that the Government had the power to make such re-

wood as against the Government, nor a claim against it in respect of the izaili wood NAGARDAS v. CONSERVATOR OF FORESTS, BOMBAY

I. L. R. 4 Bom. 264
L. R. 7 I. A. 55

2. ———— **Right to restoration of tenure after resumption by Government**—*Conditional restoration.* In a suit brought by a khot in 1862 to recover an hereditary share in a khoti

estate through the revenue survey which had been introduced during the direct management of the village by Government whether as regards the rates

KHOTI TENURE—*contd.*

of assessment or the right of tenancy. *Held*, by ARNOULD and NEWTON, *JJ.* (TUCKER, *J.*, *dissentiente*), that plaintiff had no right to object to the condition subject to which the District Judge had allowed her claim to resume the khotship. TAJUBAI *v.* SUB-COLLECTOR OF KOLABA . 3 Bom. A. C. 132

3. ———— **Liability to assessment for lands while khoti village is under attachment by Government**—*Bom. Act I of 1865, s. 11, cl. 1, and s. 38.* A khot is liable to be assessed for khoti profits in respect of land in his private occupation during the time that the khoti village is under attachment by Government. *Quære:* Whether a khot in respect of such lands is a tenant within the

4. ———— **Khot's right to profits for**

Limitation. The position of a khot, in the villages to which the Bombay Khoti Act I of 1880 has been extended, is that of a superior holder, and in the event of attachment of his village his rights in

tended, unless the khots therein are sanadi or vatandar khots. Where plaintiff sued the defendant, his khoti co-sharer, to recover from him the khoti profits for the year during which the village was

nor could he do so from Government under the Revenue Code, even if it had collected them for the year of attachment. The Government could not be said to have been trustee for the khots of the village. BHIKAJI RAMCHANDRA OKE *v.* NIJAMALI KHAN I. L. R. 8 Bom. 525

5. ———— **Relations of inamdars with Khots**—*Status of khot in the Ratnagiri district—Ownership not an essential incident of khotship—Onus—Thal* The plaintiffs were the inamdars of a certain village in the Ratnagiri district, which was granted to their ancestors by the Peshwa under a

that "so far as the Peshwa's Government could pass the soil of the village and its revenues by its grant, it did pass them to the plaintiff's ancestors," and that therefore the plaintiffs were the owners of the

KHOTI TENURE—*contd.*

forest. *Narayan Dhondbhat* v. *Pitre Trimbak Vithal, I. L. R. 11 Bom 688 note.* In the present suit, which was brought to compel the defendants to pass a fresh kabuliat every year to the plaintiffs and to recover the revenue from them for the

ernment In support of this contention, they principally relied upon the fact that they were entitled to recover, and did in fact recover, thal, or rent for lands reclaimed and brought under cultivation by the plaintiffs. The plaintiffs claimed, on the other

NARAYAN DHONDBHAT PITRE I. L. R. 11 Bom. 680

6. ———— **Proprietary right of khot to khoti vatani land**—*Right of such khot to forest land and to timber and wood growing therein—Government, right of, to appropriate to forest preserves assessed or unassessed land—Construction of*

titled to the jungle produce except timber; that in virtue of Dunlop's proclamation of 1824 the plaintiff acquired an unqualified right to the forest land in the village and timber growing on it, and that the defendant had no right to appropriate assessed

KHOTI TENURE—*contd.*

or unassessed land for forest purposes, and awarded the plaintiff the sum of R600 as damages. On appeal by the defendant to the High Court:—*Held*, that the application of the general rules of construction of grants to a subject by the State requires that language of such general import as is ordinarily to be found in the khot's sanads should be taken most beneficially to the State. *Held*, accordingly, that, in the absence of a sanad expressly granting it, the ownership neither of the soil nor of cultivated or uncultivated lands passes by the grant of the vatandari khotship. *Held*, also, that the grant of the vatani khoti did not make the khot a perpetual tenant of Government in respect of all lands in the village, except dhara lands *Held*, on the authority of *Tajubai* v *Sub-Collector of Kolaba, 3 Bom. A. C. 132*, and *Ramchandra Narsinha* v. *Collector of Ratnagiri, 7 Bom. A. C. 41*, that a permanent relationship was created between the Government and the khot which could not be interfered with as long as the settlement of 1788 was in force, except with the khot's consent, and therefore that in 1855, when the pahani of 1788 was in force, the Government could not withdraw the thikan in question from the plaintiff's cultivation *Held*, also, that, in the absence of evidence to show that the right to the jungle produce was intended to be reserved to Government, the plaintiff was entitled to cut down brushwood, whether as a source of revenue or for the purpose of bringing the land into cultivation. *Held*, that the respondent was entitled to damages for the years during which he had been excluded

OF RATNAGIRI *v.* ANTAJI LAKSHMAN
I. L. R. 12 Bom. 534

See SECRETARY OF STATE FOR INDIA *v* SITARAM SHIVRAM . . . I. L. R. 23 Bom. 518

7. ——— **Managing khot's right to create tenancies**—*Maphi istava lands—Suti lands—Sanad—Construction—Fraud.* A managing khot is entitled, without any express authorization, to create tenancies inland, even though the reversionary interest in it is vested in the person whose lessee he is If such a khot himself takes up land, he can do so consistently with the conditions of the khoti tenure; for a khot, as regards lands in his

KHOTI TENURE—*contd.*

should allow the lands, which had been granted on maphi istava tenure to certain hawaldars before the date of the sanad, to continue in their possession; that he should every year recover from them the Government dues and pay the same over to Government in addition to the amount stipulated with him on account of the khotship. Clause 9th provided that the holders of the suti lands in the village were the owners of those lands Should a new survey be made and a new assessment settled, the same should be settled by Government for the holders of the suti

land of the aforesaid village. I will take the pro-

defendant applied to the Collector to have the lands transferred to him, and the Collector transferred them to his name Shortly afterwards the defendant acquired some more lands which were held on suti tenure in the village. He either purchased them or took them up on the tenants abandoning them In 1861 when the survey was introduced

acquired during his management. The plaintiff therefore sued as khot of the village to recover the said lands with mesne profits, alleging that the defendant had illegally and fraudulently acquired those lands on his own account while acting as plaintiff's agent and praying that he should be declared to have acquired and held them in trust for the plaintiff. The defendant contended (*inter alia*) that the lands in suit were not included in the khoti

direct from Government, and that the plaintiff was only entitled to the assessment due on the lands which he had refused to accept. Lastly, the defendant denied that he had acted in fraud of the plaintiff's right in acquiring the lands in dispute on his

KHOTI TENURE—*contd.*

own account. *Held*, on the construction of the

engagement to furnish accounts of the balance of the

more than that, and the whole transaction evidenced by the kabuliats was merely an assignment, in consideration of a fixed annual payment to be made

jealously and scrupulously to protect the plaintiff's

the defendant was at liberty either to take up waste lands himself or put in tenants, if he put in tenants

8. ———— **Lease containing words of inheritance not inalienable**—*Construction—Khoti Act (Bom. Act I of 1880), s. 9.* The khots of the village of *A* in 1854 leased certain land to

KHOTI TENURE—*concld.*

B by a lease which declared that "you (*B*) are to enjoy, you and your sons, grandsons, from generation to generation." The rent fixed by the lease was eleven maunds and six and a half pailis of bhat per year. *B* having died, his widow in 1878 transferred the lease to the plaintiff, who entered into possession and offered to pay to the defendants, who were khots of the village and the successors of the grantors of the lease in 1854, the annual rent fixed by the lease The defendant refused to accept it, and contended that the plaintiff was liable to pay the rent paid by other occupying tenants in the village. The plaintiff thereupon sued to have it declared that he was entitled under the lease to hold the lands permanently at the rent thereby fixed. *Held*, by the High Court, that he was entitled to the declaration The lease was one to hold in perpetuity at the fixed rent, but there were no words making the lease inalienable. There was no evidence of any custom of the village, nor anything in the Khoti Act I (Bombay) of 1880, which could be construed as a declaration of the existing custom of khoti villages when the Act was passed VINAYAK MORESHVAR *v.* BABA SHABUDIN

I. L. R. 13 Bom. 373

9. ———— **Khoti khasgi lands**—*Khasgi lands allotted to a khoti sharer—Sale of khoti—Occupancy rights in khoti khasgi lands* One *N* was the owner of a 14 pies takshim (share) in a khoti village To this takshim were allotted twenty khasgi thikans In 1876 *N* mortgaged his khoti takshim to the plaintiff. In 1880 the takshim was sold in execution of a decree against *N* and purchased by *A* *A* sold the takshim to plaintiff in

sale of the khoti takshim passed with it the khasgi lands allotted to the takshim Both as mortgagee and purchaser of the takhsim, plaintiff acquired a title to the khasgi thikans in dispute. *Held*, also, that the effect of the decree which plaintiff had

KHOTS.

See KHOTI ACT . **I. L. R. 30 Bom. 290**

See KHOTI SETTLEMENT ACT.

See KHOTI TENURE.

1. ———— **Alluvions**—*Khots of the whole village—Right of the Khot to the alluvion—Land Revenue Code (Bombay Act V of 1879), s. 37.* The Khots of the village of Bele Budruk in the

KHOTS—*concld.*

presented no bar to the same. The construction to be placed on the words "are hereby declared" in a statute discussed SECRETARY OF STATE v. WASUDEO (1907) . I. L. R. 31 Bom. 456

2. ——— Landlord and tenant—*Pre-* ... *of evidence* ... *—Sale of* ... *Suit for* ... *village—* *Occupancy tenancy* One *A*, who held certain land as tenant, mortgaged it to *H* and shortly afterwards died. There was no evidence to show the term of *A's* tenancy. After his death the plaintiff *V*, who ...

the plaintiff *V* and his two sisters parties ... obtained a decree and sold the mortgaged land in execution. *S* bought it and now claimed possession *V* contended that *A's* interest terminated at his death, and that *S* was therefore not entitled to possession *Held*, that *S* was entitled to possession ...

tenancy which had never been legally put an end to, and was entitled to possession. Under the Khoti Settlement Act (Bombay Act I of 1880), occu- ...

KIDNAPPING.

See CHARGE TO JURY—SPECIAL CASES —KIDNAPPING . 7 W. R. Cr. 22
I. L. R. 14 All. 25

See CRIMINAL PROCEDURE CODE, ss. 199, 227, 228, 238, 537.
I. L. R. 31 Bom. 218

See CRIMINAL PROCEDURE CODE, ss. 199, 238 . . I. L. R. 27 Mad. 61

See JURISDICTION OF CRIMINAL COURT—OFFENCES COMMITTED ONLY PARTLY IN ONE DISTRICT—KIDNAPPING.
I. L. R. 18 All. 350
I. L. R. 19 All. 109

See PENAL CODE, ss. 359 TO 369.

See PENAL CODE, ss. 109, 366.
I. L. R. 26 All. 197

KIDNAPPING—*contd.*

See PENAL CODE, ss. 361, 363.
I. L. R. 31 All. 448

——— from lawful guardianship—

See PENAL CODE, s. 361.

See PENAL CODE, s. 363.
I. L. R. 31 Bom. 218

1. ——— Requisites of offence—*Penal Code, s 363—Abduction from lawful guardianship.* To constitute the offence of kidnapping under ...

custody of a minor. QUEEN v. BULDEO
2 N. W. 286

2. ——— Continuing offence—*Penal Code (Act XLV of 1860), s. 363 Semble:* Tha ...

3. ——— *Penal Code, ss. 361, 363—Enticing from lawful guardianship.* To ...

QUEEN v. MOHIM CHUNDER SIL.
16 W. R. Cr. 42

4. ——— The offence of kidnapping is complete when the person is actually taken out of the custody of his lawful guardian RAKHAL NIKARI v. QUEEN-EMPRESS 2 C.W. N. 81

5. ——— Omission to enquire as to guardian—*Child under ten years of age—Penal Code, s. 361—Guardianship—Minor.* A child ...

I. L. R. 3 Bom. 178

6. ——— Lawful guardianship—*Guardianship of illegitimate child—Penal Code (Act XLV of 1860), ss 361, 366* The mother of an illegitimate child is its proper and natural guardian during the period of nurture. And where the mother, on her death-bed, entrusts the care of such child to a person who accepts the trust and maintains the child, such a person is "lawfully entrusted" with the care and custody of the minor within the meaning of s. 361 of the Penal Code. The explanation of the words "lawful guardian" in s. 361 is intended to obviate the difficulty the prosecution might be put to in being bound to prove strictly, in cases of abduction, that the person from whose care the minor has been abducted was the

KHOTI TENURE—*contd.*

own account. *Held*, on the construction of the

ation which would be of use to him, and which indeed it would be necessary for him to possess when he resumed the management of the village on the determination of the lease. It imported nothing more than that; and the whole transaction evidenced by the kabuliats was merely an assignment, in consideration of a fixed annual payment to be made

...ly and scrupulously to protect the plaintiff's

the defendant was at liberty either to take up waste lands himself or put in tenants; if he put in tenants

that the defendant was not guilty of fraud, as there

8. ——— **Lease containing words of inheritance not inalienable**—*Construction—Khoti Act (Bom. Act I of 1880), s. 9.* The khots of the village of *A* in 1854 leased certain land to

KHOTI TENURE—*concld.*

B by a lease which declared that "you (*B*) are to enjoy, you and your sons, grandsons, from generation to generation." The rent fixed by the lease was eleven maunds and six and a half pailis of bhat per year. *B* having died, his widow in 1878 transferred the lease to the plaintiff, who entered into

the rent paid by other occupying tenants in the village. The plaintiff thereupon sued to have it declared that he was entitled under the lease to hold the lands permanently at the rent thereby fixed. *Held*, by the High Court, that he was entitled to the declaration The lease was one to hold in perpetuity at the fixed rent, but there were no words making the lease inalienable There was no evidence of any custom of the village, nor anything in the Khoti Act I (Bombay) of 1880, which could be construed as a declaration of the existing custom of khoti villages when the Act was passed VINAYAK MORESHVAR *v.* BABA SHABUDIN

I. L. R. 13 Bom. 373

9. ——— **Khoti khasgi lands**—*Khasgi lands allotted to a khoti sharer—Sale of khoti—Occupancy rights in khoti khasgi lands.* One *N* was the owner of a 14 pies takshim (share) in a khoti village. To this takshim were allotted twenty *khasgi thikans* *In 1876 N mortgaged* his khoti takshim to the plaintiff. In 1880 the takshim was sold in execution of a decree against *N* and purchased by *A*. *A* sold the takshim to plaintiff in 1881. In 1893 plaintiff obtained a decree against *N*

obtained against *N* in 1893 in the rent suit was that in the absence of any agreement, *N* was a mere tenant-at-will of the khasgi thikans, liable to be evicted after due notice. *Held*, also, that a khoti sharer has not, with reference to a khoti khasgi thikan allotted to his share, an "occupancy right"

KHOTS.

See KHOTI ACT . **I. L. R. 30 Bom. 290**

See KHOTI SETTLEMENT ACT.

See KHOTI TENURE.

1. ——— **Alluvions**—*Khots of the whole village—Right of the Khot to the alluvion—Land Revenue Code (Bombay Act V of 1879), s. 37.* The Khots of the village of Bele Budruk in the

KHOTS—*concld.*

WASUDEO (1907) . I. L. R. 31 Bom. 458

2 ———— Landlord and tenant—*Presumption as to nature of tenancy in absence of evidence—Payment of rent—Mortgage by tenant—Sale of tenant's interest—Rights of purchaser—Suit for possession—Transfer of tenancy in khoti village—Occupancy tenancy* One *A*, who held certain land as tenant, mortgaged it to *H* and shortly afterwards died. There was no evidence to show the term of *A's* tenancy. After his death the plaintiff *V*, who

death, and that *S* was therefore not entitled to

tenancy was an ordinary tenancy from year to year continuable until legally terminated There was

KIDNAPPING.

See CHARGE TO JURY—SPECIAL CASES—KIDNAPPING . 7 W. R. Cr. 22
I. L. R. 14 All. 25

See CRIMINAL PROCEDURE CODE, ss 199, 227, 228, 238, 537.
I. L. R. 31 Bom. 218

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See JURISDICTION OF CRIMINAL COURT—OFFENCES COMMITTED ONLY PARTLY IN ONE DISTRICT—KIDNAPPING.
I. L. R. 18 All. 350
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I. L. R 26 All. 197

KIDNAPPING—*contd.*

See PENAL CODE, ss. 361, 363
I. L. R. 31 All. 448

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I. L. R. 31 Bom. 218

1. ———— Requisites of offence—*Penal Code, s 363—Abduction from lawful guardianship.* To constitute the offence of kidnapping under

custody of a minor QUEEN *v* BULDEO
2 N. W. 286

2. ———— Continuing offence—*Penal Code (Act XLV of 1860), s. 363 Semble* Tha the offence of kidnapping from lawful guardianship punishable under s 363 of the Penal Code is not a continuing offence QUEEN-EMPRESS *v* RAM SUNDAR . . . . I. L. R. 19 All. 109

3. ———— *Penal Code, ss. 361, 363—Enticing from lawful guardianship.* To

QUEEN *v* MOHIM CHUNDER SIL .
16 W. R. Cr. 42

4. ———— The offence of kidnapping is complete when the person is actually taken out of the custody of his lawful guardian. RAKHAL NIKARI *v* QUEEN-EMPRESS 2 C.W. N. 81

5. ———— Omission to enquire as to guardian—*Child under ten years of age—Penal Code, s. 361—Guardianship—Minor.* A child under ten years of age is, *primâ facie*, subject to

I. L. R. 3 Bom. 178

6. ———— Lawful guardianship—*Guardianship of illegitimate child—Penal Code (Act XLV of 1860), ss 361, 366.* The mother of an illegitimate child is its proper and natural guardian during the period of nurture. And where the mother, on her death-bed, entrusts the care of such child to a person who accepts the trust and maintains the child, such a person is "lawfully entrusted" with the care and custody of the minor within the meaning of s. 361 of the Penal Code. The explanation of the words "lawful guardian" in s. 361 is intended to obviate the difficulty the prosecution might be put to in being bound to prove strictly, in cases of abduction, that the person from whose care the minor has been abducted was the

KIDNAPPING—*contd.*

guardian of such minor within the meaning of the legal acceptation of the word. EMPRESS v. PEMANTLE . . . . I. L. R. 8 Calc. 971

7. ——— *Penal Code, s. 361—Taking by father of minor wife from her husband—Guardianship of wife.* The husband of a

the petition of DHURONIDHUR GHOSE
I. L. R. 17 Calc. 298

8. ——— *Enticing away child playing on public road—Taking from lawful*

9. ——— *Penal Code, s 363—Betrothed girl after marriage is broken off* A person who carries off, without the consent of her guardian, a girl to whom he had been betrothed by her father after the father had changed his mind and broken off the marriage, is guilty of kidnapping, punishable under s. 363 of the Penal Code. QUEEN v. GOOROODASS RAJBUNSEE 4 W. R. Cr. 7

10. ——— *Kidnapping from*

offence—

posses-

ss. 360,

n away from her husband's house to the house of *R*, and there kept for two days Then one *M* came and took her away to his own house and kept her there

convicted under s. 363 of the Penal Code for kidnapping a girl under 16 years of age from the lawful

The offence of kidnapping under s 363 is not necessarily or in all

4 C. W. N. 645

11. ——— *Kidnapping of married minor girl from father's house—"Lawful guardianship"—Penal Code, s. 361, Expl. 363—Mis-*

KIDNAPPING—*contd.*

direction to jury—Failure to place evidence fairly before jury. Where an accused was charged with having kidnapped a

years of age by

father, the

stances of the

the lawful guardian, what the Judge should have left to the jury was whether or not the father had been lawfully entrusted with the care or custody of the girl. The Judge had charged the jury as follows:—

13 C. W. N. 754

12. ——— *Lawful guardianship—Penal Code (Act XLV of 1860), ss. 361, 363, 366—Kidnapping from lawful guardianship—"Lawful guardian"—Continuance of parent's possession though physical possession temporarily with another.* *S*, a girl of the age of eight years, lived ordinarily under the guardianship of her father. A sister of *S* was married to a nephew of one *K*, and, with her husband, lived in the house of *K*. *S*, with her father's knowledge and consent, visited her sister in *K's* house, and had remained there for about a month when four brothers

KIDNAPPING—*contd.*

person lawfully entrusted with the care or custody of the minor. The fact that a father allows his child to be in the custody of a servant or friend for a limited purpose and for a limited time does not determine the father's rights as guardian or his legal possession for the purposes of the criminal law If the facts are not inconsistent with a continuance of

NADHA RAO v. KAMARAJU (1900)
I. L. R. 24 Mad. 284

13. ——— Husband taking away wife

v. ASKUR . . . W. R. 1864 Cr. 12

14. ——— Consent—*Taking by force or fraud—Penal Code, s. 361.* The consent of a kidnapped person is immaterial, and it is not necessary for a conviction, under s. 361, Penal Code, that the taking or enticing should be shown to have been by means of force or fraud. QUEEN v. BHUNGEE AHEER . . . . . 2 W. R. Cr. 5

QUEEN v. AMGAD BUGEAH . 2 W. R. Cr. 61

QUEEN v MODHOO PAUL . . 3 W. R. Cr. 9

QUEEN v. KOORDAN SINGH . 3 W. R. Cr. 15

QUEEN v SOOKEE . . . 7 W. R. Cr. 36

15. ——— Abetment of kidnapping—

and was arrested on the way thither. The Sessions

16. ——— *Penal Code (Act XLV of 1860), ss. 109, 363—Right to custody of children.* A mother cannot have a right to the custody of her legitimate children adversely to the father. Ordinarily the custody of the mother is the custody of the father, and any removal of the child-

KIDNAPPING—*contd.*

PRANKRISHNA SURMA
I. L. R. 8 Calc. 969: 11 C. L. R. 6

17. ——— Concealment of kidnapped person—*Penal Code, s 368—Concealment of kidnapper.* S 368 of the Penal Code refers to some other party who assists in concealing any person who has been kidnapped, and not to the kidnappers. QUEEN v OOJEER . . . 6 W. R. Cr. 17

18. ——— *Penal Code,*

her out of view be apparent QUEEN v JHURRUP
5 N. W. 133

19. ——— *Girl merely staying temporarily in another house.* The mere circumstance of a girl, who had been kidnapped, staying in the house of a person for a day or two, does not

CHUBBOA . . . . . . 5 N. W. 169

20. ——— *Penal Code, ss 363, 366, 368—Illegal concealment.* When a

nal Code only, and of the latter under s 368 only, while the separate conviction of both under s. 366 was quashed. QUEEN v ISREE PANDEY
7 W. R. Cr. 56

21. ——— *Restraint or confinement in attempt to kidnap.* Where an act of restraint or confinement in an attempt to kidnap has

22. ——— *Penal Code, s. 368—Confinement of kidnapped girl.* If, knowing a girl has been kidnapped, a person wrongfully confines her and subsequently detains her as a slave, he is guilty of two separate offences punishable under the Penal Code. QUEEN v. SIKUNDER BHUKUT
3 N. W. 146

KIDNAPPING—*concld.*

23. ——— **Proof of offence**—*Evidence of kidnapped girl*
if thoroughly
viction for kid

24. ——— **Offence when complete.** The offence of kidnapping is complete when the minor is actually taken from lawful guardianship, and it is not an offence continuing as long as the minor is kept out of such guardianship CHEKUTTY v EMPEROR (1902) . I. L. R. 26 Mad. 454

25. ——— **Rioting with intent to abduct**—*Indian Penal Code (Act XLV of 1860), ss. 147, 366—Abduction—Rioting, charge of, whether it would necessarily fail if intention of abduction is not*

the accused under s 147, but acquitted him of the offence under s 366 on the ground that the intention of the abduction as mentioned in the charge was not proved :—*Held*, that, the intention of the abduction not being proved, and a charge of bare abduction *per se* (without the intention pointed out

26. ——— **Mahomedan Law**—*Mahomedan minor, guardianship of—Preferential right of Mahomedan mother—Penal Code (Act XLV of 1860), ss. 361, 363* Under the Mahomedan law the mother is entitled to the custody of her daughter, in preference to the husband, until the girl attains the age of puberty The removal of an immature Mahomedan girl of eleven or twelve from the house of her mother-in-law, in whose charge the husband had left her, by a third person acting at the instance, and under the instigation of her mother, is not a taking from "lawful guardianship," and does not amount to "kidnapping" *Nur Kadir v Zuleikha Bibi, I. L R. 11 Calc 649*, referred to KORBAN v EMPEROR (1905) . . I. L. R. 32 Calc. 444

KIRTAN.

See EASEMENT . I. L. R. 36 Calc. 615

KIST.

See SALE FOR ARREARS OF REVENUE. I. L. R. 35 Calc. 636

KISTBANDI.

See CIVIL PROCEDURE CODE, 1882, ss. 257, 258 (1859, s. 206).

——— **suit on**—

See CONTRACT ACT, s 25. I. L. R. 4 Calc. 500

KNOWLEDGE.

See ACQUIESCENCE.

See PRESCRIPTION—EASEMENTS—LIGHT AND AIR . . . 6 B. L. R. 85
12 B. L. R. 406

KNOWLEDGE—*concld.*

——— **of commission of offence**—

See COMPLAINT—INSTITUTION OF COMPLAINT AND NECESSARY PRELIMINARIES. 5 B. L. R. 274

See RIOTING . I. L. R. 28 Calc. 504

KONDH, COURT OF NATIVE COMMISSIONER OF.

See EXECUTION OF DECREE. I. L. R. 34 Calc. 576

KULACHAR.

See BABUANA GRANT . 12 C. W. N. 958

——— **of Darbhanga Raj**—

See GRANT FOR MAINTENANCE. I. L. R. 32 Calc. 633
9 C. W. N. 567

KUMAON AND GARHWAL.

——— **High Court for** For the purposes of the Legal Practitioners' Act, 1879, the Commissioner of Kumaun is the High Court for the Province of Kumaun and Garhwal *In the matter of the petition of* PADMA DAT JOSHI (F.B., 1902) . . . I. L. R. 24 All. 348

KURBARS.

See HINDU LAW—MARRIAGE. I. L. R. 33 Bom. 693

KURSINAMA.

See EVIDENCE, ADMISSIBILITY OF I. L. R. 34 Calc. 1059

KUTCHI MEMONS.

See CUTCHI MEMONS.

L

LABOURERS.

See ACT XIII OF 1859 8 W. R. Cr. 69
14 W. R. Cr. 29
18 W. R. Cr. 53
2 B. L. R. A. Cr. 32
I L. R. 1 Mad. 280
I. L. R. 7 Bom. 379
9 Bom. 171
I. L. R. 8 Mad. 379
I. L. R. 13 Mad. 351

See BREACHES OF CONTRACT ACT.

——— **protector of**—

See BENGAL ACT VI OF 1865 3 B. L. R. A. Cr. 39

——— **wages of**—

See BENGAL ACT VI OF 1865. 3 B. L. R. A. Cr. 39

LACCADIVE ISLANDS.

See CRIMINAL PROCEEDINGS. I. L. R. 13 Mad. 353

LACHES.

See Acquiescence . I. L. R. 1 All. 82
2 Mad. 114; 270
22 W. R. 267

See Costs—Special Cases—Delay.
I. L. R. 11 All. 372

See Court Sale.
I. L. R. 29 Bom. 234

See Execution of Decree—Application for Execution and Power of Court . . I. L. R. 15 All. 84

See Limitation Act, s. 10
I. L. R. 18 Bom 119

See Limitation Act, 1877, Sch II, Art 113 . . I. L. R. 2 Calc 323

See Privy Council, Practice of—Rehearing . . 2 B L. R. P. C. 10
12 Moo. I. A. 244

See Revision—Criminal Cases—Delay.

See Sale in Execution of Decree—Purchasers, Rights of—Generally.
11 Bom. 193

See Specific Performance—Generally.
I. L. R. 30 Calc. 265
I. L. R. 33 Calc. 633

See Summons . 15 B. L. R. Ap. 12

See Superintendence of High Court—Charter Act, s 15—Civil Cases
22 W. R. 522
5 Bom. A. C. 63
17 W. R. 477
18 W R. 87
2 C. L R. 545

See Superintendence of High Court—Civil Procedure Code, 1882, s 622.
I. L. R. 4 All. 154
I. L. R. 6 All. 125

See Transfer of Property Act, s 41.
I. L. R. 17 All. 280

1. ——— **Doctrine of laches, application of**—*Suits for which period of limitation is provided* The equitable doctrine of laches and acquiescence does not apply to suits for which a period of limitation is provided by the Limitation Act. Ram Rau v. Raja Rau . 2 Mad. 114

Taruck Chander Bhuttacharjee v. Huro Sunkur Sandyal . . . . 22 W. R. 267

2. ——— *Suits for which period of limitation is provided.* Mere laches, or [illegible]

such there are, in which they can be regarded as a positive extinguishment of right. When they go [illegible]

LACHES—*contd.*

3. ——— *Mortgagor—Limi-* [illegible]

lowed mesne profits prior to the date of the institution of the suit, which had been allowed by the High Court Juggurnath Sahoo v Shah Mahomed Hossein
14 B. L. R. 386: L. R. 2 I. A. 49
23 W. R. 99

4. ——— *Suit for declara-* [illegible]

[illegible] . . . . I. L. R. 21 Mad. 42

5. ——— *Reversioners suing within period of limitation but after delay in knowing their rights* When reversioners bring their suit within the period of limitation allowed by law, [illegible]

[illegible] Pandey . . . . 4 N. W. 83

6. ——— *Delay in suing—* [illegible]

consent:—*Held*, that the Courts of this country have [illegible]

7. ——— *Delay in execution of decree—Interest, right to* As long as a decree-[illegible]

5 W. R. Mis. 11

8 ——— *Delay* [illegible]

LACHES—*contd.*

of the decree-holder's laches in executing his decree. BHOOPUTTY LALL TEWAREE *v.* SOOCHEE SHEKHUR MOOKERJEE . . . . 12 W. R. 255

9. ——— *Delay in suing.* Where a plaintiff sued to recover certain property as waqf on the ground that the mutwali and his ancestor (a former mutwali) had misconducted themselves by selling to some of the defendants the property which was the subject of the endowment, and where it appeared that the plaintiff lay by for merely twelve years from the time when the vendees purchased and were put into possession, it was *held* that he was not entitled to the assistance of the Court. BHURRUCK CHANDRA SAHOO *v.* GOLAM SHURUFF . . . . 10 W. R. 458

10. ——— *Right of person guilty of laches against subsequent purchaser without notice.* *A* bought land from *B* in 1848, entered into possession, and in 1852 went abroad In 1853

KAN . . . . . . 1 Mad. 62

But *see* VIRABHADRA PILLAI *v* HARI RAMA PILLAI . . . . . 3 Mad. 38

11. ——— *Contract Act, 1872, ss. 13, 20—Bill of exchange—Mistake—Void agreement* On the 3rd March 1881 *N* drew a bill in English at Cawnpore in favour of *F* on a Calcutta firm and gave it to *F's* agent, who did not understand English *F's* agent kept the bill till the 10th March 1881 without ascertaining its nature. On that date the Calcutta firm on which the bill was

sued *N* ground on him- irm *N* asserted in defence to the suit that *F's* agent had not asked for a bill drawn on himself, but merely for a bill on Calcutta. *Held*, that, assuming that the sale of the bill was void by reason of both parties being under a mistake as to the bill, yet *F* could not recover the amount of the bill from *N* because his agent had been guilty of gross negligence in taking the bill and keeping it so long without ascertaining its nature and applying for redress. NIGHTINGALE *v.* FAIZ-ULLA . . I. L. R. 4 All 334

12. ——— *Mortgagee not taking possession after usufructuary mortgage.* An usufructuary mortgage of lands was executed in 1840, but the mortgagee did not enter into possession In 1852 his representative, the plaintiff, commenced a suit to obtain possession, but allowed

LACHES—*contd.*

13. ——— *Mortgage, suit for redemption of—Neglect in applying in time for execution of decree for possession—Fresh suit for redemption* The plaintiff in this suit claimed possession of certain property by redemption of a usufructuary mortgage of it which he had given the defendants The plaintiff had previously sued the defendants for possession of the property by redemption of the mortgage and had obtained a

institution of that suit and to bring a fresh suit for possession. *Golam Hossein v. Alla Rukhee Beebee, 3 N. W. 62*, followed. ANRUDH SINGH *v.* SHEO PRASAD . . . . I. L. R. 4 All. 481

14. ——— *Application to amend decree—Delay* Where a decree-holder came in, after the lapse of some three and a half years, and

entitled to these costs. OODAY TARA CHOWDRAIN *v.* JONAB ALI CHOWDRY . . 17 W. R. 358

15. ——— *Redemption refused where mortgagor neglected to set aside a decree and sale of the mortgaged property under it.* Re-

16. ——— *Omission to appeal from order—Acquiescence, presumption of.*

sioner in execution in 1865, and the Deputy Commissioner's order was reversed in appeal by the

17. ——— *Defence showing great delay on part of defendant—Suit for arrears of rent* Plaintiffs (patnidars) sued the defendants (dar-patnidars) for arrears of rent. The defendants alleged that a part of the land had been taken by the Government, twenty-four years previously,

LACHES—*contd.*

for the purposes of railway, and they claimed an abatement on that ground. *Held,* that the Limi-

18. ——— *Ignorance of Ameen's proceedings in demarcating land—Delay.* In execution of a decree for possession of land, an Ameen having been deputed to demarcate the land, the defendant pleaded, nearly a year after the demarcation, that he had been entirely ignorant of the Ameen's proceedings. *Held,* that an opportunity should be given to the defendant of substantiating his plea; but that, if plaintiff could prove that defendant had even indirect notice of what was transpiring, the lower Court should refuse to go into the question after so long a delay. COLLECTOR OF MONGHYR *v.* BHOBANY PERSHAD . 25 W. R. 183

19. ——— *Loss of Government promissory notes—Suit on agreement to obtain duplicate, or restore value.* Plaintiff's relative borrowed money from defendant on the security of a Government promissory note which was stolen from defendant in 1865, and defendant advertised the loss. In 1865 an ikrar was executed between the parties whereby defendant was bound to take steps, assisted by plaintiff, to procure a duplicate. The

any neglect that had taken place in obtaining a duplicate was entirely owing to the plaintiff's laches and that he was not entitled to recover on the ikrar. KAMINEE DEBIA *v.* RADHA SHAM KOONDOO

18 W. R. 58

20. ——— *Omission to register certificate of sale—Right to second certificate*

the original certificate. LALBHAI LAKHIMIDAS *v* KAMALUDIN HUSEN KHAN . 12 Bom. 247

21. ——— *Presumption against persons who do not enforce their rights—Unexplained delay—Disturbance of long possession—Dispute as to chur lands.* The presumption that usually arises against those who slumber on their rights is the stronger when applied to rights, the subject-matter of which (as in the case of churs) is

LACHES—*concld*

KISHEN PROSAUD SURMA

18 W. R. 4: 14 Moo. I. A. 595

22. ——— *Specific performance—Issues—Discretion of Court—Delay—Speci-*

LAKHIRAJ LAND.

See LANDLORD AND TENANT.

10 C. W. N. 434

LAMBARDAR.

See NORTH-WESTERN PROVINCES RENT ACT, s. 93 (i) . I. L. R. 26 All. 570

LAMBARDAR AND CO-SHARER.

See ADVERSE POSSESSION.

I. L. R. 27 All. 436

See AGRA TENANCY ACT (LOCAL II OF 1901), ss. 164 (2), 156.

I. L. R. 29 All. 15

See REGISTRATION ACT (III OF 1877), s. 17.

I. L. R. 27 All. 564

1. ——— *Powers of lambardar to deal with co-parcenary lands—Lease for seven years.* In the absence of a custom to the contrary a lambardar has no power without the consent of the co-sharers to grant a lease of co-parcenary land beyond such term as the circumstances of t

Jagannath

Bansidhar

followed.

2. ——— *Powers of lambardar to deal with co-parcenary lands—Lease for*

LAMBARDAR AND CO-SHARER—*concld.*

to be for the benefit of the co-sharers and when the co-sharers presumably have been shown to have

[illegible]

MAD KASIM *v.* MIAN KHAN (1907)
I. L. R. 29 All. 554

3. ———— *Suit for profits—Nature of liability of two lambardars for the same village—Res judicata.* Where there are two lambardars for the same village they may, as a matter of convenience, elect to divide the village between them for purposes of collection but such division will be purely a matter of convenience and will not *affect the joint liability of the lambardars to the* co-sharers A co-sharer sued two lambardars jointly for profits, and the Court (an Assistant Collector) *held* that they were not liable to be sued jointly and dismissed the suit The plaintiff did not appeal, but filed separate suits. *Held*, that this decision did not amount to a *res judicata* as to the lambardars' joint or separate liability in a subsequent suit by the same co-sharer against them for profits of other years. KAMTA SINGH *v.* MUKHTA PRASAD (1907) . . . I. L. R. 29 All. 287

4. ———— *Powers of lambardar to deal with co-parcenary lands—Lease for seven years.* In the absence of a custom to the contrary a lambardar has no power without the consent of the co-sharers to grant a lease of co-parcenary land beyond such term as the circumstances of the particular year or season may require *Chattray* v. *Nawala, I L. R 29 All 20*, followed. *Mukhta Prasad* v. *Kamta Singh, All. Weekly Notes (1906) 277*, distinguished. TIKAM SINGH *v* KHUBI RAM (1908) . . . . I. L. R. 30 All. 163

LAMENESS.

See HINDU LAW—INHERITANCE—DIVESTING OF, OR EXCLUSION FROM, AND FORFEITURE OF, INHERITANCE
I. L. R. 26 Mad. 133

LAND.

See CESS, ASSESSMENT OF.
I. L. R. 35 Calc. 82

See JURISDICTION.
I. L. R. 31 Calc. 937

See JURISDICTION OF CIVIL COURT—MUNICIPAL BODIES.
I. L. R. 24 Bom 600

See LAND ACQUISITION ACT (I OF 1894)

See PRESCRIPTION—EASEMENTS—LAND
I. L. R. 16 All. 178
I. L. R. 17 All. 87

See REVENUE SALE
I. L. R. 31 Calc. 725

LAND—*contd.*

———— acquisition of—

See BENGAL TENANCY ACT, s. 84
I. L. R. 18 Calc. 271

See LAND ACQUISITION ACTS
See RAILWAY COMPANY.
10 B. L. R. 241

See STATUTES, CONSTRUCTION OF
12 Bom. 250

———— belonging to Government—

See BOMBAY SURVEY AND SETTLEMENT ACT, 1865, ss. 35, 48.
I. L. R. 1 Bom. 352

———— covered with buildings, suit for rent of—

See ENHANCEMENT OF RENT—LIABILITY TO ENHANCEMENT—LANDS OCCUPIED BY BUILDINGS AND GARDENS.

See RENT, SUIT FOR.

———— exchange of—

See MORTGAGE—REDEMPTION—RIGHT OF REDEMPTION . I. L. R. 21 Bom. 396

See SALE FOR ARREARS OF RENT—INCUMBRANCES . I. L. R. 23 Calc. 254

———— for building purposes—

See ENHANCEMENT OF RENT—LIABILITY TO ENHANCEMENT—LANDS OCCUPIED BY BUILDINGS AND GARDENS.

———— let for agricultural purposes—

See LANDLORD AND TENANT.
I. L. R 34 Calc. 718

———— reformation of—

See ACCRETION

———— suit for—

See JURISDICTION—SUITS FOR LAND.

———— utility of—

See COMPENSATION.
I. L. R. 34 Calc. 599

———— with standing crops—

See THEFT . I. L. R. 36 Calc. 758

———— Land reclaimed from the sea—*Dock, construction of.* The plaintiff demised to the defendants for a term of 999 years certain lands a portion of which, A, was liable to an annual rent of R500 per acre For the other portion, B, which was described in the lease as "being at times covered by the sea," a nominal rent of R1 per acre per annum was reserved. The lease contained a power to the lessees "to reclaim from the sea" the whole or any portion of B, and provided that upon such reclamation the lessees should pay for any portion of B which they might "reclaim from the sea" an enhanced rent

LAND—*concld.*

at the rate of R500 per acre per annum. The lessees also had power under their lease to dig or excavate any portion of the demised lands, and to remove the soil therefrom. The lessees thereupon excavated a portion of B, and thus turned it

round it they charged a fee. *Held,* that the expression "to reclaim from the sea" signifying in its primary and ordinary sense, the conversion of the reclaimed land into dry land, by rendering it secure from the ingress of the sea, with the view to its being used as such, the construction of the dock was not

I. L. R. 1 Bom. 513

LAND ACQUISITION.

See LAND ACQUISITION ACTS.

1. ——— ——— *Apportionment—Landlord and tenant—Bengal Tenancy Act (VIII of 1885), s 50, applicability of—Presumption of permanency of holding—Compensation money* In apportioning compensation money between the landlord and tenant in a Land Acquisition proceeding, s 50 of the Bengal Tenancy Act has no direct application, but the principle involved in that section is a useful guide to the Courts in matters of this nature. NANDA LAL GOSWAMI *v* ATARMANI DASSEE (1908) I. L. R. 35 Calc. 763

2. ——— *Compulsory acquisition of land—Compensation—Method of hypothetical development for fixing value of land to be acquired—Charges as to the costs of the speculator—Compensation based on sales of lands into suitable building sites—The two methods employed in conjunction and producing the same result* The method of hypothetical development is open to the

of the speculator. But the claimant is not to be debited with these expenses unless the introduction of the speculator is a commercial necessity. And there is no necessary reason why the claimant should be driven to have recourse to the speculator for a business which he can do for himself. When

LAND ACQUISITION—*concld.*

compensation is fixed on the general principle of a sale of the land split up into parcels suitable for building, it is not only necessary but inappropriate to make a special deduction on account of the small area marked off for the roadway. Where the method of hypothetical development is employed for assessing compensation in conjunction with the method of ascertaining the present value of the land by reference to the prices realised by the sale of neighbouring lands, and the consequence is that the two methods lead to very much the same result, it follows not only that that result is entitled to so much the greater degree of confidence but also that the method of hypothetical development is itself corroborated In the method of arriving at a valuation of land by reference to prices

any hard-and-fast rule. TRUSTEES FOR THE IMPROVEMENT OF THE CITY OF BOMBAY *v* KARSONDAS (1908) I. L. R. 33 Bom. 28

LAND ACQUISITION ACT (VI OF 1857).

See APPEAL—ACTS—LAND ACQUISITION ACT

See ARBITRATION—ARBITRATION UNDER SPECIAL ACTS AND REGULATIONS—ACT VI OF 1857.

See DAMAGES—MEASURE AND ASSESSMENT OF DAMAGES—TORTS 6 Bom. A. C. 116

See DAMAGES—SUITS FOR DAMAGES—BREACH OF CONTRACT . 8 W. R. 327

See LAND ACQUISITION ACT (X OF 1870).

See LIMITATION ACT, 1877, s. 19 (1859, s. 4) —ACKNOWLEDGMENT OF DEBTS 11 W. R. 1

LAND ACQUISITION ACT (X OF 1870).

See BOMBAY CIVIL COURTS ACT, s 16. I. L. R. 16 Bom. 277

See GUARDIAN—DUTIES AND POWERS OF GUARDIANS . I. L. R. 18 Calc. 99 L. R. 17 I. A. 90

See LANDLORD AND TENANT—BUILDING ON LAND, RIGHT TO REMOVE, AND COMPENSATION FOR IMPROVEMENTS. I. L. R. 22 Calc. 820

See PORT COMMISSIONERS ACT (BENGAL ACT V OF 1870). ss. 5, 6, 31, 38, 39 I. L. R. 33 Calc. 1243

See RES JUDICATA—ESTOPPEL BY JUDGMENT . I. L. R. 20 Mad. 269

LAND ACQUISITION ACT (X OF 1870) —*contd.*

———— *sale of mortgaged land under*—

See TRANSFER OF PROPERTY ACT, s. 68.
I. L. R. 13 Mad. 321

1. ———— *High Court*—

Court consequently has the power of superintendence over those Courts under s. 15 of 24 and 25 Vict., c. 104 *In the matter of the petition of* ABDOOL ALI . . . . 15 B. L. R. 197

ABDOOL ALI *v* VERNER VERNER *v.* ABDOOL ALI . . . . . 23 W. R. 73; 239

2. ———— *Award of compensation—Payment of compensation awarded how enforced against the Collector—Appeal from an order irregularly made* The Land Acquisition Act (X of 1870) did not provide for or contemplate an

I. L. R. 22 Bom. 802

3. ———— *Apportionment of compensation-money, principle of—Landlord and*

so many years' purchase, and then to put a money value upon the chance (if there be any) of an en-

———— ss. 3, 24 and 25—"*Land*"—*Value of works on land used for salt factory—Exercise of jurisdiction by Judge under the Act.* Having regard to the definition of "land" contained in s 3 of Act X of 1870, there is nothing illegal in a Judge taking into account the value of

concerning the principles of valuation, and not an irregularity in the exercise of jurisdiction. JOSEPH *v* SALT CO. . . I. L. R. 17 Mad., 371

LAND ACQUISITION ACT (X OF 1870) —*contd.*

———— s. 9.

See EXECUTION OF DECREE—MODE OF EXECUTION—MORTGAGE.
I. L. R. 16 All. 78

———— ss. 9, 16, 40—*Notice—Persons known or believed to be interested—Power to take possession—Vesting of land absolutely in Government.* Land acquired under the provisions of Act X of 1870 vests absolutely in the Government, free from all encumbrances, after a *bonâ fide* award or reference by the Collector has been made and possession taken, even when no special notice, as re-

referred to. GANGA RAM MARWARI *v.* SECRETARY OF STATE FOR INDIA (1903)
I. L. R. 30 Calc. 576

1. ———— s. 11.—*Ascertainment of value and tender of compensation—Land given as compensation—Mad. Reg II of 1803, s 44—Darkhast rules—Collector, power of.* The owner of certain land taken up under the Land Acquisition Act, after the amount of compensation had been fixed, conveyed

applied under darkhast rules for the land now in dispute, but the Collector ordered the land to be placed in possession of the defendant. The Board of Revenue, however, directed that the land be made over to the prior darkhastdars on terms which were complied with, and they were put into possession. The plaintiff, having been subsequently dispossessed by the defendant, now sued for a declaration of title and for possession *Held*, that the plaintiff was entitled to the land as against the defendant There is no provision in the Land

2. ———— *Claim to share of compensation—Valuation in private transaction.* The plaintiff, as heir to her husband, brought a suit, in which Government was not represented, for a declaration of title to a quarter share of the jenm value of land taken up under the Land Acquisition Act. It appeared that the plaintiff's husband had

LAND ACQUISITION ACT (X OF 1870) —*contd.*

—— s. 11—*concld.*

share in the instrument of 1872 was not binding on the plaintiff in the present suit CHOMU *v* UMMA
I. L. R. 14 Mad. 46

—— ss. 13, 24 and 25—*Valuation of land acquired for public purposes—Time of acquisition—Award of compensation* —When land has been acquired under the provisions of the Land Acquisition Act, 1870, changes in its condition, between the time of such acquirement and that of the actual conclusion of the award of compensation, are not to increase or lessen the valuation. The provision

according to the claim, the right to certain plots of land attached to the Government, the sub-soil had no market value, because the surface was in use for public roads, having been so for about half a century *Held*, that, even if the claimants had proved a title in themselves to the sub-soil of the plots underneath the roads, still no market value had been

1 C. W. N. 693

—— s. 15.

See APPEAL—ACTS—LAND ACQUISITION ACT . . **I. L. R. 16 Bom. 525**

See SPECIAL OR SECOND APPEAL—ORDERS SUBJECT OR NOT TO APPEAL.
I. L. R. 9 Calc. 838

1. —— *Reference by Col-*

between the claimants who appear in response to the notice issued under s. 9 and who set up conflicting claims one against another as to the land required, which the District Judge as between such persons can determine The Collector has no power

LAND ACQUISITION ACT (X OF 1870) —*contd*

—— s. 15—*concld*

2 —— *Reference by Collector to Judge—Land in respect of which reference*

which such reference is made, on behalf of Government, and denies the title of other claimants, and the District Judge has no jurisdiction to entertain or determine such reference. *Imdad Ali Khan* v. *Collector of Farakhabad, I. L R. 7 All. 817*, followed CROWN BREWERY, MUSSOORIE *v.* COLLECTOR OF DEHRA DUN **I. L. R. 19 All. 339**

3. —— ss. 15, 38 and 55—*District Court, Powers of—Compensation, its principle and*

under s. 55. Land taken under the Act is taken

1. —— ss. 16 and 17—*Act VI of 1857, s. 8—Acquisition of land by Government—Right of way.* When land is taken by the Government under Act VI of 1857, the land is absolutely vested in the Government under s 8, free from any right of way previously enjoyed by the public over such land *In the matter of the petition of* FENWICK
6 B. L. R. Ap. 47 : 14 W. R. Cr. 72

2 —— *Act VI of 1857, s. 8—Right of way.* A right of way cannot by the provisions of Act VI of 1867 continue to exist over land acquired by a railway company under that Act with the aid of Government. If, however, the railway company by their representations and conduct lay themselves under legal obligation to provide a way, such obligation may be enforced. COLLECTOR OF THE 24-PERGUNNAHS *v* NOBIN CHUNDER GHOSE . . . . . **3 W. R. 27**

LAND ACQUISITION ACT (X OF 1870) —*contd.*

——— s. 19—*concld.*

negotiated with the applicant for the purchase of the ground The District Judge made an award upholding the Collector's valuation. *Held*, that the award was bad and must be set aside, as the Collector's nominee had, under the circumstances, a real bias, and was not a qualified assessor within the meaning of s 19 of the Land Acquisition Act (X of 1870). KASHINATH KHARGIVALA *v* COLLECTOR OF POONA . . I. L. R. 8 Bom. 553

2 ——— *Assessor, appointment of—Disqualifications in an assessor—Bias—Objections to assessor's appointment not raised*

...

objection was taken to his acting as an assessor. The District Judge eventually upheld the Collector's award On an application under s 622 of the Civil Procedure Code (Act XIV of 1882).—*Held*, that the award was bad The Mamlatdar had,

...

assessor under s. 19 of the Land Acquisition Act

...

1. ——— s. 22—*Determination of amount*

...

nor the pleader for the claimant appear on the day fixed for hearing, the Judge should not proceed with the case in their absence by confirming the Collector's award, but should give notice to the parties; and if they do not, within the time limited by s 22 of the Land Acquisition Act, cause their asses-

LAND ACQUISITION ACT (X OF 1870) —*contd.*

——— s. 22—*concld.*

sors to attend or appoint others, the Court should appoint other assessors in the place of those who were not in attendance. *In the matter of the petition of* KAMINI DASI *v.* SECRETARY OF STATE FOR INDIA . . . I. L. R. 17 Calc. 380

2. ——— *Determination of amount of compensation—Assessor of claimant, non-*

...

be awarded, the assessor duly nominated on behalf of the claimant was not present, owing to some misunderstanding as to the order of the Judge in an application by the claimant for an adjournment of the case made two days previously, and the other

...

claimant's assessor amounted to a neglect to act, that the Judge had no power to appoint another without seven days' notice to the claimant, and that the proceedings were consequently irregular and not in accordance with the Land Acquisition Act, and must be set aside. *In the matter of* PEARSON *v.* COLLECTOR OF THE 24-PARGUNNAHS. I. L. R. 17 Calc. 383

1 ... —*Annual* ... market ... town of

Bulsar, acquired for public purposes under Act X of 1870, the Court awarded a capital sum which at the rate of six per cent. per annum, would yield interest equal to the ascertained annual rental of the premises after deducting the amount necessarily expended for annual repairs CAREY *v.* BANU MIYA. CAREY *v.* KALU MIYA . . 10 Bom. 34

2 ——— *Compensation—Determination of value—Occupied and unoccupied land.* In determining the compensation to be allowed for land taken for public purposes, the Court distinguished between the occupied and the unoccupied land. In the case of the former the income yielded was taken into account with a view to consider the number of years' purchase to be al-

...

it was *held* that the thing to be looked at was not the cost of what had been done to preserve the land or the money spent on improvements, but the market value at the time, with an allowance for the manner in which the land was taken from the claimant. COLLECTOR OF HOOGHLY *v.* RAJ KRISTO MOOKERJEE . . . . 22 W. R. 234

LAND ACQUISITION ACT (X OF 1870) —*contd.*

——— s. 24—*concld.*

3. ——— *Principle on which compensation is given—Market value of property.* Where Government takes property from private persons under statutory powers, it is only right that those persons should obtain such a measure of compensation as is warranted by the current [illegible]

previously have given for it In accordance with [illegible]

In the matter of the LAND ACQUISITION ACT (X OF 1870) PREMCHAND BURRAL *v* COLLECTOR OF CALCUTTA . I. L. R. 2 Calc. 103

4. ——— *Principle on which compensation is given—Land subject to mokurari lease in favour of Government* When in a Land [illegible]

[illegible]

FOR INDIA *v.* SHAM BAHADOOR . I. L. R. 10 Calc. 769

5. ——— ss. 24, 25—*Compensation—Mode of determining the amount of compensation to be given—Land in vicinity of town where building is going on—Market-value at time of awarding compensation, meaning of.* The recognized modes of ascertaining the value of land for the purpose of determining the amount of compensation to be allowed under the Land Acquisition Act (X of 1870) are —(i) If a part or parts of the land taken up has or have been previously sold, such sales are taken as a fair basis upon which making all proper allowances for situation, etc., to determine the value of that taken. (ii) To ascertain the net annual income of the land, and to deduce its value by allowing a certain number of years' purchase of [illegible]

LAND ACQUISITION ACT (X OF 1870) —*contd*

——— ss. 24, 25—*concld*

value "at the time of awarding compensation" may fairly be taken to mean "at the time when proceedings under the Act are taken." *In the matter of the* LAND ACQUISITION ACT (X OF 1870) *In the matter of* MUNJI KHETSEY I. L. R. 15 Bom. 279

6. ——— ss. 24, 25, 15, 42—*Compensation—Mode of assessment—Antiquities not proved to have any market-value—Quarries—Persons interested in the land* [illegible]

could form the subject of assessment, and the value of the antiquities could not; for, under the circumstances, no market value could be assigned to the antiquities; (ii) the right, if not the only, course of proceedings was to estimate the rent at which possibly the whole plot might be leased, on the basis of how much rent a portion of the plot when leased for quarries had in fact obtained for the zamindar, (iii) to calculate the purchase-money, as the first Court had done, at twenty-five years of such rent was proper, and no reason appeared for reducing this number of years to fifteen; (iv) though quarrymen had been employed and had earned money, on the plot, they were not interested therein, in the sense intended by the Act; and their earnings in which the zamindar was not interested, could not enter into the question of compensation and increase the award; (v) under s. 42, fifteen per cent. was to be paid on the sum awarded SECRETARY OF STATE FOR INDIA *v* SHANMUGARAYA MUDALIAR I. L. R. 16 Mad. 369 L. R. 20 I. A. 80

1. ——— s. 35—Appeal—*Difference of* [illegible]

2. ——— *Appeal—Appeal from decision of Judge and assessors—Collection charges, amount of, to be deducted in cases of mokurari lease.* In a case under the Land Acquisition Act, if there be a difference of opinion between

LAND ACQUISITION ACT (X OF 1870)
—contd

———— s. 35—*concld.*

apply, and no appeal will lie against the decision of the Court with reference to the point upon which the Court and the assessors differed If, however, in addition to differing upon any question of law, etc , they ultimately differ also as to the amount of compensation to be awarded, s. 28 does not apply, but under s. 35, coupled with s. 30, in such a case an appeal will lie, and in such appeal of questions decided by the lower Court, whether the opinion of the assessors coincided with that of the Judge or not upon these questions, are open to the parties in the Appellate Court. SECRETARY OF STATE FOR INDIA *v* SHAM BAHADOOR

I. L. R. 10 Calc. 769

3. ———— *Appeal—Difference of opinion between Judge and assessors—Compensation* Under s 30, Act X. of 1870, an appeal lies from the decision of the Judge where he differs from the assessors, whether the assessors agree with one another or not *In the matter of the* LAND ACQUISITION ACT (X OF 1870). HEYSHAM *v.* BHOLANATH MULLICK. BHOLANATH MULLICK *v.* HEYSHAM . **11 B. L. R. 230 : 17 W. R. 221**

4. ———— *Appeal—" District Judge "—Officer specially appointed under Act X of 1871—Costs* An appeal from the decision of

civil jurisdiction The words " District Judge " in s. 35, Act X of 1870, include the High Court in its appellate jurisdiction, and there is nothing in the definition of those words given in Act I of 1868, s. 2, cl. 12, opposed to this meaning. No appeal lies on a question of costs in a case under Act X

5. ———— *Apportionment of compensation referred to Judge—Denial by one party interested of right of another to share in compensation—Appeal.* Under s. 35 of Act X of 1870, the fact that one of the persons concerned denies altogether the right of another of such person to

I. L. R. 17 All. 573

———— s. 39.

See RES JUDICATA—ADJUDICATIONS.

I. L. R. 7 Calc. 406

LAND ACQUISITION ACT (X OF 1870)
—contd.

———— s 39—*contd.*

See SPECIAL OR SECOND APPEAL—ORDERS SUBJECT OR NOT TO APPEAL

I. L. R. 9 Calc. 838

1. ———— **Appeal**—*Apportionment of compensation—Judical officer appointed as Judge in town of Madras—Appeal.* No appeal lies to the High Court from a decision apportioning compensation by a judicial officer appointed to perform the functions of a Judge within the town of Madras under Act X of 1870, the Land Acquisition Act. AROONACHELLA GRAMANY *v* VILLIAPPA GRAMANY. . . **8 Mad. 103**

2. ———— *Appeal—Addi-*

INDIA . . . . I. L. R. 10 Calc. 81

3. ———— **Compensation, apportionment of**—*Right of suit.* A decree which apportions compensation made under s 39 of the Land Acquisition Act (X of 1870) by a Court to whom such matter has been referred under s. 38 of the same Act is final, and cannot be questioned otherwise than by the appeal permitted under s 39 NILMONEE SINGH DEO *v.* RAMBUNDHOO ROY

I. L. R. 4 Calc. 757 : 3 C. L. R. 211

4. ———— *Act VI of 1857,*

JABUR JUMMAH KHAN . . 16 W. R. 81

5. ———— *Apportionment of compensation, claim and title to.* When land is taken for public purposes, the party *primâ facie* entitled to compensation is the proprietor. Any party claiming it against him by virtue of a right created by him must prove his title to it. ISSUR CHUNDER BANERJEE *v* SUTTYO DYAL BANERJEE.

12 W. R. 270

6. ———— *Compensation, apportionment of—Party in possession—Land taken for railway.* When a railway company takes land

BANERJEE . . . . 10 W. R. 15

7. ———— *Compensation apportionment of—Land taken for railway.* Where lands are taken compulsorily, the principle upon

LAND ACQUISITION ACT (X OF 1870) *—contd.*

——— **s. 39**—*contd.*

which the amount of compensation is divisible amongst the zamindar and the holders of several subordinate tenures is by ascertaining the value of the interest of each holder of a tenure, and to give him a sum equivalent to the purchase-money of such interest GORDON, STUART & CO *v* MOHATAB CHUNDER **Marsh 490 ; 2 Hay 565**

8. ——— *Compensation, apportionment of—Land taken for railway—Deduction from rent by tenant.* When land is taken for railway purposes and compensation is made which is divided between the zamindar and those holding under him, any deduction of rent claimed from the zamindar must be reckoned with reference not to the gross amount of compensation, but to the proportion which passed into his hands DHERAJ MAHTAB CHAND *v* CHITTRO COOMAREE BIBEE **16 W R. 201**

9. ——— *Compensation, apportionment of, for land—Owner under grant by zamindar retaining reversionary interest.* It was *held* that, assuming that possession of certain plots of land had been granted by the zamindars to persons to build thereon, and to hold so long as the buildings subsisted, the zamindars being only en-

10. ——— *Compensation,*

11.——— *Apportionment of compensation between zamindar and patnidar, principle of* The apportionment between zamindar and patnidar of the amount awarded as compensation for land taken by Government under the Land Acquisition Act will depend partly on the sum paid as bonus for the patni, and the relation that it bears to the probable value of the property, and partly on the amount of rent payable to the zamindar, and also the actual proceeds from the cultivating tenants or under-tenants BUNWARI LAL CHOWDHRY *v* BURNOMOYI DASI **I L. R. 14 Calc. 749**

12. ——— *Compensation, apportionment of* *Held*, that the principle laid down in the case published at page 328 of the Sudder Decisions for 1860 (*vide* foot-note) to regulate compensation for land taken for public purposes is not applicable to the division of compensation in every case. It would not provide for the case of several patnis were the land is taken from the holder of the lost tenure, and where the grantors of

LAND ACQUISITION ACT (X OF 1870) *—contd.*

——— **s. 39**—*contd.*

the several intermediate tenures have received a sum of money as a bonus for the grant. MAHATAB CHAND BAHADOOR *v* BENGAL COAL COMPANY **10 W R. 391**

13. ——— *Compensation,*

buted where the zamindar received a little more than sixteen years' purchase of the rent abated, and the patnidar received the remainder. When

14. ——— *Apportionment*

permanent interest next above the occupancy

v. DHUNPUT SINGH **I. L R 7 Calc. 585 : 9 C. L. R. 227**

15. ——— *Act VI of 1857—*

collection. The zamindar claimed twenty times the profits he derived from the patnidar, *less* revenue paid to Government. *Held*, that as the plaintiff's calculation secured to the zamindar a more favourable result than that for which the latter himself contended, it was sufficient to decree the suit without determining the proper principle on which compensation should be allowed. BENGAL COAL COMPANY *v.* MAHTAB CHAND BAHADOOR **12 W. R. 340**

LAND ACQUISITION ACT (X OF 1870)
—*contd.*

———— s. 39—*contd.*

16. ———————— *Distribution of compensation allowed—Mirasidar—Allowance for expenses of cultivation.* No general rule can be laid down as to the tenure and rights of persons called "Ulkudi Sukhavasis" or "Payakaris," but, [illegible]

allowance must be made for the mirasidar's reversionary right; and when the rights of the parties are calculated on the basis of the value of the produce, allowance must be made for the expenses of cultivation. APPASAMI MUDALI *v.* RANGAPPA NATTAN . . . I L R. 4 Mad. 367

17. ———————— *Apportionment of compensation—Landlord and tenant.* The mode of apportionment of compensation between landlord and tenant considered DUNNE *v* NOBO KRISHNA MOOKERJEE . . I L R. 17 Calc 144

18. ———————— *Land Acquisition Act (I of 1894)—Superior zamindar and talukhdar—Apportionment of compensation-money—Landlord and tenant* No fixed principle can be laid down regarding the apportionment of compensation allowed by Government under Act I of 1894 between the superior zamindar and the talukhdar. Where the talukhdar's interest is of a permanent character only regarding the duration and not regarding the rent payable, the zamindar has a much larger interest than to receive the capitalized value upon the rent reserved. In this particular case, the compensation-money was equally divided between the zamindar and the talukhdar. *Dunne* v. *Nobo Krishna Mookerjee, I. L. R. 17 Calc. 144,* and *Godadhar Das* v. *Dhunput Singh, I. L. R 7 Calc. 585,* referred to BIR CHUNDER MANIKHYA *v.* NOBIN CHUNDER DUTT . 2 C. W. N. 453

19. ———————— The mode of apportionment of compensation between landlord and tenant considered. *A. M. Dunne, v. Nobo Krishna Mookerjee, I. L. R 17 Calc. 144,* and *Godadhar Dass* v. *Dhunput Singh, I. L. R , 7 Calc. 585,* followed. KHETTER KRISTO MITTER *v* DINENDRA NARAIN ROY . 3 C. W N. 202

20. ———————— *Accretion to parent tenure—Beng. Reg XI of 1825, s. 4, cl. 1—Rate of rent—Apportionment of compensation awarded* The words "increase of rent to which he may be justly liable" contained in cl. I, s. 4, Regulation XI of 1825, were not intended to lay down an inflexible rule applicable to all cases, and in the absence of any special circumstance the rate of rent to be assessed upon an accretion should be in proportion to that paid for the parent tenure. Where therefore such accreted land is taken up under the Land Acquisition Act, the compensation awarded should be divided by giving the landlord the value of the rent payable in respect thereof, with 15 per cent. for compulsory

LAND ACQUISITION ACT (X OF 1870)
—*contd.*

———— s. 39—*concld.*

sale, and the balance to the tenure-holder. *Golam Ali* v. *Kali Krishna Thakur, I. L R. 7 Calc. 479,* commented on. CHOORAMONI DEY *v.* HOWRAH MILLS COMPANY . . I L R. 11 Calc. 696

21. ———————— *Compensation award of—Frontage and back sites—Parties—Lessees of such land, Right of, to be joined in suit by the owner.* The claimant, Kashinath, owned certain lands, measuring 173,436 square feet, situated in the city of Poona. This land was originally devoted to agricultural purposes, and contained [illegible] which side it opened upon a large unoccupied area of garden land, also belonging to the claimant. The second and third claimants were the lessees of Kashinath. The said land was taken up by the Collector of Poona on behalf of the municipality of that city for the purposes of erecting a central market. The claimant having declined to receive R12,880 offered to him as compensation, the Col- [illegible]

average rate of eighteen sales enumerated in certain sale-deeds at ten annas per square foot, and some at less than one anna. His award for the land was [illegible]

The decree was accordingly varied by awarding R19,739-2 as compensation for the property, to [illegible]

sively between the co-respondents, and properly [illegible] not [illegible] ld be [illegible] was [illegible] OF POONA *v.* KASINATH KHASGIWALA I. L. R. 10 Bom. 585

LAND ACQUISITION ACT (X OF 1870) —*contd.*

———— ss 39, 40.

22 ———— ss. 39, 40—*Proceedings under—Finality.* In proceedings under the Land Ac-

any person who may receive the whole, or any part of any compensation awarded under the Act to pay the same to the person lawfully entitled thereto" This applies only to persons whose rights have not been dealt with in adjudications in pursuance of ss 38, 39, and 40, and does not permit a person whose claim has been disposed of in the manner pointed out in the Act to have that claim re-opened, and again heard, in another suit NILMONI SINGH DEO BAHADUR *v.* RAM BANDHU RAI

I L R. 7 Calc 388 : 10 C L R 393
L R. 8 I A. 90

(*Contra*) DWARKA SINGH *v* SOLANO 22 W. R 38

23. ———— *Settlement of amount of compensation—Apportionment of compensation, notice of proceedings for—Right of suit to recover share of compensation.* The apportionment of the compensation under s 39 of Act X of 1870 is intended to be a proceeding distinct from that of settling the amount of compensation under the pre-

proceedings is requisite to bind any person by

ings, from bringing a suit under the proviso to s. 40, to recover a share of the money so apportioned. HURMUTJAN BIBI *v* PADMA LOCHAN DOSS

I L R 12 Calc 33

24. ———— *Power to award compensation—*

Where therefore the Collector tendered compensa-

determined what was a proper compensation for each description of land *In the matter of the petition of* ABDOOL ALI . 15 B L R. 197

LAND ACQUISITION ACT (X OF 1870) —*contd.*

———— ss 39, 40—*concld.*

s c ABDOOL ALI *v.* VERNER VERNER *v.* ABDOOL ALI . . 23 W. R 73; 239

25. ———— **Question of title**—*Award of*

rights, determined as between the person in possession and others whose claims had remained dormant until the acquisition of the land, the relative strength of their titles:—*Held,* that the order of the Judge was *ultra vires,* his duty under the Land Acquisition Act being to determine the money value of ascertained interests, and not to try question of title GOUR RAM CHUNDER *v.* SONATUN DOSS . . . 25 W R. 320

26. ———— *Apportionment of compensation—Question of title.* Under s. 39 of the

the title to the other parts of the property belonging to persons who may come before the Judge under s. 39 NOBODEEP CHUNDER CHOWDHRY *v* BOOPENDRO LALL ROY

I L R 7 Calc 406 : 9 C. L R 117

27. ———— **Costs**—*Judge appointed under s. 3—Power of Judge to give costs* A Judge

diction of the High Court has no power to award costs in respect of proceedings under s. 39, Part IV of the Act. RAMANJEM NAIDOO *v* RUNGIAH NAIDOO . . . 8 Mad. 192

———— **s. 55 (Act VI of 1857, s. 32)**—

See ARBITRATION—ARBITRATION UNDER SPECIAL ACTS AND REGULATIONS—ACT VI OF 1857.

See COLLECTOR, I L R. 16 Mad. 321

———— *Part of property acquired for public purposes—Owner desiring that the whole shall be acquired—Right of owner not confined to small or confined areas—Convenience of*

should take the whole of such property or none. *Held,* applying to s. 55 the interpretation placed by the Courts in England upon the corresponding

LAND ACQUISITION ACT (X OF 1870) —*concld.*

———— s. 55—*concld.*

without inconvenience to the owner. KHAIRATI LAL *v.* SECRETARY OF STATE FOR INDIA.
I. L. R. 11 All. 378

———— s. 58—*Award of compensation—Effect*

has been awarded and to have plaintiff's title declared to the land concerned KAMINEE DEBIA *v* PROTAP CHUNDER SANDYAL . 25 W. R 103

LAND ACQUISITION ACTS (XVIII OF 1885 AND I OF 1894).

———— *Compensation—Apportionment of compensation-money—Landlord and tenant—Rent fixed in perpetuity—Bengal Tenancy Act (VIII of 1885), s. 50, sub-s (2)* In apportioning compensation-money, awarded under the Land Acquisition Act, between the landlord and the tenure-holder, the Court ought to proceed on the principle of ascertaining what the value of the interest of the landlord is on the one hand, and that of the tenant on the other, and to divide the sum awarded between them in accordance with these values. Where the rent is fixed in perpetuity, the landlord is not entitled to more than the capitalized value of his rent. *Gordon Stuart and Co.* v. *Maharajah Mohatab Chunder Bahadoor, 1 Marsh 490; Raye Kisori Dassee* v. *Nilcant Dey, 20 W. R. 370; Godadhar Dass* v. *Dhunput Sing, I. L. R. 7 Calc. 585; Dunne* v. *Nobo Krishna Mookerjee, I. L. R. 17 Calc. 144; Rajah Khetter Kristo Mitter* v. *Kumar Dinendra Narain Ray, 3 C. W. N. 202,* and *Shama Prosunno Bose Mozumdar* v *Braloda; Sundari Dasi, I. L. R. 28 Calc. 146,* considered. DINENDRA NARAIN ROY *v* TITURAM MUKERJEE (1903)
I L R 30 Calc. 801 : s c. 7 C W. N. 810

LAND ACQUISITION ACT (I OF 1894).

See APPEAL . I. L. R. 32 Calc. 921

See APPELLATE COURT—INTERFERENCE WITH, AND POWER TO VARY, ORDER OF LOWER COURT I. L. R. 30 Calc. 501

See BOMBAY CIVIL COURTS ACT, s. 16
I. L. R. 33 Bom. 371

See BOMBAY CITY IMPROVEMENT ACT.
I. L. R. 27 Bom. 424

LAND ACQUISITION ACT (I OF 1894) —*contd.*

See CALCUTTA MUNICIPAL ACT, s. 557
10 C. W. N. 289

See CIVIL PROCEDURE CODE, 1882, s. 102
10 C. W. N. 991

See COMPENSATION . 9 C. W. N. 655
I. L. R. 30 Calc. 801
I. L. R. 36 Calc. 967

See CONTEMPT OF COURT—PENAL CODE, s 174 . . 5 C. W. N. 131

See LAND ACQUISITION.
I. L. R. 32 Calc. 605

See MUNSIF, JURISDICTION OF
I. L. R. 20 Mad. 155

See VALUATION OF LAND.
I. L. R. 32 Calc. 343

———— reference under—appeal—court-fee—

See COMPENSATION . 8 C. W. N. 671

See COURT FEES ACT, SCH II, ART. 11
8 C. W. N. 321

1. ———— Compensation—*Compensation determination of—Compensation for severance.* Under the provisions of the Land Acquisition Act (... was ... sever ... cut ... where the residence of the manager, and all ... . The ... a con- ... a mile ... being ... of the ... ig the ... led, in addition to the market value of the land and the ...

2. ———— *Landlord and tenant—Patnidar, whether entitled to abatement of rent and compensation—Proportion—Principal.* ...

LAND ACQUISITION ACT (I OF 1894) —*contd.*

cussed BHOBANI NATH CHUCKERBUTTY *v.* LAND ACQUISITION DEPUTY COLLECTOR OF BOGRA (1902)
7 C. W. N. 130

3. ——————— *Indian Forest Act* (VII of 1878) ...

as to what land shall be acquired for a public purpose, the Indian Forest Act gives the power to afforest subject to conditions as to the fulfilment of which the Local Government is given no express power to decide. BALWANT RAMCHANDRA *v* SECRETARY OF STATE (1905)
I. L. R. 29 Bom. 480

4. ——————— *Objection—Reference—Party—Jurisdiction of Court.* A Court has no jurisdiction to deal with objections except those which were made by persons, who were parties to the proceedings before the Collector and which brought about the reference MAHAMMAD SAFI *v.* HARAN CHANDRA MUKERJEE (1908)
12 C W. N. 985

PRABAL CHANDRA MUKHERJEE *v* PEARY MOHUN MUKHERJEE (1908) . **12 C. W. N. 987**

1. ——————— s. 2, sub-s 2—*Land Acquisition Act (X of 1870)—Contest before the Collector—Admission before the Judge—Increased value, s. 25, Act I of 1894* Whilst proceedings under Act X of 1870 were pending, the new Act I of 1894 came into operation. *Held,* that having regard to s 2, sub-s. (2), Act I of 1894, the case must be governed by the new Act. *Balaram Bhramaratar Ray* v. *Sham Sunder Narendra, I. L. R 23 Calc. 526,* followed. NOBIN CHUNDER SARMA *v* DEPUTY COMMISSIONER OF SYLHET
1 C. W. N. 562

2. ——————— *Award of compensation—Payment of compensation awarded how enforced against the Collector—Appeal from an order irregularly made—Practice—Precedure.* On the 16th February 1894, under the Land Acquisition Act (X of 1870), an award of compensation to the claimant for land acquired under that Act was made by the Assistant Judge of Thana, and he subsequently made an order directing the Collector to pay the amount with interest and costs, without, however, fixing a date for payment On the 1st March 1894, the new Land Acquisition Act (I of 1894) came into force On the 26th February 1895, the claimant applied to enforce payment of the amount awarded, and the then Assistant Judge (Mr. Knight) re-affirmed the previous order and directed the Collector to pay it on or before the 20th May 1896 No payment, however, was made, and the matter came before the new Judge (Mr. FitzMaurice) for final order. He *held* that neither under Act X of 1870 nor the new Act I of 1894 had he any power to enforce payment against

LAND ACQUISITION ACT (I OF 1894) —*contd.*

——————— s. 2, sub-s 2—*concld.*

the Collector, and he therefore dismissed the claimant's application. On appeal to the High Court, the matter was referred to a Full Bench. *Held,* that the Act X of 1870 prescribed no mode of ...

proceedings pending in the case when the new Act I of 1894 came into force. Cl 2 of s 2 of that Act therefore did not apply, and no further steps could be taken under that Act *Per* RANADE, J.—The District Judge's order appealed from was improperly made The Assistant Judges had jurisdiction to make the previous order, and, even, if their order was not properly made, it could not be set aside in the way it was done by the District Judge as if an appeal lay to him from such order. That order, however, as now *held* was wrong, and the irregularity of the District Judge's order thus led to no failure of justice, and fell under s. 578 of the Civil Procedure Code (Act XIV of 1882) *Quære:* Whether an award made under the provisions of Act I of 1894 can be enforced against the Collector by execution proceedings. NILKANT GANESH NAIK *v.* COLLECTOR OF THANA **I. L. R. 22 Bom. 802**

——————— s. 3 (*a*)—*Fishery rights—"Land"—Jurisdiction.* The Land Acquisition Deputy Collector of Balasore, on the 3rd March 1903, gave notice of the intention of Government to acquire ...

which they are exercised; that what is to be ac- ...

——————— s. 3, cl. (*c*)—*Market value of land—Collector—Calcutta Municipal Act (Bengal Act III of 1898), s. 557—Land—District—Re-assessment.* The object of s. 557, cl. (*a*) of the Calcutta ...

LAND ACQUISITION ACT (I OF 1894) *—contd.*

———— s. 3, cl. (c)—*concld.*

tion or any of the other persons mentioned in s. 3. cl. (c) of Act I of 1894, acts as the Collector, the acquisition must take place under the Land Acquisition Act. The performance by the Chairman

term "land," as used in s. 557, cl. (d), includes *bustee* lands. The term "district," as used in the proviso to s. 557, cl. (d), is equivalent to the term "ward" under the old Municipal Act, II of 1888. The term "re-assessment" in s. 557, cl. (d), signifies "re-valuation" and not the re-imposition of "rate" or "tax." Where a substantial part of the act of assessment or valuation was completed before the commencement of the Act, it cannot be maintained that there was a re-assessment after the commencement of the Act, because some objections to the re-assessment or re-valuation might have been preferred or disposed of after that date, although the re-assessment came into force on the day of the commencement of the Act *Corporation of Calcutta* v. *Bhupati Roy Chowdhry, I. L. R. 26 Calc. 74,* referred to SECRETARY OF STATE FOR INDIA v. BELCHAMBERS (1905)

I. L. R. 33. Calc. 396 s.c. 10 C. W. N. 289

———— ss. 3 (a), 23 (3)—*When land is acquired with trees on it, the 15 per cent ought to be calculated on the value of both* Trees are things attached to the "earth" and are thus included in the definition of land in s. 3 (a) of the Land Acquisition Act; and this definition must be applied in the construction of s. 23 of the Act. The value of such trees as are on the land when the declaration is made under s. 6 is included in the market value of the land on which the allowance of 15 per cent is to be calculated under s. 23 (2) of the Land Acquisition Act. SUB-COLLECTOR OF GODAVARI v SERAGAN SUBBAROYADU (1906) . **I. L. R. 30 Mad. 151**

———— s. 6—

See ZANZIBAR. . **L. R. 28 I. A. 121**

———— ss. 6 to 8, 9 (2), 11, 39 to 41, 48 50 (2)—*Owner—Land—Notice of inquiry—Government, power of, to acquire property for a Company —Land Acquisition Act proceedings by Collector—Jurisdiction—Collector holding inquiry, whether a judicial officer—Injunction—High Court, power of, to question validity of land acquisition proceedings.* The jurisdiction of the Land Acquisition Collector extends, under the Act of 1894, over several districts, and he has power to hold his sittings at the office to which he was posted. When provisions of law are clear, it is not competent to Courts of Justice to enter into questions of natural justice; and, having regard to the economy and social conditions of the country, the provision that the Government should be the sole judge of what is likely to prove useful to the public is both expedient and useful. In making an acquisition, the wishes of the owner of the land are wholly irrelevant under the Act. There is no definition of a "public purpose" in the Land Acquisition Act, nor any limitation regarding what is likely to prove useful to the public: both matters are left to the absolute discretion of the Local Government, and it is not competent for this Court to assume to itself the jurisdiction to impose restrictions on this discretion by holding that at an inquiry under s. 40 of the Act the person whose land is intended to be acquired should have an opportunity to appear and object. This is a course wholly contrary to the policy of the Act. S. 40 of the Act constitutes the Government custodian of the public interests and sole judge as to whether the land is required for the construction of work and whether that work will prove useful to the public This Court is not competent to question the validity of the proceedings under s. 40 of the Act. It is not open to this Court to discuss the sufficiency of the inquiry made by the Collector, or his qualifications. The Local Government is sole judge S 41 of the Land Acquisition Act makes the Government sole judge of the manner in which the public are to have the use of the land taken up. A Collector holding an inquiry under the Land Acquisition Act is not a judicial officer, nor is the proceeding before him a judicial proceeding. He acts as the agent of the Government for the purpose of acquisition, clothed with certain powers to require the attendance of persons to make statements relevant to the matters which he has to inquire into. *Durga Dass Rakhit* v. *Queen Empress, I. L R 27 Calc. 820,* followed. Neither the inquiry nor the proceedings held by the Land Acquisition Collector are invalid There is no provision under s 39 of the Act that the consent of Government should be given after the agreement is executed, and that such consent should be notified by a Resolution in the Gazette. EZRA v SECRETARY OF STATE (1902)

I. L. R. 30 Calc. 36; s c. 7 C. W. N. 249

———— ss. 6, 11, 12 and 40—*Enquiry under s. 40—Owner—Owner of land not entitled to notice of enquiry as to compensation—Judicial proceeding —Evidence on which award as to compensation may be based.* The owner of land, which it is pro-

LAND ACQUISITION ACT (I OF 1894) —*contd.*

——— s. 6—*concld.*

not disclosed at the enquiry. EZRA v SECRETARY OF STATE FOR INDIA (1905) I. L. R. 32 Calc. 605
s.c. 9 C. W. N. 454
L. R. 32 I. A. 93

——— ss. 9, 12, 18—*Notice—Irregularity in the notice, effect of—Valid award, requirements of—Ferry—Compensation for a ferry—Railways Act (IX of 1890) s 10, sub-s (2)—Limitation Act (XV of 1877), Sch. II, Art 120—Damages, measure of.* Where notice under s 9 of the Land Acquisition Act does not contain the material facts, which would enable the landowner to identify the land intended to be taken up, and where the land to be acquired is affected with a franchise, the franchise is not described, and the notice fixes less than the prescribed time to prefer claims, these being irregularities, a suit for damages for permanent injury to a ferry caused by acquisition under the Land Acquisition Act, is maintainable in the Civil Court [illegible]

Act does not bar a suit for compensation in the Civil Court when the Collector refuses to adjudicate upon the claim put forward by the owner. A suit will lie in the Civil Court in respect of claim for [illegible]

the refusal by the Collector to award compensation. The mere construction of a railway bridge across a river whereby the profits of the ferry are reduced, does not entitle the owner to claim damages; but where lands and both banks of the river, which were [illegible]

INDIA (1907) . . I. L. R. 34 Calc. 470

——— ss. 9, 25 (2)—*Jurisdiction—Compensation—Award* Where no claim pursuant to a notice under s. 9 of the Land Acquisition Act was made by a party interested to make a claim:—*Held,* [illegible]

LAND ACQUISITION ACT (I OF 1894) —*contd.*

——— ss. 9, 25 (2)—*concld.*

a person to prefer his claim SECRETARY OF STATE FOR INDIA v. GOBIND LAL BYSAK (1907)
12 C. W. N. 263

——— s. 10.

See COMPLAINT—INSTITUTION OF COMPLAINT AND NECESSARY PRELIMINARIES
I. L. R. 27 Calc. 985

——— ss. 11, 18, 31 and 33 - [illegible]

cation of their claims in such case—Limitation—Construction of Statute—Construction of grant—Hindu widow—Life-interest, amount of compensation due to As between the claimants *inter se,* an award by a Collector under s 11 of the Land Acquisition Act does not amount to an adjudication of any question regarding the apportionment of compensation adjudged under the Act. Any [illegible]

may have received the whole or a part of the com- [illegible]

[illegible] followed. The provisions of s 33 of the Land Acquisition Act show that the limitation provided by proviso (*a*), sub-s (2), of s 18 of the Act is not intended to be an absolute limitation as to time. PUNNABATI DAI v PUNMANUND SINGH (1903) . . 7 C. W. N. 538

——— ss. 11, 21—*Market value—Bases of its calculation—Speculative advance in prices—Recent instances of sale—Rental of lands in the vicinity—General demand for land—Onus probandi.* Profit from the most advantageous disposition of land is one test for determining its market price. The probable use of land in the most [illegible]

[illegible] *Hughly Mills Company* v. *Secretary of State,* unreported; *Secretary of State for Foreign Affairs* v. *Charlesworth, Pilling & Co., I. R. 28 I. A 121; Rajendra Nath Banerjee* v. *Secretary of State, I. L. R. 32 Calc. 343,* referred to. The market value of the acquired lands is also to be ascertained from recent instances of sales in the same or in the adjoining localities, and from the

LAND ACQUISITION ACT (I OF 1894)
—*contd.*

——— ss. 11, 21—*concld.*

average rental of these and similar lands in the vicinity S. 21 of the Act authorizes the judge to confine his enquiry into valuation to the interests of persons affected by the Collector's reference, but the section must mean the admitted interests. If there is any dispute as to the relative value of such interest

to the probative value of the Collector's inquiry under s. 11 of the Act, and if he makes no inquiry

I. L. R. 34 Calc. 599

——— ss. 12, 18—*Notice by the Collector—Reference to Court—Construction of statute—Meaning of word "immediately"* The provisions of the Land Acquisition Act for the compulsory acquirement of private property are made for the public benefit, and, in the case of such Acts, "if upon words or expressions at all ambiguous it would

limitation for a party, who has not accepted the Collector's award, *viz*, either six weeks from the date of the receipt of the Collector's notice, whether im-

the Legislature or the parties to the contract intend that it shall be done immediately The conditions

and In re the application of Shesham-ma, I. L. R. 12 Bom. 276, followed. *In re* NANU KOTHARE (1905) . . I. L. R. 30 Bom. 275

——— ss. 12, 18, 31, 53—*Civil Procedure Code, 1882, ss. 102, 103—Apportionment—Reference*

LAND ACQUISITION ACT (I OF 1894)
—*contd.*

——— ss. 12, 18, 31, 53—*concld.*

to Court—Dismissal for default—Fresh suit, if maintainable—Rights of persons, not parties to the reference—Construction of Statute—Special jurisdiction Certain persons, who were parties in a land acquisition proceeding, being dissatisfied with the apportionment of the compensation-money made by the Collector, obtained a reference to the Court under s 18 of the Land Acquisition Act, but as they did not appear at the hearing of the same it was struck off. *Held,* that a suit instituted by the same persons in the Civil Court for the apportionment of the compensation-money was barred by ss. 102 and 103, Civil Procedure Code, which apply to proceedings before the Court to which a reference is made under s 18 of the Land Acquisition Act, owing to the operation of s. 647, Civil Procedure Code, which is made applicable to such proceedings by s 53 of the Land Acquisition Act. Persons, who were not parties in the land acquisition proceeding, were not debarred from instituting a suit for apportionment in the Civil Court STEPHEN, *J.—Quære* Whether persons, who were before the Collector, but not before the Court to which a reference was made under s. 18, Land Acquisition Act, would be debarred from instituting such a suit MUKERJEE, *J.*—An objection, as to the measurement of the land or the amount of the compensation payable therefor, must be determined exclusively by a reference to the Civil Court under s. 18, cl. (1) of the Land Acquisition Act. But a question as to the persons to whom compensation is payable or its apportionment among the persons interested may be determined either under a reference as contemplated

however, a party, has once availed himself of a reference to the Court under s. 18, Land Acquisition Act, he cannot again ask for an opportunity to litigate the same matter in the ordinary Court.

SINGH *v.* RAMADHIN ROY (1905) 10 C. W. N. 991

1. ——— ss. 12, 18, 49—*Award—Compulsory acquisition of buildings—Buildings adjacent*

portion is not "reasonably required for the full and unimpaired use of the house." VENKATARATNAM NAIDU *v* THE COLLECTOR OF GODAVARI (1904)
I. L. R. 27 Mad. 350

2. ——— *Compensation—Principle of assessment—Market value—Annual value of produce.* In assessing compensation for lands acquired under the Land Acquisition Act

LAND ACQUISITION ACT (I OF 1894)—*contd.*

——— ss. 12, 18, 49—*concld.*

where the letting value of the lands is not ascertainable and the selling value of lands in the neighbour-

STATE FOR INDIA (1904) . . 8 C. W. N. 671

——— s. 16.

See MORTGAGE 13 C. W. N. 350; 357

1. ——— s. 18—*Award—Reference—Locus standi to ask for reference on the ground of insufficiency of amount awarded—Interest in land, if necessary—Person interested—Decision of Collector, power of Court of Reference to question—Interlocutory order—Appeal* Some land in which one *B* owned a *mourasi mukurari* tenant's interest was acquired by Government Previous to the declaration of the acquisition, one *G* had entered into a contract with *B* Notice of the acquisition under s 9 of the Act was served, amongst others, on *G* *G* alone appeared before the Collector and, on the award being made, applied for a reference under s 18 on the ground that the amount awarded was insufficient The Collector made the order asked for Up till the date of the declaration no conveyance of *B's* interest in the land had passed in favour of *G* But some time after the award and the order of reference, *B* purported to convey all the interest he could claim on account of the land to *G* The Land Acquisition Judge *held* that under the circumstances *G* had no *locus standi* to contest the sufficiency of the award *Held*, that no question of apportionment having arisen, the question whether *G* had an interest such as would entitle

award was passed on a petition of objection preferred on behalf of the Government. But the final order confirming the award was made on a subsequent date. Both orders having been appealed against:—*Held*, that no appeal against the previous order was necessary, nor did an appeal lie from an interlocutory order of its nature GALSTAUN *v.* SECRETARY OF STATE FOR INDIA (1905)

10 C. W. N. 195

2. ——— *Award—Applica-*

LAND ACQUISITION ACT (I OF 1894)—*contd.*

——— s. 18—*concld.*

N. 454, s c. I. L R 32 Calc. 605, referred to ADMINISTRATOR-GENERAL OF BENGAL *v.* LAND ACQUISITION COLLECTOR (1905) 12 C. W. N. 241

3. ——— *Compensation—Mode of valuation when no recent sales—Market value—Surveyor's opinions—Objections to Surveyor's reports—Determination of value of frontage land—Building frontage, how determined—Relative value of back land and frontage—Hypothetical building scheme, value of—Value of whole land, how derived from value of part—Collector's award* In cases where the valuation of land cannot be based on what the property was producing at the time of the notice of acquisition, and where there have been no recent sales of the land to guide the Court, the market value must be determined by

a few rupees except for very strong reasons such as an error on a question of principle. *In the matter of* KARIM TAR MAHOMED (1908).

I. L. R. 33 Bom. 325

4 ——— s. 18 (2)—*Reference by Collector—Grounds of objection—Additional grounds urged before Court—Issues.* S. 18, sub-s. (2) of the Land Acquisition Act requires that any person

LAND ACQUISITION ACT (I OF 1894)
—*contd*.

——— s. 18 (2)—*concld*.

interested who has not accepted the Collector's award and requires the Collector to make a reference to the Court "shall state the grounds on which objection to the award is taken." Such requirement is one of the conditions precedent to the obligation of the Collector to make the reference. *Held*, that, as s. 147 of the Civil Procedure Code applied, the claimant at the hearing is not confined to the grounds set out in his notice. *Held*, further, that he is entitled to advance claims in respect of portions of the land taken up not referred to in his notice. *In re* RUSTOMJI JIJIBHAI (1905).
I. L. R. 30 Bom. 341

1. ——— ss. 18, 20, 21—*Compensation*—

tion to the apportionment of compensation made by the Collector must be taken to have accepted the award in that respect. Under ss 18, 20 and 21 of the Land Acquisition Act all that the Court can deal with is the objection which has been referred to it; it cannot go into a question raised for the first time by a party who had not referred any question or raised any objection to it under s 18 of the Act ABU BAKAR *v* PEARY MOHON MUKERJEE (1907) . . . **I. L. R. 34 Calc. 451**

2. ——— *Reference to Special Judge—Scope of enquiry—Parties, addition of, after reference—Contesting award on matters outside the reference—Hindu Law—Debutter, conversion of, into secular property—Consensus of family—Real or nominal debutter—Test dealings with property—Release by Government, effect of—Shebaiti right, alienation of, to co-shebait—Validity—Idol, breakage of—Effect.* In a reference under s. 18 of the Land Acquisition Act, it is not open to the

GOBINDA KUMAR ROY CHOWDHURY *v.* DABENDRA KUMAR ROY CHOWDHURY (1907) **12 C. W. N. 98**

——— ss. 18, 30, 31, 32—*Jurisdiction of District Judge to order refund of money paid by Collector under s 31—Civil Procedure Code (Act XIV of 1882), s 622.* A District Judge has no jurisdiction to order a refund of money paid by a Collector under the Land Acquisition Act without

objections as to the persons, to whom compensation

LAND ACQUISITION ACT (I OF 1894)
—*contd*

——— ss. 18, 30, 31, 32—*concld*.

is payable, or s. 30, which deals with disputes as to the person, to whom compensation is payable, can have any application after the money has actually been paid away under s 31 (2). GOBNIDARANEE DASSEE *v.* BRINDA RANEE DASEE (1908)
I. L. R. 35 Calc. 1104
s.c. 12 C. W. N. 1039

——— ss. 18, 50—*Land Acquisition Act (I of 1894), secs. 18, 50—Reference before Judge—Parties, when acquisition for Corporation—Appeal by Corporation, if lies—Secretary of State for India in Council, if necessary party.* A company or corporation for whose benefit any land may be acquired by the Collector is not a necessary party in a land acquisition proceeding. S. 50 of the Land Acquisition Act allows such company or corporation to appear simply for the purpose of watching the proceedings or assisting the Secretary of State. Such a company or corporation has no power to ask for a reference under s. 18 of the Act, nor has it the right to appeal against the decree made upon a reference. MUNICIPAL CORPORATION OF PABNA *v* JOGENDRA NARAIN RAIKUT (1908)
13 C. W. N. 116

——— ss. 19, 23—*Market value—Proof—Onus—Omission of Collector to state grounds—Effect—Calcutta Municipal Act (Beng. III of 1889), s. 557—Bustee land—Valuation on the basis of best use, if permissible—Special Judge—Jurisdiction to assess compensation outside the limits of the declaration.* The methods of valuation of land acquired under Act I of 1894 may be classified

prospective profits from the lands acquired. It is generally necessary to take two or all of these

made by the Collector. If no evidence has been

award. The failure of the Collector in making a reference under s. 18 of the Land Acquisition Act to state the grounds on which the amount of compensation was determined as required by s. 19, cl. (*d*), makes it incumbent on the Collector to justify

LAND ACQUISITION ACT (I OF 1894) *—contd.*

——— **s. 19**—*concld.*

the award before the Special Judge S 557 of the Calcutta Municipal Act precludes any valuation

geous use to which land can be put in Calcutta Both the Collector and the Special Judge under Act I of 1894 have limited jurisdiction. They are bound by the official declaration in the local *Gazette* The

the same under the provisions of the Act, and give possession accordingly. The Special Judge has to make similar enquiries If the Local Government committed a mistake by giving an erroneous boundary, the Judge or Collector cannot cure the mistake If the land acquired be for Government purposes, and if the Government takes possession of land beyond the limits prescribed by the declaration or in excess of the area for which compensation is paid, it trespasses on private land and is liable under the law of the country; and so is a company if the acquisition is for its purposes

show that he sustained damage or loss by reason of

grounds on which the amount of compensation was determined. MADHUSUDAN DAS *v.* COLLECTOR OF CUTTACK (1901) . . . **6 C. W. N. 406**

——— **ss. 20, 21.**

See ante., s. 18.

1. ——— s. 23—Acquisition of land "injuriously affecting other property"—*Compensation—Right to compensation for loss of a ferry by reason of acquisition of adjacent land—Land Clauses Consolidation Act (8 Vict, c. 18), s. 63* The word "acquisition," as used in s. 23 of the Land Acquisition Act, includes the "purpose" for which the land is taken as well as the actual taking And the words "at the time" in cl. 4 of the same section must

LAND ACQUISITION ACT (I OF 1894) *—contd*

——— **s. 23**—*contd.*

be taken to mean the time when the damage takes place and the right to compensation arises. *London and Brighton Railway Company* v. *Truman, L R 11 App Cas 45*, *Hopkins* v. *Great Northern Railway Company, L R 2 Q B D 224 · 46 L J. (Q B) 265*, *Ricket* v. *Metropolitan Railway Company, L. R 2 E & I. A. 175*, and *Cowper Essex* v *Acton Local Board, L R 14 App. Cas. 153*, referred to The District Board of Dinagepore erected a bridge over the river Tulai, in consequence of the erection of which a ferry, which was within

entitled under the Land Acquisition Act to compensation for the loss of the ferry. COLLECTOR OF DINAGEPORE *v.* GIRJA NATH ROY **I. L. R. 25 Calc. 346**

2. ——— Person interested—*Land Ac-*

person interested, within the meaning of s. 23 *of that Act, and is entitled to compensation.* NARAIN CHANDRA BORAL *v.* SECRETARY OF STATE FOR INDIA (1900) . **I. L. R. 28 Calc. 152** s.c. **5 C. W. N. 349**

3. ——— ss. 23, cls. 3 and 4, and 48—*Acquisition of portion rendering remainder useless*

acquire to the ... would ... by severance and to the property being injuriously affected by the acquisition. SARAT CHANDRA BOSE *v.* SECRETARY OF STATE FOR INDIA (1904) **10 C. W. N. 250**

4. ——— *Parties bound by decision as to right to claim compensation—Res*

KUTTI ALI (1905) . **I. L. R. 29 Mad. 173**

5 ——— "Market value of land" *—Methods of assessing the market value—Correct methods laid down—City of Bombay Improvement*

LAND ACQUISITION ACT (I OF 1894) —*contd.*

———— s. 23—*contd.*

Act (Bom Act IV of 1898)—Valuation by Collector —Acquisition of interest by claimant after Collector's award—References to the Tribunal of Appeal—Consolidation of references The Government of Bombay, acting on behalf of the Improvement Trustees, under the City of Bombay Improvement Act (Bombay Act IV of 1898), notified for acquisition nine parcels of land in December 1898. At the date of the notification, *J* the owner of the parcels, was in unencumbered possession of only one of them; and the remaining parcels were let on permanent leases as building sites Between the dates of notification and acquisition, *J* bought out the interests of the tenant in one of the parcels. The situation of the land was such that the whole plot consisting of the nine parcels was capable of forming a valuable quarry. The Collector in assessing compensation dealt with all the parcels separately; and refused compensation on a quarrying basis. As regards the seven parcels, the award was arrived at on a rental basis In all nine cases, references were claimed and made to the Tribunal of Appeal constituted under section 48 of the City of Bombay Improvement Act (Bombay Act IV of 1898) After the Collector had made his award and before the references were heard, *J* bought out the tenants' rights in the seven parcels. *J* next applied to the Tribunal of Appeal for consolidation of the references into one this was allowed The Tribunal of Appeal allowed *J's* claim for compensation for the whole land on a quarrying basis On appeal, it was objected that the consolidation was wrongly allowed, for *J* was thereby permitted to advance a claim—namely the claim to the quarrying value—which otherwise he would not have been able to make :—*Held*, that the consolidation was rightly allowed and had not the effect which was contended for It was not by reason of the consolidation of references that *J* was enabled to put forward what might be called the quarrying claim. that claim was already before the Collector and the Tribunal, and, whether good or bad, had to be decided on quite other grounds than the arbitrary division of the land made by the Collector. *Held*, further, that compensation should not be assessed on a quarriable basis, for the land was never a marketable quarry at the material time, and did not become so till after the Collector had made his award. *Per* BATCHELOR, *J* —For the purposes of ascertaining the market value of land under section 23 of the Land Acquisition Act (I of 1894), the Court must proceed upon the assumption that it is the particular piece of land in question that has to be valued including all interests in it *Collector of Belgaum* v. *Bhimrao, 10 Bom L R 657*, followed The method contemplated by the Land Acquisition Act (I of 1894) for

that value among the persons interested. The "market value of the land" means the price which would be obtainable in the market for a concrete parcel of land with its particular advantages and its particular drawbacks, both advantages and drawbacks being estimated rather with reference to commercial value than with reference to any abstract legal rights. *Per* HEATON, *J.* :—Taking the scope of the Land Acquisition Act (I of 1894) and its words, it seems that in ascertaining compensation for land taken up neither the method of valuing each interest in it separately nor the method of valuing the land as a whole and then apportioning to each person interested the share to which he is entitled, is excluded. What is intended is a fair and reasonable estimate of the compensation

L R. 657. BOMBAY IMPROVEMENT TRUSTI *v.* JALBHOY (1909). **I. L. R. 33 Bom. 483**

6. ———————— *Valuation of land as building land—Value of trees, as standing trees, if may be claimed—Inconsistency of claims—Trees to be valued as cut timber.* Where a person whose land was acquired under the Land Acquisition Act asked the same to be valued as vacant land to be used for the purpose of erecting buildings, he could not at the same time claim the value of the trees on it, on the footing that they would still remain there—the claims being inconsistent. The proper value of the trees would be their value as timber after they have been cut down THE SECRETARY OF STATE FOR INDIA *v.* DUMA LAL SHAW (1909) **13 C. W. N. 487**

7. ———————— *Land Acquisition Act (I of 1894), ss. 23, 24—" Market value " of land—Special adaptability to the purpose of the acquisition if to be considered—Land acquired for rifle range—Land behind the butts, depreciation of—Injurious affection* The meaning of " market value " discussed by Doss, J *Per* Doss, *J.*—

taken is, however, an important element to be taken into consideration in determining the market value But it is only the possibility of the site going into the market as being required for the purpose and not the realised possibility that must form the basis of calculation. *In re Gough and Aspatria, Silloth v District Joint Water Board,* [1904] 1 K. B. 417, *In re Lucas and Chesterfield Gas and Water Board,* [1908] 1 K. B. 571, relied on :—*Held*, by Doss, J. (RICHARDSON, J., *contra*)—That there being no other land in the

LAND ACQUISITION ACT (I OF 1894) —*contd*

——— s. 23—*concld.*

vicinity of the Lebong Cantonment suitable for a rifle range for which purpose the land in question had been acquired the special (or rather the unique) adaptability of the land for the purpose was an element to be considered in valuing the land *Per* RICHARDSON, *J* —There being no demand for rifle

25 Calc 194, L R. 24 I. A, 177. *Per Curiam* —In so far as it could be reasonably anticipated that the rifle range would interfere with the working of the owner's land behind the butts as a tea garden, to that extent the value of such land became depreciated, and the owner was entitled to compensation for it and it was no answer to his claim to say that any injury that may be caused in future by the use of the acquired land as a rifle range will be actionable. *Cowper Essex* v *The Local Board for Acton*, L. R 14 App Cas. 153, R. H WERNICKE *v.* THE SECRETARY OF STATE FOR INDIA (1909) . . **13 C. W. N. 1046**

——— s. 24—

See ante, s. 23

——— s 25—

See ante, s 9.

——— *Objection to amount of compensation before Collector—Withdrawal of objection on appeal—Right to increased amount given on appeal* Where a claimant objected to the amount of compensation offered by the Collector, but withdrew his objection before the District Judge who, however, allowed an increased amount at the instance of other objectors. *Held*, that under s 25, Act I of 1894, the former did not disentitle himself from claiming the benefit of the increased amount awarded by the Judge NABIN CHANDER SARMA *v.* DEPUTY COMMISSIONER OF SYLHET

1 C. W. N. 562

——— ss 25, 27, 54—*Appeal lies against an award of costs under s. 25—S 27 does not allow a pleader's fee to be fixed arbitrarily—Fees to be allowed on the valuation as laid down in the Civil Rules of Practice or according to the rules applicable to the particular Court.* Under s. 25 of the Land Acquisition Act, an award of costs is a part of the award and is appealable as such under s. 54 of the Act. S. 27 does not authorise the Court to allow any amount for the pleader's fee at its discretion. Where the subject-matter is capable of being valued pleader's fees must be allowed on the scale laid down in the Civil Rules of Practice or on such other scale as may be in force for the particular Court. EKAMBARA GRAMANY *v* MUNISWAMY GRAMANY (1907) . . **I. L. R. 31 Mad. 328**

——— s. 30—*Lands waste from time immemorial taken up—Compensation awarded—*

LAND ACQUISITION ACT (I OF 1894) —*contd.*

——— s. 30—*concld.*

Amount claimed by mirasidars and shrotriemdars—Persons entitled. Certain lands which had been waste from time immemorial were taken up by Government, and compensation was awarded. Claims were made by the *mirasidars* for the amount so awarded The rights of the Government in the lands had been alienated by Government to certain *shrotriemdars*, who also claimed to be entitled to the amount awarded as compensation *Held*, that the *shrotriemdars* were entitled. SIVAN THA NAICKEN *v.* NATTU RANGA CHARI (1902)

I. L. R. 26 Mad. 371

——— ss 30 and 53—*Civil Procedure Code, s. 32—Parties—Reference by Collector as to apportionment of compensation—Addition by Judge of party to reference.* Where, under s. 30 of the Land Acquisition Act, 1894, the Collector has referred to the District Judge a dispute as to the apportionment of compensation settled under s. 11

PRASAD (1902) . . . **I. L. R. 25 All. 133**

——— ss 30, 53, 54—

See REFERENCE TO CIVIL COURT.

11 C. W. N. 430

——— s 31—

See ante, ss 11, 18, 31 AND 33.

——— ss. 31 and 32—*Land taken up for public purposes, such land being in possession of a Hindu widow holding in right of her deceased husband —How compensation in respect of such land should be allotted.* Where land which was taken up by the

(1899) p 96, followed. SHEO PRASAD SINGH *v.* JALEHA KUNWAR (1901) . **I. L. R. 24 All. 189**

——— s 32—

1. ——— *Person having "no power to alienate"—Money awarded as compensation —Claim by karnavan of tarwad.* The Government acquired, under the Land Acquisition Act, property belonging to a Mahomedan family in North Malabar governed by the *Marumakatayam* law, and the money awarded as compensation was deposited

LAND ACQUISITION ACT (I OF 1894) —*contd*

———— s. 32—*concl'd.*

awarded, s. 32 of the Land Acquisition Act did not apply, and an order directing it to be dealt with in accordance with the provisions of that section was wrong. MAHOMED ALI RAJA AVERGAL *v* AHAMMED ALI RAJA AVERGAL (1902)
I. L. R. 26 Mad. 287

2.————————*Compensation money paid to Hindu widow—Reversioner's application for reference—Order by Judge on reference directing refund—Appeal—Revision—Civil Procedure Code (Act XIV of 1882), s. 622.* Where a Land Acquisition Collector having awarded a certain sum as compensation for land acquired, paid it to, amongst others, a Hindu widow, and almost six months after the award her daughter asked for a

[illegible]

the Judge was not in a position to make such an order and so no appeal lay from it and the High Court could properly interfere under s. 622 of the Civil Procedure Code GOBINDO RANI DASSI *v.* BRINDA RANI DASSI (1908)
I. L. R. 35 Calc. 1104
s. c. 12 C. W. N. 1039

———— ss 32, 33, 54—*Order—Order directing refund of compensation money paid—Civil Procedure Code (Act XIV of 1882), ss. 254, 588, 647—Execution, mode of—Order directing payment of money.* An order made by a Court in a proceeding under the Land Acquisition Act, directing a party, to whom a sum of money awarded as compensation under the Act had been paid under a previous order, to refund the money, is not an award or a portion of an award within the meaning of s 54 of the Act, nor does it come under any of the orders mentioned in s. 588 of the Civil Procedure Code. No appeal therefore lies from such an order. *Sheo Rattan Roy* v. *Mohri, I. L. R. 21 All. 354, Muhammad Ali Raja Avergal* v. *Ahammed Ali Raja Avergal, I. L R 26 Mad. 287,* distinguished. The order directing a refund may be enforced by the imprisonment of the party against

[illegible]

———— s. 33—

See ante, ss. 11, 18, 31.

———— ss. 39 to 41, 48, 50 (2)—

See ante, ss 6 TO 8, 9(2), 11.

LAND ACQUISITION ACT (I OF 1894) —*concld.*

———— s 49—"*House, manufactory or building*"—*Acquisition of part only required—Whether whole must be purchased.* Land, which is not a house, manufactory or building in the literal sense and which is not reasonably required for the full and unimpaired use of a house, manufactory or building cannot be considered as part of the "house, manufactory or building" within the meaning of s. 49 of Act I of 1894 Whether or not the land is so reasonably required is a question of fact depending upon the ... circumstances of each case. ... ndia in ... NITA ... (1908).
I. L. R. 30 All. 176

———— s 50—

See ante, s. 18. . . **13 C. W. N. 116**

———— s 53—

See ante, ss. 30 AND 53.

See FALSE EVIDENCE—GENERAL CASES
I. L. R. 27 Calc. 820

———— s. 54 and s 30—*Award of compensation—Order for apportionment of compensation—Appeal*—The term "award" used in s. 54, Act I of 1894 ...

[illegible]

SHAM SUNDER NARENDRA . I. L. R. 25 Calc. 026

SHEO RATTAN RAI *v* MOHRI
I. L. R. 21 All. 354

———— ss 54, 55—*Appeal against award—Hindu Law—Charity properties primâ facie inalienable.* Properties set apart for charities are *primâ facie* inalienable; and where such properties are acquired under the Land Acquisition Act, the award made thereunder may direct the investment of the compensation-money in Government securities An appeal lies against the award in so far as it directs investment under s 54 of the Land Acquisition Act. SHIVA RAO *v.* NAGAPPA (1905)
I. L. R. 29 Mad. 117

LANDHOLDER

See MADRAS RENT RECOVERY ACT (VIII OF 1865), s 1.

———— responsibility of—

See RIOTING . . **I. L. 28 Calc. 504**

LAND HOLDER AND TENANT.

See LANDLORD AND TENANT.

LAND IMPROVEMENT LOANS ACT (XIX OF 1883).

———— s. 7 (1) (a) — *Revenue Recovery Act (Mad. Act II of 1864), s 42—Advance to owner on two pieces of land—Security taken on one alone—Sale of the other piece in respect of advance—Validity* N held two pieces of land

LAND IMPROVEMENT LOANS ACT (XIX OF 1883)—*concld.*

——— s. 7 (1) (a)—*concld.*

on *patta*, and obtained a loan from Government, under Act XIX of 1883, for the improvement of one of them, namely No 315 The other piece, namely, No. 105-B, was not made collateral security for the loan. Default having been made in repayment of the loan, piece No. 315 was in 1894 attached and put up for sale, and (as there were no bidders) bought in by Government In 1895, *N* sold the other piece of land, No 105-B, to plaintiff, but the *patta* was not transferred In 1896, No. 105-B was attached by Government in respect of *N's* unpaid loan. Plaintiff objected to its sale, claiming title to it as purchaser, and, in 1897, *both N and plaintiff applied for a transfer of the patta* to plaintiff. The transfer was not made, as the loan to *N* had not been repaid The land was ultimately sold by Government to first defendant, whereupon plaintiff brought this suit for a cancellation of that sale *Held*, that plaintiff was entitled to the relief claimed CHINNASAMI MUDALI *v* TIRUMALAI PILLAI (1901) **I. L. R 25 Mad. 572**

LANDING AGENTS AT PENANG

See BILL OF LADING **13 C. W. N. 733**

LANDLORD.

See LANDLORD AND TENANT.

——— **Crown as—**

See TRANSFER OF PROPERTY ACT, s. 51 **13 C. W. N. 931**

——— **right of suit by—**

See SPECIFIC RELIEF ACT, s. 9. **13 C. W. N. 835**

LANDLORD AND TENANT.

LANDLORD AND TENANT—*contd.*

See ABATEMENT OF RENT.

See ACCOUNT, SUIT FOR

I. L. R. 27 Calc. [illegible]

See ACQUIESCENCE **7 B. L. R. [illegible]**

8 B. L. R. [illegible]

10 B. L. R. [illegible]

I. L. R. 9 Calc. [illegible]

I. L. R. [illegible]

I. L. R. 2[illegible] Calc. [illegible]

3 C. W. N. [illegible]

I. L. R. 21 All. 496 : L. R. [illegible]

I. L. R. 27 Calc. 570 : 4 C. W. N. [illegible]

[illegible] C. W. N. [illegible]

LANDLORD AND TENANT—*contd.*

See ADVERSE POSSESSION
10 C. W. N. 343

See APPEAL. I. L. R. 32 Calc. 1023

See APPORTIONMENT OF RENT
7 C. W. N. 453

See BABUANA GRANT 13 C. W. N. 118

See BENGAL TENANCY ACT, VIII OF 1885

See BENGAL TENANCY ACT
10 C. W. N. 351; 547

See CENTRAL PROVINCES TENANCY ACT.

See CHOTA NAGPUR LANDLORD AND TENANT PROCEDURE ACT, ss. 123, 125

See CIVIL PROCEDURE CODE, 1882, s. 244.
10 C. W. N. 240

See CIVIL PROCEDURE CODE, 1882 s 310 A . . 12 C. W. N. 434

See CO-SHARERS . 11 C. W. N. 517

See DECREE. I. L. R. 32 Calc. 680

See EASEMENT I. L. R 29 Calc. 363
I. L. R. 29 All 652

See EJECTMENT, SUIT FOR

See ENHANCEMENT OF RENT
9 C. W. N. 303

See ESTOPPEL—LANDLORD AND TENANT —DENIAL OF TITLE

See EVIDENCE ACT (I OF 1872), s 90
I. L R. 33 Calc. 571
10 C. W. N. 422

See FIRST CHARGE I. L. R. 31 Calc. 550

See FORFEITURE I. L. R. 31 Bom 15

See HINDU LAW—ENDOWMENT
I. L. R. 36 Calc. 1003

See HOLDING OVER. 9 C. W. N. 340

See INTEREST . I. L. R. 35 Calc 34

See INTEREST—MISCELLANEOUS CASES—ARREARS OF RENT.

See JOINT TENANCY.

See JURISDICTION OF CIVIL COURT—RENT AND REVENUE SUITS.

See KABULIYAT

See LAND ACQUISITION
I. L. R. 35 Calc. 763

See LAND ACQUISITION ACT (X OF 1870)
I. L. R. 28 Calc. 146

See LAND ACQUISITION ACTS (XVIII OF 1885 AND I OF 1894)
I. L. R. 30 Calc. 801

See LEASE . I. L. R. 33 Calc. 203

See LEASE, CONSTRUCTION OF.

LANDLORD AND TENANT—*contd.*

See LIMITATION—QUESTION OF LIMITATION
7 W. R. 395
18 W. R. 443
6 B. L. R. Ap. 130
7 B. L. R. Ap. 17
12 B. L. R. 274, 282 note, 283 note
I. L. R. 7 Bom. 96
7 C. W. N. 294

See LIMITATION. I. L. R. 31 Calc. 897

See LIMITATION ACT, 1877, s 18.
I. L. R. 12 Bom. 501

See LIMITATION ACT, 1877, SCH. II, ARTS. 110 AND 120;
I. L. R. 25 Bom. 556

ART. 139

See MADRAS RENT RECOVERY ACT (VIII OF 1865)

See MESNE PROFITS—MODE OF ASSESSMENT AND CALCULATION.
I. L. R. 30 Calc. 536

See MORTGAGE LIEN.
I. L. R. 32 Calc. 41

See NON-OCCUPANCY RAIYAT.
8 C. W. N. 446

See NORTH-WESTERN PROVINCES LAND REVENUE ACT (XIX OF 1873), ss. 154, 190 . I. L. R. 29 All. 318

See NORTH-WESTERN PROVINCES RENT ACT (XII OF 1881)

See NOTICE TO QUIT 11 C. W. N. 1124

See NUISANCE, UNDER CRIMINAL PROCEDURE CODE . 6 C. W. N. 466

See OCCUPANCY-HOLDING
12 C. W. N. 1086
13 C. W. N. 220

See ONUS OF PROOF—LANDLORD AND TENANT

See PARTIES—PARTIES TO SUITS—LANDLORD AND TENANT

See PARTITION—RIGHT TO PARTITION—PARTITION OF PORTION OF PROPERTY
5 C. W. N. 185
9 C. W. N. 699

See PRACTICE I. L. R. 33 Calc. 1094

See PRINCIPAL AND AGENT—

AUTHORITY OF AGENTS;
I. L. R. 30 Calc. 207

LIABILITY OF PRINCIPAL;
I. L. R. 30 Calc. 207

See PRESCRIPTION . 9 C. W. N. 293

See PUNJAB LAWS ACT.
I. L. R. 30 Calc. 635

See RELINQUISHMENT OF TENURE.

See RENT, SUIT FOR.

LANDLORD AND TENANT—*contd.*

See RES JUDICATA—

COMPETENT COURT—REVENUE COURTS

ESTOPPEL BY JUDGMENT; **I. L. R. 28 Calc. 109**
6 C. W. N. 66

MATTERS IN ISSUE; **I. L. R. 28 Calc. 17**

See RIGHT OF OCCUPANCY.

See SALE FOR ARREARS OF RENT

See SET-OFF . . **11 C. W. N. 25**

See SMALL CAUSE COURT, PRESIDENCY TOWNS — JURISDICTION — MOVEABLE PROPERTY . **I. L. R. 4 Calc. 946**
10 B. L. R. 448

See SMALL CAUSE COURT—PRESIDENCY TOWNS — JURISDICTION — IMMOVEABLE PROPERTY, RECOVARY OF
I. L. R. 10 Bom. 30
I. L. R. 17 Mad. 216

See SPECIAL OR SECOND APPEAL—ORDERS SUBJECT OR NOT TO APPEAL
I. L. R. 28 Calc. 116, 532

See SUIT . **I. L. R. 31 Calc. 965**

See TRANSFER . **8 C. W. N. 214**
10 C. W. N. 422, 449

See TRESPASS—GENERAL CASES
23 W. R. Cr. 40
I. L. R. 2 Mad. 232

See TENURE—MUKADDAMI TENURE.
I. L. R. 23 All. 67

See TITLE—MISCELLANEOUS CASES
I. L. R. 25 Mad. 507

——— **Act X of 1859, ss. 77, 153, 155, 160**—

See LANDLORD AND TENANT ACT
13 C. W. N. 599

——— **adverse title, setting up of**—

See LANDLORD AND TENANT
13 C. W. N. 805

——— **ejectment**—

See JURISDICTION OF CIVIL COURT—RENT AND REVENUE SUITS—NORTH-WESTERN PROVINCES
I. L. R. 23 All. 360

See LANDLORD AND TENANT—NATURE OF TENANCY . **I. L. R. 28 Calc. 738**

See LIMITATION ACT, 1877, SCH. II, ART. 144—ADVERSE POSSESSION.
I. L. R. 26 Bom. 442

——— **ejectment: notice to quit**—

See RULES MADE UNDER ACTS—BENGAL TENANCY ACT **I. L. R. 28 Calc. 590**

LANDLORD AND TENANT—*contd.*

——— **exchange of leasehold rights**—

See TRANSFER OF PROPERTY ACT, s. 118
6 C. W. N. 905

——— **improvements**—

See MALABAR LAW.
I. L. R. 25 Mad. 568

——— **lease of the same interest by two persons**—

See BENGAL TENANCY ACT, s 153
8 C. W. N. 438

——— **liability of heirs for rent**—

See INHERITANCE **5 C. W. N. 189**

——— **rate of tent**—

See EVIDENCE—PAROL EVIDENCE—EXPLAINING WRITTEN INSTRUMENTS AND INTENTION OF PARTIES
6 C. W. N. 242

See KHOTI SETTLEMENT ACT, s 8
I. L. R. 27 Bom. 71

——— **right of pasturage**—

See EASEMENT . **8 C. W. N. 425**

See RECOVERY OF RENTS ACT (BENGAL ACT X OF 1859).

See RELINQUISHMENT. **8 C. W. N. 315**

——— **suit for alluvial land**—

See LIMITATION ACT, 1877.
I. L. R. 29 Calc. 518

——— **transfer by tenant**—

See POSSESSION—SUITS FOR POSSESSION
7 C. W. N. 607

1 CONTRACT OF TENANCY, LAW GOVERNING.

1 [illegible] Rules applicable to relation [illegible]

2. ——— **Contracts of tenancy between Hindus in Calcutta**—*Stat 21 Geo. III, c. 70 s 17.* A tenancy created by express contract between Hindus in Calcutta is within the words "matters of contract and dealing between party and party" in 21 Geo. III, c. 70, s. 17, and the right of the parties and the incidents of the tenancy must be governed by Hindu law [illegible] MUDDUCK *v* LOKENATH KURMOKAR
I. L. R. 5 Calc. 688 : 5 C. L. R. [illegible]

3. ——— *Government settlement—Rate of rent—Obligation of under-tenants—Contract with Government—[illegible] Regulation (VII of 1822), s. 9.* On the expiry of the term of a prior settlement the plaintiff took a fresh settlement

LANDLORD AND TENANT—*contd.*

1. CONTRACT OF TENANCY, LAW GOVERNING—*contd.*

from the Government of certain lands and contracted with the Government that he would not collect higher rents than are recorded in the settlement papers :—*Held*, that that contract would not prevent him from recovering from the defendants higher rents by enforcing a contract, which the latter had entered into with him S. 9 of Regula-

followed. GOUR CHANDRA SAHA *v.* MANI MOHAN SEN (1905) . . . . I. L. R. 32 Calc. 463

4. ——————— *Covenant by sub-tenant to pay rent due to superior landlord—Failure to pay—Recovery of same by superior land-*

took settlement of some lands from the plaintiffs. In the *kabuliat* executed by the defendants, the terms of the agreement were as follows :—" In all fixing the annual rent . . . at R4,991-12-3 and granting a permanent *dur-putni* and *se-putni* settlement . . . you have executed in my favour the . . . *pottah* I therefore execute this *kabuliat* and agree that I shall pay R3,191 12-3, the annual rent payable into the estate of your paid *putnidars* and *maliks*, and pay the remaining profit of R1,800 a year to you . . . . I shall pay the *putni* and *dur putni* rents and cesses . . payable by you . . . . , and take *dakhilas* for that and make them over to you and I shall take *dakhilas* from you . . . . . if by reason of my default in payment of the said rents the *maliks* bring suits for arrears of rent and in execution of decree, your *putni* and *dur-putni* rights be attached and brought up for sale . . . . . . then you will deposit the said amount of rent and bring a suit against me for arrears of rent and recover that amount with interest and costs by sale of this my *dur-putni* and *se-putni* rights and from other properties." Defendants failed to pay to the superior landlords rents due for 1304 and 1305 and the latter

for recovery, as damages, of the said amount from the defendant. It was objected that the suit was not maintainable and was barred by limitation : *Held*, that the suit was properly brought as a suit for damages. There were here two separate and

Bengal Tenancy Act, and plaintiff's proper remedy was to bring a suit for damages. *Basanta Kumari Debya* v. *Ashutosh Chuckerbutty, 4 C. W. N. 3 s.c. I. L. R. 27 Calc. 67*, distinguished. *Held*, that the present case was undistinguished from *Ratnessur Biswas* v. *Hurish Chunder Bose, I. L. R. 11 Calc. 221*, which had not been overruled by the Full Bench in *Basanto Kumari Debya* v. *Ashutosh Chuckerbutty, I. L. R. 11 Calc. 221.* HEMENDRA NATH MUKERJEE *v.* KUMAR NATH ROY (1905) 9 C. W. N. 96

5. ——————— *Jote, portion of—Transfer—Validity—Decree for rent against recorded tenant—Unrecorded tenant's interest, effect on—Sherista, landlord's, record in, not compulsory.*

the recorded tenants does not pass the interest of the tenants, whose names are not registered in the landlord's sherista *Nitya Behari Saha* v. *Hari-*

(1905) . . . . . . 9 C. W. N.

6. ——————— *Bengal Tenancy*

7. ——————— *Bengal Tenancy Act (VIII of 1885), s 178, sub-s. (1), cl. (a) and sub-s. (3), cl. (a)—Contract stipulating re-entry on raiyat's death—Validity—Bengal Act VIII of 1869, s. 7.* A valid contract of tenancy providing that the tenant, a raiyat, should hold the land for his lifetime, and that the landlord would have the right to re-enter on his death, could be created before the passing of the Bengal Tenancy Act.

therefore enforceable The contract in this instance having been created by a *solenamah* in 1877 and the tenant dying in 1902 :—*Held*, that the landlord

LANDLORD AND TENANT—*contd.*

1. CONTRACT OF TENANCY, LAW GOVERNING—*contd.*

can recover *that* possession BAUL CHANDRA CHAKRAVARTI *v.* NISTARINI DEBI (1905)
I. L. R. 33 Calc. 136
s.c. 10 C. W. N. 533

8. ——————— *Suit against landlord and other person claiming under him by* ... *V, and* ... *(VII of* ... right to ... d others ... him s 7, ...

I. L. R. 31 Mad. 14

9. ——————— *Decree for rent —Executive—First charge—Lien—Bengal Tenancy Act (VIII of 1885), ss 65, 148 (b), 161—Regulation VIII of 1819, s. 134.* A zemindar sued his patnidar for arrears of rent and obtained a decree, but previous to the institution of the suit had sold all his interest in the zemindari. The purchaser of the zemindari subsequently instituted proceedings ...

... *Mohini Dassi, 3 C W. N. 604; Srimant Roy v.* ...

10. ——————— *Mámlatdárs'* ...

... the plaintiff let certain lands to defendants Nos 1 and 2 During the continuance of the tenancy ...

Court against the defendants Nos 1—3 to recover possession of the lands The defendant No 3 contended that her adverse possession having commenced more than six months before the institution of the suit the Mámlatdár had no jurisdiction so far as the plaintiff's claim against her was concerned. *Held,* that the plaintiff's remedy *having been to bring his suit under clause (b) of* s. 19 of the Mámlatdárs' Courts Act (Bombay Act II of 1906), on the expiry of the tenancy, the fact that a trespasser got into possession during the continuance of the tenancy, but more than six months before its determination, did not oust the ...

I. L. R. 32 Bom. 46

11. ——————— *Right of melvaramdar to distribute water—The right of the ryot to the customary supply of water is proprietary* As between the melvaramdar and the owner of the kudivaram, the right of the latter to the customary supply enjoyed by him is proprietary and not contractual. The former cannot by any agreement ... derogate from such right and the ... for an in... uch kudi... ordinary ... unlike the melvaramdar, the right to revise the assessment and to distribute water in the interests of the general public, subject to the claim of the ryot for a supply sufficient for his requirements. NYNAPPA SERVAI *v.* VEERAN (1908)
I. L. R. 32 Mad. 423

... for rent pleaded that in the absence of a lease ...

2 CONSTITUTION OF RELATION.

(a) GENERALLY.

3. ——— **Contract to pay rent**—*Omission to obtain Kabuliat.* Where two parties bind themselves under an indenture drawn up in the

LANDLORD AND TENANT—*contd.*

2. CONSTITUTION OF RELATION—*contd.*

(a) GENERALLY—*contd.*

English form, the one to lease and the other to pay rent for certain land, the contract is complete, and a suit for arrears of rent due under it will lie under Act X of 1589, although no separate kabuliat is executed. KISHEN DOSS *v.* HURRY JEEBUN DOSS . . . . . 10 W. R. 324

4. ———— **Implied relationship of landlord and tenant**—*Absence of express condition.*

5. ———— **Grant of pottah by zamindar to sub-tenant**—*Non-assignment of rights to intermediate tenant—Suit for kabuliat* The defendant was under-tenant in respect of lands which his lessor held under a modafut from the zamindar Subsequently the lessor left, and the zamindar gave to the defendant a pottah for part of the lands covered by the modafut, and to the plaintiff a pottah for the whole land covered by the original modafut, but did not assign any of his rights as zamindar to the plaintiff to recover or enhance the rent reserved in the pottah he had granted to the defendant. *Held,* in a suit for a kabuliat at an enhanced rate, that the plaintiff and defendant were not in the position of landlord and tenant, so as to enable the plaintiff to maintain his suit. KALAM SHEIKH *v.* PANCHU MANDAL . 2 B. L. R. A. C. 252

S. C. KALLAM SHEIKH *v* PANCHOO MUNDUL 11 W. R. 128

6. ———— **Grant relating to portion of land rent-free, but subject to house-tax**—*Holders under sanad under Bom Act VII of 1863* The plaintiffs were the registered holders of the

tenant between the parties. JESINGBHAI *v.* HATAJI . . . . I. L. R. 4 Bom. 79

7. ———— **Instrument not fixing permanent rent** Where a written instrument purported to create the relation of landlord and tenant for five years, the lessor's tenure being that of a mirasidar, *i e.*, a hereditary tenancy under Govern-

LANDLORD AND TENANT—*contd.*

2 CONSTITUTION OF RELATION—*contd.*

(a) GENERALLY—*contd.*

ment determinable on default in payment of the proportion of the motha faisal assessment payable for the land:—*Held*, that the instrument did operate to create the relation of landlord and tenant, notwithstanding that the assessment was not permanently fixed. SAMINATHAIYAN *v* SAMINATHAIYAN 4 Mad. 153

8. ———— **Payment of revenue by one co-sharer through another**—*Interest—Act X*

lord and tenant was not created by the deed, and consequently that s 20 of Act X of 1859 did not apply to entitle *A* to interest upon the recovery of a quota of revenue payable by *B* under the deed. GOLUCK CHUNDER ROY *v.* JUGGERNAUTH ROY CHOWDHRY . Marsh. 146: W. R. F. B. 47 1 Hay 346

9. ———— **Decree for kabuliat**—*Evidence of relationship of landlord and tenant* A decree which directs that a kabuliat shall be given by the

fully entitled to remain in possession of the land without paying rent until the zamindar assesses rent upon him HUREEBUNS BURHAL *v.* JOYKISHEN MOOKERJEE . . . . . 6 W. R. 92

BROJONATH DUTT *v* JOYKISHEN MOOKERJEE 4 W. R. 69

BHOOPAL CHUNDER BISWAS *v* MAHOMED MOLLAH 6 W. R. 286

11. ———— **Decree declaring right to assessment**—*Resumption of invalid lakhiraj—Beng Reg. II of 1819, s. 30—Beng. Reg. XIX of 1793, s. 10—Decree of Civil Court.* A decree of a

LANDLORD AND TENANT—*contd.*

2. CONSTITUTION OF RELATION—*contd.*

(a) GENERALLY—*contd.*

was sufficient to establish the relationship of landlord and tenant between the zamindar and the party against whom the right of assessment was declared. SAUDAMINI DEBI *v.* SARUP CHANDRA ROY . **8 B. L. R. Ap. 82 : 17 W. R. 383**

SHAMASUNDARI DEBI *v.* SITAL KHAN **8 B. L. R. Ap. 85 note : 15 W. R. 474**

MADHUSUDAN SAGORY *v.* NIPAL KHAN **8 B. L. R. Ap. 87 note : 15 W. R. 440**

ROHINI NANDAN GOSSAIN *v.* RATNESWAR KUNDU **8 B. L. R. Ap. 89 note : 15 W. R. 345**

12. ——— Decree for resumption—*Resumption of invalid lakhiraj—Beng. Reg. II of 1819—Suit for kabuliat—Act X of 1859, s. 23, cl. 1.* The having obtained a decree for resumption of invalid lakhiraj lands, held on tenure prior to 1st December 1790 under Regulation II of 1819, did not create the relationship of landlord and tenant between the plaintiff and defendant so as to enable the plaintiff to sue for a kabuliat under cl. 1, s. 23, Act X of 1859. That relationship could not come into existence until the lakhirajdar had agreed to pay the revenue assessed by the Collector. MADHAB CHANDRA BHADORY *v.* MAHIMA CHANDRA MAZUMDAR **8 B. L. R. Ap. 83 note : 12 W. R. 442**

13. ——— Suit for arrears of rent as so determined for a period prior to such

[illegible]

14. ——— Position of occupiers in

[illegible]

tenure, or to re-grant on the same tenure lapsed

[illegible]

15. ——— Relationship depending on validity of adoption—*Status pending appeal to Privy Council.* In a suit for rent the plaintiff sued as the adopted son of the deceased landlord, and the defendant (who was the adopted son of the deceased tenant and in possession) denied the relationship of landlord and tenant between them. It appeared that the defendant disputed the validity of the plaintiff's adoption and had brought a suit to set it aside in which he had failed, but had appealed to the Privy Council; that the plaintiff had not received rent for many years, and had brought a suit to eject the defendant and recover mesne profits which was dismissed, it being found that the defendant was entitled to retain possession. *Held*, that, so long as the decision that the plaintiff was the adopted son of the deceased landlord held good, the relationship of landlord and tenant existed between the parties, and the plaintiff was therefore entitled to recover rent from the defendant. HURONATH ROY CHOWDHRY *v.* GOLUCKNATH CHOWDHRY **19 W. R. 18**

16. ——— Assignment by tenant of goodwill, stock-in-trade, fixtures, furniture, and chattels—*Notice by landlord to lessee and to assignee to deliver up possession on expiration of lease or to pay rent—Holding over—Use and occupation—Liability of assignee for compensation*

[illegible]

the plaintiff. The deed of assignment contained (*inter alia*) a provision empowering the assignee, in the event of any breach by *L* of the covenants contained in the said deed, to let the premises for

[illegible]

without the permission of *D*. Shortly before the

[illegible]

had durwans and a clerk on the premises to see that nothing was removed therefrom without his permission. *L* and *D* continued to keep the stock-in-trade on the premises after the determination of the

[illegible]

tion for the use and occupation of the premises. MADHUBMONEY DASSEE *v.* NUNDO LALL GUPTA **I. L. R. 26 Calc. 338**

17. ——— Non payment of rent. Non-payment of rent does not determine the relation of landlord and tenant. APURBA KRISHNA ROY *v.* ASHUTOSH DUTT (1905) . **9 C. W. N. 122**

LANDLORD AND TENANT—*contd.*

2. CONSTITUTION OF RELATION—*contd.*

(*a*) GENERALLY.—*concld.*

18. ——— **Right of tenant to hold land for which he refused to accept patta.** A tenant is not entitled to claim lands, for which he refused to accept pattas tendered by the landholder, as having become part of his holding by such tender. JUMNA BAI RANEE SAHEB *v.* SOLAI KAVUNDAM (1905) . **I. L. R. 28 Mad. 553**

19. ——— **Benami transactions**—*Benami lease—Authority of benamdar registered tenant to pledge the tenure for arrears of rent—Mortgage—Form of mortgages—Agreement not to alienate—Transfer of interest—Creation of charge—Absence of attestation—Charge—Transfer of Property Act (IV of 1882), ss. 58, 59, 100—Charge for rent—Bengal Tenancy Act (VIII of 1885), s 65.* Where *A* held a tenure in the benami of *B*, who was the recorded tenant, and the latter without the knowledge or consent of *A* executed a bond in favour of the landlord, who knew that *B* was merely a benamdar, mortgaging or charging the tenure for arrears of rent due in respect thereof. *Held*, that the bond could not affect the tenure and that the landlord suing on the bond was not entitled to claim a charge on the land under s 65 of the Bengal Tenancy Act *Per* MOOKERJEE, *J.*—The test is whether *B* acted within the scope of his authority. A nominal owner has no implied authority to pledge the property in arrears on the real owner failing to pay the rent regularly. An instrument, by which the payment of money is secured on land, must be taken to create a mere charge, unless there is an indication in it that some interest in specific immoveable property was transferred; a clause

transaction purporting on the face of it to be a mortgage is converted into a charge, if the instrument cannot operate as a mortgage by reason of defective execution or non-compliance with the formalities prescribed by the law. ROYZUDDI SHEIK *v.* KALI NATH MOOKERJEE (1906) **I. L. R. 33 Calc. 985**

20. ——— **Relationship of landlord and tenant must be shown to arise out of contract or privity of estate.** *Suit for rent*—Before a plaintiff can succeed in a suit to recover rent, he must establish relationship of landlord and tenant existing between himself and the defendant and resting either on contract or privity of estate. MANJAPPA *v.* VENKATESH (1906) **I. L. R. 31 Bom. 159**

(*b*) ACKNOWLEDGMENT OF TENANCY BY RECEIPT OF RENT

21. ——— **Right to recover rent, establishment of**—*Assessment—Agreement to pay rent.* To establish a right to recover rent, a zamindar must show that either by assessment in due course of law or by agreement the tenant is liable to pay it. GAYASOODEEN *v.* KHUDA BUKSH **1 N. W. 87 : Ed. 1873, 139**

KRISHNA GHOSE *v.* RAM NARAIN MOHAPATTUR **25 W. R. 214**

22. ——— **Right to recover rent**—*Sharer in undivided talukh—Agreement to pay rent.*

talukh unless there is an agreement to that effect. SHAMA SOONDUREE DEBIA *v.* KRISTO CHUNDER ROY . . . . . . **13 W. R. 316**

23. ——— *Purchase of land—Contract, express or implied, for payment of rent. Held*, that the plaintiff, not having been put into the possession of land purchased by him, and holding on contract, express or implied, from the holder of the land for payment of rent, was not competent to sue the defendant (occupant of the land) for rent thereof. RAM DASS SINGH *v.* RAM NARAIN **2 Agra Rev. 9**

24. ——— **Liability to pay rent**—*Occupation after deprivation under decree.* A party

therefore he is not liable to distraint for rent. He must have become a tenant by agreement or act of law to render him liable for rent MUKURDHOOJ SINGH *v.* RAM CHURN **1 N. W. 14 : Ed. 1873, 12**

25. ——— **Implied contract to pay rent.** Under certain circumstances, a contract to

26. ——— **Transferee of landlord**—*At-*

tenant existed between the parties so that the suit could be instituted in a Revenue Court under the Rent Act. SREE CHAND *v.* BUDHOO SINGH **13 W. R. 301**

27. ——— **Ex-proprietary tenant**—*Suit for arrears of rent—Determination of rent—Act*

LANDLORD AND TENANT—*contd.*

2. CONSTITUTION OF RELATION—*contd.*

(b) ACKNOWLEDGMENT OF TENANCY BY RECEIPT OF RENT—*contd.*

XII of 1881 (N.-W. P. Rent Act), ss 14, 95, cl. (l)—Act XIX of 1873 (N.-W. P. Land Revenue Act), s. 190. Except where there has been an arrangement or agreement between the parties, a landholder cannot sue his ex-proprietary tenant for rent until, as a condition precedent, he or the tenant has obtained a determination of the amount thereof, either by application to the Settlement Officer under s. 14 or to the Revenue Court under cl. (l), s. 95 of the Rent Act, or it has been fixed by the Collector or Assistant Collector according to s. 190 of Act XIX of 1873 PHULAHRA v. JEOLAL SINGH

I. L. R. 6 All. 52

28. ———— Suit for arrears of rent prior to order—*N.-W. P. Rent Act (XII of 1881), s. 95—N.-W. P. Land Revenue Act (XIX of 1873), ss. 72 and 77—Determination of rent by Settlement Officer.* In March 1884, the rent payable by an

the Court of first instance nor the High Court having jurisdiction to fix it, and that the claim for rent for the period in question must therefore be dismissed. *Mahadeo Prasad* v. *Mathura, I. L. R. 8 All 189,* distinguished *Phulahra* v. *Jeolal Singh, I. L. R. 6 All 52,* referred to RADHA PRASAD SINGH v. JUGAL DAS. I. L. R. 9 All. 185

29. ———— Extinguishment of proprietary right by partition—*Contract for payment of rent* Where a partition was made and the

RAI v. DOORGA RAI . 1 Agra Rev. 68

30. ———— Claim to rent——*Arrears of rent—Failure to prove liability to pay rent.* A claim for arrears of rent cannot be sustained where the claimant fails to prove that rent has ever been paid. SHEO SAHAI v. ATA HOSSEIN

2 Agra Rev. 10

LANDLORD AND TENANT—*contd.*

2. CONSTITUTION OF RELATION—*contd.*

(b) ACKNOWLEDGMENT OF TENANCY BY RECEIPT OF RENT—*contd.*

See GUMANI KAZI v. HURRYHUR MOOKERJEE

B L. R. Sup Vol 15

Or proves a contract to pay rent LUCHMEEPUT DOSS v. ENAET ALI . . 22 W. R 348

31. ———————— *Assessment and determination of rate of rent—Rent-free lands* A suit for arrears of rent cannot be maintained in respect to rent-free land until the land has been assessed and the rate of rent determined. NOOR ALI v. IMTEAZOODEEN KHAN . 3 Agra Rev. 2

32. ———————— *Suit for arrears of rent—Non-payment of rent for long period—Allegation of rent-free tenure* A landlord cannot maintain a suit for arrears of rent where a claim to hold the land rent-free by some title of exemption is set up, and the question for enquiry in such a suit is not whether the land is or is not subject to assessment, but whether, referring to the circumstances under which rent has been withheld, the land can be regarded as rent-paying land The mere fact of the land being entered in the settlement papers as assessed, or that the annual papers contain entries, is not sufficient to justify a decree for arrears of rent. CHOONEELAL v. CHITOWLA . 2 Agra 137

33. ———————— *Decree for kabuliat—Suit for arrears of rent previous to kabuliat.* Where a party, after obtaining a decree establishing his title to land, sues for and gets a decree for a kabuliat against another who was holding the land adversely to him without any contract express or implied, for the payment of rent, he cannot maintain a suit, for arrears of rent for a period previous to the kabuliat, which cannot have retrospective effect JAN ALI v GOOROO DAS ROY . . . . 8 W. R 338

34. ———————— *Mortgagor after redemption and grantee of mortgagee.* No such relation as that of landlord and tenant exists between a

35. ———————— *Purchaser of rent-paying tenure—Privity with zamindar.* There is sufficient privity of estate between the purchaser of a rent-paying holding and the zamindar to entitle the latter to claim rent KOOLOO MISR v BHYRO KULWAR . . . 2 N. W 258

36. ———————— *Liability of heir of deceased lessee for rent—Mokurrari lease—*

LANDLORD AND TENANT—contd

2. CONSTITUTION OF RELATION—*contd.*

(b) ACKNOWLEDGMENT OF TENANCY BY RECEIPT OF RENT—*contd.*

37. ———— *Registered owner, suit by, where the relationship of landlord and tenant is not shown to exist—Beng. Act VII of 1876, s. 78.* The mere fact of a person being

claimed rent sued the occupier for such rent, but was only able to prove the fact that he was the regis-

I. L R 9 Calc 517 : 12 C. L R. 141

38. ———— *Presumption of relationship of landlord and tenant* Where a

LALL MOOKHERJEE *v.* MODHOO SOODUN CHOWDHRY **8 W. R. 474**

39. ———— *Beng Regs V of 1799, s 5, and V of 1827, s 3—Sub-tenure taken charge of by Collector.* Under the provisions of Regulation V of 1799, s 3, and Regulation V of 1827, s. 3, the Collector took charge of a sub-tenure as administrator of a deceased person to whom the subtenure belonged. *Held,* the Collector was in no sense the tenant of the superior landlord and consequently no suit would lie against him under Act X of 1859 *for rent alleged to be due in respect of the* sub-tenure COLLECTOR OF BOGRAH *v.* DWARKANATH BISWAS **4 B. L. R Ap. 80 : 13 W R 194**

40. ———— *Occupation by trespasser.* Occupation by a trespasser does not create a claim to rent, though it may give grounds for an action for damages BICHOOK PANDEY *v.* NARAIN DUTT **1 N W. 26 : Ed 1873, 24**

41. ———— *Right of persons in possession under decree against person with subsequent decree for possession—Attornment, absence of.* Where *A* and *B* were in possession of lands by virtue of a decree of Court, their tenants could not be called upon to pay rent to *C*, to whom they had not attorned, but who subsequently obtained a decree for the lands in suit, so long as no decree of Court had declared the title of *C* to be superior to that of *A* and *B* *C's* remedy in such case is an action against the persons who were wrongfully in possession for mesne profits, and not in a suit for rent against their tenants, who had in good faith dealt with the persons who were the ostensible proprietors in possession under a decree. Lands may be cultivated by a mere trespasser, and in that case the cultivator would not be liable to a suit for rent, but to a suit for mesne profits Owners of land may take advances for the cultivation of indigo, and the persons by whom the advances were given may find it necessary to enter on the land and look after the cultivation and harvesting of the crop, but if they did so, they could not be sued as tenants for rent. To render a person liable to pay as a tenant, it must be proved that he has by an express or implied agreement promised to pay rent, or that he has been assessed with rent in due course of law. MUNOHUR DOSS *v* DEEN DYAL **3 N. W. 179**

42. ———— *Liability for rent from use and occupation without registration.* Parties in possession make themselves tenants by use and occupation, and may be sued for rent, even though not registered by the zamindar. LALUN MONEE *v.* SONA MONEE DABEE **22 W. R 334.**

43. ———— *Suit for rent—*

Doss Choudhry v. *Sumeeruddin Lasker, 13 B. L. R. 243 ; 21 W. R. 208 ; Surnomoyee* v. *Dino Nath Gir, I L R. 9 Calc. 908 ; Binad Lal Pakrasi* v. *Kalu Pramanik, I. L. R 20 Calc. 708,* referred to. AZIM SIRDAR *v.* RAMLALL SHAHA **I L. L 25 Calc. 324**

44. ———— *Person in possession of land served with notice to quit or pay rent*

LANDLORD AND TENANT—con'd.

2. CONSTITUTION OF RELATION—contd

(b) ACKNOWLEDGMENT OF TENANCY BY RECEIPT OF RENT—contd.

[illegible]

But see BURODA KANT ROY v. RADHA CHURN ROY . . . 13 W R 163

45 ——— Receipt of rent—*Ratification of lease* If a person being aware that another is in possession claiming to hold under a lease accepts rent from him, he thereby ratifies the lease so far as he has the power to do so, and if he wishes to protect himself from the ordinary inference that he recognizes the lease, he is bound to give distinct notice to the tenant that he intends to dispute its validity, so as to leave the tenant an opportunity of refusing payment. JUGGESHUR BUTTOBYAL v. ROODRO NARAIN ROY . 12 W R 299

See NUBO KISHEN MOOKERJEE v. KALA CHAND MOOKERJEE . . . . 15 W R 438

RAM GOBIND ROY v. DUSHOOBHOOJA DEBEE 18 W R 185

46. ——— *Transferee of intermediate tenure.* Where rent is recovered without objection by successive landlords from the transferee of an intermediate tenure from the date of [illegible]

47. ——— *Lease granted by trespasser—Ratification—Acceptance of rent—Transfer of Property Act (IV of 1882), s. 107.* Defendants held under a thika lease granted to them by *P*. In a suit which was subsequently brought against *P* by the vendor of the plaintiff, it was held that *P* had no title The plaintiff's vendor had accepted rent from the defendants and showed by his conduct that he intended to consider himself [illegible]

lord and tenant could not be created having regard to the provisions of s 107, Transfer of Property Act. LALA SHEO CHARAN LAL v. LALA PARBHOW DYAL 1 C. W. N. 142

48. ——— *Bengal Tenancy Act (VIII of 1885), s. 157—Dismissal of former suit for rent.* Plaintiff brought this suit to obtain a declaration that he had a right to the land in suit, and that the defendant No 1 was a korsa raiyat under him, and to recover khas possession upon ejectment of the defendant No. 1; plaintiff had previously brought a suit for rent against the defendant No 1, who in that suit denied the [illegible]

title to the land and for recovery of rent from defendant No. 1 *Held*, by PRINSEP, O'KINEALY, and BANERJEE, *JJ*—That s. 157 of the Bengal [illegible]

NATH ROY v. RAM CHAND AICH I. L. R. 26 Calc. 428 3 C. W. N. 266

49. ——— *Creating new* [illegible]

50. ——— *Suing for* [illegible]

according to law. MAHOMED AZMUR v. CHUNDEE LALL PANDEY . . . 7 W. R. 250

51. ——— *Acknowledgment of nature of tenancy—Receipt of rent as from particular tenure* Where the nature of a tenant's tenancy and the right of his lessor to create it are in question, the genuineness of a pottah does not settle [illegible]

[illegible] 20 W. R. 222

52. ——— *Permitting occupation of land and taking rent—Right to resume land so taken* By permitting a patnidar to take a quantity of land in addition to what is already held by him in patni, and by receiving rents from him for such additional land for a series of years, a proprietor cannot, in the absence of any kabuliat from the patnidar or verbal agreement giving him

LANDLORD AND TENANT—*contd.*

2. CONSTITUTION OF RELATION—*contd.*

(*b*) ACKNOWLEDGMENT OF TENANCY BY RECEIPT OF RENT—*contd.*

the extra land in perpetual lease, be *held* to be debarred from resuming possession. KISHORE BULLUBH MITTER *v.* BISTOO CHUNDER GHOSE 12 W. R. 188

53. ———— *Acquiescence in party holding after death of tenant having right of occupancy.* The defendant had been associated in the occupation and cultivation of certain land with *I*, a tenant with a right of occupancy, and after *I's* death continued the occupation and paid rent to the plaintiffs for nine years *Held*, that this acquiescence in his occupation must be regarded as a recognition by the plaintiffs of his having been associated with *I*, and in a suit to eject him, held the plaintiffs were not entitled to succeed. CHATOOR SINGH *v.* HEERA KOOER . . 5 W. R. 191

54. ———— *Acceptance of rent from agent* Acceptance of rent from a person acting as the agent of another is not a recognition of the agent as a tenant. BANEE LALL *v* RAM BHUROSE CHOWBEY . 1 N. W. Ed. 1873, 63

55. ———— *Ratification of —Grant prior to Beng Reg. V of 1812.* The acceptance of rent for forty years ratifies the original grant of a mokurari pottah granted prior to Regulation V of 1812 UMRITHNATH CHOWDHRY *v* KOONJ BEHARY SINGH . . W. R. F. B. 34

56. ———— *Effect of acceptance of rent from tenant holding over—Renewal of tenancy* By indenture, dated 1st February 1856 *A* leased certain premises to *B* in Calcutta for a term of ten years from 1st November 1855 at a rent of R100 per month, payable monthly. *A* covenanted with *B* to grant her on request, to be made within three months of the expiry of the term, a fresh

B or by any one claiming through her. The plaintiffs became *A's* representatives in June 1866 and gave notice to quit in September 1866, from the 1st November 1866 *Held*, that the acceptance of rent by *A* and his representatives from the defendant holding over after the expiration of the original term did not constitute a renewal of the lease for three years BROJONAUTH MULLICK *v* WESKINS 2 Ind. Jur. N. S. 163

57. ———— *Assent by zamindar to transfer of tenure.* By accepting rent the zamindar assents to the transfer of a tenure, whether the whole is sold or a part only. BHARUT ROY *v.* GUNGANARAIN MOHAPATTUR 14 W. R. 211

58. ———— *Alienation by cultivators—Acceptance of rent from alienee.* Although in a mouzah cultivators may not possess the right of alienating their holdings, yet, if, with a knowledge of such an alienation, the zamindar accepts rent from the alienee, he recognizes the alienee's position, and is as much bound as if he had expressly assented to the alienation RUMMUN SINGH *v.* ESHREE PERSHAD . . 2 Agra 144

59. ———— *Recognition of an under-tenure by the zamindar—Result of his receiving rent in respect of it—Deposit of rent by tenure-holder under Bengal Tenancy Act (VIII of 1885), s. 61, and acceptance by zamindar.* A widow in possession of her widow's estate in a zamin-

patni lease was not proved to have been made with authority, or from necessity justifying the alienation by the widow. *Held*, that the patni was, on the death of the widow, only voidable, and not of itself void; so that the plaintiff, the next inheritor of the zamindari, might then elect to treat it as valid. The plaintiff had done so He had accepted rent

facie an admission that the patni was still subsisting In the absence of evidence to put a different construction upon the plaintiff's act and to negative its effect, there was a sufficient *primâ facie* case of an election to affirm the validity of the patni. MODHUSUDAN SINGH *v.* ROOKE

I. L. R. 25 Calc. 1
L. R. 24 I. A. 164
1 C. W. N. 433

60. ———— *Admission of status of purchaser from raiyats. Held*, that a zamindar, by taking the rent of the plaintiff's purchased lands after the rent was deposited by him in the Collector's treasury, virtually admitted the plaintiff's status as purchaser from the former raiyats, and that he had attorned to him as landlord: and that, as this payment was made long before the zamindar sued the former raiyats for enhanced rent under Act X of 1859, the decrees obtained in that suit must have been collusive. GUDADHUR BENERJEE *v* KHETTERMOHUN SURMAH 7 W. R. 460

61. ———— *Transfer of tenure—Acceptance of rent from transferee* Where

decree for the rent of previous years. ABDOOL KUREEM *v.* MUNSOOR ALI . 12 W. R. 396

LANDLORD AND TENANT—*contd.*

2. CONSTITUTION OF RELATION—*contd.*

(b) ACKNOWLEDGMENT OF TENANCY BY RECEIPT OF RENT—*contd.*

62. ———————— *Purchaser at sale in execution of decree—Leases made after decree.* The purchaser at a sale in execution of a decree obtained by a mortgagee in satisfaction of his mortgage-debt is not bound by leases executed by the mortgagor after decree, unless he has recognized the leases after his purchase by receiving rent from the lessees as such HUNOOMAN DOSS *v* KOOMEROONISSA BEGUM

W. R. F. B. 40 : 1 Ind. Jur. O. S. 42

s c. KOOMEROONISSA BEGUM *v* HUNOOMAN DOSS . . . Marsh. 122 : 1 Hay 266

63. ———————— *Evidence of confirmation of tenure—Giving receipts for rent* The giving of receipts for rent, coupled with the fact of payment of rent at the old rate down to the present time, is evidence of confirmation of the tenure by the auction-purchaser and his successor TARA CHAND DUTT *v* WAKEENOONISSA BIBEE

7 W. R. 91

64. ———————— *Lease by naib of zamindar—Transfer of tenure* When a zamindar dispossessed the purchaser of a jungleboory tenure, the title of whose vendor was acquired from the zamindar's naib, who had no power to grant such a pottah :—*Held*, that the receipt of rent by the zamindar from the plaintiff and his vendor did not amount to a ratification of the plaintiff's right to hold under the pottah transferred to him by the vendor A zamindar is not bound to recognize tenures not created by himself or by any authorized agent on his part BISSUMBHUR POORKAET *v.* BHUGGOBUTTY CHURN POORKAET W. R. 1864, 292

65. ———————— *Receipt of rent from a person as sarbarahakar—The original tenant's name also appearing on the receipt as tenant, effect thereof—Whether it amounts to recognition of the sarbarahakar as tenant* The mere fact of rent having been received from a certain person does not

recognise the purchaser at a tenant. *Bhojohuree Bunik* v *Aka Golam Ali, 16 W. R. 97, Gaur Lal Sirkar* v. *Rameswar Bhumik, 6 B. L R. App. 92,* relied on. *Gudadhur Banerjee* v. *Khettur Mohun Surmoh, 7 W. R. 460 ; Ram Gobind Roy* v. *Dushoobhoojah Debee, 18 W. R. 195,* distinguished RASAMOY PURKAIT *v.* SRINATH MOYRA (1902)

7 C. W. N. 132

66. ———————— *Same rent paid for a long period, not conclusive of permanent tenancy —Origin of lease known—Pottah found to be a mutation pottah—Circumstances justifying inference as to permanency.* The mere fact of an acceptance of rent

LANDLORD AND TENANT—*contd.*

2 CONSTITUTION OF RELATION—*contd.*

(b) ACKNOWLEDGMENT OF TENANCY BY RECEIPT OF RENT—*concld.*

particular case may properly lead to such an inference, each case depending upon its own circumstances In this case the lease, which was embodied in a pottah, dated the 9th July 1822, was, upon the circumstances of the case, held to be in the nature of a mutation pottah merely and not one newly granted, and the tenure held to be a permanent one J. WINTERSCALE *v.* SARAT CHUNDRA BANERJEE (1904) . 8 C. W. N. 155

67. ———————— *(X of 1859) s. 77—Landlord and Tenant Act (X of 1859), ss. 77 153, 155, 160—Rent suit—Intervener—Decision of Deputy Collector if appealable to Collector or Zillah Judge—" Question relating to title to land, etc "* Where in a suit for rent, another person intervenes under s 77 of Act X of 1859, on the ground that he had actually and in good faith received and enjoyed the rent before and up to the commencement of the suit, all that the Deputy Collector has to determine is which of the two parties, the plaintiff and the intervener was in actual receipt and enjoyment of the rent and any question of title is gone into only incidentally for the purpose of deciding the main question. An appeal therefore lies from the Deputy Collector's decision to the

(c) ACKNOWLEDGMENT OF TENANCY BY PAYMENT OF RENT.

68. ———————— *Suit by landlord for possession—Denial of landlord's title by tenant—Effect of payment of rent—Onus of proof—Payment of rent by agent of tenant—How far principal bound—Rent paid by mistake—Adverse possession—*

sufficient in law to raise a *primâ facie* presumption of title in the plaintiff's favour, and to throw the *onus* upon the defendants of proving that the ladd belonged to Government and that the rent had been

LANDLORD AND TENANT—*contd.*

2. CONSTITUTION OF RELATION—*concld.*

(*c*) ACKNOWLEDGMENT OF TENANCY BY PAYMENT OF RENT—*concld.*

paid under a mistake. VITHALDAS KANJISHET *v.* SECRETARY OF STATE FOR INDIA (1901) **I. L. R. 26 Bom. 410**

3 OBLIGATION OF LANDLORD TO GIVE AND MAINTAIN TENANT IN POSSESSION.

1. ———— **Presumption of ability to give possession** When a zamindar gives a lease, the presumption is that he is in a position to give possession of the property leased DONZELLE *v.* TEK NARAIN SINGH . **2 W. R., Act X, 103**

2. ———— **Implied contract for possession**—*Peaceable possession* In every agreement to lease land there is an implied contract that the lessor will give peaceable possession of the land leased to the lessee MUNEE DUTT SINGH *v.* CAMPBELL . . . . **11 W. R. 278**

Affirmed on review . . **12 W. R. 149**

3. ———— **Lessee without possession**—*Right to rent—Condition precedent.* A landlord cannot claim rent under a kabuliat where the lessee has never obtained possession, delivery of possession being ordinarily a condition necessary for the maintenance of an action for rent HURISH CHUNDER KOONDOO *v* MOHINEE MOHUN MITTER **9 W. R. 582**

ASHRUFOONISSA BEGUM *v.* TOSUDDUCK HOSSEIN **22 W. R. 260**

4. ———— **Right of tenant to be continued in quiet possession**—*Right to rent* The right of a landlord to receive rent from a [illegible]

[illegible] **W. R. [illegible]**

5. ———— **Possession not obtained by lessee**—*Right to rent* A suit for rent will not lie where the lessee has never obtained possession of the land leased to him. BULLEN *v.* LALIT JHA **3 B. L. R. Ap. 119**

6. ———— **Lessee kept out of possession**—*Right to rent—Dispossession by or through landlord* A suit for rent will not lie unless the relation of landlord and tenant be established, and a tenant cannot be made liable for rent, if it be established that he has been kept out of the possession of the tenure by the landlord. ABDOOL GUNNEE *v* KHERODE CHUNDER ROY . **2 Hay 409**

ABDOOL GUNNEE *v.* POORNO CHUNDER ROY **2 Hay 524**

7. ———— **Dispossession of tenant**—*Obligation of landlord to indemnify tenant.* In the absence of any express agreement to the contrary, a landlord is under the implied obligation to indemnify his tenant against ouster or disturbance

LANDLORD AND TENANT—*contd.*

3. OBLIGATION OF LANDLORD TO GIVE AND MAINTAIN TENANT IN POSSESSION—*contd.*

of possession by his own act, or by the acts of those who claim under him, or have a right paramount to his, but not against the wrongful acts of third parties. RASSAM *v.* DONZELLE . **23 W. R. 121**

8. ———— **Implied covenant for quiet enjoyment**—*Interruption of tenant's enjoyment by order of plague officials—Suit for rent* A lessor sued to recover from his lessee rent for fifteen months from 1st August 1897 to 31st October 1898, under an agreement for lease for ten years, dated 1st September 1890, *i.e.*, prior to the application of Transfer of Property Act (IV of 1882) to Bombay. The defendant contended that in the agreement there was an implied covenant for quiet enjoyment, and that, as he had been compelled by the plague authorities to vacate the premises from 5th February 1898 to 1st April 1898, there had been a breach of the covenant. He claimed therefore to deduct the rent for that period or to be allowed it as a counterclaim as damages for disturbance *Held* [illegible]

9. ———— **Failure to give possession**—*Agreement to give lease—Procedure by tenant.* When consideration-money has been paid for a patni lease with a view to khas possession and such possession is not obtained, the proper course is to repudiate the lease and bring an action immediately. MOKOOND CHUNDER ROY *v.* PRANKISSEN PAUL CHOWDHRY . . **W. R. 1864, 287**

10. ———— **Lease given without authority and afterwards set aside**—*Liability for rent after dispossession.* Where a lease was granted by a Deputy Collector without authority, and his act set aside by the Collector the tenant, who was turned out of possession without any beneficial occupation for the short period of his lease, was held not to be liable for rent. KALEE DOSS BANERJEE *v.* NUBEEN CHUNDER CHATTERJEE **24 W. R. 91**

11. ———— **Dispossession by stranger**—*Liability for rent* A tenant disposed by any person not claiming under the landlord is still liable for the rent; his remedy is against the wrong-doer for damages. GALE *v* CHEDI JHA . **2 Hay 591**

12. ———— **Failure of lessor to protect possession of lessee**—*Liability for rent—Dispossession.* If a lessor fails by remissness to do that which he alone can do to protect his lessee in possession, even independently of any protective provision

LANDLORD AND TENANT—*contd.*

3. OBLIGATION OF LANDLORD TO GIVE AND MAINTAIN TENANT IN POSSESSION —*contd.*

13. ———— **Disturbance by landlord of peaceable possession**—*Suspension and apportionment of rent* Where the act of a landlord is not a mere trespass, but something of a graver character, interfering substantially with the enjoyment, by the tenant, of the demised property, the tenant is entitled to a suspension of rent during such interference, even though there may not be actual eviction If such interference be committed in respect of even of a portion of the property, there should be no apportionment of rent where the whole rent is equally chargeable upon every part of the land demised But if the interference is in respect of only a certain portion of the demised property, the rent for which is separately assessed, there should be apportionment DHUNPUT SINGH v MAHOMED KAZIM ISPAHAIN **I. L. R. 24 Calc. 296**

14. ———— **Failure to keep tenant in entire possession**—*Surrender by tenant on being partly dispossessed—Liability for rent* Where a plaintiff brought a suit to recover the rents of some lands which he had leased out to defendant, but defendant pleaded that he had relinquished the lands because, in a suit brought against him by a third party, who claimed a portion of the lands, a decree had given the said party possession of the portion claimed by him; and the question arose whether defendant was justified in relinquishing the lands, seeing that this decree had been reversed on appeal, and that defendant, if he had waited, would have been put in possession of all the land covered by his lease :—*Held*, that defendant

15. ———— **Disturbance by landlord of peaceable possession**—*Suspension and apportionment of rent.* A landlord is not entitled to reco-

land is separately assessed and separately chargeable with rent. *Dhunput Singh* v. *Mahomed Kazim Ispahain, I. L. R. 24 Calc. 296*, distinguished. HARRO KUMARI CHOWDHRANI v. PURNA CHANDRA SARBOGYA (1900)
I. L. R. 28 Calc. 188

LANDLORD AND TENANT—*contd.*

3 OBLIGATION OF LANDLORD TO GIVE AND MAINTAIN TENANT IN POSSESSION —*contd*

16. ———— **Landlord bound to put tenant into possession.**—A landlord is bound to put the tenant into possession of the land let to him, and unless and until he does this he is not entitled to the rent *Hurish Chunder Koondoo* v. *Mohinee Mohun Mitter, 9 W R 582*, referred to SHAMA PROSAD GHOSE v TAKI MULLIK (1901)
5 C. W. N. 816

17. ———— **Ouster of tenant by paramount owner**—*Claim by tenant against his lessor for compensation for such ouster—Lease—Covenant for quiet enjoyment—Damages—Measure of damages—Transfer of Property Act (IV of 1882), s 108, cl (c)* The words "without interruption," in s. 108, cl (c), of the Transfer of Property Act (IV of 1882), give a lessee in India the same rights as he would have under what is known in England as a covenant for quiet enjoyment in an unqualified form In other words, the lessee is protected against interruption, by whomsoever it is occasioned. Where the interruption is caused by the paramount

that, under cl (c) of s 108 of the Transfer of Property Act (IV of 1882), *A* was entitled to recover compensation from *B* TAYAWA v GURSHIDAPPA (1900) . . . . . **I. L. R. 25 Bom. 269**

18. ———— **Abatement f rent of portion of land tenant did not obtain possession**—*Bengal Tenancy Act (VIII of 1885), ss 38 and 52.* Where in a suit for rent a tenant, who did not obtain possession of a portion of the lands let out to him, pleaded that he was not bound to pay rent of that portion :—*Held*, that he was entitled to say so and it was not necessary for him to bring a separate suit for abatement of rent That a suit under ss 38 and 52 of the Bengal Tenancy Act was not necessary, as those sections do not apply, where the tenant has never been put into possession by the landlord SIBA KUMARI DEBI v. BIPRODAS PAL CHOWDHURY (1908) . . . . . **12 C. W. N. 767**

19. ———— **Eviction**—*Dispossession by landlord, through another lessee—Non-delivery of possession—Suspension of rent—Apportionment—Boundaries specified in lease—Quantity of land if to be ascertained from boundaries from area mentioned* Where a lessee was prevented from taking possession of a portion of the demise land by another lessee to whom the said portion was demised by a subsequent lease, *Held, per* CHITTY J —There was no eviction properly so called of the lessee by the landlord. *Per* VINCENT, J. (contra) —There was eviction of the first lessee by the second by the procurement of the landlord. *Dhun-*

LANDLORD AND TENANT—*contd.*

3. OBLIGATION OF LANDLORD TO GIVE AND MAINTAIN TENANT IN POSSESSION—*concld.*

put Singh v. *Mahomed Kazım Ispahain, I. L. R. 24 Calc. 296, Harro Kumari Choudhrani* v. *Purna Chandra Sarbogya, I. L. R 28 Calc. 188, Kali Prosanna Khasnabish* v. *Mathura Nath Sen, I. L. R. 34 Calc. 191,* referred to. *Per* CURIAM—That as the landlord was found not to have acted *mala fide*, and the lessee so far from repudiating the lease kept possession of the remaining portion and even paid rent subsequently to the creation of the second lease, the lessee could not, in a suit for rent by the landlord, ask for a suspension of the whole rent, and was bound to pay proportionate rent. *Quære* · Whether the technicalities to be found in the English law should be allowed to affect the relations of landlord and tenant in this country. *Per* CHITTY, *J.*—It is true that speaking generally the boundaries given in a conveyance are the true criterion of the amount of land; conveyed it is not however an absolutely hard and fast rule; the true construction to be put upon a deed is that which will as far as possible bring its several provisions into harmony with one another and express most nearly the intention of the parties *Per* VINCENT, *J*—Where there is a description of land in a conveyance or lease setting forth the boundaries and specifying the area, the land within the boundaries passes by the deed. ANNADA PROSAD MUKHOPADHYA *v* MATHURA NATH NAG MOZUMDAR (1909) **13 C. W. N. 702**

4. OBLIGATION OF TENANT TO KEEP HOLDING DISTINCT

1. ———— **Confusion of boundaries**—*Person holding land on lease and land of his own.* A tenant is bound to keep distinct from his own land during the tenancy, and to leave clearly distinct at the end of it, the land of his landlord Where, owing to the negligence of the tenant, the land demised becomes confounded with his own, the tenant, unless he can ascertain the former, is bound to deliver to the landlord a portion of the lands of which the boundaries have been confounded equal in value to the land demised DUGAPPA CHETTI *v.* VIDHIA PURNA TIRTHASAMI **I. L. R. 6 Mad. 263**

DOORGA KANT MOZOOMDAR *v.* BISHESHUR DUTT CHOWDHRY . . **W. R. 1864, Act X, 44**

2. ———— *Interference of Civil Court to fix them.* In equity, if through the default of a tenant ...

decreed that they should be defined and fixed in such a manner that the produce of the total land in each

LANDLORD AND TENANT—*contd.*

4. OBLIGATION OF TENANT TO KEEP HOLDING DISTINCT—*concld.*

...

GANGOOLY . . . . . **9 W. R. 95**

3. ———— **Obliteration of boundary-marks by cultivation**—*Effect of, on claim to rent* A claim to rent for certain land must not be dismissed merely because the defendant, by planting indigo, has obliterated the boundary-mark of that land. It must be ascertained who, by previous enjoyment, is entitled to receive the rents of the land, if the plaintiff is not so entitled BROJONATH ROY *v.* GILMORE . . . **2 W. R., Act X, 48**

4. ———— **Tenant allowing encroachment of tenure**—*Obligation of lessee to avoid dispossession or encroachment on lessor's property* It is a general principle of law that it is incumbent upon every lessee to protect his lessor's property from encroachment or unlawful eviction, and that, if he fails to do so, he exposes himself to an action for damages by his landlord PROSUNNO MOYI DASI *v.* KALI DAS ROY . **9 C. L. R. 347**

5. ———— **Confusion of boundaries.** Where, owing to the negligence of the tenant, the land demised becomes confounded with other lands, the tenant, unless he can ascertain the former, is bound to make good to the landlord the quantity of the land to which the latter is entitled. ISMAIL KHAN MAHOMED *v.* BROUGHTON (1901) **5 C. W. N. 846**

5. LIABILITY FOR RENT.

1. ———— **Proof of liability**—*Production and proof of kabuliat.* The production of a kabuliat and proof of its execution by the tenant is sufficient to charge him with rent without the production of the pottah. MAHOMED HYDER HOSSEIN *v* JEEAWUN . . **1 N. W. Ed. 1873, 43**

2. ———— **Non-completion of contract**—*Mad. Regs. XXX of 1802, s 6, and V of 1822, s. 9* Where no pottahs and muchalkas have been exchanged between the parties, occupants of lands cannot, in accordance with Regulation XXX of 1802, s 6, and Regulation V of 1822, s. 9, be sued for its proceeds, even though they have admitted the plaintiffs to be the proprietors. TANUVIYAN *v.* VALANAGANDA . . . . **1 Mad. 3**

3. ———— **Interruption of tenancy**— ...

KHAN . . . . . . **8 W. R. 54**

LANDLORD AND TENANT—*contd.*

5. LIABILITY FOR RENT—*contd.*

4. ———— *Dispossession of tenant in middle of year—Right to rent accrued due on interruption of occupation.* A landlord, by dispossessing his tenant in the middle of the year, does not, in all cases, forfeit his right to rents which have already accrued due. Whether he does or not [illegible]

5. ———— *Dispossession, and recovery of mesne profits for.* In a suit for rent in which defendant pleaded that during the period for which rent was claimed the tenants had been out of possession of the land, having been ousted by a third party to whom the zamindars (plaintiffs) had given a lease of the land:—*Held*, that the zamindars were precluded from suing defendants for rent on account of such period, even though the latter had recovered a decree with wasilat for the period of dispossession. KADUMBINEE DOSSIA *v* KASEENAUTH BISWAS . . . . 13 W. R. 338

6. ———— *Wrongful act of superior tenure-holders—Ouster.* In a suit by a [illegible]

that such wrongful act of the intervenor defendants (the superior holders) was not in law sufficient to constitute an ouster of the plaintiff, but gave the tenant defendants a cause of action against them for damages. CHUNDER NATH BHUTTACHARJEE *v* JUGGUT CHUNDER BHUTTACHARJEE 22 W. R. 337

7. ———— *Rent after loss of possession—Ejectment by zamindar.* A zur-i-peshgidar cannot compel his lessees to pay rent when both he and they are evicted by the zamindar. BISHEN DYAL SINGH *v* PROBHOO DASS 1 W. R. 1

8. ———— **Assignment of right to recover rent**—*Subsequent suit for arrears of rent* A tenant was authorized by his landlord to pay a certain portion of his rent to *T*, a creditor of the [illegible]

that he was entitled to recover only the surplus beyond the amount for which *T* had obtained a decree, notwithstanding such decree was unsatisfied LALLAH GOUR NARAIN *v* KARROO LALL THAKOOR Marsh. 383: 2 Hay 447

9. ———— **Rent paid to some one else with landlord's acquiescence**—*Subsequent suit for such rents.* A tenant cannot afterwards be held liable for rents which he pays to a third party (co-sharer) with the acquiescence of his landlord, expressed or implied; and where the relation of landlord and tenant ceases with the consent of the landlord, the landlord cannot again claim rent unless he shows how or when the relation revived. MUDDUN MOHUN ROY CHOWDHRY *v.* CHUNDER SEKHUR BHUTTACHARJEE . . . 25 W. R. 115

10. ———— **Rent between date fixed for leaving and actual previous departure.** [illegible]

though he actually left on the 16th May, he was liable for rent up to the 1st June RUFF *v* STOKOE 9 W. R. 213

11. ———— **Purchaser of house**— *Notice of rate of rent—Liability of tenant at fixed rent.* [illegible]

12. ———— **Auction-purchaser of orchard from zamindar**—*Orchard included in settled area of village.* An auction-purchaser of the rights and interest of the zamindar in an orchard cannot be treated by the latter as his raiyat, because the area of the orchard is included in the settled area of the village of which he is the proprietor, and a suit by the latter to impose rent on the garden and for delivery of kabuliat is not maintainable MOOTEE *v* ROORA . . . . . 3 Agra 159

13. ———— **Purchaser in execution of decree**—*Payment for period subsequent to purchase—Notice.* An auction-purchaser, with notice of a payment in advance, made by the tenant to the former proprietors of rent due for a period subsequent to the date of purchase, is bound by such payment RAM LALL SHAW *v* JOGGENDRO NARAIN ROY . . . . . 18 W. R. 328

14. ———— **Purchaser of a portion of tenure, whether liable for rent before date of purchase**—*Joint liability of purchaser of a* [illegible]

followed *Chatraput Singh* v. *Girindra Chunder Roy, I. L R 6 Calc. 389*, and *Moharanee Dasya* v. *Harendra Lal Roy, 1 C. W. N. 458*, distinguished.

LANDLORD AND TENANT—*contd.*

5. LIABILITY FOR RENT—*contd.*

The transferree of a part of a tenure is jointly liable with his co-sharer for the whole rent, for although the privity between the parties may be one of estate only, it is in respect of the whole of the tenure, though the transfer was of a part, by reason of the indivisibility of the tenure without the landlord's consent. The fact of the lease being for a limited time does not make any difference *Shib Das Bandopadhya* v. *Baman Das Mookhopadhya, 8 B L R. 237 ; Hare* v. *Cator, Cowp. 766 ; Halford* v. *Hatch, 1 Doug. 182 ;* and *Curtis* v. *Spitty, 1 Bing. N. C. 757,* distinguished. *Kristo Bulluv Ghose* v. *Kristo Lal Singh, I. L. R. 16 Calc. 642 ; Chintamoni Dutt* v. *Rash Behari Mondul, I. L R. 19 Calc. 17*, and *Sourindra Mohun Tagore* v. *Surnomoyi, I. L. R. 26 Calc. 103,* referred to. JOGEMAYA DASSI v GRINDRA NATH MUKERJEE
4 C. W. N. 590

15. ———— **Purchaser of specific share** —*Proportionate liability for rent.* The purchaser of a specific share of a talukh, which with other talukhs was held by the same jotedar, can be held liable only for the rent due upon the share purchased and there can be no difficulty in determining the rent payable if each tenure has a separate jama. and each share-holder holds a specific share. KHEMA MOYEE *alias* KHEMESSUREE DEBIA v. RADHA PEAREE DEBIA CHOWDHRAIN
8 W. R. 469

16. ———— **Suit for balance of amount of decree against one tenant only**—*Successful claim by another party after decree* Plaintiff, a patnidar, got a decree for rent against *B's* wife, the ostensible dar-patnidar. Shortly afterwards *B's* nephew brought a suit against *B* for an 8 annas share of the dar-patni, which he claimed as joint family property, and obtained a decree Before this last decree was executed, the dar-patni was sold to satisfy the rent decree, but the proceeds were insufficient. In a suit for the balance remaining due: —*Held*, that *B* and his nephew were jointly liable for the amount. PROMOTHO NATH BANERJEE v JOGENDRO NATH ROY . . **12 C. L. R. 15**

17. ———— **Assessment of rent**—*Land covered with trees—Act X of 1859, s 23, cl. 1* *Held*, that the defendants, whose proprietary title at the time of settlement was recognized in the land then covered with trees, were not liable to assessment by zamindars, under the provisions of cl. 1, s 23, Act X of 1859, on account of the trees having since disappeared and the land having been brought into cultivation. JADOO RAI v. MAHOMED TUQUEE
1 Agra Rev. 24

See MOOSEY KHULEREY v. MAHOMED TUQUEE
1 Agra Rev. 3

18. ———— **Misrepresentation by landlord**—*Cross-suit* A plea that the defendant was deceived into taking a lease by the misrepresentation of the plaintiff cannot be pleaded as an answer to an action for rent. Such a defence should be made the subject of a cross-suit. ISHREE PERSHAD RAE v. BEHAREE LAL . . **2 N. W. 243**

19. ———— **Liability of the transferee of a fractional share of patni to pay rent**—*Reg. VIII of 1819, s. 6—Personal liability of patnidar for rent, notwithstanding a stipulation in the patni*

of the requisite security, yet the transfer is not altogether void, and he is liable for rent severally and jointly with the registered tenant, if the landlord chooses to recognize him as one of the joint holders of the patni, and he is also liable for the entire rent of the patni estate. Notwithstanding a stipulation in the patni lease that on default of any instalment of rent the landlord shall be entitled to realize the same by auction sale of the patni mehal, the

to. SOURENDRA MOHAN TAGORE v. SURNOMOYI
I. L. R. 26 Calc. 103
3 C. W. N. 33

20. ———— **Failure to pay Government assessment**—*Land Revenue Code (Bom Act V of 1879), ss. 56 57, 81, 214 (e) and (i)—Lease —Forfeiture—Payment of the arrears by tenant actually in possession—Forfeiture not followed by sale of occupancy—Lease not destroyed by the forfeiture—Tenant's liability for rent subsequent to the forfeiture.* A registered occupant of land having failed to pay the arrears of Government revenue, his occupancy was forfeited under s. 56 of the Land Revenue Code (Bombay Act V of 1879), but the forfeiture was not followed by sale of the occupancy, the Collector having allowed the registered occupant

feiture, and the lessee is still under liability to his landlord. GANPARSHIBAI v. TIMMAYA. SHIVAPPA v. HALEPOIT . . **I. L. R. 24 Bom. 34**

21. ———— **Occupancy-raiyat dying intestate**—*Liability of the heirs of a deceased occupancy-raiyat to pay rent—Surrender of holding—Bengal Tenancy Act (VIII of 1885), ss. 5, 26,*

LANDLORD AND TENANT—*contd.*

5. LIABILITY FOR RENT—*contd.*

and 86 The heirs of an occupancy-raiyat, dying intestate, are liable to pay rent, whether they occupy the land or not, until they surrender the holding in the manner prescribed by s 86 of the Bengal Tenancy Act, 1885 PEARY MOHUN MOOKERJEE *v* KUMARIS CHUNDER SIRKAR

I. L. R. 19 Calc. 790

22. ———— Occupancy-tenant—*Liability of holder of right of occupancy for arrears of rent which accrued in lifetime of his predecessor.* An occupancy-tenant in possession who has accepted the occupancy-holding is liable to be sued for arrears of rent, not barred by limitation, which accrued in the lifetime of the person from whom the right of occupancy has devolved on him. LEKHRAJ SINGH *v* RAI SINGH . **I. L. R. 14 All. 381**

23. ———— Lease to one partner on behalf of himself and his co-partners—*Suit for rent—Making co-partners parties—Use and occupation* When one partner *A* takes a lease of [illegible]

[illegible] not a mere contract; it is a conveyance, and effects a transfer of property The lessee can only be the person named in the lease If that person becomes a lessee on behalf of some one else—as he may do—the law regards him as a trustee for that other person, and does not consider that other person as the lessee, since there is no demise or conveyance to him. The covenant to pay rent may be made on behalf of another person, but, as far as the lessor is concerned, it must be deemed to be only on behalf of the person to whom the demise is made Neither are *B* and *C* liable to be sued by the lessor [illegible]

I. L. R. 16 Bom. [illegible]

24. ———— Lease—Assignment by Official Liquidator of lease held by a company in liquidation—*Assignment not in writing registered—Transfer of Property Act, s. 2 (d)* In the course of the winding up of a company, the Official Liquidator, with the sanction of the Court, sold the remainder of a lease for a long term of years, reserving a rent, which was held by the company No written assignment was ever executed, but the Official Liquidator handed over the lease to the purchaser, who entered into possession In a suit [illegible]

use and occupation, and under such circumstances the rent fixed by the lease would be a fair basis for the amount to be decreed. GAYA PRASAD *v* BAIJ NATH . . . . **I. L. R. 14 All. 176**

25. ———— Liability of agent for rent—*Honorary Secretary to a school maintained by a foreign society* The plaintiff sued the defendant to recover possession of a certain house in Bombay and for arrears of rent The defendant pleaded that the house in question was occupied by the Beni-Israel school of Bombay which was main- [illegible]

There was nothing to show that the contract for the house was made on the personal credit of any one except the defendant BHOJABHAI ALLARAKHIA *v* HAYEM SAMUEL . . **I. L. R. 22 Bom. 754**

26. ———— Liability of purchaser of khasgi (private or personal) land of a khoti sharer—*Mortgage of the khoti takshim (share)—Sale in execution of a decree on the mortgage—Partition among the khoti sharers—Interest acquired by the purchaser at the execution sale—Agreement by the mortgagor to be responsible for the revenue—Agreement coming to an end with the extinction of the equity of redemption* *Primâ facie* all land not shown to be alienated is liable to [illegible]

plaintiff, and undertook to pay the Government dues on it Plaintiff got a decree on his mortgage, and in execution the land was sold, and purchased by defendant in the year 1878 In the year 1881, the khoti sharers effected partition In 1883 defendant took possession of the land In 1884, [illegible]

purchased by the defendant *Held*, that as the partition between the khoti sharers took place after the execution-sale, only the occupancy of the land was sold to the defendant, and that the plaintiff was [illegible]

extinction of the equity of redemption by the Court-sale. BALKRISHNA MHADSHET *v.* VISHVANATH KESHAV JOG . . **I. L. R. 19 Bom. 528**

LANDLORD AND TENANT—*contd*

5. LIABILITY FOR RENT—*contd.*

27. ———— **Suit for arrears of rent—**

tained delivery of possession in execution of decree in 1891, and in 1892 mesne profits for the years 1295 (1887-88) to the Bhadui season of 1299, (1891-92) were awarded to him At the time of the ascertainment of mesne profits, the landlords claimed to set-off the rent against each year's profits, but they were referred to a separate suit, and set-off was not allowed. The present suit for refund of profits or rent for the period aforesaid was brought in August 1892, and one of the objections raised was that the claim to the rents of 1295 and 1296 was barred by limitation The plaint alleged that the cause of action accrued upon the date of ascertainment of profits and the rejection of the claim to set-off in 1892, and it was urged that at all events it did not accrue before delivery of possession in 1891. *Held*, that the objection was valid and the claim to the rents in question was barred by limitation *Swarnamayi* v. *Shashi Mukhi Barmani, 2 B L R P C. 60 : 11 W R P. C. 5 · 12 Moo. I. A 244*, and *Din Dyal Paramanick* v. *Radha Kishori Debi, 8 B L R. 536 · 17 W R 415*, distinguished *Kadumbinee Dossia* v. *Kashinath Biswas, 13 W. R. 338*, followed. *Eshan Chunder Roy* v *Khajah As:* ... *Roy Chowd* ... *I. L R. 9* ... v. MAHOMI ...

28. ———— **Liability of representatives**—*Suit to recover arrears of rent from representatives of tenant at fixed rates Held*, that the legal representatives of a deceased tenant at fixed rate, who had died leaving the rent payable by him in arrear, were liable for payment of the arrears to the extent of the assets of the tenant which had come into their hands, and that this liability was not affected by the question whether or not they took over the tenancy of the deceased themselves *Lekhraj Singh* v. *Rai Singh, I. L. R. 14 All 381*, referred to. MAHARAJA OF BENARES *v.* DALJIT SINGH . . . . **I. L. R. 19 All. 352**

29. ———— **Suit for rent by unregistered proprietor**—*Beng Act VII of 1876, s. 78 —Application for registration as proprietor.* S 78 of the Land Registration Act, 1876, precludes a person ...

KANT ACHARYA BAHADUR *v* HEMANT KUMARI DEVI . . . . **I. L. R. 16 Calc. 706**

DHORONIDHUR SEN *v.* WAJIDUNNISSA KHATOON **I. L. R. 16 Calc. 708 note**

30. ———— **Interruption of tenancy—** —*Rent-suit—Disturbance of quiet possession by landlord—Liability to pay rent—Eviction, not complete.* The law does not require that there should be a complete eviction of the lessee in order that he may be exempted from liability to pay rent. *Dhunput Singh* v. *Mahomed Kazim Ispahain, I. L R. 24 Calc. 296*, approved. A lessor is not ...

31. ———— **Co-sharer landlord**—*Suit—Rent—Variance between pleading and proof—Converting suit of one nature into one of a different nature.* When a landlord sues for the entire rent of a holding, but it is found that he is entitled only to a share of the rent, the suit must be dismissed, unless his co-sharer landlords are made parties to it, or an arrangement is proved between the landlords and the tenant that the latter should pay each landlord his proportionate share of the entire rent. *Gani Mahomed v. Moran, I. L. R 4 Calc. 96 : 2 C. L R. 371*, followed. NEPAL CHUNDRA GHOSE *v* MOHENDRA NATH ROY CHOWDHRY (1904) **I. L. R. 31 Calc. 707**

32. ———— *Co-sharers, suit for rent by—Liability for rent.* The plaintiff and the defendants, being some of the co-owners of a zamindari, purchased certain holdings under the zamindari and were in occupation of separate portions of them :—*Held*, the defendants were not, in the absence of any agreement between themselves and the plaintiff to pay him rent, the tenants of the plaintiff in respect of the lands actually occupied by them, and were not liable to pay him rent for the same. GIRINDRA CHANDRA PAL CHOWDHRY *v* SREENATH PAL CHOWDHRY (1905) **I. L. R. 32 Calc. 567**

33. ———— *Rate of rent—* ...

34. ———— *Right of co-sharer landlords to collect rent jointly—Bengal Tenancy Act (VIII of 1885), s 65. A* and *B* being co-sharer landlords collected rent from their tenants *C* and *D* separately Subsequently *C* and *D* sold their interests to *E* *A* and *B* then demanded rent from *E* jointly. *E* objected on the ground that *A* and *B* having collected their rent separately for many years, could not now sue jointly. *Held*, that there was nothing to prevent the co-sharer landlords from suing *E* jointly for their rent, there being no evidence to show that the former agreement to collect rent separately was to be perpetual *Shyama Charan Bhuttacharya* v. *Akhoy Kumar Miller, 10* ...

LANDLORD AND TENANT—*contd.*

5. LIABILITY FOR RENT—*contd.*

17 Calc. 695, referred to *Raja Pramoda Nath Roy v. Raja Ramoni Kanti Roy, 9 C. W. N. 34*, distinguished. AKSHOY KUMAR MITRA *v.* GOPAL KAMINI DEBI (1906) . . **I. L. R. 33 Calc. 1010**
s.c. 10 C. W. N. 952

35. ———— *Bengal Tenancy Act (VIII of 1885), ss 65, 159—Sale in execution of a decree for arrears of rent at the instance of a co-sharer landlord—Interest of unrecorded tenant how*

a suit against *N*, *B* and *T* for his share of the rent and got a decree; in execution of the decree the holding was sold and purchased by the 1st defendant. *Held*, that the 1st defendant purchased only the right, title and interest of the judgment-debtors AFRAZ MOLLAH *v.* KULSUMANNESSA BIBEE (1905)
10 C. W. N. 176

36. ———— *Suit for rent by co-sharer landlord against some of several joint tenants—Limitation—Maintainability* Art 2 (*b*) of Sch. III of the Bengal Tenancy Act applies to a suit for rent by a co-sharer landlord A suit for rent against some of several joint tenants is maintainable as joint tenants are jointly and severally liable. JOGENDRA NATH ROY *v.* NOGENDRA NARAIN NANDI (1907) . . . **11 C. W. N. 1026**

37. ———— "**Indefiniteness**"—*Suit for rent*

ing to the rent of the neighbouring wet lands, is not bad for indefiniteness There is a material distinction between the power of the Court in dealing, in suits under s 8 or s 9 of the Rent Recovery Act, with questions which have not been settled by contract or specifically provided for by law, and its power when dealing with a litigation

payable by the tenant for the services of the village accountant and other public servants of the village would be summarily recovered and charged with interest, if in arrear, is not an improper term. *Semble:* That a tenant may be estopped from objecting to the terms of a pottah, where he has accepted pottahs containing similar terms for a series of years previously in respect of the same

38. ———— **Repudiation of lease**—*Rescission—Suit for rent—Denial of liability to pay rent on the ground of lessee not obtaining possession, effect of.* Plaintiff brought a suit for a declaration of her title to and to recover possession of two villages, which she alleged had been leased to her by a *dar-putni* lease by defendant No. 6 who had obtained a *putni* lease of the same together with other villages from the father of defendants Nos 1 to 5 Defendant No 1, *inter alia*, stated that

pleaded that he was not bound to pay rent for those villages as he had never been placed in possession of them *Held*, that the conduct of the defendant No 6, the lessee of the *putni* lease in the course of the litigation between him and the father of defendants Nos 1 to 5, could not be treated as a repudiation or rescission of the lease so far as it covered the villages in suit. HARA SUNDARI DEBYA *v* JOGENDRA NATH MOZUMDAR (1905)
9 C. W. N. 387

39. ———— **Dispossession**—*Liability to pay rent—Kabuliat received by landlord from sub-tenant—Disturbance* Where a landlord took *kabuliats* from the under-tenants of his tenant, but the latter was not dispossessed: *Held*, that the tenant was liable to pay rent when as a matter of fact he was not dispossessed and was never disturbed SRIMATI MONI *v* KALACHAND GHARAMI (1905) . . . . **9 C. W. N. 871**

40. ———— **Apportionment**—*Rent—Transfer of lessor's interest by operation of law—Transfer of Property Act (IV of 1882), ss 2 (d), 37* *R* was *hakim* and as such was entitled to certain *mauzas*, which were held by *M* as mortgagee in possession under him On the 7th Sraban 1307 *Fus'i R* ceased to be *hakim* and plaintiff became *hakim* and took possession of the *mauzas* by ousting *M*. *M* had collected from the tenants of the *mauzas* the entire rent for the year 1307, and

perty Act being inapplicable to the case, having

540, referred to MATHEWSON *v.* SHYAM SUNDER SINHA (1906) . . **I. L. R. 33 Calc. 786**

41 ———— **Suspension of rent**—*Dispossession by lessee of landlord.* A lessee, who may have lost possession of a portion of the lands covered by his lease, is not entitled to suspend the payment of rent, if the dispossession has been effected not by the landlord, but by other lessees under him. *Dhunput Singh* v. *Mahomed Kazim*

LANDLORD AND TENANT—*contd.*

5. LIABILITY FOR RENT—*contd.*

Ispahain, I. L. R. 24 Calc. 296, and *Harro Kumari Chowdhrani* v. *Purna Chandra Sarbogya, I. L. R. 28 Calc. 188,* referred to. KALI PRASANNA KHASNABISH *v.* MATHURA NATH SEN (1907)
I. L. R. 34 Calc. 191

42. ———— **Compromise**—*Rent—Solenama—Civil Procedure Code (Act XIV of 1882), s 375—Registration Act (III of 1877)—Unregistered solenama.* Plaintiffs had sued the defendants for damages for wrongfully taking fish from a jalkar ;

further provided that so long as the contract was not completed the defendants would be at liberty to use the *jalkar* and would pay rent from the year 1300 B. S. A decree was made on the basis

the defendants, having been in occupation of the *jalkar* after 1893, were bound to pay rent to the plaintiffs under the terms of the *solenama* JASIMUDDIN BISWAS *v.* BHUBAN JELINI (1907)
I. L. R. 34 Calc. 456

43. ———— **Partition**—*Landlord and tenant—Landlord jointly interested in holding—Partition, if effects a division of the holding* Plaintiff held land in joint tenancy with the defendants under herself as the landlord The shares of the plaintiff and the defendants having been separated by partition, the defendants contended that the plaintiff could not sue them for rent jointly, but must bring a separate suit against each tenant: *Held,* that there was only a division of the land and not a division of the holding and the tenants remained jointly liable to the landlord for the entire rent DUKH HARAN SINGH *v* MUSSAMMAT BIBEE SOGHRA (1908) . . **12 C. W. N. 568**

44. ———— **Sale**—*Landlord and tenant—Lessee—Lessor.* Where the lessee agreed with his lessor to pay rent due by the latter to the superior landlord, but failed, and the superior landlord then recovered a decree for rent against the lessor and sold his interest in the lease-hold property in execution of the decree —*Held,* that the sale was not the natural consequence of the lessee's default, as the lessor ought to have paid the rent due to the superior landlord when he came to know of the lessee's default, and the lessee should not be made liable for the value of the property sold GIRISH CHANDRA DAS MAZUMDAR *v* KUNJO BEHARI MALO (1908) . . . **I. L. R. 35 Calc. 683**
s.c. 12 C. W. N. 628

LANDLORD AND TENANT—*contd.*

5. LIABILITY FOR RENT—*contd.*

45. ———— **Concurrent leases**—*Landlord entitled to recover rent only as against second lessee. Held,* that where a lessor executes two concurrent leases of the same property, that is to say, two leases in which the term of the second commences before the term of the first has expired, the second lessee is to be taken as the assignee of the lessor's interest during the concurrent portion of the terms, and the lessor after the execution of the second lease can recover rent only from the second and not from the first lessee. *Harmer v. Bean, 3 C. & K. 307,* followed. RAM ANANT SINGH *v.* SHANKAR SINGH (1908) . **I. L. R. 30 All. 369**

46. ———— **Attachment for larger amount than due**—*Distraint for larger amount than what is due not void, but will be good for amount actually due.* An attachment under the Rent Recovery Act by the landlord for a larger amount than

actual sale because by a sale the property of the tenant passes away from the tenant altogether, while in the case of an excessive attachment the aggrieved tenant can apply to the Collector for redress *Pichu Ayyangar* v. *Oliver, I. L. R. 26 Mad. 260,* distinguished *Ramchandra* v. *Nara-*

47. ———— **Encroachment by tenant**—*Limitation Act (XV of 1877), Sch. II, Arts. 142, 144—Encroachment by tenant on adjoining land—Landlord's suit to recover—Onus—Adverse possession to be proved by tenant* If a tenant encroaches on the adjoining land of his landlord, he must distinctly prove adverse possession and such adverse possession must be set up in defence to the suit It must be shown that there was not merely possession but that such possession was with notice to the landlord and was known by the parties to be a trespass. Art. 142 of Sch II of the Limitation Act (XV of

6. RENT IN KIND.

1. ———— **Suit for share of rent or money-equivalent**—*Valuation of crop* A landlord sued his tenant, paying rent in kind, for the share of the crop due to him, or rent, or for its money-equivalent. *Held,* that the prices at which the landlord was entitled to have crop valued were those which prevailed at the time the crop was cut, and when it should have been made over to him. LACHMAN PRASAD *v* HOLAS MAHTOON
2 B. L. R. Ap. 27 ; 11 W. R. 151

LANDLORD AND TENANT—*contd.*

6. RENT IN KIND—*concld.*

2. ———— **Rent in kind, demand for** —*Landlord and tenant.* Acquiescence in a mode of payment different from that agreed on cannot alter

3 C. W. N. 151

3. ———— **Conversion of nakdi into bhaoli**—*Road and Public Works Cess Act (Beng. IX of 1880), s. 4 Explanation, and s 20 (a) and (b)—Road-cess return—Conversion of nakdi into bhaoli rent shortly before return submitted—Annual value how to be assessed —Alteration in area of holdings and tenures by reason of exchange amongst tenants, if must be specified in return.* The plaintiff who had a share in a mouzah had his share separated by partition in 1300, F S. Subsequently to the partition, the defendants who were tenants ... *bhaoli* ... also ... of the ... espec- ... they held homestead lands and in this way an exchange of lands took place between them. On the 4th of Assin 1302, F. S., the plaintiffs submitted a road-cess return in respect of their separated share, in which the *nakdi* rents which prevailed up to the end of 1301, F. S , and not the recently settled *bhaoli* rents were mentioned Further, the statement of

rents calculated on lands held by them since the exchange, the defendants objected that the provisions of cls. (*a*) and (*b*) of s 20 of the Road and Public Works Cess Act had not been complied with *Held*, that as there was no enhancement of rent, but only conversion of *nakdi* into *bhaoli* rent and as no calculation of annual value based on the average money value of three years' *bhaoli* rent as contemplated in the explanation to s 4 of the Act was possible in this case, the plaintiffs had substantially complied with the provisions of s 20, cl. (*b*) of the Act That cl (*a*) of the section had

sued in this case was greater than that shown in the road-cess return. GOURI SARAN MAHTO *v* MOULVI MAHOMED LATIF (1906)

11 C. W. N. 211

7. TENANCY FOR IMMORAL PURPOSE.

1. ———— **Lodgings let to prostitute**—*Suit for rent of.* A landlord cannot recover the rent

LANDLORD AND TENANT—*contd.*

7. TENANCY FOR IMMORAL PURPOSE—*concld.*

of lodgings knowingly let to a prostitute who carries on her vocation there GAURINATH MOOKERJEE *v.* MADHUMANI PESHAKAR . **9 B. L. R. Ap. 37**

S C GOURINATH MOOKERJEE *v.* MODHUMANI PESHKAR . . . . **18 W. R. 445**

8. PAYMENT OF RENT.

(*a*) GENERALLY.

1. ———— **Payment to co-lessors after distress**—*Claim for rent—8 Anne c. 14—Distress—Co-landlords.* Two daughters, as co-partners, were owners of certain property, each having an eight annas share therein On June 30th, 1868, they executed a lease of the property, in which it was provided that a monthly rent should be paid in separate payments to each of the two owners respectively, they giving separate receipts for the same The tenant having failed to pay rent, one of the owners brought a suit for her share in her own name only, and obtained a decree In execution of this decree, she seized and sold property belonging to the tenant The sale took place on

decree. *Held*, that she was not entitled to have it so paid. *Held*, also, *per* PEACOCK, *C J*—The

execution-creditor PADAMANI DASI *v* JAGADAMBA DASI . . **3 B. L. R. O. C. 56**

2. ———— **Payment to superior landlord after grant of intermediate lease**—*Payment without notice of assignment—Liability to intermediate tenant* A tenant paying rent to the

3. ———— **Payment to a third person by landlord's directions**—*Plea of payment.* Payment by a tenant under the landlord's directions

defence, being rather one of payment than of a set off, was open to a defendant in a suit under Act X of 1859 JOY KOOER *v.* FURLONG

W. R. 1864, Act X, 112

4. ———— **Payment by tenant of revenue to save estate from sale**—*Payment or set-*

LANDLORD AND TENANT—*contd.*

8. PAYMENT OF RENT—*contd.*

(*a*) GENERALLY—*contd.*

off in suit for rent. Where a tenant is left in that condition in which he is compelled to pay his landlord's debt to save his own security from forfeiture, the circumstances constitute a sufficient authority

10 W. R. 340

5. ———— **Presumption of payment of rent for former years**—*Suit for rent of current year—Beng Reg. VII of 1799.* Under Regulation VII of 1790, a plaintiff could only sue for and recover the rent of the current year. No legal presumption arose from his doing so that the rent of prior years had been satisfied MIRTHERJEET SINGH *v.* CHOKER NARAIN SINGH . 2 W. R. 58

6. ———— **Presumption of payment of rent**—*Payment of rent of subsequent year, effect of.* The payment of the entire rent of a subsequent year affords a presumption in favour of the payment of the rent for the previous year. SOLANO *v.* DOOLHIN UMRIT KOER . W. R. 1864, Act X, 65

SORUTH SOONDERY DABEE *v.* BRODIE
1 W. R. 274

7. ———— **Appropriation of payments**—*Arrears and current rent—Unspecified payment.*

8 ———— **Payment to one of joint lessors.** Payment to one of several joint proprietors is a payment to all. OODIT NARAIN SINGH *v.* HUDSON . . . 2 W. R., Act X, 15

RAMNATH SINGH *v.* GONDEE SINGH.
10 W. R. 441

SAMBHU *v.* KAMOLRAO VITHALRAO.
I. L. R. 22 Bom. 794

And payment by one of several joint lessees is payment by all NILLUMBHUR MASTOPHY *v.* DOORGA CHURN BISWAS . . 2 W. R., Act X, 94

9. ———————————— *Discharge of debt.* Payment of rent by the lessee to one of several joint lessors, and at his request, discharges the debt as to all, as also payment made at his request to one of several joint creditors. KRISHNARAV RAMCHANDRA *v.* MANAJI BIN SAYAJI . . 11 Bom. 106

10. ———— **Presumption of mode of payment** Where it does not appear that rent is payable in instalments, it must be assumed to be payable annually SURRESHOOLLAH *v.* RAM COOMAR GOOPTA . . . . 25 W. R. 556

11. ———— **Obligation as to mode of payment**—*Instalments* Where a patnidar's rent is payable in monthly instalments, he agreeing to pay the revenue out of the rent and to file the Collector's receipts as payment, he is not entitled to deduct from an instalment of rent any portion of the Government revenue which may not be payable until after the instalment is due. He is bound to pay either in cash or partly in revenue receipts; failing to pay in both shapes, he may be sued for an arrear of rent. RADHAMONEE CHOWDHRAIN *v.* GRAY . . . . . 12 W. R. 295

12. ———— **Place of payment**—*Bengal Tenancy Act (VIII of 1885), ss 54, 67—Interest—*

Calcutta. The landlord did not appoint a convenient place, and the tenants were in arrears which the landlord now sued to recover with interest *Held,* that a tenant's liability to pay rent remains notwithstanding that the landlord has no village office, and that he has not appointed a convenient place

v. BONNERJI . . . . 4 C. W. N. 324

13. ———— **Claim by assignee of tenant-for life for rent**—*Lease by tenant-for-life—Rent payable during month—Death of tenant-for-life prior to end of month—Apportionment* A tenant-for-life leased immoveable property to tenants at a rent which was payable in half-yearly instalments. Four days before an instalment was due, the tenant-for-life died, and the assignee of his interest sued the tenants for the rent. *Held,* that he was entitled to recover *Per* SUBRAHMANIA AYYAR, *J*—*In the absence of a specific rule applicable to cases like this, in India, the Courts are entitled to follow the broad and just principle underlying*

(*b*) NON-PAYMENT.

14. ———— **Appointment of sezawal on default in payment**—*Determination of tenancy.* It was stipulated in defendant's lease that,

LANDLORD AND TENANT—*contd*

8. PAYMENT OF RENT—*contd.*

(b) NON-PAYMENT—*contd.*

OMRITNATH TEWAREE *v.* BUGGOO SINGH
W. R. 1864, 269

(*Contra*) DALRYMPLE *v.* BRAJAN SAHA
3 B. L. R. Ap. 54 note

JHOOMUCK CHOWDHRY *v.* ANDERSON
6 W. R. Act X, 23

15. ———— A kabuliat, after the usual stipulations, provided for the can-

sezawal was appointed *Held*, that the lease having been cancelled by the default, the appointment of a sezawal had reference only to the back rents to be collected. RADHA PERSHAD SINGH *v* BAJHAWUN OOPADHYA . . 24 W. R. 116

16. ———— Effect of non-payment—*Onus probandi—Suit for rent* When the relation-

LALL MUNDUL *v* ABDOOL GUFFOOR
I. L. R 4 Calc 314: 3 C L. R. 119

17 ———— Adverse possession Mere non-payment of rent to the landlord does not render possession by tenants adverse to the landlord. GANGABAI *v* KALAPA DARI MAKRYA
I. L. R. 9 Bom. 419

18. ———— *Onus probandi —Suit for rent—Adverse possession* Where the relation of landlord and tenant is proved to have existed, it lies on the defendant in possession of the

by Government to defendant for five years do not, when Government claims no interest adverse to plaintiff and plaintiff does not consent to defendant becoming tenant to Government, create any possession in defendant adverse to plaintiff. *Rungo*

LANDLORD AND TENANT—*contd.*

8 PAYMENT OF RENT—*contd.*

(b) NON-PAYMENT—*contd*

Lall Mundul v. Abdool Guffoor, I. L. R. 4 Calc. 314, approved TIRUCHURNA PARUMAL NADAN *v.* SANGUVIEN . . I. L. R. 3 Mad. 118

HARI VASUDEB *v.* MAHADAJI APPAJI
5 Bom. A. C. 85

19. ———— *Adverse possession.* Non-payment of rent by tenant for more than twelve years does not constitute adverse possession. When possession may be referred to the contract of tenancy under which the tenant entered,

MAHOMED INAYETOOLLA *v* AKBER ALI
2 Agra 25

TROYLUKHO TARINEE DOSSIA *v.* MOHIMA CHUNDER MUTTUCK . . . 7 W. R 400

DAVIS *v* ABDOOL HAMED . . 8 W. R. 55

20. ———— *Adverse possession*—The plaintiff sued for possession of a piece of

pied it for more than twelve years without paying any rent or acknowledging the defendants as his landlords, he was entitled to be considered as owner

possession TATTIA *v* SADASHIV
I L R 7 Bom 40

21. ———— *Non-payment of rent by occupancy raiyat—Title to land—Admission by tenant of liability to pay rent—Limitation.* The non-payment of rent for a term of twelve years and more does not relieve an occupancy raiyat from the status of a tenant so as to give him a title to the land Rent falls due at certain periods and the

22. ———— *Adverse possession—Determination of tenancy.* The plaintiffs in this suit, alleging that *S*, through whom they

ditions being contained in a keraianama executed by *B* in *S's* favour, sued the defendants for the rent

LANDLORD AND TENANT—*contd.*

8. PAYMENT OF RENT—*contd.*

(*b*) NON-PAYMENT—*contd.*

of such house for two years, and for possession of the same, *alleging the breach of such condition.* *Held* (SPANKIE, J., dissenting), that, supposing that a tenancy had arisen in the manner alleged, the mere non-payment of rent by the defendants for twelve years prior to the institution of the suit would not suffice to establish that the tenancy had determined, and that the defendants had obtained a title by adverse possession, so as to defeat the claim; for if once the relation of landlord and tenant were established, it was for defendants to establish its determination by affirmative proof, over and above the mere failure to pay rent. PREM SUKH DAS *v.* BHUPIA . I. L. R. 2 All. 517

23. ———— **Surrender by inamdar**—*Acquiescence of landlord, effect of—Subsequent suit by landlord for possession—Inam land—Sub-alienee—Wrongful surrender by the village inamdar to Government—Limitation—Remand.* The plaintiff, a sub-alienee from an inamdar of certain inam, leased it to *D* prior to the year 1858 In 1860, the land was

terest in the land, and that his suit was barred.

could not affect the relationship of landlord and tenant which admittedly existed between them in 1863. RAMBHAT *v* BABABHAT

I. L. R. 18 Bom. 250

24. ———— **Relinquishment**—*Diluvion, disappearance of land by—Subsequent re-appearance of land—Relinquishment of tenancy, evidence of—N.-W. P. Rent Act (XII of 1881).* Act XII of 1881, and the Acts of a like nature which preceded it, assume that a tenancy of agricultural lands once entered upon continues until determined by effluxion of time, or by mutual consent, or in one of the ways provided for by statutory enactment, but mere non-payment of rent does not of itself determine the tenancy. Hence where the lands of certain tenants became submerged by the action of a river, and the tenants, though they ceased to pay rent during the period of the submersion, made no overt indication of their intention to relinquish the

Ashgur Sirdar, I. L R 4 Calc. 894, not followed. MAZHAR RAI *v.* RAMGAT SINGH

I. L. R. 18 All. 290

25. ———— **Site in abadi occupied by non-agricultural tenant**—*Adverse possession—License—Indian Easements Act (V of 1882), s. 60.* A person who was neither an agricultural tenant nor a village handicraftsman was found in possession of a house in the abadi which he and his predecessors in title had held for a period of considerably more than twelve years, without paying rent or acknowledging in any way the title of the zemindar to the site upon which it was built *Held*, that such person had acquired the absolute ownership of the site BHADDAR *v.* KHAIR-UD-DIN HUSAIN (1906) . . I. L. R. 29 All 13

9. NATURE OF TENANCY.

1. ———— **Presumption as to nature of tenancy**—*Yearly tenant* Where there is no-

Bom. L. R.

GOORDIAL *v.* RAMDUT

Agra F. B. 15 Ed. 1874, 11

2. ———— **Holding for long**

v. SANYASIRAZ PEDDABALIYARA SIMHULU

3 Mad. 1

3. ———— **Long continuance of a tenancy at a low and unvaried rent**—*Zamindar's right against tenant—Origin and special purpose of the tenancy—Cessation to use the land for such purpose—Burden of proving permanent tenure—Inference of tenancy-at-will, or from year*

LANDLORD AND TENANT—*contd.*

9. NATURE OF TENANCY—*contd.*

to year. The evidence having shown the origin and particular purpose of a tenancy, long con- [illegible]

made between the parties that the tenant should hold a permanent tenure; and, *held*, that on such [illegible]

ordinary tenancy-at-will or from year to year; also that the facts here presented did not lead to that inference SECRETARY OF STATE FOR INDIA v LUCHMESWAR SINGH . I L R 16 Calc 223
L R 16 I. A. 6

4. ———— **Lease for construction of permanent works**—*Permanent tenure—Conduct of lessor* The defendants and their predecessors in title held of the plaintiffs and their predecessors certain land under a pottah which, though not expressly stated to grant a permanent lease, was granted for the purpose of constructing "a brick-built dock, building, etc., and workshops" The works were constructed; and during a period of 42 years the interest of the lessees were from time to time transferred without any conduct on the part of the lessors or their successors, indicating that they regarded the interest of the lessees as not permanent. Some years after the construction of the dock it ceased to be used as such *Held*, that the tenure created by the pottah was of a permanent nature. *Secretary of State for India* v *Luchmeswar Singh, I. L R 16 Cal. 223 L R 16 I A 6,* distinguished RUNGO LALL LOHEA v WILSON
I L R 26 Calc 204
2 C W N 718

5 ———— **Perpetual tenancy**—*Long possession—Presumption arising from such possession—Bombay Land Revenue Act (V of 1879), s 83—Burden of proof* The plaintiff's predecessor in title acquired the lands in dispute in A. D 1780 The defendants were in possession as tenants They proved their possession so far back as 1812 But it did not appear that they were put in possession first in that year There was no evidence either of the commencement or of the duration of their tenancy. *Held*, that, under s 83 of the Bombay Land Revenue Code (Bombay Act V of 1879), the defendants' tenancy should be presumed to be perpetual, and that it lay on the plaintiff to prove the contrary. DAULATA v SAKHARAM GANGADHAR . I L R 14 Bom 392

6. ———— **Tenure in property, proof of**—*Long possession at an invariable rent—Local* [illegible] be [illegible] at [illegible] uch [illegible] *bay*

v. *Narayan, I. L. R. 3 Bom. 340,* referred to. NARAYANBHAT v DAVLATA
I L R 15 Bom. 647

7 ———— **Tenancy not more than forty years old**—*Bombay Land Revenue Act (Bom Act V of 1879), s. 83—Tenancy not permanent* [illegible]

which, in the case of a tenancy at most only forty years old, there is no reason for presuming will be the case KALIDAS LALDAS v. BHAIJI NARAN
I L R. 16 Bom. 646

8. ———— **Tenancy forty years old**— [illegible]

satisfactory evidence to show the commencement as well as the terms of the tenancy. LAKSHMAN v. VITHU . . . I L. R 18 Bom. 221

9 ———— **Permanent tenancy**—*Bombay Land Revenue Code (Bom. Act V of 1879), s 83—Absence of local usage* The mere fact that a tenancy has commenced subsequently to the commencement of the landlord's tenure does not pre- [illegible]

nearly 80 years It was found that, owing to this antiquity of the tenancy, its commencement or duration could not be satisfactorily established by evi- [illegible]

10 ———————— *Right of occupancy—Undisturbed possession—Construction of* [illegible]

It appeared that the defendants ancestor had held the village from the Collector (then in charge of the temple properties) under a lease which expired in 1831, when he offered to hold it for two years more. The Collector made an order [illegible]

LANDLORD AND TENANT—*contd.*

8. PAYMENT OF RENT—*contd.*

(*b*) NON-PAYMENT—*contd.*

of such house for two years, and for possession of the same, alleging the breach of such condition *Held* (SPANKIE, J., dissenting), that, supposing that a tenancy had arisen in the manner alleged, the mere non-payment of rent by the defendants for *twelve years* prior to the institution of the suit would not suffice to establish that the tenancy had determined, and that the defendants had ob-

over and above the mere failure to pay rent. PREM SUKH DAS *v.* BHUPIA . I. L. R. 2 All 517

23. ——— Surrender by inamdar—*Acquiescence of landlord, effect of—Subsequent suit by landlord for possession—Inam land—Sub-alienee—Wrongful surrender by the village inamdar to Government—Limitation—Remand.* The plaintiff, a sub-alienee from an inamdar of certain inam, leased it to *D* prior to the year 1858 In 1860, the land was

Held, that the plaintiff did not acquiesce in the surrender by the inamdar in 1860 to Government, as he

against the tenant in 1863, if they were not barred by the Statute of Limitation, and as to limitation :—*Held*, that, as the District Judge had decided the point under the influence of the view taken by him as to the plaintiff's conduct, the case should be remanded for a fresh finding on that point. *Held*,

tenant which admittedly existed between them in 1863. RAMBHAT *v* BABABHAT

I L R. 18 Bom. 250

24. ——— Relinquishment—*Diluvion, disappearance of land by—Subsequent re-appearance of land—Relinquishment of tenancy, evidence of—N.-W. P. Rent Act (XII of 1881)* Act XII of 1881, and the Acts of a like nature which preceded it, assume that a tenancy of agricultural lands once

LANDLORD AND TENANT—*contd.*

8. PAYMENT OF RENT—*concld.*

(*b*) NON-PAYMENT—*concld.*

entered upon continues until determined by efflux-ion of time, or by mutual consent, or in one of the ways provided for by statutory enactment, but mere non-payment of rent does not of itself determine the tenancy. Hence where the lands of certain tenants became submerged by the action of a river, and the tenants, though they ceased to pay rent during the period of the submersion, made no

with their former holding : *Held*, that there had been no relinquishment. *Hemnath Dutt* v. *Ashgur Sirdar*, *I. L. R 4 Calc 894*, not followed. MAZHAR RAI *v.* RAMGAT SINGH

I. L. R. 18 All. 290

25. ——— Site in abadi occupied by

), *s. 60.*
tenant
possess-
and his
of con-
paying

rent or acknowledging in any way the title of the zemindar to the site upon which it was built. *Held*, that such person had acquired the absolute ownership of the site BHADDAR *v.* KHAIR-UD-DIN HUSAIN (1906) . . I L R. 29 All. 13

9 NATURE OF TENANCY.

1. ——— Presumption as to nature of tenancy—*Yearly tenant* Where there is no-

7 Bom. A. C. 111

GOORDIAL *v.* RAMDUT

Agra F. B. 15 Ed. 1874, 11

2. ——— Holding for long period with payment of rent—*Tenancy from year to year.* In a suit to recover a village alleged by the plaintiff to have been let to defendant on service

v SANYASIRAZ PEDDABALIYARA SIMHULU

3 Mad. 1

3. ——— Long continuance of a tenancy at a low and unvaried rent—*Zamindar's right against tenant—Origin and special purpose of the tenancy—Cessation to use the land for such purpose—Burden of proving permanent tenure—Inference of tenancy-at-will, or from year

LANDLORD AND TENANT—*contd.*

9. NATURE OF TENANCY—*contd.*

to year. The evidence having shown the origin and particular purpose of a tenancy, long continued at a low and unvaried rent, *viz.*, from 1798 until 1873, when the tenant ceased to use the land for the purpose. *Held*, that it was not to be inferred from that evidence that an agreement had been made between the parties that the tenant should hold a permanent tenure; and, *held*, that on such cessation the tenant could only resist a suit to eject him by proving, or giving grounds for the inference of, an agreement with the owner of the land that he should have something more of a lease than the ordinary tenancy-at-will or from year to year; also that the facts here presented did not lead to that inference. SECRETARY OF STATE FOR INDIA *v.* LUCHMESWAR SINGH . I. L. R 16 Calc 223
L R. 16 I. A. 6

4. ———— **Lease for construction of permanent works**—*Permanent tenure—Conduct of lessor.* The defendants and their predecessors in title held of the plaintiffs and their predecessors certain land under a pottah which, though not expressly stated to grant a permanent lease, was granted for the purpose of constructing "a brick-built dock, building, etc, and workshops" The works were constructed; and during a period of 42 years the interest of the lessees were from time to time transferred without any conduct on the part of the lessors or their successors, indicating that they regarded the interest of the lessees as not permanent. Some years after the construction of the dock it ceased to be used as such *Held*, that the tenure created by the pottah was of a permanent nature. *Secretary of State for India v Luchmeswar Singh, I. L. R 16 Calc. 223 L R 16 I. A 6*, distinguished. RUNGO LALL LOHEA *v* WILSON
I L. R 26 Calc 204
2 C W N 718

5 ———— **Perpetual tenancy**—*Long possession—Presumption arising from such possession—Bombay Land Revenue Act (V of 1879), s 83—Burden of proof* The plaintiff's predecessor in title acquired the lands in dispute in A. D. 1780. The defendants were in possession as tenants They proved their possession so far back as 1812 But it did not appear that they were put in possession first in that year There was no evidence either of the commencement or of the duration of their tenancy. *Held*, that, under s. 83 of the Bombay Land Revenue Code (Bombay Act V of 1879), the defendants' tenancy should be presumed to be perpetual, and that it lay on the plaintiff to prove the contrary DAULATA *v* SAKHARAM GANGADHAR . . I L R 14 Bom 392

6. ———— **Tenure in property, proof of**—*Long possession at an invariable rent—Local usage or custom* A tenure in perpetuity cannot be established merely by evidence of long possession at an invariable rent, unless it appears that such tenancy may be so acquired by local usage *Babaji v. Narayan, I. L. R. 3 Bom 340*, referred to NARAYANBHAT *v.* DAVLATA
I L R. 15 Bom. 647

7 ———— **Tenancy not more than forty years old**—*Bombay Land Revenue Act (Bom Act V of 1879), s. 83—Tenancy not permanent* S 83 of the Land Revenue Code (Bombay

I L R. 16 Bom 648

8. ———— **Tenancy forty years old**—*Evidence of commencement and origin of tenancy—Bombay Land Revenue Code (Bom Act V of 1879), s. 83.* S 83 of the Land Revenue Code (Bombay Act V of 1879) does not apply to a tenancy which commenced about forty years ago, but it applies to a tenancy with respect to which there is no satisfactory evidence to show the commencement as well as the terms of the tenancy. LAKSHMAN *v.* VITHU . . . I L. R 18 Bom. 221

9 ———— **Permanent tenancy**—*Bombay Land Revenue Code (Bom Act V of 1879), s. 83—Absence of local usage* The mere fact that

nearly 80 years It was found that, owing to this antiquity of the tenancy, its commencement or duration could not be satisfactorily established by evi-

10 ———— *Right of occupancy—Undisturbed possession—Construction of grant—Conduct of parties.* In a suit for ejectment brought by the trustee of a temple, the defendants set up a right of occupancy as permanent tenants. It appeared that the defendants' ancestor had held the village from the Collector (then in charge of the temple properties) under a lease which expired in 1831, when he offered to hold it for two years more. The Collector made an order

the tenant successively, but they were returned as not being in proper form. No further document was executed, but the tenant and his descendants remained in undisturbed possession at the same rate of payment up to 1888 In that year the

LANDLORD AND TENANT—*contd.*

9. NATURE OF TENANCY—*contd.*

plaintiff sent a notice of ejectment to the then tenant, who, however, set the plaintiff at defiance and remained in possession till the present suit was brought in 1890. *Held*, that it should be inferred that the defendants were in possession under a permanent right of occupancy. VARADARAJA *v.* DORASAMI . **I. L. R. 16 Mad. 131**

11. ——— *Sheri and khata lands—Rights of khata tenants not holding under express contract, how proved—Evidence as to similar tenants in similar villages admissible—Custom—Mirasidars—Liability to enhancement of rent.* In a suit for ejectment for non-payment of enhanced rent the defendants pleaded (1) that they were permanent tenants; (2) that the plaintiff had no power to enhance; (3) that the enhancement by the plaintiff was unreasonable. The lower Courts *held* that the defendants were permanent tenants, but were bound to pay a reasonable rent. Their decision was not based on evidence given in the case, but on what was termed a " well-known [illegible]

ordinate Judge. In determining the rights of [illegible]

rent. An inamdar can enhance their rents within the limits of custom VISHVANATH BHIKAJI *v.* DHONDAPPA . . **I L R 17 Bom. 475**

12. ——— *Lease by temple-trustee—Ulavadai mirasidars—Long possession—* [illegible]

V and *S*, the ancestor of the other defendants, addressed a petition to the Collector, the then manager of the temple. In 1832 *V*, and *S* executed a fresh lease and a security bond in favour of the temple, in both of which documents *V* and *S* were described as ulavadai mirasidars, that is, persons with an hereditary right, to cultivate. There was no evidence adduced to prove for what purpose the lease of 1832 was executed, but the defendants held possession as tenants from 1832 to date of suit. *Held*, that the words ' ulavadai mirasidars' used in the deeds of 1832 as describing the tenant denoted that they were persons with hereditary right to cultivate, and that the case was therefore of a permanent nature. *Held*, also, that, after the lapse of so great a period of time, the Court would presume, under the circumstances, that the original grants were made for a necessary purpose and were binding on the temple. CHOCKALINGAM PILLAI *v.* MAYANDI CHETTIAR

I. L. R. 19 Mad. 485

13. ——— *Cultivating raiyat on permanently-settled estate.* A raiyat cultivating land in a permanently-settled estate is *primâ facie* not a mere tenant from year to year, but the owner of the kudivaram right in the land he cultivates. VENKATANARASIMHA NAIDU *v.* DANDAMUDI KOTAYYA . **I. L R. 20 Mad. 299**

14. ——— *Presumption arising from facts of permanency of tenancy—Long possession at an unvaried rent—Admissibility in evidence of judgments in former suits.* A zamindar claimed the proprietary right and possession of mouzahs within the limits of his zamindari, against tenants who by themselves and their predecessors in title, had held the land from before the Decennial Settlement in Bengal, an unvaried rent having been paid to the zamindar. The first defendant alleged a grant to his ancestor of a mokurari tenure by a ghatwal then holding land within the zamindari; the other defendants alleged title as dar-mokuraridars under the first Part of the evidence for the defence consisted of judgments, among which was one of the year 1817 and another of 1843, to which the zamindar's predecessors had not been parties. These had been given in suits brought by the successor of the ghatwal which had been resisted by the first defendants' ancestors on the ground of their having had fixity of tenure. *Held*, that they could be received as evidence of long anterior possession at a rent, and of the title on which the defendants now relied, having been openly asserted long ago Taken with other evidence, they established possession by the defendants at a uniform rent paid to the zamindar, thus leading to the inference that the tenure had been, and still was, of a permanent character RAM RANJAN CHAKERBATI *v* RAM NARAIN SINGH

I. L. R. 22 Calc. 533
L. R. 22 I. A. 60

15. ——— *Presumption as to tenancy being permanent—Long possession—Transfers of holding and erection of buildings* [illegible]

LANDLORD AND TENANT—*contd.*

9. NATURE OF TENANCY—*contd.*

ence for such a length of time as would warrant an inference that the lease was one for building purposes; that there was nothing to show that they were erected under circumstances from which acquiescence of the landlord and the creation of an equitable right in the tenant could be inferred; or that they were erected with the knowledge of the landlord; these facts are not sufficient to warrant an inference that the tenancy was, when first created, intended to be permanent, or was subsequently by implied agreement converted into a permanent one ISMAIL KHAN MAHOMED *v.* JAIGUN BIBI . . **I. L. R. 27 Calc. 570**
4 C. W. N. 210

16. ——— **Construction of lease**—*Monthly tenancy.* By indenture, dated 1st February 1856, *A* leased to *B* certain premises in Calcutta for a term of ten years from 1st November 1855 at a rent of R100 per month payable monthly. The defendant became the assignee of the lease without notice to *A* from August 1858, and continued to occupy the premises and paid the rent in the name of *B* up to August 1866, though the lease had expired on 31st October 1865 *Held*, that the tenancy after the expiration of the lease was a monthly tenancy in the name of *B* and terminable by a monthly notice to quit. BROJONAUTH MULLICK *v* WESKINS . . . **2 Ind. Jur. N. S. 163**

17. ——— **Holding over after expiry of lease**—*Monthly or yearly tenancy—Notice to quit.* *A* and *B* let a house and premises in Calcutta to *C* under a Bengali lease, for a period of three years, from 1st Assar 1273 (14th June 1866) Upon expiration of the term, *C* continued in possession of the house, and *A* and *B*, after repeatedly calling upon him to deliver up possession, served on him, on 18th March 1873, in a letter written by their attorney, a notice to quit "on or before the 1st day of Jaishta 1280 B S, corresponding with the 13th day of May next" *Held*, that *C*, after the end of his lease, held merely from month to month, and that the tenancy was terminable by a month's notice *Held*, further, that the letter of the 18th March 1873 was a sufficient notice. There is nothing which makes it a necessary inference that a tenancy in Calcutta is a tenancy by the year, in the absence of any special agreement to the contrary So far as there is any custom in Calcutta, or any inference of fact to be drawn from mere occupation accompanied by payment of a monthly rent, it is that the tenancy is a monthly one NOCOORDASS MULLICK *v* JEWRAJ BABOO . **12 B. L. R. 263**

18. ——— **Duration of tenancy**—*Transfer of Property Act (IV of 1882), ss 106, 107—Presumption of yearly tenancy—Evidence—Burden of proof in action of ejectment by zamindar against tenant as to nature of tenancy* Suit for ejectment

LANDLORD AND TENANT—*contd.*

9. NATURE OF TENANCY—*contd.*

was admitted that the tenants' possession was derived from him. *Held*, that these facts alone were not enough to raise the presumption of a tenancy from year to year *Per* SHEPHARD, *J.*—It is not the general rule that the tenants in an ordinary zamindari hold their lands as yearly tenants or as tenants from year to year Many of the occupants of zamindari lands are not tenants in the proper sense of the word, and the fair presumption is that when new occupants are admitted to the enjoyment of waste or abandoned lands, the intention is that they should enjoy on the same terms as those under which the prior occupants of zamindari lands held,

English law, because of the general prevalence in ... the ... ian- ... uch ... on

zamindaris is cultivated by raiyats who are generally entitled to hold them so long as they desire to do so, subject to the performance of obligations incident to the tenure, there is insufficient founda-

proving that the tenancy is not one from year to year In order to discharge the onus which is on him in a case of ejectment, the zamindar must do more than merely show that the land when it passed into the hands of the raiyat was at his disposal as relinquished or as immemorial waste land. He must show that the defendants' possession is inconsistent with the *primâ facie* view that it is held under the

determined in one of the modes specified in s. 111 of the Transfer of Property Act, limitation does not run against the landlord, though the tenant may, in fact, profess to hold the property adversely to the landlord *Srinivasa Ayyar* v. *Muthusami Pillai, I L R 24 Mad. 246,* and *Seshamma Shettati* v *Chickaya Hegade, I. L R 25 Mad. 507,* followed RAMASWAMI NAIK *v* THAYAMMAL (1902) **I. L. R. 26 Mad. 488.**

20. ———— **Expectation of grant of land** —*Construction—Expectation raised and acted upon of a grant of land from the proprietor to a person encouraged by him to lay out money thereon—Irrigation canal—Waste land of Government—Stipulation as to possession of the canal* The principle on which this case was decided is that stated by Lord Kingsdown in *Ramsden* v. *Dyson, 1 H. L. Eng and Ir. Ap Cas 129, 170:* " If a man, under a verbal agreement with a landlord for a certain interest in land, or, what amounts to the same thing, under an expectation created or encouraged by the landlord that he shall have a cer-

the landlord to give effect to such promise or expectation. This was the principle of the decision in *Gregory* v. *Mighell, 18 Ves 328;* and, as I conceive, is open to no objection " A canal bringing water from the Sutlej to tracts till then watered only by rain was sanctioned by Government, to be made, in the greater part, upon their waste land, at the expense of the predecessor in estate of the

who frequented the above tracts for pasturage and sparse cultivations *Held,* that the undertakers acquired a proprietary interest in so much of the Government lands, taken for the purpose of the canal, as was required for its construction and maintenance, and acquired also a right to have the waters of the Sutlej admitted into the canal so long as it was used for the purpose of irrigating the tracts. The canal having been completed, and the lease of the customary use having come to an end with the termination of the current settlement, the son obtained from Government a grant of an estate assessed to the revenue in the tracts within reach of the irrigation, together with an *inam* of R5,000 a year for two lives Afterwards, in a *sanad,* stating the grant of this estate, Government expressly reserved the right to take possession and control of the canal and to manage the irrigation for as long as they wished, without paying compensation This possession was taken. This suit was brought for a declaration of the rights acquired by the makers of the canal, and for other relief, on the title of their descendants, the plaintiffs. *Held,* that, at the date of the grant of the estate, the maker had already a proprietary interest in the canal, and a right to take water from the Sutlej, so long as the canal should be used for the purpose for which it was designed, namely, the benefit of the tracts which it traversed Also, that the effect of the reservation of the grant was that Government could assume the control of the canal and the irrigation without being in the position of receivers, managers or trustees for the proprietors or accountable to them for the profits. The reservation did not empower Government to confiscate the canal, nor did they acquire any proprietary

21. ———— **Permanent tenancy**—*Suit for ejectment—Tenancy, origin of which not known—Presumption as to a tenancy being a permanent one—Long possession, transfer of the holding by succession and purchase, erection of pucca buildings, with the permission of the landlord, by successive tenants, whether sufficient for a presumption that the tenure is a permanent one.* Although the

having from time to time been transferred by succession and purchase, in which the landlord acquiesced or of which he had knowledge, a Court is justified in presuming that the tenure is of a permanent nature. CASPERSZ *v* KADER NATH SARBADHIKARI (1901) . **I. L. R. 28 Calc. 738; s.c. 5 C. W. N. 858**

Shyama Churn Napit, 8 C. L. R 50; Prosunno Coomaree v Sheikh Rutton Bepary, I. L R. 3 Calc. 698, referred to. DURGA MOHUN DAS *v.* RAKHAL CHANDRA ROY CHOWDHURY (1901) **5 C. W. N. 801**

23. ———————— *Ejectment—Origin of tenancy—Presumption as to permanent*

that the tenancy was, when first created, intended to be permanent, or was subsequently, by agree-

LANDLORD AND TENANT—*contd.*

9. NATURE OF TENANCY—*contd.*

ment, converted into a permanent one, and that any presumption arising from long possession was negatived where the origin of the tenancy is known. *Casperse v Kedar Nath Sarbadikari, 5 C W N. 858, Durga Mohun Das v Rakhal Chandra Roy Chowdhury, 5 C. W. N. 801,* distinguished ISMAIL KHAN MAHOMED *v.* BROUGHTON (1901)

5 C. W. N. 846

24. ———— *Origin of tenancy known.* Where a tenancy was created by a *kabuliyat* not containing any words to imply that the holding was hereditary or the rent fixed in perpetuity, and was held on payment of rent, at an unvaried rate, to the landlord, who happened to be a *mutwalli*, the *mahal* having been always let out by the *mutwalli* in *ijara*: *Held*, that the tenancy in its inception was not permanent, and had not subsequently been converted into such ISMAIL KHAN MAHOMED *v* KALI KRISHNA MONDOL (1901)

6 C. W. N 134

25. ———— *Ejectment—Origin of tenancy—Land whether originally agricultural—Successive transfers, and payment of rent at unvaried rate—Presumption as to permanent character of tenancy.* Where a tenancy was created by a *kabuliyat* and *patta* not containing any words of inheritance or of perpetual tenancy, the mere facts that the land has been held by tenants at an unchanged rate of rent for a very long period, and that it has been the subject of successive transfers, do not warrant the inference that the tenancy was, when first created, intended to be permanent, or was subsequently converted into such *Held*, also, that, assuming that the tenancy was originally of an agricultural character, that would not of necessity lead to the inference that the tenant had permanent rights in the land where it is clear that the land had long ceased to be agricultural: the words "you are to enjoy the land with great pleasure (*param sukhe*)" do not create a permanent tenancy ISMAIL KHAN MAHOMED *v* NILRATAN MONDOL (1902) . . . 6 C. W. N. 352

26. ———— *Tenancy, permanent or not—Ejectment—Heritable right—Evidence—Presumption—Onus* In the absence of words importing it, the hereditary character of a tenure may be supplied by evidence of long and uninterrupted enjoyment, and of the descent of the tenure from father to son *Baboo Gopal Lall Thakur v. Tiluck Chunder Rai, 10 Moo I A 183, 191,* and *Rajah Satyasaran Ghoshal v Mohesh Chunder Mitter, 2 B L R (P C) 23,* followed The presumption of the permanency of a holding was legally made in a case where the following facts were found, *viz*, possession at a uniform rent for some 100 years, the property descending from father to son, various transfers, many of them recognised by the landlord, erection of *pucca* buildings, improvements at much cost, and all this with the knowledge of the landlord's agents, and no attempt to eject or to enhance the rent for all those years. In a suit for ejectment, where the defendant sets up a permanent tenancy, the *onus* is upon the defendant to show this A permanent tenancy is not destroyed by the acceptance by a purchaser of the

October, 1825, that it was only a confirmatory *patta*, in fact, a *kharija patta*, and that it was executed, not for the purpose of destroying the old permanent tenure and creating a tenancy-at-will, but simply with the object of effecting a mutation of names in the landlord's *sharista* The same observations would apply to the *pattas* dated 5th November, 1835, and 29th May, 1838 ISMAIL KHAN MAHOMED *v* AGHORE NATH MUKERJEE (1903) . . . 7 C. W. N. 734

27. ———— *Void lease—*

Extra Assistant Collector of the Panch Mahals, to manage the estate during the minority of the heir,

December, 1881, and February, 1884, three leases (Exhibits 59, 60 and 61) were granted to the defendant of portions of such land by the Collector purporting to act on behalf of Government, but no specific sanction of Government was obtained to the leases These three leases were not registered The Bombay Minors' Act came into

LANDLORD AND TENANT—*contd.*

9. NATURE OF TENANCY—*contd*

comprised in Exhibits 59, 60 and 61 to the defendant, without any sanction from the Government or the District Court by which he had in the first instance been granted a certificate of administration (Exhibit 2). This lease was duly registered.

written statement the defendant rested his claim

tual as an acknowledgment of a yearly tenancy. It was contended that the action of the Collector was ratified by Government by their Resolution No.

had determined. *Held (per* BATTY, *J.)*, that there can be no ratification by a person who at the time of the ratification could not have done the act himself, even though he had the power to do it when the original act unauthorised by him was done. The defendant contended that he had been in possession as of right, and that his possession was therefore adverse, and had continued for over twelve years; that the defendant became a permanent tenant under the plaintiff's guardian, the Collector; that the plaintiff had not repudiated the act of his guardian within three years after he attained majority and consequently that in any view of the case his claim was time-barred. *Held*, that it is well established that there can be adverse possession of a limited interest in property as well as of the full title as owner As it appeared that the defendant agreed to go into possession under rules which would give him a permanent tenancy, and that he had ever since he went into possession claimed to be in as a permanent tenant, he had therefore since 1881 and 1881 been in adverse possession as a permanent tenant *Held*, further, that, as the plaintiff had not brought the suit within three years of attaining his majority, the defendant had obtained by adverse possession a right to hold the lands as against the plaintiff as a permanent tenant. *Per* BATTY, *J.*—The authorities show that a tenant in India is not precluded by an admission of tenancy from showing that the nature of the tenancy asserted by him

LANDLORD AND TENANT—*contd.*

9. NATURE OF TENANCY—*contd.*

to the knowledge of the landlord has been for the period prescribed by the Limitation Act *pro tanto* adverse to the right to evict either at will or on *notice given. A manifest assertion by the tenant*, to the knowledge of the person representing the landlord's interests, of a right inconsistent with that claimed by the landlord to treat him as a tenant-at-will or from year to year, would be a disclaimer of the landlord's title. *Vivian* v. *Moat*, *L. R. 16 Ch Div 730*, relied on A landlord merely by receiving rent cannot preserve his right to other claims continuously denied by the tenant. The fact that such assertion and enjoyment are

ing what was in the contemplation of the parties. *Held (per* BATTY, *J.)*, that "a document inadmissible under s. 49" (of the Registration Act) "could not, I think, be used as evidence of delivery of possession" But, seeing that the Legislature had advisedly rejected, in the more recent Act, the phrases which made such unregistered documents absolutely incapable of being received in evidence at all, and has very guardedly stated the purposes for which they shall not be received, I think, in the absence of authority to the contrary, an unregistered document inadmissible for the purpose of affecting immoveable property or any transaction affecting immoveable property may yet be looked

son whose claims were admittedly limited to the rights enumerated in such document. FATESINJI DIPSANGJI *v.* BAMANJI ARDESHIR DALAL (1903)
I. L. R. 27 Bom. 515

28. ——————— *Permanency of tenure—Lease of temple lands by manager—Petition for fresh lease without mentioning former leases—Madras Regulation VII of 1817—"Ulavadai mirasidars"—"Paracudis."* One of two persons, through whom the respondents claimed, acquired rights in certain lands under permanent leases granted by the manager of a temple in 1813 and 1820 In 1831 the lessee and the other person, from whom the respondents derived their title, petitioned the Collector, under whose management the temple then was, for a lease of the land for one year. No reference was made in the petition to the former leases, and the petitioners described themselves as *paracudis In 1832 they executed*

claim to a permanent tenure. In a suit by the manager of the temple in 1892 to recover possession of the lands, the respondents set up the defence that

LANDLORD AND TENANT—*contd.*

9. NATURE OF TENANCY—*contd.*

they held a permanent tenure and were not liable

the former leases and not a new lease, and that the respondents held the lands in a permanent tenure: *Held*, by the Judicial Committee (reversing the decision of the High Court), that the question whether the respondents had a permanent tenure or

meaning to justify resting the decision of the case upon it. The term "paracudi," however, in which character the lease was asked for in 1831 was one well understood and definite, and documents in which it was used similar to that in the present case had been construed as giving no permanent right of occupancy *Chockalinga Pillai* v *Vythealinga Pandara Sannadhy, 6 Mad H C 164*, *Thiagaraja* v. *Giyana Sambandha Pandara Sannadhy, I L R. 11 Mad. 77*, and *Krishnasami Pillai* v *Varadaraja Ayyangar, I L. R 5 Mad. 345*, referred to MAYANDI CHETTIAR *v.* CHOKKALINGAM PILLAY (1904)
I. L. R. 27 Mad. 291

29. ———————— *22 and 23 Vict*, *c. 41—Specific performance—Interests unknown to*

sioner, requesting him to remove certain fish and vegetable markets from the site of the proposed Boulevard. On the 17th November 1865, the Municipal Commissioner replied, that the markets were vested in the Corporation of Justices, but that he was willing to vacate certain Municipal stables, which occupied a portion of the proposed site, if the Government would rent other land, mentioned

with rubble foundations, to be removed at six months' notice, on other suitable ground being provided by Government" The land referred to by the Municipal Commissioner was Crown land, which vested in Her late Majesty by the operation of the Statute 21 and 22 Vict, c 106 The Municipal Commissioner's application was referred to the Architectural Improvement Committee and on the 5th of December 1865, the Secretary to that Committee wrote as follows:—"The Committee see no objection to the ground applied for being rented to the Municipal Commissioner, and suggest that the annual charge of one pie per square yard be levied in consideration of the expense of filling in the ground" On the 9th of December 1865, the Government of Bombay passed the following Resolution:—"Government are pleased

pal Commissioner entered into possession of the

Municipality, from the 1st April 1895 to the 31st March 1897, at the rate of R12,000 per annum, and the sum of R24,000 was at a subsequent date paid to Government under protest In 1898, the

tion, praying, *inter alia*, for a declaration that the tenancy of the defendants created by the Government Resolution of the 9th December 1865, had determined, and for an order that the defendants should pay to the plaintiff arrears of rent, at the rate of R12,000 per annum, from the 1st April 1897. The defendants counterclaimed in respect of the R24,000 paid for rent, under protest, in 1897 The lower Court *held*, that the tenancy created by the Government Resolution of the 9th December 1865, had been determined by the notice to quit, dated the 6th June 1900, and ordered the defendants to pay to the plaintiff a sum to be ascertained by the Special Commissioner, as

create, by lease, an interest unknown to the law and as such was bad A disposition in 1865 of Crown lands by the Governor in Council was dependent for its validity on an adherence to the forms prescribed in 22 and 23 Vict, c. 41, and therefore the Resolution was not a valid disposition of the property for the interest claimed. The claim for specific performance was open to similar objection. A Court would not have granted specific performance of a contract for an interest not recognized by the law, and the Resolution regarded as a con-

LANDLORD AND TENANT—*contd.*

9. NATURE OF TENANCY—*contd.*

tract was equally open to the objection, that the statutory formalities had not been observed.

Municipality, having, under an expectation created and encouraged by the Government that a certain interest would be granted, taken possession of the

TARY OF STATE FOR INDIA (1905)

I. L. R. 29 Bom. 580

30. ——— *Onus.* Plaintiff

Court of first instance decreed plaintiff's claim holding that the lands were his *zerait* lands The lower Appellate Court dismissed plaintiff's suit

to retain possession. Where the owner of land seeks to recover possession on the allegation that the party in possession had no right to continue in it and his title to possession is proved or admitted, he can claim a decree, unless the party in possession proves the existence of a tenancy, which entitles him to retain possession. NARSING NARAIN SINGH *v* DHARAM THAKUR (1905)

9 C. W. N. 144

31. ——— **Homestead lands**—*Agricultural lands—Transfer of Property Act* The incident of non-transferability was common to ordinary tenancies of agricultural lands and tenancies from year to year of homestead lands before the passing of the Transfer of Property Act: and the party alleging transferability had to prove a custom to that effect. *Hari Nath v. Raj Chandra, 2 C. W. N. 122,* referred to. *Beni Madhub Banerjee v. Jaikrishna Mookerjee, 7 B. L. R. 152,* distinguished. MADHU SUDAN SEN *v.* KAMINI KANT SEN (1905) . . . **9 C. W. N. 895**

32. ——— *Lease given for building purposes—Presumption of permanency.* Where a lease is given for building purposes the Court may well presume that it was intended to be a perpetual grant *Juhooreelal Sahoo v. H. Dear, 23 W. R. 399, Ismail Khan Mahomed v. Jaigoon Bibee, 4 C. W. N. 210 s.c. I. L. R. 27 Calc. 570,* relied on. *Lala Beni Ram v. Kundan Lal, 3 C. W. N. 502, s c. L. R 26 I. A. 58,* distinguished. PROMODA NATH ROY *v.* SRI GOBINDO CHOWDHURY (1905)

9 C. W. N. 483

33. ——— **Monthly tenancy**—*Non-agricultural land.* In a case where it was quite uncertain as to what was the date from which a tenancy in respect of non-agricultural land ran. *Held, per* RAMPINI, *J.,* that the presumption was that the

with the

Where

tenancy

s served

34. ——— **Lakhiraj or mal**—*Onus—Landlord and tenant—Pasture land* When a landlord sues for possession of land lying within the ambit of his estate on the ground that it is *mal* and not *lakhiraj* of the defendant, the burden of proof in the first instance is upon the plaintiff. *Hari Har Mukhopadhya v. Madhab Chandra Babu, 8 B. L. R 566,* followed The reason of the rule as

35. ——— **Rights of zemindar in respect of house-sites and grove-lands**—*Wajib-*

e plaintiffs pur-

artly of groves

of houses but

LANDLORD AND TENANT—*contd.*

9. NATURE OF TENANCY—*contd.*

transferring their houses The wajib-ul-arz set forth that the occupiers of houses had this power, but all through the entries the zemindar was recognized, and it was stated that if a new house was to be built the permission of the zemindar must be obtained The entry in the wajib-ul-arz as to groves was to the effect that isolated trees and clumps of bamboos planted by tenants might be cut by them; as to rent-free groves, if the trees should die out and the land be brought into cultivation, rent must be paid, and that if a new grove was to be planted the leave of the zemindar must be obtained. *Held*, that the inference of law derivable from the facts stated above was that the plaintiffs were not the absolute owners of the plots purchased by them. KISHAN KUNWAR *v* FATEH CHAND (1906) . . **I. L. R 29 All 203**

36. **Presumption as to permanent tenure**—*Permanent or precarious tenure—Unchanged rent—Transfers of tenure—Recognition by landlord of transfers—Deeds of sale, construction of—Receipts for rent not expressly describing transferee as tenant of holding.* In a suit for ejectment on the ground that the defendant was a mere tenant-at-will, it appeared that the tenure had been in existence for about 80 years, that the rent had never been enhanced though the value of the holding as measured by its sale-price had greatly increased; that it had again and again been sold by kobalas purporting to convey an absolute interest; that it had passed by will, and that the new tenants had been recognized by the landlords after such devolutions *Held*, that the inference was that it was a permanent tenure On the construction of the kobalas *Held*, that the insertion therein of a stipulation that the transferee should take a new patta in his own name did not ...

though not expressly describing the transferee of the tenure as tenant of the holding, stated that the rent paid was the rent of the tenure, and the person paying was the occupier of it, and was paying on her own account *Held*, that there was a sufficient recognition of the transferee as tenant NABA KUMARI DEBI *v* BEHARI LAL SEN (1907)
I. L. R 34 Calc. 902; L. R. 34 I A 160

37. ——— **No presumption that tenancy is chalgeni or mulgeni**—*South Canara, tenant in—Immemorial possession on uniform rent, presumptive evidence of mulgeni* There is no presumption in South Canara that a tenancy is ...

... chalgeni tenure. *Doggu Shetti* v. *Raghuranaik, second appeals Nos 137 and 192 of 1879,* referred to. KITTU HEGADTHI *v.* CHANNAMMA SHETTATHI (1904) . **I. L. R. 30 Mad. 528**

LANDLORD AND TENANT—*contd.*

9. NATURE OF TENANCY—*concld.*

38. ——— **Recorded tenant, whether represents holding**—*Occupancy holding—Question of fact—Decree for rent against recorded tenant—Sale—Interest of unrecorded tenant now affected.* The decision in *Ashok Bhuiyan* v. *Karim Bepari, 9 C. W. N. 843,* lays down no more ...

lord. The fact that only one tenant is registered is merely an item in the evidence on the question whether he is or is not the representative tenant *qua* the landlord *Nitayi Behari Saha* v. *Hari Govinda Saha, I. L R, 26 Cal. 677; Mati Lal Poddar* v. *Nripendra Nath, 2 C. W N. 172, Ananda Kumar* v *Hari Haldar, I. L. R. 27 Calc. 546; Rupram Namasudra* v. *Iswar Namasudra, 6 C W N 302; Rajani Kant Guha* v. *Uzir Bibi, 7 C W N 170; Afraz Mollah* v. *Kulusumannessa, 10 C W N 176, Ambica Pershad* v. *Chowdhry Keshri Sahai, I L R 24 Calc 642; Motilal* v. *Omar Ali, 3 C W N 19,* referred to. The question whether the recorded tenant represents the holding or not is, under the present law, always a question of fact JAGAT TARA DASSYA *v* DAULATI BEWA (1909) . **13 C. W. N. 1110**

10 HOLDING OVER AFTER TENANCY.

1. ——— **Tenant holding over after lease**—*Tenancy from year to year—Agricultural* ...

renewed from year to year and if any contract is ...

2 C. W. N. 303

2. ——— **Terms of holding over after lease has expired**—*Terms of lease.* When a tenant holds on after the expiration of a lease, he does so at the same rent and on the same terms and stipulations as are mentioned in the lease, until the parties come to a fresh settlement. ENAYATOOLAH *v* ELAHEE BUKSH
W. R. 1864, Act X, 42

SHIB SAHAE *v* MUKBOOL AHMAD **2 N. W. 204**

TARA CHUNDER BANERJEE *v.* AMEER MUNDOL
22 W. R. 395

LANDLORD AND TENANT—*contd.*

10. HOLDING OVER AFTER TENANCY—*contd.*

ALLAH BIBEE *v.* JOOGUL MUNDUL
25 W. R. 234

3. ———— *Current rates for similar land.* A raiyat who holds over after the expiry of his lease, in spite of his landlord, is liable to pay at the rates current for the same kind of land in the village TOMMY *v.* SOOBHA KURIM LAL . . . . . 2 W. R., Act X, 73

4. ———— *Evidence of rate of rent.* Where a tenant continues to hold land after his term, his pottah will be evidence of the

5. ———— *Conditions of tenure.* Where on the expiration of a lease the lessee is allowed to continue in possession as a yearly tenant, he does so on the terms contained in the expired lease, so far as they are consistent with a yearly holding SAYAJI *v.* UMAJI
3 Bom. A. C. 27

6. ———— **Right of tenant holding over**—*Holding over by acquiescence of landlord after lease has expired—Notice to quit.* A landowner who, after the expiration of a lease, continues to receive rent for a fresh period, must be considered to have acquiesced in the tenant continuing to hold upon the terms of the original lease, and cannot turn out the tenant, or treat him as a trespasser, without giving him a reasonable notice to quit. RAM KHELAWAN SINGH *v.* SOONDRA
7 W. R. 152

7. ———— *Liability to ejectment—Notice to quit* A tenant holding over for some time without renewal of his lease is entitled, whether he has any right of occupancy or not, to retain possession of his tenure until either he resigns it or is ejected in due course of law. OOMA LOCHUN MOJOOMDAR *v.* NITTYE CHUND PODDAR
14 W. R. 467

8. ———— *Notice to quit* Where a tenant has been allowed to hold over leases on the expiry of their terms, and has continued in possession under those leases, it must be supposed that there is an implied agreement between him and the landlord, and the tenant under such circumstances is entitled to hold on until served with a legal notice to quit. JUMANT ALI SHAH *v.* CHOWDRY CHUTTURDHAREE SAHEE
16 W. R. 185

9. ———— *Notice to quit.* There is no difference in law between the position of a raiyat holding without a pottah and that of one

out some act on the part of the landlord and tenant jointly, or of either of them. *Ram Khelawan Singh v. Soondra, 7 W. R. 152,* followed. CHATURI SINGH *v.* MAKUND LALL
I. L. R. 7 Calc. 710 : 9 C. L. R. 240

10. ———— **Liability of tenant holding over**—*Ejectment, liability to.* If a tenant holds his land for a term of years, and no new tenancy is created by the zamindar on the termination of the original lease, either by receipt of rent or in any other way, and if the tenant has no other title to the land beyond that conceded in the original lease for a term of years, the zamindar is entitled to evict the tenant on expiration of the lease without the intervention of a Court. CHOWDHRY IZHAROOL HUQ *v.* BHOOSEE MAHTOON . . 25 W. R. 201

11. ———— *Tenant-at-will, rate of rent for.* A zamindar who allows a tenant to remain on his land without express contract can only demand a fair rate of rent,—*i.e.*, the full market rate. MONEERODDEEN MERDHA *v.* KEENNIE
4 W. R., Act X, 45

GOPAL LAL THAKOOR *v.* BUDUROODEEN,
7 W. R. 28

12. ———— *Trespasser.* Where a lessee whose lease has expired, and who is unwilling to give the increased rent demanded by the landlord, retains possession in the hope of

13. ———— *Increase of rent—Agreement for specified period.* The defendant being, under a settlement originally obtained from the Government, bound to pay a particular rent to the plaintiff, who had, subsequently to that settlement, obtained an jara from the Government, the

proceedings for enhancement having been taken or fresh contract with the defendant entered into, the special arrangement came to an end at the expiration of 1282 and the original arrangement revived, and therefore the plaintiff was not entitled to demand more than the original rent payable. BURHUNUDDI HOWLADAR *v.* MOHUN CHUNDER GUHA . . . . . 8 C. L. R. 508

This case was distinguished where there was no agreement for a specified period. BURHUNUDDI HOWLADAR *v.* MOHUN CHUNDER GUHA
8 C. L. R. 511

14. ———— **Acquiescence of landlord in tenants holding over**—*Right of occupancy.* The mere fact of a landlord permitting a tenant to

LANDLORD AND TENANT—*contd.*

10. HOLDING OVER AFTER TENANCY—*contd.*

15. ——— Dispossession of tenant

the same right if, having been ejected during his lease, his lease expires pending a suit to recover possession. As against every one except the landlord, he is still the person entitled to possession ARUB v. ASHRUF . . . . 24 W. R. 335

16. ——— Suit against tenant holding over—*Suit on contract or for use and occupation.* Where there is an express contract, the zamindar can only sue on the terms of the contract, and cannot sue for use and occupation WATSON & Co v. TARINEE CHURN GANGOOLY 17 W. R. 494

DHUNUNDRO CHUNDER MOOKERJEE v LAIDLAY 20 W. R. 400

17. ——— *Use and occupation of building under unregistered lease.* A

18. ——— *Liability to change of rent—Notice—Use and occupation of land* In cases not governed by Bengal Act VIII of 1869, a landlord, by merely giving his tenant notice, cannot bind him to pay a particular rent; but he can put an end to the tenancy on its former terms, and if the tenant continue to hold, he does so without any rent having been fixed. A suit by the landlord to recover his dues in such a case would be not a suit for rent, but for reasonable compensation for the use and occupation of the land, and the Court would have no power to fix the rent for the future. KYLASH CHUNDER SIRCAR v WOOMANUND ROY 24 W. R. 412

See LALUNMONEE v. AJOODHYA RAM KHAN 23 W. R. 61

19. ——— *Termination of tenancy and alteration of rent after notice to quit —Suit for use and occupation.* A landlord who can terminate his tenant's tenancy by a reasonable

LANDLORD AND TENANT—*contd.*

10. HOLDING OVER AFTER TENANCY—*contd.*

liable to pay a reasonable sum for occupation. BUDUN MOLLAH v. KHETTUR NATH CHATTERJEE 24 W. R. 441

20. ——— *Consent of landlord—Trespasser—Damages for use and occupa-*

are liable, not for rent as tenants, but for damages as trespassers. MACKINTOSH v. GOPEE MOHUN MOJOOMDAR . . . . 4 W. R. 24

21. ——— *Settlement with tenant containing a clause for re-entry—Compensation in lieu of rent—Use and occupation—Trespassers* The plaintiff made a settlement of certain

amount of rent due and for eviction *Held*, that defendants Nos 2 and 3 had no right on the pro-

rent when defendants Nos. 2 and 3 were in possession as much as he was; but that as the plaintiff had elected to waive the trespass, all the defendants, might, on the authority of *Lalun Monee v. Sona Monee Dabee, 22 W. R 333*, and *Lukhee Kant Dass Chowdhry v. Sumeeruddi Lusker, 13 B. L. R. 243 : 21 W. R. 208*, be treated as tenants, and a decree for use and occupation given against them SURNOMOYEE v. DINONATH GIR SUNNYASEE I. L. R. 9 Calc. 908 : 13 C. L. R. 69

22. ——— *Ejectment, delay in executing decree for—Possession of tenant until execution—Suit for damages.* A plaintiff who had obtained a decree for ejectment under s 25, Act

LANDLORD AND TENANT—*contd.*

10. HOLDING OVER AFTER TENANCY—*contd.*

defendants being the occupation of tenants-at-will and not of trespassers. AYMEL ISLAM *v.* JARDINE, SKINNER & Co. . . . . **8 W. R. 501**

23. ———————— *Tenancy from year to year—Transfer of Property Act (IV of 1882), ss 116, 117.* When an agricultural tenant holds over, his tenancy is renewed from year to year. *Kishore Lal Dey* v. *The Administrator-General of Bengal, 2 C. W. N. 303,* doubted ADMINISTRATOR-GENERAL OF BENGAL *v* ASRAF ALI (1900) **I. L. R. 28 Calc. 227**

24. ———————— *Lease—Tenant holding over—Assent of landlord—Liability for rent after expiry of term—Transfer of Property Act (IV of 1882), s 116.* The defendant held a share of a *khoti* village from the plaintiff, under a *kabuliyat* dated 30th June, 1890, for a period of five years This suit was filed to recover from him the rent due under it for the years 1898, 1899 and 1900. He pleaded that the *kabuliyat* had expired on 30th June 1895, and that subsequently to that date he held

however, that, though the *kabuliyat* had expired in June, 1895, the plaintiff in 1897 had sued the defendant for the rent due under it for the four years 1893-1894 to 1896-1897, and had obtained a decree *Held,* that the decree in that suit was an adjudication that the defendant continued in possession after the date of the expiry of the *kabuliyat* as tenant from year to year, and was liable to payment of rent for the years then sued for, and that he would be liable to the rent now sued for unless he proved that after the decree in the suit of 1897 he gave such notice to the plaintiff as had in fact terminated the tenancy, and unless he put the plaintiff in the way, if he desired it, of acting on that notice by receiving from the defendant as managing *khot* what the plaintiff would be entitled to receive if the tenancy by sufferance had continued. BALAJI RAGHUNATH PHADKE *v.* RAMCHANDRA KASHI PATKAR (1902) . **I. L. R. 27 Bom. 262**

25. ———————— *Under-raiyat, heir of—Possession, right to remain in.* Irrespective of custom or local usage the heir of an under-raiyat under an annual holding is entitled on the death of

26. ———————— *Liability of co-tenants for—Transfer of Property Act (IV of 1882), s. 116—Lease—Estate of deceased co-tenant, when liable for holding over.* The holding over by one or more co-tenants without the consent of the others cannot render persons not so holding over liable for rent. *Draper* v. *Crofts, 15 M. & W. 166,* followed. In order to make the estate of a deceased co-tenant liable for rent due for holding over onus lies heavily on the plaintiff to prove clearly and conclusively that after the expiry of the old lease a new contract was made by and between the plaintiff

9 C. W. N. 540

27. ———————— *Specific Relief Act (I of 1877), s. 9—Tenant holding over—Dispossession by landlord—Suit by tenant to recover possession—Extraordinary jurisdiction* A tenant

upon applied under the extraordinary jurisdiction (s. 622 of the Civil Procedure Code, Act XIV of 1882) *Held,* reversing the decree, that the plaintiff (tenant) was not liable to be evicted by the defendant (landlord) *proprio motu* and that he was entitled to a decree for possession. RUDRAPPA *v.* NARSINGRAO (1905) . **I. L. R. 29 Bom. 213**

11. DAMAGE TO PREMISES LET.

1. ———— **Damage by fire**—*Negligence —Defect in building.* The plaintiff hired a thatched bungalow of the defendant, entered into possession and after living in the house some time lit a fire in the fire-place in one of the rooms. The chimney took fire, and the plaintiff's furniture was destroyed. He subsequently ascertained that

should have given the plaintiff notice of the defective construction of the chimney. The plaintiff had a right to assume that it was properly built. RADHA KRISHNA *v.* O'FLAHERTY **3 B. L. R. A. C. 277 : 12 W. R. 145**

2. ———— **Damage by storage of goods** —*Warehouse—Damage—Suit for negligence—Onus probandi.* The plaintiff let to the defendants a

LANDLORD AND TENANT—*contd.*

11. DAMAGE TO PREMISES LET—*contd.*

an unreasonable and improper weight on the floor, whereby it broke through and damaged the plaintiff's goods below. The evidence showed that the godown had been used by former tenants for storing light goods, but, in addition to light goods, the defendants had, at the time the floor broke, stored upon it several casks of white and red lead and some cases containing tin plates The evidence of professional witnesses showed that a warehouse floor ought to be able to bear 1¼ cwt. per superficial foot, and there was evidence to show that the pressure on the portion of the floor which fell was, at the time, 1 cwt 1 qr 6 lbs. The floor gave way in the part where the heavy goods were stored, but there was nothing to show that they were improperly stored Evidence was given that it was not usual to store [illegible] their merchandise, but that 1¼ cwt was not a dangerous weight for a warehouse-floor to bear, and that no unprofessional person could have anticipated danger from it in the present instance. There was also evidence to show that the girders were [illegible] be [illegible] tain [illegible] the [illegible] appeal), that it lay upon the plaintiff to show that the defendants had acted in an improper and untenant-like manner, and that he had failed to show that any improper or unreasonable weight had been placed by the defendants upon the floor, or such as a tenant exercising ordinary caution might not have placed there. KOEGLER *v.* YULE

5 B. L. R. 401 : 14 W. R. O. C. 45

3. ——— **Destruction of plants by fire**—*Transfer of Property Act (IV of 1882), s. 108, cl (e)—Lease of coffee garden—Voidability of lease* The plaintiff was the assignee of the right and title of the lessor, and the defendant was the lessee of a coffee garden under an instrument which was held to constitute a lease of the coffee plants only. In a suit to recover the annual payment [illegible] *Held*, that the plaintiff was not entitled to recover. KUNHAYEN HAJI *v.* MAYAN . I. L. R. 17 Mad 98

4. ——— **Destruction of premises** [illegible] the defendant let to the plaintiffs one compartment in a certain godown for storing goods for twelve months for a sum of R1,459 and a second compartment in the same godown for twelve months for R 1,368. The plaintiffs entered into possession. In August 1896, in accordance with the practice, the plaintiffs paid the said two sums in advance to the defendant and got a receipt. On the 30th October 1896, without any default of the plaintiffs the whole godown including the said two compartments was destroyed by fire and rendered wholly unfit for the purpose of storing goods The plaintiffs thereupon sued for a refund of a proportionate part of the money paid to the defendant, relying upon s 108, cl. (e), of the Transfer of Property Act and s 65 of the Contract Act *Held*, that they were entitled to recover. The consideration was for the whole year. The lease, *i e.*, the whole contract had become void, and therefore under s 65 of the Contract Act the defendant, who had received the whole consideration, was bound to make compensation for that portion which had failed DHURAMSEY SOONDERDAS *v* AHMEDBHAI HUBIBBHOY . . I. L. R. 23 Bom. 15

5. ——— **Excavations by tenant**—*Permanent lease—Injunction.* A tenant holding under a lease of a permanent character has no power to make excavations of such a character as to cause substantial damage to the property demised, although by the terms of the lease he has power to make excavations. GRISH CHANDRA CHANDOO *v.* SIRISH CHANDRA DAS (1905) . 9 C. W. N. 255

12. DEDUCTIONS FROM RENT.

1. ——— **Right to hajuts or remissions of rent**—*Discretion of landlord.* A raiyat can have no claim in law to hajats (or remissions), which being acts of grace on the part of the landlord rest solely on his discretion PANAOLLAH NASHYO *v.* NUBODEEP CHUNDER SHAHA . 15 W. R. 270

13 REPAIRS

1. ——— **Liability for repairs**—*Construction of lease* Where certain premises were let [illegible] that it would not be a fair construction to hold that [illegible] ANUND MOYEE DOSSEE *v.* RAJ COOMAR ROY

23 W. R. 34

2. ——— *Lease—Assignment of lease—Privity of contract—Liability to repair—Transfer of Property Act (IV of 1882), s. 3.*

LANDLORD AND TENANT—*contd.*

13. REPAIRS—*contd.*

The
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have been originally founded, has never received so wide an application here as there. For anything to be a *fixture* it must be "attached to the earth" as that expression is defined in s. 3 of the Transfer of Property Act. Where the occupiers of premises continue in possession in the belief common to them and the owner of such premises that they hold under the terms of a lease, which had never been assigned to them by the original lessee and which had expired, they are bound to carry out such covenants as to repairs, etc., as would have to be performed under the lease within a period of similar duration to that during which they hold possession, their liability being based on the footing of a tenancy that commenced at the expiration of the lease and not on any privity of contract or estate whether legal or equitable, created by the lease CHATURBHUJ *v.* THOMAS J. BENNETT (1905)

I. L. R 29 Bom. 323
23 W. R. 34

3. ———— **Deduction from rent.** In a suit for house-rent, the tenant cannot be allowed to set-off a sum expended by him in repairing the house without authority from the plaintiff. ZUMMEERUNNISSA *v.* GAYER

6 W. R. Civ. Ref. 26

4 ———— **Lessee's liability to keep demised premises in repair**—*Covenant to renew lease—Extent of lessor's liability—Compensation for lessee's loss for non-repairs by lessor—Transfer of Property Act (IV of 1882, as amended by Act III of 1885), s. 105.* In the absence of express covenant in the lease how far lessor is bound to make structural repairs during the continuance of the lease or on its renewal when such option is given —*Held,* that the lessor is not bound to make such repairs Although the lessee is bound to yield up the premises in good repair after expiry of lease, except ...

amended by Act III of 1885), nor does any principle of equity require such a result *Held,* further, that, if by any act of God or inevitable accident any material portion of the property became unfit for the purpose for which it was let, the lessee had the option to avoid the lease, but no right to claim damages against the lessor. STUART *v.* PLAYFAIR

2 C. W. N. 34

5. ———— **Damage by earthquake**—*Lease—Covenant to "...*

... Where a lessee covenanted to keep the premises wind and watertight and in habitable condition," and the premises were subsequently damaged by earthquake:—*Held,* that the lessee was bound by his covenant whether or not the

14 TAX AND CESSES.

1. ———— **Liability for tax**—*House built by tenant.* The owner of the land is not liable for the tax assessed on a house built upon the land by his tenant WOOMA NUNDO ROY *v* BROWNE

6 W. R. Civ. Ref. 30

2. ———— **Liability for cess**—*Construction of deed—Cess Act (Bengal Act IX of 1880), s 11—Mokurari lease.* It is open to the zemindar and the tenure-holder to contract themselves out of the provisions of s. 41 of the Bengal Cess Act Where in a perpetual *mokurari* lease the rent was fixed by a clause, which runs thus: "At varying *jamas,* to wit, at an annual uniform *jama* of R1,580 from 1284 to 1291 (*Fasli*) and at an annual uniform consolidated *jama* of R1,585 of the current coin from 1292 (*Fasli*) together with *abwah* such as salami for Dusserah and Holi, Burkha, Sair, Road cess, Public works cess, etc, all of which are included in that very sum of R1,585." *Held,* that the contract does not provide for the contingency which happened in this case, namely, an increase in the amount of cesses levied by the State That if any additional

15 ALTERATION OF CONDITIONS OF TENANCY.

(*a*) POWER TO ALTER.

1. ———— **Mortgagee of tenant**—*Change of nature of tenure without authority from landlord.* When the conditions of a tenure have been settled by a compromise between the landlord

LANDLORD AND TENANT—*contd.*

15. ALTERATION OF CONDITIONS OF TENANCY—*contd.*

(*b*) DIVISION OF TENURE AND DISTRIBUTION OF RENT.

2. ———— **Change in position of tenants and rent payable for each portion of land** A landlord, who has let out land at a certain rent, payable in one sum for the whole, cannot, without the consent of the tenant, alter the position of the latter and say that in future so much shall be payable in respect of one parcel only, and so much in respect of another KALEE CHUNDER AICH *v.* RAMGUTTY KUR . . . **25 W. R. 95**

3. ———— **Breaking up tenures without consent of tenants**—*Liability for rent* Where tenants hold land by different agreements, the zamindar has no right without their consent to break up existing holdings and redistribute lands so as to alter the extent and nature of the holdings RUHEEMUDDY AKUN *v.* POORNO CHUNDER ROY CHOWDHERY . . . **22 W. R. 336**

4. ———— **Splitting claim for rent**—*Suit for rent under a lease of several estates where the rent is a lump sum.* Where the rent reserved by a lease of several estates is a lump sum, a claim to recover it under the lease cannot be split and apportioned. OOSMAN KHAN *v* CHOWDHRY SHEORAJ SINGH . . . . . . **5 N. W. 42**

25 W. R. 19

6. ———— *Consent of landlord—Act X of 1859, s. 27.* Under s. 27, Act

S C. WOOPENDRO MOHUN TAGORE *v* THANDA DOSSIA . . . . . **12 W. R. 263**

SADHAN CHANDRA BOSE *v.* GURU CHARAN BOSE **8 B. L. R. 6 note : 15 W. R. 99**

7. ———— *Acquiescence by landlord.* But where a zamindar himself put up a

8. ———— *Consent of landlord—Power to consent—Former* Held, by a majority of the Court (*dissentiente* STEER, *J.*), that the farmer of a Government khas mehal, as the party entitled to the rents, can accept a surrender of a tenure, and therefore is competent to assent to the division of a raiyati holding within his farm into several distinct and separate holdings. HUREE MOHUN MOOKERJEE *v.* GORA CHAND MITTER **2 W. R., Act X, 25**

9. ———— **Agreements as to division**—*Act X of 1859, s. 27—Liability for rent* The provision of Act X of 1859 which requires that every agreement as to division or distribution of rent should be in writing, applies only to division or distribution made after the Act came into operation ALLENDER *v.* DWARKANATH ROY . **15 W. R. 320**

10. ———— *Bengal Tenancy Act (VIII of 1885), s 88—Division of tenure—*

tinguished An entry in a furd or account which appeared on the face of it to have been written by a servant of a tenant and exhibited payments of rent made in respect of six different taluks by the tenant to the landlord, and which was signed and receipted by a Sumarnavis of the said landlord, does not amount to a consent in writing on behalf of the landlord to a division of the tenure or distribution of the rent. JNANENDRA MOHAN CHOWDHRY *v.* GOPAL DAS CHOWDHRY (1904) **I. L. R. 31 Calc. 1026**
S C. 8 C. W. N. 923

11. ———— **Transfer of a tenure**—*Liability of tenant—Bengal Tenancy Act (VIII of 1885), ss 12, 17, 88.* Where the defendant held separately a share of a *sikmi taluq* under the plaint- ... party and plaintiff, ... ngal Ten- ... endant in making the transfer did not amount to a sub-

DEBI *v.* DHARANI KANTA LAHIRI (1905) **I. L. R. 33 Calc. 279**

12. ———— **Partition**—*Joint landlords—Effect on holding—Division of holding—Estates Partition Act (Bengal Act VIII of 1867).* An estate

LANDLORD AND TENANT—*contd.*

13. REPAIRS—*contd.*

The word *fixture* is one of common use in English law, but in India the word is not so familiar, and the maxim '*quicquid plantatur solo solo cedit*,' on which the law of England as to fixtures seems to have been originally founded, has never received so wide an application here as there. For anything to be a *fixture* it must be "attached to the earth" as that expression is defined in s. 3 of the Transfer of Property Act. Where the occupiers of premises continue in possession in the belief common to them and the owner of such premises that they hold under the terms of a lease, which had never been assigned to them by the original lessee and which had expired, they are bound to carry out such covenants as to repairs, etc., as would have to be performed under the lease within a period of similar duration to that during which they hold possession, their liability being based on the footing of a tenancy that commenced at the expiration of the lease and not on any privity of contract or estate whether legal or equitable, created by the lease. CHATURBHUJ *v* THOMAS J BENNETT (1905)
I. L. R. 29 Bom. 323
23 W. R. 34

3. ———— **Deduction from rent.** In a suit for house-rent, the tenant cannot be allowed to set-off a sum expended by him in repairing the house without authority from the plaintiff. ZUMMEERUNNISSA *v.* GAYER
6 W. R. Civ. Ref. 26

4. ———— **Lessee's liability to keep demised premises in repair**—*Covenant to renew lease—Extent of lessor's liability—Compensa-*

except in case of damage done by act of God or inevitable accident, a corresponding liability is not imposed on the lessor. No such obligation is imposed by the Transfer of Property Act (IV of 1882, as amended by Act III of 1885), nor does any principle of equity require such a result. *Held*, further, that, if by any act of God or inevitable accident any material portion of the property became unfit for the purpose for which it was let, the lessee had the option to avoid the lease, but no right to claim damages against the lessor. STUART *v* PLAYFAIR
2 C. W. N. 34

5. ———— **Damage by earthquake**—*Lease—Covenant to "keep premises wind and watertight and in habitable condition"—Liability to repair—Transfer of Property Act (IV of 1882), s. 108, cl. (m).* Where a lessee covenanted to "keep the premises wind and watertight and in habitable condition," and the premises were subsequently damaged by earthquake:—*Held*, that the lessee was bound by his covenant whether or not the damage was caused by an earthquake or other irresistible force; that the covenant was a contract to the contrary within the meaning of s. 108, Transfer of Property Act, and cl. (*m*) of that section did not apply; and that the defendant was not liable to do all and every repair that became necessary by reason of the earthquake, but only to make good the damage caused to the premises by the earthquake to the extent of making them wind and watertight and in habitable condition *Proudfoot* v. *Hart, L. R. 25 Q B. D 44*, referred to. HECHLE *v.* TELLERY
4 C. W. N. 521

14. TAX AND CESSES.

1. ———— **Liability for tax**—*House built by tenant.* The owner of the land is not liable for the tax assessed on a house built upon the land by his tenant. WOOMA NUNDO ROY *v* BROWNE
6 W. R. Civ. Ref. 30

2. ———— **Liability for cess**—*Construction of deed—Cess Act (Bengal Act IX of 1880), s 11—Mokurari lease* It is open to the zemindar and the tenure-holder to contract themselves out of the provisions of s. 41 of the Bengal Cess Act Where in a perpetual *mokurari* lease the rent was fixed by a clause, which runs thus: "At varying *jamas*, to wit, at an annual uniform *jama* of R1,580 from 1284 to 1291 (*Fasli*) and at an annual uniform consolidated *jama* of R1,585 of the current coin from 1292 (*Fasli*) together with *abwab* such as salami for Dusserah and Holi, Burkha, Sair, Road cess, Public works cess, etc., all of which are included in that very

cess is imposed or if the amount of cess is increased, the incidence of the new burden must be regulated according to the Statute. MAHANAND SAHAI *v.* SAYEDUNNISSA BIBI (1907) . **12 C. W. N. 154**

15 ALTERATION OF CONDITIONS OF TENANCY.

(*a*) POWER TO ALTER.

1. ———— **Mortgagee of tenant**—*Change of nature of tenure without authority from landlord.* When the conditions of a tenure have

1 Agra Rev. 60

LANDLORD AND TENANT—*contd.*

15. ALTERATION OF CONDITIONS OF TENANCY—*contd.*

(*b*) DIVISION OF TENURE AND DISTRIBUTION OF RENT

2. ——— **Change in position of tenants and rent payable for each portion of land** A landlord, who has let out land at a certain rent, payable in one sum for the whole, cannot, without the consent of the tenant, alter the position of the latter and say that in future so much shall be payable in respect of one parcel only, and so much in respect of another KALEE CHUNDER AICH *v.* RAMGUTTY KUR . . . **25 W. R. 95**

3. ——— **Breaking up tenures without consent of tenants**—*Liability for rent* Where tenants hold land by different agreements, the zamindar has no right without their consent to break up existing holdings and redistribute lands so as to alter the extent and nature of the holdings RUHEEMUDDY AKUN *v.* POORNO CHUNDER ROY CHOWDHRY . . . **22 W. R. 336**

4. ——— **Splitting claim for rent**—*Suit for rent under a lease of several estates where the rent is a lump sum.* Where the rent reserved by a lease of several estates is a lump sum, a claim to recover it under the lease cannot be split and apportioned. OOSMAN KHAN *v.* CHOWDHRY SHEORAJ SINGH . . . . . . **5 N. W. 42**

[illegible]

25 W. R. 18

6. ——— *Consent of landlord—Act X of 1859, s 27* Under s 27, Act X of 1859, no division of tenure or distribution of rent is valid or binding without the consent in writing of the landlord. UPENDRA MOHUN TAGORE *v* THANDA DASI . . . **3 B. L. R. A. C. 349**

s c. WOOPENDRO MOHUN TAGORE *v* THANDA DOSSIA . . . . . **12 W. R. 263**

SADHAN CHANDRA BOSE *v* GURU CHARAN BOSE **8 B. L. R. 6 note : 15 W. R. 99**

7. ——— *Acquiescence by landlord.* But where a zamindar himself put up a tenure for sale in separate lots, and took rents from [illegible]

8. ——— *Consent of landlord—Power to consent—Farmer. Held,* by a ma- [illegible]

LANDLORD AND TENANT—*contd.*

15. ALTERATION OF CONDITIONS OF TENANCY—*contd.*

(*b*) DIVISION OF TENURE AND DISTRIBUTION OF RENT—*contd.*

several distinct and separate holdings. HUREE MOHUN MOOKERJEE *v.* GORA CHAND MITTER **2 W. R., Act X, 25**

9. ——— **Agreements as to division** —*Act X of 1859, s 27—Liability for rent.* The [illegible]

10. ——— *Bengal Tenancy Act (VIII of 1885), s. 88—Division of tenure—Distribution of rent—Rent receipt and furd, construction of—Consent to a division or distribution of* [illegible]

tinguished An entry in a furd or account which appeared on the face of it to have been written [illegible]

does not amount to a consent in writing on behalf of the landlord to a division of the tenure or distribution of the rent. JNANENDRA MOHAN CHOWDHRY *v.* GOPAL DAS CHOWDHRY (1904) **I. L. R. 31 Calc. 1026** **s c. 8 C. W. N. 923**

11. ——— **Transfer of a tenure**—*Liability of tenant—Bengal Tenancy Act (VIII of 1885), ss. 12, 17, 88.* Where the defendant held separately a share of a *sikmi taluq* under the plaintiff, and transferred that share to a third party and served a notice of the transfer on the plaintiff, landlord, as prescribed by s. 12 of the Bengal Tenancy Act. *Held,* that the act of the defendant in making the transfer did not amount to a subdivision of the tenure, and that the defendant was not liable for rent for any period subsequent to the transfer. *Chintamani Dutt* v. *Rash Behari Mondal, I. L R. 19 Calc. 17,* referred to KALI SUNDARI DEBI *v.* DHARANI KANTA LAHIRI (1905) **I. L. R 33 Calc. 279**

12. ——— **Partition**—*Joint landlords—Effect on holding—Division of holding—Estates Partition Act (Bengal Act VIII of 1867)* An estate

LANDLORD AND TENANT—*contd.*

15. ALTERATION OF CONDITIONS OF TENANCY—*contd.*

(b) DIVISION OF TENURE AND DISTRIBUTION OF RENT—*concld.*

having been partitioned between the plaintiff and his co-sharers under Bengal Act VIII of 1876, a portion of a holding, which formerly appertained to the joint estate, fell within plaintiff's share: *Held*, that the partition had the effect of dividing the holding so that the plaintiff became the sole landlord with regard to the portion of the holding that fell within his share of the estate. *Sarat Sundari Dibya v. Ananda Mohun Sarma, I. L. R. 5 Calc. 273*, *Hem Chandra Chowdhry v. Kali Prossunno Bhaduri, I. L. R. 26 Calc. 832*, referred to. *Durga Prosad Sen v. Doula Gazee, 1 C. W. N. 160 and 161*; *Rai Kamaleswarie v. Maharaja Harbullabh Narain Singh, 2 C. L. J.*

SHAHA (1906) . . . 10 C. W. N. 818

13. ———— *Partition—Rights of tenants in respect of house sites in the abadi.*

his predecessors in title had occupied for a con-

doubted. SADDU *v.* BIHARI SINGH (1908) I. L. R. 30 All. 282

(c) CHANGE OF CULTIVATION AND NATURE OF LAND.

14. ———— **Allowance of time for**

15. ———— **Using land for brick-making**—*Changing the nature of the land—Injunction—Acquiescence of landlord.* In a suit for a perpetual injunction against the principal defendants to stop the business of brick-making carried on by them on lands which they had taken

LANDLORD AND TENANT—*contd.*

15. ALTERATION OF CONDITIONS OF TENANCY—*contd.*

(c) CHANGE OF CULTIVATION AND NATURE OF LAND—*concld.*

under temporary leases from their co-defendants, who were holders of small jotes within the plaintiff's zamindari and to recover damages for alleged injury done to the lands, where the evidence showed such a continued use of the land for twenty-five

than it had been in previously:—*Held*, that no case had been made out for the issue of an injunction. TARINEE CHURN BOSE *v.* RAMJEE PAL 23 W. R. 298

16. ———— *Right of tenant to change nature of land.* No tenant taking

17. ———— **Planting a mango tope on dry land**—*Forfeiture—Waste.* In the absence of local custom, tenants are not entitled to convert land under cultivation into a mango grove. Tenants from year to year are not at liberty to change the usual courses of husbandry without the consent of the landlord. LAKSHMANA *v.* RAMACHANDRA . . . I. L. R. 10 Mad. 351

(d) DIGGING WELLS OR TANKS.

18. ———— **Right to dig well**—*Mokurrari tenure, holder of.* A mokurrari raiyat may build a well on his land or do anything that does not so entirely destroy the land as to endanger the zamindar's ground-rent. DHEPUT SINGH *v.* HALAL KHOORY CHOWDHRY . . W. R. 1864, 279

19. ———— *Right of tenant to dig well for use of himself and other residents in village.* A tenant with a right of occupancy, who failed to show that he had a right, by custom or

20. ———— *Custom—Acquiescence of zamindar.* Where a cultivator was in the habit of digging wells to irrigate his field, described as irrigated chobee, and from the practice which had arisen under the old proprietors, the

LANDLORD AND TENANT—*contd.*

15. ALTERATION OF CONDITIONS OF TENANCY—*contd.*

(*d*) DIGGING WELLS OR TANKS—*contd.*

consent of the zamindar had not been thought necessary:—*Held* that the cultivator was entitled to insist on his old right until by a new contract the old terms of his holding were superseded. MAHOMED FIZOODDEEN *v.* IMBUT . 3 Agra 285

21. ——— **Breach of covenant not to dig tank**—*Suit by zamindar.* For breach of a covenant by an ijaradar not to excavate a tank on the lands leased to him, or, if so, to be liable to eviction by the zamindar, and to pay the cost of filling up the tank, no suit will lie at the instance of the zamindar for the recovery of a fractional portion of the lands covered by the lease, but the zamindar may declare the lease cancelled and resume the whole of the lands, or he may sue for cancellation of the lease, and he may also sue for damages occasioned by the excavation of the tank. BEER CHUNDER MANICK *v.* HOSSEIN 17 W. R. 29

22. ——— **Digging well or planting trees without permission**—*Ejectment—Forfeiture of lease as for breach of condition.* The act of digging a well or planting trees may not necessarily imply or assert a proprietary right in the land in which the well is dug or the trees are planted, yet by the general law of the North-West Provinces a raiyat, even having a right of occupancy, being prohibited from doing certain acts, such as planting of trees or digging wells, without his landlord's consent makes himself liable to ejectment, unless protected by local usages, from his holding, if he were to dig a well or plant trees without the landlord's consent. S. 6, Act X of 1859, which provides that a raiyat who has held or cultivated the land for more than twelve years acquires a right of occupancy in it so long as he pays rent for the same, must be read consistently with cl. 5, s. 23 of that enactment,

is at liberty to use and deal with the land as he pleases. The useful or beneficial nature of an act is not a justification of it if it be a breach of contract. A condition not expressly made between the parties to a contract may nevertheless be attached to such contract by custom. The general rule that a raiyat is liable to ejectment on the digging of a well without the consent of the zamindar may be varied by particular local usage or express contract. KOONJ BEHARY PATUCK *v.* SHIVA BALUK SINGH

Agra F. B. 119 : Ed. 1874, 89

23. ——— **Power of tenants to construct wells without consent of landholder**—*N. W. P. Rent Act (XII of 1881), s. 44. Held*, that, having regard to s. 44 of the N.-W. P. Rent Act, 1881, an occupancy tenant may, if such well be an improvement within the meaning of the section, construct either a kutcha or pucca well on his

LANDLORD AND TENANT—*contd.*

15. ALTERATION OF CONDITIONS OF TENANCY—*contd.*

(*d*) DIGGING WELLS OR TANKS—*concld.*

I. L. R. 21 All. 386

24. ——— **Rule prohibiting tenant**

invariable penalty for breach of contract occasioned by the construction of a well. When such forfeiture is claimed, and the right to claim it is proved, the Court should consider whether an adequate remedy cannot be secured to the landlord without

tenant, and leave the landlord to seek a remedy which would be more proportionate to the injury he has sustained, and amply relieve him from its effects. SHEOCHURN *v.* BUSSUNT SINGH. RAMJUTHUN SINGH *v.* MEHDEE

3 N. W. 282 : Agra F. B. Ed. 1874, 258

25. ——— **Prohibition to excavation of tank**—*Sub tenant—Breach of stipulation in lease—Excavation of tank.* The plaintiff let a piece of land to *M*, and by the terms of the lease it was

[illegible] B. L. R. Ap. 40 : 20 W. R. 230

LANDLORD AND TENANT—*contd.*

15. ALTERATION OF CONDITIONS OF TENANCY—*contd.*

(e) ERECTION OF BUILDINGS.

26. ———— **Right to erect buildings**—*Tenant of non-agricultural land—Injunction to restrain erection* Although where land is let for

erected by him or his predecessors, because a landlord might let property of that kind as agricultural land at will or from year to year. *Prosunno Coomaree Debea* v *Rutton Bepary, I. L. R 3 Calc. 696 1 C L. R. 377*, considered *Lal Sahoo* v.

JEE *v.* JAGUN NATH BAISAK . **10 C. L. R. 25**

Reversing decision in JAGGANATH BAISAK *v.* PROSONNO COOMAR CHATTERJEE **9 C. L. R 221**

27. ———— *Erection of buildings by tenant-at-will or tenant from year to year—Determination of tenancy—Notice to quit.* There is no law in this country which converts a holding at will from year to year, or for a term of years, into a permanent tenure, merely because the tenant, without any arrangement with his landlord builds a dwelling-house upon the land demised PROSONNO COOMAREE DEBIA *v* RUTTON BEPARY.
I. L. R. 3 Calc. 696 : 1 C. L. R. 577

28. ———— *Grant of land—Presumption as to nature of tenure—Erection of buildings—Bastu land—Suit to evict.* Where

and that the grant was of a permanent character. *Prosonno Coomar Chatterjee* v. *Jagun Nath Bysack. 10 C. L R 25*, followed *Prosunno Coomaree, Debea* v *Rutten Bepary, I L. R. 3 Calc. 696*, distinguished. GUNGA DHUR SIKDAR *v.* AYIMUDDIN SHAH BISWAS . **I. L. R. 8 Calc. 960**

LANDLORD AND TENANT—*contd.*

15. ALTERATION OF CONDITIONS OF TENANCY—*contd.*

(e) ERECTION OF BUILDINGS—*contd.*

s c. GOVINDA CHUNDRA SIKDAR *v.* AYINUDDIN SHA BISWAS . . . **11 C. L. R. 281**

29. ———— **Occupancy of homestead land**—*Tenancy, determination of.* The mere record of the name of a tenant, who is found in occupation of a particular piece of land, in settlement proceedings, and of the rent payable by him does not invest him with any permanent title to hold it. Where an estate, at one time the property of the Government, was as a khas mehal settled raiyatwari for a period of thirty years from 1247, and where in such settlement *A* was recorded as tenant of the land at a stated rent:—*Held*, that the Court was not bound to presume that the origin of *A's* title was a grant to continue in permanent possession. *Prosunno Coomaree Debea* v. *Rutton Bepary, I. L. R. 3 Calc. 696*, and *Addaito Charan Dey* v. *Peter Das, 13 B. L. R. 17*, followed. ARUT SAHOO *v.* PRANDHONE PYKURA
I. L. R. 10 Calc. 503

30. ———— **Suit to compel tenants to clear lands of buildings and trees**—*Currency of lease—Cause of action.* Certain landlords' suits to compel their lessee's tenants to clear certain

31. ———— **Suit to eject tenant and remove buildings**—*Unsubstantial or temporary building.* A claim to occupy a building cannot be maintained on the ground of a previous tenant's

SUFDUR ALI KHAN *v.* JEO NARAIN SINGH
16 W. R. 161

32. ———— **Ejectment suit**—*Tenant expending money on the premises.* In a suit for eject-

erect a new house, it would not be equitable to allow him to eject them from it, and he accordingly refused the plaintiff a decree for ejectment, but gave him decree against the defendants for three

LANDLORD AND TENANT—*contd.*

15. ALTERATION OF CONDITIONS OF TENANCY—*contd.*

(e) ERECTION OF BUILDINGS—*contd.*

years' rent. On appeal to the High Court, the decree was varied by directing that the plaintiff should recover possession of the land and house, there being no evidence that the defendants had entered on the land for building purposes or had built "in the hope or encouragement by the plaintiff of an extended term or an allowance for expenditure" (*Ramsden v. Dyson, L. R. 1 H. L. 170*) and consequently the defendants had no equity against the plaintiff. ONKARAPA v. SUBAJI PANDURANG SUBAJI PANDURANG v. ONKARAPA

I. L. R. 15 Bom. 71

33. ———— Perpetual injunction—*Specific Relief Act (I of 1877), s. 54, cls. (b), (c)—Injury to interest in immoveable property—Inapplicability of remedy by compensation—Erection of dwelling-house on agricultural land—Ameliorating waste.* A zamindar sued for an injunction to compel the defendant, who held agricultural lands comprised in the zamindari with occupancy-rights, to demolish a dwelling-house which he had erected thereon for purposes not connected with agriculture, and

34. ———— Law of landlord and tenant as to building by the tenant on the land—*Acquiescence of lessor—Equitable estoppel preventing ejectment—Onus of proof.* A lessor is not restrained by any rule of equity from bringing a suit to evict a tenant, the term of whose lease has expired, merely by reason of that tenant's having erected permanent structures on the land leased, such

was a legal inference to be drawn from such facts as were found. The onus of establishing sufficient

been dis-

Ramsden

s. 108 of

ferred to.

BENI RAM v. KUNDAN LAL

I. L. R. 21 All. 496 : L. R. 26 I. A. 58

3 C. W. N. 502

35. ———— Erection of buildings by tenant on land—*Acquiescence of landlord—Compensation to tenant—Transfer of Property Act (IV of 1882), s. 108.* To resist ejectment by a tenant on the ground that the tenancy is a permanent one, and that the landlord stood by and

Mad. 320, referred to. Where it is proved that

Yeshwada

distinguish

BIBI .

36. ———— Agricultural holdings—*Alteration of the character of the holdings by persons entitled to permanent rights of occupancy—Remedy.* The occupants of certain *tope* lands,

I. L. R. 24 Mad. 65

37. ———— Buildings erected by tenant—*Transfer of Property Act (IV of 1882), s. 108—Removal of buildings during continuance of lease—Rule of common law in India.* Certain land was leased in 1875 to a tenant for twenty years, it being recited in the lease that the tenant took a lease of the land for constructing a building thereon for the purposes of trade. A building was

LANDLORD AND TENANT—*contd.*

15. ALTERATION OF CONDITIONS OF TENANCY—*concl'd.*

(e) ERECTION OF BUILDINGS—*concld.*

erected, and it was not contended that it was of a kind different from or of a value out of proportion to what was in the contemplation of the parties when the lease was entered into At the expiration of the term, the lessor sued to recover the land, but [illegible]

English law as such was applicable, the Indian [illegible]

law (as well as under the common law of India) a tenant, who erects a building on land let to him can only remove the building and cannot claim compensation for it on eviction by the landlord *Mahalatchmi Ammal* v. *Palani Chetti, 6 Mad H. C. 215,* discussed. ISMAI KANI ROWTHAN *v* NAZARALI SAHIB (1904) . I. L. R. 27 Mad. 211

38. ———— **Indigo factory on land let for cultivation**—*Land let for agricultural purposes—Bengal Tenancy Act (VIII of 1885), s. 23—Use of land consistent or not with purposes of tenancy—Second appeal, power in, to deal with findings as to whether erection of building impairs value of land or renders it unfit for cultivation.* An occupancy-tenant can under s 23 of the Bengal Tenancy Act (VIII of 1885) " use the land in any manner which does not materially impair the value of the land or render it unfit for the purposes of the tenancy." In a suit for an injunction to restrain the building of an indigo factory on land let for agricultural purposes generally: *Held,* that the question whether such a building conforms to the [illegible]

(reversing the decision of the Subordinate Judge) found that the erection of the building did not impair the value of the land, and was in conformity with the purposes for which an agricultural holding is let, and dismissed the suit. *Held,* that the High [illegible]

LANDLORD AND TENANT—*contd.*

16. TRANSFER BY LANDLORD.

1. ———— **Assignee of lessor**—*Assignee of right to recover rent—Acquiescence of lessee.* Where a landlord assigns his right to another, his lessee cannot put an end to the obligation to pay rent, if, after becoming aware of the arrangement, he made no objection. If the assignee dispossesses the lessee, he cannot sue the latter for rent. GOUR DYAL SINGH *v.* HUBEEL HOSSEIN 14 W. R. 83

2. ———— *Right to rent—Attornment by lessee.* A party succeeding to the proprietary rights of a lessor and dispossessing the lessee cannot sue such lessee in the Collector's Court for rent due from him as tenant, unless the latter has previously attorned to him. RAM LALL MISSER *v.* CHUNDRABULLEE DABEE . . 13 W. R. 228

3. ———— *Liability for rent to* [illegible]

suit against *D* was dismissed by the lower Courts. *Held,* that, as the assignment respected the rents of that tenure and *D* had admitted being in possession of the land, the suit ought to have been allowed to proceed against both. DHOOLEE CHUND *v.* RAJROOP KOOER . . . 15 W. R. 107

4. ———— *Change in proprietary title of estate—Right of patnidar to eject tenant* A mere change in the proprietary title of an estate does not entitle a patnidar, who holds from the new proprietor, to eject a tenant who can prove a right of occupancy RAM GHOSE *v.* RADHA CHURN GANGOOLY . . . . 15 W. R. 416

5. ———— *Transfer by landlord or person having right to receive rent—Right of assignee to realize rent. A,* a zamindar granted [illegible]

whole of the arrears claimed had become due *C* [illegible]

I Mad. 24

6. ———— *Sale of zamindar's rights—Right of purchaser to rent.* If, when a judgment-debtor's rights and interests in property are sold, the property is lawfully in the pos-

LANDLORD AND TENANT—*contd.*

16. TRANSFER BY LANDLORD—*contd.*

session of tenants, the proper course is not to dispute their lawful possession and occupation, but to place the purchaser in a condition to receive from them the rents in the place of the judgment-debtor. UNCOVENANTED SERVICE BANK *v.* PALMAR 2 N. W. 456

7. ———— *Purchaser of zamindari, right of, to rent.* Where a party purchases another's zamindari rights in an estate in which that other had created an under tenure with a fixed rent, the circumstance that payment of rent on account of such tenure was suspended while the zamindari was in the hands of the former proprietor does not affect the rights of his successor or the fixity of the rent. GUDADHUR LALL *v.* RAM JHAN GUNDEREE . . . 10 W. R. 212

8. ———— *Suit for rent—Bengal Tenancy Act (VIII of 1885), ss. 72 and 73—Rule 3, Ch. I of the Rules made by the Local Government under cl. (2) of s. 189 of the Bengal Tenancy Act—Liability for rent on change of landlord—Notice of transfer—Transfer of patni right over a specific area, whether valid—Reg. VIII of 1819, ss. 3 and 6—Transfer of Property Act (IV of 1882), s. 6.* Patni right over a specific area lying within a patni talukh is transferable. Sub-s. (1) of s. 72 of the Bengal Tenancy Act does not require that the notice therein contemplated should be given in any particular manner. MADHUB RAM *v.* DOYAL CHAND GHOSE I. L. R. 25 Calc. 445
2 C. W. N. 108

9. ———— *Position of tenant-at-will paying rent and the purchaser.* Where a party occupies land within a zamindari with the zamindar's permission as a tenant-at-will, on the terms of paying rent, a purchaser of the zamindari has a right to treat him as his tenant unless the zamindar has transferred his right, *e. g.*, by granting a patni for the land to a third party. In a suit by such purchaser against such tenant, in which the third party intervened, the issue whether the zamindar transferred his rights to the plaintiff or had previously transferred them to the intervenor was material. GOOROO PROSUNNO BANERJEE *v.* SREEGOPAL PAL CHOWDHRY . . . 20 W. R. 99

10. ———— *Purchaser at sale for arrears of revenue—Alteration in payment of rent.* The purchasers of a zamindari right by having their shares separately [illegible]

11. ———— *Suit by purchaser of moiety of talukh for rent.* Where the plaintiff, after purchasing from *S* a moiety of a talukh which had been previously let in ijara on a lump jumma to *T*, brought a suit under Act X of 1859 against the lessee to recover that portion of the whole rental property [illegible]

subsequent suit brought against *S* and *T*, for a declaration of title and for rent from the time of the purchase, that, as the lessee had no explicit notice [illegible]

10 W. R. [illegible]

12. ———— *Arrangement between landlord and tenant binding a purchaser.* A purchaser of land is bound by a contract between his vendor and a tenant, which is secured by the rent of the land remaining in the hands of such tenant, the contract being in the nature of an assignment of rent of the property sold. CHOORAMUN SINGH *v.* PATOO KOOER . . 24 W. R. 68

13. ———— *Mortgagee after foreclosure and tenant of mortgagor.* A mortgagee [illegible]

14. ———— *N. W. P. Rent Act (XII of 1881), ss. 7, 95 (l)—Determination of rent by Revenue Court—Suit for arrears of rent as so determined for period prior to such determination.* An application was made in the Revenue Court under s. 95 (*l*) of the N.-W. P. Rent Act (XII of 1881) by the purchaser of proprietary rights in a mehal, for determination of the rent payable by his vendors, who had become, under s. 7, his ex-proprietary tenants in respect of the land they had previously held as sir. The Revenue Court, by an order dated the 18th February 1884, fixed the rent at a particular sum payable annually, after making the deduction of four annas in the rupee required by s. 7 of the Rent Act. In May, 1884, the purchaser sued the ex-proprietary tenants to recover from them arrears of rent at the sum so fixed, for a period of three years prior to the Revenue Court's order. *Held* by the Full Bench, that the plaintiff was en- [illegible]

15. ———— *Bengal Tenancy Act (VIII of 1885), s. 72—Transfer of landlord's interest—Liability to pay rent—Payment to transferor—Notice by transferor and not by transferee.* Where a landlord transferred his interest to another person, and the tenant got notice of the transfer from the transferor, but the transferee did not give any notice: *Held*, that payments of rent made by

LANDLORD AND TENANT—*contd.*

16. TRANSFER BY LANDLORD—*concld.*

the tenant to the transferor after such notice were not valid payments, and the transferee was entitled to claim the same from the tenant The object of sub-s (2) of s 72 is to relieve the transferee landlord from the necessity of giving notice

16. ——— *Mortgage of holding by landholder to tenant—Mortgagee's rights as tenant not merged in his rights as mortgagee.* The fact of a tenant's taking a mortgage of land comprised in his holding from his landlord does not itself extinguish the tenancy by merging the rights of the tenant in those of the mortgagee. The effect of such a mortgage on the tenant rights would be merely that they would be in abeyance. When the landlord redeemed the mortgage, the parties would revert to their former position, and the landlord would not be entitled to get possession of the land except by ejecting the tenant in due course of law. KALIU *v.* DIWAN (1902)
I. L. R. 24 All. 487

17. TRANSFER BY TENANT.

1. ——— Right to sub-let—*Tenant with permanent right of occupation* A tenant who has a permanent right to the occupancy of land subject to payment of fair and equitable rent has, as a matter of course, a right to sub-let the land to the extent of his own interest therein. KHOSHAL MAHOMED *v.* JOYNOODDEEN . . 12 W. R. 451

2. ——— *Limit of power—Under-lease specifying no term* A lessee cannot

22 W. R. 214

3. ——— *Limit of power*

tenens he is; and that no occupancy or jotedari rights, which relate to a specific extent of land, could be acquired in respect of an undivided share of an estate. SHOORUT SOONDRY DABEE *v.* (BINNY) JARDINE, SKINNER & CO. . . 25 W. R. 347

4. ——— *Sub-lease—Position of sub-tenant—Privity of contract—Ejectment—Notice to quit—Bombay Land Revenue Code (Bombay Act V of 1879), s 84* A sub-lease differs from an assignment of lease in that it creates no privity of contract between the sub-tenant and the landlord. The landlord has to deal with his lessee and not with the sub-tenants of the latter. A landlord putting an end, by proper notice, to the tenancy of his tenant thereby determines the estate of the under-tenants of the latter. TIMMAPPA KUPPAYYA *v.* RAMA VENKANNA NAIK
I. L. R. 21 Bom. 311

LANDLORD AND TENANT—*contd.*

17. TRANSFER BY TENANT—*contd.*

5. ——— *Sub-letting—Sub-lessee, rights and liabilities of—Sale of lessee's interest, effect of.* *B* held certain land as a lessee under *M*. The lease did not contain any covenant against sub-letting, or any forfeiture clause. *B* sub-let a portion of the land demised to *A* *M* obtained

the land or put an end to the sub-lease VISHNU ATMARAM *v.* ANANT VISHNU I. L. R. 14 Bom. 384

6. ——— *N.-W. P. Rent Act (XII of 1881), s. 9—Ex-proprietary tenant, power to sub-let—Right of occupancy.* An ex-proprietary tenant can sub-let the whole or any part of his occupancy holding, and such a sub-letting is not forbidden by s 9 of Act XII of 1881. KHIALI RAM *v* NATHU LAL . . I. L. R. 15 All. 219

7. ——— *N.-W. P. Rent Act (XII of 1881), s. 9—Occupancy-tenant, power of, to sub-let—Perpetual lease by occupancy tenant.* The effect of a perpetual lease made by an occupancy tenant of his occupancy holding to a person not a co-sharer in the right of occupancy considered. MAHESH SINGH *v.* GANESH DUBE
I. L. R. 15 All. 231

8. ——— *N.-W. P. Rent Act (XII of 1881), s 31—Lease of occupancy-hold*

9. ——— *Bengal Tenancy Act (VIII of 1885), s. 85—Landlord and tenant—Sub-lease of a raiyati holding by a registered in-*

10. ——— Transfer of Tenancy—*Yearly tenancy—Consent of landlord.* A yearly tenancy cannot be transferred without the lessor's consent, and the fact that the lessee had had enjoy-

LANDLORD AND TENANT—*contd.*

17. TRANSFER BY TENANT—*contd.*

ment under the pottah for a very long series of years does not alter the character of the interest originally created by the pottah LALLJEE SAHOO *v* BHUGWAN DOSS . . . . 8 W. R. 337

11. ———————— *Consent of landlord—Purchaser from tenant* The purchaser of a raiyati tenure is bound to communicate with the zamindar and obtain his consent to the transfer of the tenure, without this being done, a gomastah's receipts of rent are not binding on the zamindar BHOJOHURRI BANICK *v* AKA GOLAM ALI

16 W. R. 97

12. ———————— *Transfer of non-transferable tenure—Right of purchaser against transferee of raiyat.* Where proprietors purchased a tenant's rights and sued to eject one, who alleged that he held the pottah from the tenant, it was *held* that the tenant, being a simple raiyat without transferable rights, could not give a third party any right of possession as against the proprietors of the estate, and that the holder of the pottah from the tenant was a mere trespasser. OMAR *v.* ABDOOL GUFFOOR . . . . 9 W. R. 425

13. ———————— *Kurpha tenant—Transferable tenures* The jummai rights of a kurpha under-tenant are not transferable without the consent of the raiyat landlord BONOMALI BAJADUR *v.* KOYLASH CHUNDER MOJOOMDAR

I. L. R. 4 Calc. 135

14. ———————— *Transfer by tenant of mirasi rights—Acknowledgment of transfer by landlord* The right of transfer of mirasi rights although by no means commonly enjoyed by tenants in these provinces, is nevertheless in some places sanctioned by local usage. Where a person has made such a transfer without authority, it should nevertheless be enquired into whether or not the landlord has sanctioned such transfer by accepting the assignee as tenant and receipt of rent. KOOERYA *v.* DOORGA PERSHAD . 2 N. W. 139

15. ———————— *Suit for rent of transferable tenure—Possession of holder.* The person into whose hands a transferable tenure comes [illegible]

16. ———————— *Liability for rent—Party in possession.* A landlord seeking to recover rent is not bound to proceed against any person who may have any latent beneficial right to the tenure in respect of which the rent has fallen due, but against that person only who may be found in possession thereof with a legal right. TILOCK CHUNDER CHUCKERBUTTY *v.* GOURMONEE

2 Hay 364

17. ———————— *Liability for rent—Registered tenant.* When arrears of rent become due, a zamindar is not bound to look beyond his book for the party liable, except when he has recognized other persons as his tenants either by receipt of rent or in other ways. ANUND MOYEE DASSEE *v.* MOHINDRO NARAIN DASS 15 W. R. 264

18. ———————— *Suit for rent against person in possession though unregistered.* An action for rent does not lie against a person said or shown to be in possession of a tenure which is written in the books of the zamindar in the name of a different person unless there is a contract for rent, express or implied. ESHAN CHUNDER GHOSSAL *v.* BURNO MOYEE DOSSEE . . 16 W. R. 233

19. ———————— *Liability for rent—Unregistered transfer.* Where there has been [illegible]

SUROOP CHUNDER MITTER *v* DHONAYE BISWAS

23 W. R. 103

20. ———————— *Transfer of raiyati jote—Unregistered occupier—Person in possession.* In the case of transfer of a mere raiyat's jote, the person in possession is liable for the rent whether he is registered or not. GUNGA'RAM SIRDAR *v* BIRESSUR BANERJEE, 6 W. R., Act. X, 32
MISSLEBACK *v.* LUCHMEE NARAIN 17 W. R. 504

21. ———————— *Suit for rent—Possession—Registration of tenants* A suit for [illegible]

[illegible] W. R. Act X, 50

22. ———————— *Non-registration of transfer.* When a tenure is not transferable, and no transfer has been consented to or adopted by the zamindar the zamindar is entitled to treat the incoming raiyat as a trespasser, and to evict him even in the middle of the year But [illegible]

evicting him in the middle of the year. HURRO MOHUN MOOKERJEE *v.* CHINTAMONEE ROY

2 W. R. Act X, 19

23. ———————— *Non-registration of transfer.* Non-registration in the zamindar's serishta does not invalidate the sale of a tenure. BHARUT ROY *v* GANGANARAIN MOHAPUTTAR

14 W. R. 211

24. ———————— *Unregistered* [illegible]

LANDLORD AND TENANT—*contd.*

17. TRANSFER BY TENANT—*contd.*

NOBEEN KISHEN MOOKERJEE *v.* SHIB PERSHAD PATTUCK . . . . . 8 W. R. 96

Upheld on review . . . 9 W. R. 161

25. ———— *Unregistered transferee*

CHURN BANDOPADHYA *v.* DROBO MOYEE DOSSEE 17 W. R. 122

26. ———— *Acknowledgment of tenancy—Non-registration and mutation of names.* A zamindar is bound to sue the actual tenant when known to him, though the tenant's name

DEBI . . . . . . 8 B. L. R. 1

27. ———— *Act X of 1859, s 27—Division of rent or tenure.* The lessor is not bound to recognize the title of any one except the person with whom he deals, whatever that title may be as between the lessee and the members of his family. UPENDRA MOHUN TAGORE *v.* THANDA DASI . . . . . 3 B. L. R. A. C. 349

s c. WOOPENDRO MOHUN TAGORE *v* THANDA DOSSIA . . . . . . 12 W. R. 263

SADHAN CHANDRA BOSE *v.* GURU CHARAN BOSE 8 B. L. R. 6 note: 15 W. R. 99

28. ———— *Liability for rent—Mortgagee in possession—Transfer of Property Act (IV of 1882), ss. 65, 76* Where the subject of a mortgage is leasehold property, and the mortgagee is put into possession under circumstances which amount to an assignment or transfer of the leasehold interest, the mortgagee becomes liable, as a rule, to pay the rent; but where the mortgagee is in possession and his name is registered in the landlord's books as the tenant, there can be no doubt as to his being liable for the rent. KANNYE LALL SETT *v.* NISTARINY DOSSEE I. L. R. 10 Calc. 443

29. ———— *Purchaser of khas mehal—Registration of tenures* The purchaser of a Government khas mehal is not bound by the transfer of the rights of any of the original

1 W. R. 225

It is otherwise if they are registered. HURRO-MOHUN MOOKERJEE *v.* GOLUCK MUNDUL 1 W. R. 351

SUTTO CHURN GHOSAL *v.* OBHOY NUND DOSS 2 W R., Act, X, 31

30. ———— *Failure to obtain registry of name—Purchaser, position of.* Where the purchaser of a patni talukh fails to obtain registry of his name in the zamindar's books, a third party who claims to derive his title from the purchaser's vendor has no right on the ground of such failure to treat the purchaser as his tenant. RAM NARAIN DOSS *v* TWEEDIE 12 W. R. 181

31. ———— *Right of purchaser—Under-lessees* *A* agreed to take at a stipulated rent a portion of the property leased to *B* for the remainder of *B's* lease. Almost immediately after, *B* surendered his lease to the landlord (*S*),

time of *R's* purchase, had held under him as a tenant-at-will. *Held*, that *A* was bound, under the terms of his contract, to pay the rent for as many years as the lease had to run to his lessor, or to the person who represented his lessor. RUSHTON *v.* ATKINSON . . . . 11 W. R. 485

32. ———— *Liability for rent accruing before tenant's possession—Liability of transferee of lease for rent.* Except under special circumstances, which the plaintiff must prove, a tenant defendant cannot be held liable for the rent which has accrued due prior to his taking possession. Hence if *A* leases land to *B*, who transfers the lease to *C*, and *C* mortgages to *D*, who afterwards forecloses his mortgage and takes possession of the demised premises, *D* cannot be held liable for any rent which has accrued due prior to his taking possession. MACNAGHTEN *v.* LALLA MEWA LALL 3 C. L. R. 285

33. ———— *Non-registration of tenure—Recognition of transfer of tenure.* A

SOMOYEE DOSSEE *v.* MACKINTOSH . 2 Hay 14

34. ———— *Transfer of permanent hereditable tenure—Forfeiture—Sarbarakari tenure.* A zamindar is not bound to recognize the transfer of a permanent hereditable tenure

35. ———— *Transfer defeating right of re-entry.* Even where a lessee's interest-

LANDLORD AND TENANT—*contd.*

17. TRANSFER BY TENANT—*contd.*

36. ——— *Liability for rent—Registration of tenant—Transfer without landlord's knowledge.* Where a landlord registers a new tenant with his express or implied consent in the place of the old tenant, the new tenant becomes for the future as much personally liable for the rent as the old tenant was; and this personal liability continues, notwithstanding a fresh transfer or devolution of the tenure, unless proper steps are taken to apprise the landlord of the change and to have it registered in his serishta DWARKA NATH MITTER *v* NOBONGO MUNJORI DASSI 7 C. L. R. 233

37. ——— *Acknowledgment of tenancy—Registration of transfer—Deposit of rent.* The mere deposit of rent in the Collector's office by the purchaser of an under tenure in his own name and that of the registered tenant is not sufficient notice to the zamindar of such purchase, nor is the mere acceptance by the zamindar of rent so paid an acknowledgment on his part of the purchaser as his under tenant, but it is otherwise when there is acceptance with notice, notwithstanding that the transfer has not been registered MRITYUNJAYA SIRCAR *v* GOPAL CHANDRA SIRCAR 2 B L. R. A. C. 131

s.c. MRITUNJOY SIRCAR *v.* GOPAL CHUNDER SIRCAR . . . . . 10 W. R. 466

38. ——— *Transfer by registered tenant—Sale in execution of decree—Receipt of rent—Acknowledgment of tenancy—Bengal Act VIII of 1865, s. 16.* The plaintiffs were shareholders with one *B* in a tenure, of which *B* was the registered tenant, but of which he had assigned part to the plaintiffs without the consent of the zamindar In execution of a decree against *B* for arrears of rent, the plaintiff's portion was sold and purchased by the defendant. In a suit by the plaintiffs to set aside the sale and recover their property:-*Held*, that they were pecuniarily liable for the rent with *B*, unless the zamindar had made a separate agreement with them; that the whole tenure was rightly seized and sold in execution of the decree; [illegible]

SRIMANTO LASHKAR

8 B. L R. 240 note: 10 W. R. 467

39. ——— *Transfer without consent of zamindar—Right of zamindar to sell tenure for arrears of rent—Recognition of transferee.* [illegible]

judgment-debtors, if he does so with reasonable promptness: provided he has not done anything to recognize the transfer. Where a zamindar makes a transferee a party to a suit for rent and accepts a decree against him jointly with other persons, he must be held to have recognized the transferee as a tenant, although the latter's name may not have been entered as such in the zamindar's book. RAM KISHORE ACHARJEE CHOWDHRY *v* KRISHNO MONEE DEBIA . . . . . 23 W. R. 108

40. ——— *Liability for rent—Non-registration of tenure.* *A*, the lessee of a transferable tenure, transferred his interest to *B*, but after the transfer the name of *A* remained as registered tenant. Subsequently the zamindar brought a suit against *A* for arrears of rent which accrued due partly before and partly after the purchase, and obtained a decree for the sale of the [illegible]

See NOBIN CHUNDER SEN CHOWDHRY *v* NOBIN CHUNDER CHUCKERBUTTY . . 23 W. R. 46

41. ——— *Position of purchaser—Act X of 1859, s. 21.* A decree against a vendor obtained before a Collector cancelling a pottah of a jote which has been sold is not binding on the purchaser of the jote, if the purchase was made before the transfer of the tenure to him took place. The purchaser, having entered into possession, became a "raiyat holding under a pottah, the term of which had not expired," within s 21, Act X of 1859, and therefore could not be ejected otherwise than in execution of a decree made in a suit against himself. LALLJEE SAHOO *v* BHUGWAN DOSS . . . . . . 8 W. R. 337

42. ——— *Suit for rent—Liability of tenure for rent—Rent due by former* [illegible]

43. ——— *Enhancement of rent, Suit for—Transferable tenure—Mutation of names—Tenant who has transferred his holding, Liability of, for rent.* The main object of a suit for

LANDLORD AND TENANT—*contd.*

17. TRANSFER BY TENANT—*contd.*

had been no mutation of names, or payment of a nazar, or execution of fresh lease; but the landlord had received rent from the third party and was

44. ———— *Mortgage of occupancy holding—"Act inconsistent with the purpose for which the land was let"—Suit to eject mortgagee in possession—N.-W. P. Rent Act (XII of 1881), ss. 9 and 93.* A mortgage of his holding by an occupancy tenant, under which the mortgagee obtains possession, is not an act "detrimental to the land" or "inconsistent with the purpose for which the land was let" within the meaning of s. 93 (*b*) of the N.-W. P. Rent Act (XII of 1881) An act detrimental to the land means an act which injures the land itself. An act inconsistent with the purpose for which the land was let must be some such act as the making of a tank, or the altering

transfer within the prohibition of s. 9 of the N.-W.P. Rent Act. MADHO LAL *v.* SHEO PRASAD MISR
I. L. R. 12 All. 419

45. ———— *Transfer of portion of makurari tenure—Bengal Tenancy Act (VIII of 1885), ss. 17, 18 and 88—Rights of purchaser or transferee of tenure—Right of suit.* There is nothing in s. 88 of the Bengal Tenancy Act to prevent a person who has purchased a share in a

I. L. R. 21 Calc. 433

46. ———— *Transfer of Property Act (IV of 1882), s. 108, cl. (j)—Transfer by lessee—Lessor's right to sue both lessee and his transferee.* The provision in s. 180 of the Transfer of Property Act that a lessee may transfer absolutely or by way of mortgage or sub-lease, the

LANDLORD AND TENANT—*contd.*

17. TRANSFER BY TENANT—*contd.*

also liable to the lessor, who may at the same time sue the lessee upon his express covenant, and the transferee upon the privity of estate, though he can have execution against one only. KUNHANUJAN *v.* ANJELU . . . **I. L. R. 17 Mad. 296**

47. ———— *Transfer of Property Act (IV of 1882), s. 108—Transferability of agricultural and non-agricultural holding—Law before the passing of the Transfer of Property Act.* Before the Transfer of Property Act was passed, there was no distinction drawn between agricultural and non-agricultural tenancies, and there was no law under which, before the passing of the Transfer of Property Act, agricultural holdings could be transferred against the will of the landlord or sub-divided without his consent. MADHAB CHANDRA PAL *v.* BEJOY CHAND MAHATAB
4 C. W. N. 574

48. ———— *Transfer of Property Act (IV of 1882). s. 108, cl. (j)—Liability of a lessee for rent after transfer—Leases of non-agricultural character.* To suits brought by a landlord against his lessee for rent based upon kabuliats, the leases being of a non-agricultural character, an assignee of the lessee was of made a party defendant on his own application. It was contended on behalf of the lessee that under the common law of India it was competent for the tenant to rid himself of his liability by assignment or at any rate by assignment and notice thereof to his landlord *Held*, that, if there was such a common law

strued without reading it as governed by, or interpreted with reference to, any such principle; and that, after a transfer by the lessee and notice thereof to the landlord, the liability of the lessee would not cease, merely at his pleasure, without any act or consent on the part of the landlord. SASI BHUSHAN RAHA *v.* TARA LAL SINGH DEO
I. L. R. 22 Calc. 494

49. ———— *Bengal Tenancy Act (VIII of 1885), ss. 18 and 50—Presumption—Occupancy raiyats—Raiyats holding at fixed rent—Incidents of tenancy—Transferability of tenure—Alienation of part of a tenure—Suit for khas possession and for declaration that alienation was*

that the alienation did not work a forfeiture, and the plaintiffs were not entitled to khas possession,

LANDLORD AND TENANT—*contd.*

17. TRANSFER BY TENANT—*contd.*

but they were entitled to the declaration that the alienation was not binding upon them ; (ii) that the presumption created by s. 50 does not operate to convert an occupancy raiyat into a raiyat holding at fixed rates, nor does it render the tenancy subject to the incidents of a holding at fixed rates as prescribed by s. 18 of the Act. BANSI DAS *alias* RAGHU NATH DAS *v.* JAGDIP NARAIN CHOWDHRY

I. L. R. 24 Calc. 152

Dissented from in DALHIRI GOLAB KOER *v.* BALLA KURMI . . . . I. L. R. 25 Calc 744

50. —— —————— *Mulgeni lease—Alienation by mulgenidar—Alienation contrary to the terms of the lease—Absence of any clause as to re-entry—Suit by mulgar for possession.* In the absence of any clause for re-entry in the event of alienation by the mulgenidar (permanent tenant), contrary to the terms of the lease, the mulgar (landlord) cannot treat the alienation as void and recover possession from the alienee. NARAYAN DASAPPA *v.* ALI SAIBA . . . I. L. R. 18 Bom. 603

51. —————— *N.-W. P. Rent Act (XII of 1881), s. 9—Mortgage by occupancy-tenant—Surrender of holding by heirs of mortgagor—Suit on mortgage—Sale and purchase by mortgagee—Subsequent suit by zamindar for recovery of occupancy-holding.* *A*, an occupancy-tenant to whom the second and third paragraphs of s. 9 of Act XII of 1881 applied, gave a simple mortgage of his occupancy holding to one *S*. During the continuance of the mortgage, *A* died and his sons surrendered the occupancy-holding to the zamindar *S* then brought a suit for sale on his mortgage, obtained a decree, had the mortgaged property sold, and purchased it himself. On suit by the zamindar, who had not been made a party to any of the previous proceedings, against *S* for recovery of the holding, it was *held* that *S* took nothing by his purchase under the decree obtained as above described and that the zamindar was entitled to recover. SUKHU *v.* TAFAZZUL HUSAIN KHAN

I. L. R. 16 All. 398

52. —————— *Alienation contrary to terms of lease—Absence of any clause as to re-entry—Suit for ejectment—Forfeiture.* A clause in a lease whereby the lessee covenanted not to alienate, unaccompanied by any clause for re-entry upon breach of the covenant, *held* to be a covenant merely and not a condition, and a suit for ejectment brought by the lessor was dismissed. *Narayan Dasappa v. Ali Saiba, I. L. R. 18 Bom 603*, followed. MADAR SAHEB *v.* SANNABAWA GAJ-BANSHAH . . . . I. L. R. 21 Bom. 195

53. —————— *Transfer by tenant without consent of landlord—Original tenant*

of the tenures, and the original tenants had re-

UPENDRA CHUNDER CHOWDHRY

I. L. R. 24 Calc. 212

54. —————— *Transfer by tenant of land on which he has by permission of zamindar built a house for his own occupation—Rights of zamindars in land forming part of the abadi—Customary law of the North-Western Provinces.* According to the general custom prevalent

village. As such occupier of a house in the abadi

of a decree against him, except his interest in the timber, roofing, and wood work of the house. *Narain Prasad v. Dammar, All Weekly Notes (1888) 125*, and *Chajju Singh v. Kanhia, Weekly Notes All (1881) 114*, referred to. GIRDHARIJI MAHARAJ *v.* CHOTE LAL. I. L. R. 20 All. 248

55. —————— *Payment into Court by tenant, and withdrawal of money by landlord—Effect of withdrawal as showing consent of landlord to transfer.* When a non-transferable

he had procured the money by selling his holding to the defendant No. 1, and the landlord, the plaintiff, took out the money out of Court: *Held*, that is

2 C. W. N. 63

56. ———— Bengal Tenancy Act—*Bengal Tenancy Act (VIII of 1885), s. 85—Sub-letting, restrictions on—Validity of sub lease granted by raiyat*

LANDLORD AND TENANT—*contd.*

17. TRANSFER BY TENANT—*contd.*

for more than nine years—Sub-lease registered before the commencement of the Bengal Tenancy Act. Where a *raiyat* has, without the consent of his landlord, granted a sub-lease, by an instrument registered before the commencement of the Bengal Tenancy Act, the sub-lease shall not be valid for more than nine years from the commencement of the Act, as against the landlord, but not as against the *raiyat.* GOPAL MONDAL *v.* ESHAN CHUNDER BANERJEE (1901). . I. L. R. 29 Calc. 148

57. ——— *Bengal Tenancy Act, s. 85 (3).* The word " the sub-lease shall not be valid," in s. 85 (3), mean that the sub-lease shall not be valid against the landlord. MADAN CHANDRA KAPALI *v.* JAKI KARIKAR (1902) 6 C. W. N. 377

58. ——— *Bengal Tenancy Act (VIII of 1885), ss. 49, 85 (2)—Permanent lease by an occupancy-raiyat—Registration—Indian Registration Act (III of 1877), s. 17—Estoppel—Suit for ejectment of under-raiyat by purchaser of raiyat's interest—Proof of lease—Meaning of " kaimi."* Where defendant No. 1, an occupancy-*raiyat*, executed a permanent registered lease in favour of defendant No. 2, who was put in possession, and

the defendant No. 2: *Held*, that the purchaser was

gistered contrary to the provisions of s. 85 (2) of the Bengal Tenancy Act, must be regarded as unregis-

must be taken to be an under-*raiyat* holding otherwise than under a written lease. The tenancy thus being a subsisting one, the defendant No. 2 could not be evicted except after service of notice as prescribed by s. 49 of the Bengal Tenancy Act. *Also* that a tenant can prove his tenancy right without proving his lease, if he has one which is inadmissible for want of registration. *Also* that the word " *kaimi* " does not import fixity of rent. FAZEL SHEIKH *v.* KERAMUDDI SHEIKH (1902) 6 C. W. N. 916

59. ——— *Bengal Tenancy Act (VIII of 1885), ss. 49, 85—Permanent lease by a raiyat—Right of suit by assignee of under-raiyat against purchaser of raiyat's interest.* A *raiyat* granted a permanent sub-lease, and an assignee of the

LANDLORD AND TENANT—*contd.*

17. TRANSFER BY TENANT—*contd.*

the plaintiff could not succeed except on proof of

ground of mere prior possession, claim the protection afforded by the provisions of s. 49 (*b*) of Bengal Tenancy Act to an under-*raiyat* with a *bonâ fide* subsisting tenancy, whose permanent lease is void and cannot be put in evidence. *Fazel Sheikh* v. *Keramuddi Sheikh, 6 C. W. N. 916*, distinguished RAMGATI MANDUL *v.* SHYAMA CHARAN DUTT (1902) . . 6 C. W. N. 919

60. ——— *Sale of house by tenant—Haq-i-chaharum by whom payable.* In the case of a customary right to receive *haq-i-chaharum*

I. L. R. 23 All. 209

61. ——— *Sale of jote—Surplus sale proceeds, claim of, by purchaser—Transferability, question of.* A certain *jote* was sold for arrears of rent obtained against the recorded tenant, and the purchaser of a portion of the *jote*

AMBICA NATH ACHARJEE *v.* ADITYA NATH MOITRA (1902) . . . . . 6 C. W. N. 624

62. ——— *Fraudulent decree—Claim of rent at a higher rate—Custom and usage—Transfer of occupancy holding—Bengal Tenancy Act (VIII of 1885), s. 183.* Where a land-

stitute fraud The essence of a usage of transferability is that transfers made to the know-

plaintiff could retard the growth of the usage in his patti, which was a separate estate by refusing to acknowledge the validity of transfers in that patti. JAGUN PROSHAD *v.* POSUN SAHOO (1904) 8 C. W. N. 172

63. ——— *Landlord and tenant—Sale of occupancy holding upon payment of nazar—Landlord's consent—Usage—Custom—Pay-*

LANDLORD AND TENANT—*contd.*

17. TRANSFER BY TENANT—*contd.*

ment of rent marfatwaree—Bengal Tenancy Act (VIII of 1885), s 183. Where the facts found were that in a certain locality upon transfer of a non-transferable holding the landlord does not recognise the transferee as tenant, but all the same he receives rent from the transferee granting a receipt in which the original holder's name is entered as tenant and in which the transferee's name is entered as a person through whom the payment is made, and when the transferee does not personally pay the rent, but sends it by an agent, the name of this agent is also entered as the person by whose hand the payment is made, and till the transferee pays the *nazar* the original holder remains recorded in the landlord's books as tenant. *Held, that upon these facts it might be found that a raiyat is entitled to sell his holding without reference to the landlord provided only that the purchaser pays to the landlord a customary fee. That the finding that tenants do transfer their rights of occupancy without the landlord's consent does not in itself establish a usage in this respect so as to affect the right of the landlord to accept or refuse to consent to such transfer. That the finding that payment of a *nazar* was requisite to validate such transfer would imply that the landlord's consent was necessary. That the *nazar* not having been paid by the

64. ——— *Rights of land-*

not in the absence of a special custom or contract giving him such a right, any right to transfer the site of his house in the *abadi*. BHAJAN LAL *v.* ABDUS SAMAD KHAN (1905) . I. L. R. 27 All. 55

65. ——— *Customary law—Rights in respect of building sites in the abadi—Wajib-ul-arz—Unauthorised building—Acquiescence.* The plaintiff, who was the receiver of the estate of a minor, situate in the district of Bulandshahr, resided at Calcutta, the property in Bulandshahr being managed through a karinda, whose authority was strictly limited by a power-of-attorney. In 1894, two tenants of the village Sankhni, in which the minor was a co-sharer, sold their house in the *abadi* by means of a registered sale-deed. The vendee was put into possession, and proceeded, between 1894 and 1896, to spend a considerable sum of money in building a " pucca " house on the site of the house so purchased. It did not appear that he made any inquiries from the karinda of the plaintiff as to his rights or asked for any permission to build the house. On the other hand the karinda took no steps to interfere with the building. The wajib-ul-arz of the penultimate settlement of the village contained these provisions :—" Without our consent no body can settle

LANDLORD AND TENANT—*contd.*

17. TRANSFER BY TENANT—*contd.*

can remove and sell the materials of the building constructed by him." In January 1902 the plain-

the plaintiff's karinda under the circumstances

Acting C.J., (*contra*)—The principal defendants,

Sri Girdharji Maharaj v. Chote Lal, I. L. R. 20 All. 248, and *Ramsden v. Dyson, L. R. 1 E. and I. A. 129*, referred to RAJ NARAIN MITTER *v.* BUDH SEN (1905) . . I. L. R. 27 All. 338

66. ——— *Transfer of non-transferable holding—Sub-lease by transferee.* Where defendants Nos 2 and 3, who had a non-transferable occupancy holding sold it to defendant No. 1 and took an under-lease of the same from the

67. ——— *Transfer by a*

distinguished. RAJANI KANTO BISWAS *v.* EKKOWRI DAS (1907) . I. L. R. 34 Calc. 689

LANDLORD AND TENANT—*contd.*

17. TRANSFER BY TENANT—*contd.*

Decree against recorded tenant, effect of—Purchase of part of tenure if an incumbrance. When raiyats,

[illegible]

the transferees took no steps to get their names registered in the landlord's *sherista* and had paid no rent since their purchase, inasmuch as the landlord had notice of the purchase under s. 17, Bengal Tenancy Act, he was bound to bring a suit against the transferrers and the transferees jointly. A sale of the holding in execution of a decree for rent obtained against the transferrers only did not therefore affect the transferees' interest in the holding. The landlord was bound to recognise the transfer though in the absence of his written consent as required by s. 88 of the Bengal Tenancy Act, he was not bound to recognise the sub-division effected by the transfer The interest of the transferees was not an incumbrance which could be avoided by a purchaser at a rent sale BAISTAB CHARAN CHOWDHURY *v.* AKHIL CHANDRA CHOWDHURY (1906) . . . **11 C. W. N. 217**

69. ——————— *Landlord and tenant—C[illegible]*
usage of—
hold and
on paym[illegible] [illegible] evidence that for 15 or 16 years before suit, occupancy holdings had been transferred in the Pergunnah as also in the village, and the landlords had allowed the transferees to hold possession and pay rent as *marfatdars* and granted them receipts as such, but would not substitute their names in the *sheristha*, unless some payment was made by way of *salami* or *nazar* :—*Held*, that the evidence was insufficient to establish a custom or local usage of transferability of occupancy holdings. KURANI DASSI *v* SAJONI KANT SINGH (1908)
12 C. W. N. 589

[illegible]

was transferable without their consent, but only that it was transferable with their consent. That

[illegible]

LANDLORD AND TENANT—*contd.*

17. TRANSFER BY TENANT—*contd.*

Banerjee, 11 C. W.N. 76, distinguished. ASMUTUNNESSA KHATUN SAHEBA *v* HARENDRA LAL BISWAS (1908) . . . **I. L. R. 35 Calc. 904**
s.c. 12 C. W. N. 72

18. ACCRETION TO TENURE.

1. ——————— **Right to increment to tenure.** The law gives an increment to a tenant or under-tenant in possession, without reference to the nature of his title. NARAIN DOSS BEPARY *v* SOOBUL BEPARY . . . **1 W. R. 113**

2. ——————— *Tenant-at-will.* A tenant-at-will is entitled to occupy an accretion to his holding so long as he retains possession of his original holding. BHUGABUT PRASAD SINGH *v.* DURG BIJAI SING . . . **8 B. L. R. 73**
16 W. R. 95

(*Contra*) FINLAY, MUIR & Co *v* GOPEE KRISTO GOSSAMEE . . . . **24 W. R. 404**

3 ——————— **Right to pottah from the zamindar for accreted lands**—*Jote paying rent to Government.* In case of an accretion to land by alluvion, the raiyat is not entitled to a pottah from the zamindar in respect of the accretion, if it is an accretion to a jote the rent of which is payable to Government. CAMPBELL *v* KISHEN DHUN AUDHICAREE . . **Marsh 67: 1 Hay 233**

KISHEN DHUN AUDHICAREE *v* CAMPBELL
W. R. F. B. 22: 1 Ind. Jur. O. S. 79

4. ——————— **Terms of holding accreted lands**—*Beng. Reg. XI of 1825—Assessment of accreted lands.* Lands accreting to a tenure are, under Regulation XI of 1825, to be held under the rates and on the conditions imposed upon the original tenure itself. MAHOMED WASSIL *v.* ZULEKHA KHATOON . . . . **2 Hay 515**

5. ——————— *Beng Reg. XI of 1825, s 4, cl 1. Held*, that, under s 4, cl. 1,

[illegible]

RAI *v.* RAMGOBIND SINGH. **2 Agra, Pt. II, 206**

6. ——————— *Land accreted to muafi tenure—Beng Reg. XI of 1825, s. 4, cl 1.* Where alluvial land has been formed in front of and contiguous to an old muafi which had been resumed and settled with the muafidars :—*Held*, that, in the absence of any custom to the contrary, the first clause of s 4, Regulation XI of 1825, applies, and the portion so thrown up in front of the muafi becomes an increment to the holding of ex-muafidars. FUZL-OOD-DEEN *v* IMTEEAZ-OON-NISSA
3 Agra 152

7. ——————— Where lands become annexed to a jote by gradual accretion

LANDLORD AND TENANT—*contd.*

18. ACCRETION TO TENURE—*contd.*

within the meaning of s 4, Regulation XI of 1825, the jotedar is entitled to hold them on the same principle and under the same legal conditions as he holds the parent estate. GOBIND MONEE DEBIA v. DINO BUNDHOO SHAHA . . 15 W. R. 87

8. ———— *Beng Reg XI of 1825, s 4, cl 1* Cl. 1, s. 4, Regulation XI of 1825, refers only to under tenants intermediate between the zamindar and the raiyat, and to khood kasht or other raiyats who possess some permanent interest in their lands, and not to tenants from year to year ZUHEEROODEEN PAIKAR v CAMPBELL. 4 W. R. 67

9. ———— *Beng Reg XI of 1825, s. 4, cl. 1* Cl. 1, s. 4, Regulation XI of 1825, prescribes that the right to the occupancy of accreted land is with the owner of the parent mehal or subordinate tenure, as the case may be. But so far from saying that it is revenue or rent-free, or that the original revenue or rent assessment covers the demand both for the original estate or original subordinate tenure and for the accreted land, the very reverse is contemplated by the section, which provides for payment of revenue or rent, if payable under law or usage Accreted lands, when liable to enhancement at the ordinary neighbouring rates, are entitled to a deduction of 10 per cent. for collection charges, and 10 per cent. for talukhdari profits. JUGGUT CHUNDER DUTT v PANIOTY 6 W. R., Act X, 48

10 ———— **Accretion to zimma tenure**—*Beng. Reg XI of 1825.* Cl. 1, s. 4, Regulation XI of 1825, and s. 22, Act X of 1859, will not allow a suit for the assessment of lands accreted to a zimma tenure ; and holders like the zimmadar, in a case of this nature, are not liable under s 15, Act X of 1859, for additional rent for chur land, until they are shown by the zamindar to be holders

11. ———— **Accretion to holding of mirasi jotedar**—*Right of occupancy.* A mirasi jotedar with a right of occupancy has a right to lands which accrete to his jote, and the zamindar cannot take them away and settle them with other parties. ATTIMOOLLAH v SAHEBOOLLAH 15 W. R. 149

149 ; and Bhagabat Prasad Sing v. Durg Bijai Singh, 8 B L. R. 73 : 16 W. R 95, followed. *Finlay Muir & Co.* v. *Gopee Kristo Gossamee, 24 W. R. 404,*

LANLORD AND TENANT—*contd.*

18. ACCRETION TO TENURE—*contd.*

not followed GOURHARI KAIBURTO v BHOLA KAIBURTO . . I. L. R. 21 Calc. 233

13. ———— **Rent of accreted land**—*Beng Reg XI of 1825, s. 4, cl. 1—Liability to increased rent.* When the area of land held by a tenant under a permanent tenure has been increased by accretion, the tenant becomes subject to pay an increased rent on account of the land gained by accretion, on the conditions laid down in Regulation XI of 1825, s 4, cl. 1. RAMNIDHEE MANJIE v PARBUTTY DASSEE . . I. L. R. 5 Calc. 823

s c. SHOROSSOTI DOSSEE v. PARBUTTI DOSSEE 6 C. L. R. 362

BROJENDRA COOMAR BHOOMICK v. WOOPENDRA NARAIN SINGH . . I. L. R. 8 Calc. 706

See BAKRANATH MANDAL v BINODE RAM SEIN 1 B. L. R. F. B. 25 : 10 W. R. F. B. 33

HURROSOONDEREE DOSSEE v. GOPI SOONDEREE DOSSEE . . 10 C. L. R. 559

14. ———— **Lands formed by the drying up of a beel or marsh**—*Trespasser—*

him as a tenant for some time. The principal

treated the defendants as trespassers from the

treating it as a separate estate,

LANDLORD AND TENANT—*contd.*

18. ACCRETION TO TENURE—*contd.*

the parties. *Held*, that, the landlord could not treat it as a separate tenure altogether; that the increment was to be regarded as part of the parent estate, and treating it as part and parcel of the parent estate he was entitled to get assessment of rent on the disputed land; but he was not entitled in the suit to back rent or compensation for use and occupation. ASSANULLAH BAHADUR *v.* MOHINI MOHAN DAS . I. L. R 26 Calc. 739

16. ——— Lessee under Government —*Right of lessee to accretions to his tenure.* The lessee of a mouzah ordinarily being in the position of zamindars, a lessee holding lands from Government, in the absence of any stipulation in his

17. ——— Submergence of occupancy tenant's land—*Diluvion—Liability for rent—Resumption by landholder—Custom—Act XII of 1881 (N.-W. P. Rent Act), ss. 13, 31, 34 (b), 95 (n).* A landholder,—alleging that by local custom when land was submerged, and the tenant ceased to pay rent for the same, his right to it abated and when the land re-appeared the landholder was entitled to possession thereof; that certain land belonging to him had been submerged and the occupancy-tenant thereof had ceased to pay rent for it;

SINGH . . . . I. L. R. 5 All. 260

18. ——— Land in excess of tenure—*—Accretions to parent tenure—Rate of rent—Beng. Reg. XI of 1825, s. 4, cl. 1.* In a suit for arrears of rent, it appeared that the defendant had, in 1260 (1853), executed a kabuliat, in which the boundaries of the land were given and the rate of rent fixed

LANDLORD AND TENANT—*contd.*

18. ACCRETION TO TENURE—*contd.*

the increment. GOLAM ALI *v.* KALI KRISHNA THAKUR I. L. R. 7 Cal. 479: 8 C. L. R. 517

19. ——— *Suit for increased rent for lands found in excess on measurement.*

ing that a recent measurement showed a greater extent of area than had been formally ascertained. MODEE HUDDIN JOWADAR *v.* SANDES 12 W. R. 439

RASHUM BEEBEE *v.* BISSONATH SIRCAR 6 W. R., Act X, 57

DAVID *v.* RAM DHUN CHATTERJEE 6 W. R., Act X, 97

RAJMOHUN MITTER *v.* GOOROO CHURN AYCH 6 W., R. Act X, 106

20. ——— *Land held in excess of tenure—Mirasi istemrari pottah—Right to enhance rent.* Where a mirasi istemrari pottah had

9 W. R. 65

21. ——— *Rate of rent assessable for.* In respect to excess area it was

22. ——— *Suit for rent—Encroachment.* *A*, the holder of an independent istemrari tenure lying in *B's* zamindari let it to *C*,

1 B. L. R. A. C. 21

LANDLORD AND TENANT—*contd.*

18. ACCRETION TO TENURE—*contd.*

23. ———— Encroachment by tenant —*Encroachment by tenant, presumption of English law as to.* The presumption of English law as to encroachments made by a tenant during his tenancy upon the adjoining lands of his landlord is that the lands so encroached upon are added to the tenure and form part thereof for the benefit of the tenant, so long as the original holding continues, and afterwards for the benefit of the landlord, unless it clearly appeared by some act done at the time that the tenant made the encroachment for his own benefit. Where lands encroached upon have been added to the tenure, the tenant, if his tenancy is permanent, or he has a right of occupancy, cannot be ejected from them while the tenure lasts; but when rent is re-adjusted, these lands may be brought into the calculation. GOOROO DOSS ROY *v.* ISSUR CHUNDER BOSE 22 W. R. 246

24. ———— *Fazendari tenure—Encroachment of tenant added to the tenure.* An encroachment made by a tenant on the property of his landlord—*e.g.*, by a person holding under fazendari tenure—should not be presumed to have been made absolutely for his own benefit and against his landlord, but should be deemed to be added to the tenure, and to form part thereof. *Gooroo Doss Roy v. Issur Chunder Bose, 22 W. R. 246*, followed. ESUBAI *v.* DAMODAR ISHVARDAS I. L. R. 16 Bom. 552

25. ———— *Encroachment by a tenant—Effect of such encroachment—Position of such tenant—Trespasser.* When a tenant encroaches upon the land of his landlord, he does not by such encroachment become the tenant in respect of the land encroached upon against the will of the landlord. PROHLAD TEOR *v.* KEDARNATH BOSE I. L. R. 25 Calc. 302

26. ———— *Landlord's right —Encroachment acquiesced in by landlord.* If a tenant during his tenancy encroaches upon the land of a third person, and holds it with his own tenure until the expiration of the tenancy, he is considered to have made the encroachment not for his own benefit, but for that of his landlord; and if he has acquired a title against the third person by adverse possession, he has acquired it for his landlord, and not for himself. NUDDYAPCHAND SAHA *v.* MEAJAN I. L. R. 10 Calc. 820

27. ———— Tenant bringing jungle land into cultivation—*Assessment of rent —Improvements by tenant.* A raiyat who brings jungle land into cultivation is liable, after a reasonable period, to pay the full pergunnah rates of cultivated land. A raiyat who does more than bring uncultivated land into cultivated,—*i.e.*, converts, by means of special works and special labour, unculturable into culturable land,—is entitled to hold at exceptionally low rates. CHOWDHRY KHAN *v.* GOUR JANA 2 W. R., Act X, 40

LANDLORD AND TENANT—*contd.*

18. ACCRETION TO TENURE—*concld.*

28. ———— Chur land—*Bengal Tenancy Act (VIII of 1885), ss. 20, cl. (7), and 180—Onus of proof—Presumption of holding chur land continuously for twelve years—Reg. XI of 1825, s. 1—Raiyat having no pre-existing right to the land—Right to accretion. Held*, that the presumption, which is created by s. 20, cl. (7), of the [Bengal

BENI PERSAD KOERI *v.* CHATURI TEWARY (1906) I. L. R. 33 Calc. 444

19. RIGHT TO CROPS.

1. ———— Right to crops on death of occupancy raiyat—*Legal representatives, Right*

2. ———— Right to crops when stored —*Bhag-jote tenure.* When lands are held under a bhag-jote tenure and the tenants are bound

3. ———— Standing crops—*Effect of order of ejectment under Bengal Rent Act, 1869.* The effect of an order of ejectment under the Bengal Rent Act is to dispossess the raiyat not only of the land, but also of the crop standing thereon. *In the matter of* DURJAN MAHTON *v.* WAJID HOSSEIN I. L. R. 5 Calc. 135

4. ———— *No charge for se-*

proved when all the evidence in support of such custom is the testimony of a single witness, who says he paid it and accounts extending back to 25 years, which show that demands for the additional charges were made on certain tenants, but which do not show that they were ever paid. KUMARU REDDI *v.* NAGAYASAMI THAMBICHI NAICKER (1907 I. L. R. 31 Mad. 17

LANDLORD AND TENANT—*contd.*

20. PROPERTY IN TREES AND WOOD ON LAND

1. ——— Right to trees for timber——*Right to cut down trees.* A zamindar has a right

to have his title in the growing trees declared. ABDOOL ROHOMAN *v.* DATARAM BASHEE W. R. 1864, 367

2. ——— Right to trees planted by raiyat—*Death of raiyat. Held*, that the plaintiffs, the owners of the lands on which trees stand, are, in default of heirs, entitled to proprietary possession of trees as "lawarisee" which had been planted by the deceased raiyat. BHAIROW DEEN *v* MOOKTA RAM . . . . 1 Agra 13

3. ——— Right to trees already planted—*Lease in perpetuity.* Where a lease is

ownership of the trees. SHARODA SOONDARI DEBIA *v.* GONEE SHEIK . . . . 10 W. R. 419

4. ——— Assessment in respect of trees—*Profits realized by erection of huts for pilgrims.* A landlord is entitled to assessment in respect of trees as being the produce of the soil, but not in respect of profits realized by the use of stalls or huts erected by the tenant for the use of pilgrims frequenting a fair annually held on the land in honour of an idol which the defendant has there. KEWAJAH CHYEMUN KAJAH *v.* JAN ALLY CHOWDHRY . . . . . . 1 W. R. 46

5. ——— Evidence of property in trees—*Proof of acts of ownership* A person's title or property in a tree may be proved by showing that the tree grows on his land, without proof of any act of ownership over the tree CHUTOOR BHOOJ TEWAREE *v.* VILLAET ALI KHAN W. R. 1864, 223

6. ——— Trees planted by lessee——*Right to growing trees under grant of homestead or waste land.* A peshcushi sanad, or grant at a quit rent of homestead and waste land, being

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7. ——— Presumption as to ownership of trees—*Suit for possession of tree—Presumption in favour of lessee* In a suit to recover possession of a tree and of its produce, where defendant was admitted to be plaintiff's tenant as to the land on which the tree stood:—*Held*, that the tree

LANDLORD AND TENANT—*contd.*

20. PROPERTY IN TREES AND WOOD ON LAND—*contd.*

was rightly presumed to be included in the lease, and that it was for the plaintiff to establish that he was entitled to remain in possession of the tree notwithstanding the lease. *Held*, that the fact of a part of defendant's allegation—*viz.*, that the tree had been planted by his ancestor—having proved untrue, did not entitle plaintiff to a decree. MAHOMED ALI *v.* BOLAKEE BHUGGUT . 24 W. R. 330

8. ——— *Trees—Landholder's and tenant's rights as to trees on tenant's*

zamindar has no right to interfere with the enjoyment by his tenant of the trees upon his holding so

9. ——— Right of tenant to remove trees—*Determination of tenancy—Purchaser of rights of tenant after expiry of tenure. Held*, that trees accede to the soil and pass to the landholder with the land on the termination of a tenancy, and

tenant has been ejected in the execution of the decree
the land
rminates,
g on such
A person,
therefore, who purchases the rights and interests of a tenant after his ejectment in the execution of such a decree, cannot maintain a suit for the possession of the trees standing on the tenant's holding. RAM BARAN RAM *v.* SALIG RAM SINGH I. L. R. 2 All. 896

10. ——— Property in timber—*Right to trees on land—Transfer of trees by tenant.* The presumption of law and the general rule is that property in timber on a tenant's holding rests in the landlord in the same way as, and to no less an extent than, the property in the soil itself. *Soonar v. Khuderun, 2 N. W. 251; Ajudhia Nath v. Sital, I. L R. 3 All 567; Abdool Rohoman v. Dataram Bashee, W. R. 1864, p. 367; Ruttonji Edulji Shet v. Collector of Thanna, 11 Moo. I. A 295 : 10 W. R. P. C. 13*, referred to *Held*, therefore, where an occupancy-tenant transferred his holding, that the transfer was not only invalid in respect of the holding, but in respect also of the trees on the holding. KASIM MIAN *v.* BANDA HUSAIN . . . . . I. L. R. 5 All. 616

11. ——— Lease of produce of trees—*Effect of lease to pass property in trees.* A lease which gave a right to the produce of trees held not

LANDLORD AND TENANT—*contd.*

20. PROPERTY IN TREES AND WOOD ON LAND—*contd.*

to pass any property in the trees. MAHOMED ALI *v.* DEO NARAIN SINGH . . 1 W. R. 352

12. ——— Property in trees passing with the land.

thereon unless it could be shown that they were specially excepted SOONAR *v* KHUDEEUN 2 N. W. 251

13. ——— Sale of trees in execution of decree against tenant—*Trees planted by occupancy tenant with landlord's consent—Transfer of right of occupancy—Act XII of 1881 (N.-W. P. Rent Act), s. 9* An occupancy-tenant, whose orange trees, planted with the landholder's consent, had been sold in execution of a decree against him, made a collusive resignation of his land to the landholder, who thereupon sued the purchaser and the occupancy-tenant for possession of the land with or without the trees. *Held*, that, as the purchase did not involve a transfer of the tenancy of the land in the sense of s. 9 of the N.-W. P. Rent Act, nor any change in the relations between the landholder and the occupancy-tenant such as was prohibited by that law, landholder was not entitled to possession of the land. LALMAN *v* MANNU LAL I. L. R. 6 All. 19

14. ——— Right of occupier of land—*Bom. Act I of 1865, s. 40—Right to trees on land* The occupier of land who does not come under s. 40 of the Bombay Survey and Settlement Act, 1865, has not, in the absence of agreement, any proprietary right to the trees growing on his land. GOVIND PURSHOTAM KOLATKAR *v* SUB-COLLECTOR AND DEPUTY CONSERVATOR OF FORESTS OF COLABA . . . . . 6 Bom. A. C. 188

15. ——— Lien of mortgagee on guava trees after ejectment of tenant—*Trees planted by tenant* A raiyat mortgaged certain guava trees which he had planted on a portion of his holding. Subsequently the zamindar obtained a decree against the raiyat for ejectment, and after his ejectment the mortgagees obtained a decree on their mortgage-deed *Held*, in a suit between the mortgagees and the zamindar, that their lien on the trees was destroyed by the ejectment of the raiyat PEARUN *v* RAM NARAIN SINGH *alias* RUNNOO SINGH 1 N. W. Ed. 1873, 213

16. ——— Right to hypothecate trees—*Tenant with right of occupancy.* A tenant with a right of occupancy can only make a valid

. . . I. L. R. 3 All. 567

17. ——— Right of usufructuary mortgage—*Right to trees planted by him during*

LANDLORD AND TENANT—*contd.*

20. PROPERTY IN TREES AND WOOD ON LAND—*contd.*

tenure. Held, that, although defendant, usufructuary mortgagee of a share in a joint estate, would

18 ——— Ex-proprietary tenant, right of—*Nature of the right of occupancy—N.-W. P Rent Act (XII of 1881), s. 7—Trees* In a suit for recovery of possession of zamindari property conveyed by sale-deed, including certain plots of land which were the defendant-vendor's sir, the lower Courts held, with reference to s 7 of the N.-W. P. Rent Act (XII of 1881), that the defendant was entitled to hold possession of the said plots as ex-proprietary tenant; but as it appeared that they had fruit and other trees upon them, the Courts awarded the plaintiff possession of these trees on the

missed *Per* MAHMOOD, J., that the principle of the

duree Dassee, 21 W. R. 344; Mahomed Ali v. Bolakee Bhuggut, 24 W. R. 330; Ram Baran Ram v. Salig Ram Singh, I. L. R. 2 All 896; and *Debi Prasad v. Har Dyal,* I. L. R. 7 All 691, referred

19. ——— *Trees—Sale in execution of decree—N.-W. P. Rent Act (XII of 1881), ss. 7, 9. Held*, by the Full Bench, that an ex-proprietor, who, under s. 7 of Act XII of 1881

LANDLORD AND TENANT—*contd.*

20. PROPERTY IN TREES AND WOOD ON LAND—*contd.*

tary holding. *Held*, by the Full Bench, with reference to the provisions of ss. 7 and 9 of Act XII of 1881 (N.-W. P. Rent Act), that the trees were not liable to attachment and sale in execution of the decree. *Per* STRAIGHT, J.—When a proprietor sells his rights and becomes entitled under s. 7 of the

[illegible]

damages. Certain occupancy-raiyats held by ...

[illegible] *Held*

[illegible]

DASS . . . . . I. L. R. 23 Calc. 804

21. ———————— *Property in trees growing on land—Bengal Tenancy Act (VIII of 1885) s. 23—Right of occupancy tenant to cut down trees—Right of occupancy-tenant to appropriate trees when cut down—Onus of proof—Custom—Suit for damages.* The property in trees growing on land is, by the general law, vested in the proprietor of the land, subject, of course, to any custom to the contrary. Under s. 23 of the Bengal Tenancy Act, the onus is on the landlord to show that a tenant with occupancy right is debarred from cutting down the trees on the land, and not on the tenant to prove a custom giving him the right to do so. The right to appropriate them when cut down, however, is a different question. In a suit by landlords against their tenants who had a right of occu-

... s grow- ... —*Held*, ... tenants

of proving a custom they alleged, giving them the right to sell the trees, and, on failure to prove such custom, they were liable to damages for so

LANDLORD AND TENANT—*contd.*

20. PROPERTY IN TREES AND WOOD ON LAND—*contd.*

appropriating them. NAFAR CHANDRA PAL CHOWDHURI *v.* RAM LAL PAL I. L. R. 22 Calc 742

22. ———————— *An occupancy-tenant* has a right to cut down trees unless a custom to the contrary is proved by the landlord. GRIJA NATH ROY *v.* MIA ULLA NASOYA

I. L. R. 22 Calc. 744 note

NAFAR CHANDRA PAL CHOWDHRY *v.* HAZARI NATH GHOSE . I. L. R. 22 Calc. 748 note

NUFFER CHUNDER GHOSE *v.* NUND LAL GOSSYAMY . . I. L. R. 22 Calc 751 note

(*Contra*) PYARI LALL PAL *v.* NARAYAN MANDAL I. L. R. 22 Calc. 746 note

where it was *held* that the onus lay on the tenant to prove a custom allowing him to cut down trees.

23. ———— Trees growing on land—*Lease for purpose of clearing jungle land.* Where a lease of a mouzah was granted for the express purpose of clearing jungle land and bringing it under cultivation, and no reservation of the right in the trees was made in the lease:—*Held*, that the lessee had the right to appropriate the trees when cut. MON MOHINI GOOPTA *v.* RAGHOONATH MISSER . . . . I. L. R. 23 Calc. 209

24. ———— Trees, sale of—*Occupancy-tenant—Such sale invalid—Act XII of 1881, s. 9.*

[illegible]

BHAGIRATH . . . . I. L. R. 10 All 158

25. ———— Right of tenant to cut down and sell trees. The property in trees

[illegible]

referred to. KAUSALIA *v.* GULAB KUAR .

I. L. R. 21 All. 297

26. ———— Suit for possession of fallen wood of self sown trees growing ... *proof.* ... ood of ... occu- ... ntract ... The ... circum-

[illegible]

custom to the fallen wood of ... NATHAN *v.* KAMLA KUAR . I. L. R. 31 All. 571

27. ———— Ownership of trees standing on fixed-rate tenant's holding—

LANDLORD AND TENANT—*contd.*

20. PROPERTY IN TREES AND WOOD ON LAND—*contd.*

Evidence—Presumption—Tenant at fixed rate. A tenant at fixed rates having a transferable right in his holding, the presumption is that the trees standing thereon are the property of the tenant and not of the *zamindar* HARBANS LAL *v* MAHARAJA OF BENARES (1900)

I. L. R. 23 All. 126

28. ——— Kanomdar, right of—*Malabar Compensation for Tenants' Improvements Act (Madras Act I of 1887), ss 2, 3, 4, 6—Malabar Compensation for Tenants' Improvements Act (Madras Act I of 1900), ss 3, 4, 7, 10—Transfer of Property Act (Act IV of 1882), ss 108 (h), (o), 117—Right of kanomdar to remove and appropriate trees planted by himself* A *kanomdar* is entitled, during the period of his occupation, to remove and appropriate to himself any trees that he has planted, provided that he leaves the property substantially in the state in which he received it. VASUDEVAN NAMBUDRIPAD *v* VALIA CHATHU ACHAN (1900)

I. L. R. 24 Mad. 47

29. ——— Property in trees planted by a tenant on his holding. When a tenant, either occupancy or tenant-at-will, plants trees on his holding, the property in those trees, in the absence of custom or contract to the contrary, attaches to the land, and the tenant has no power of selling or otherwise transferring those trees. *Ajudhia Nath* v *Sital, I L R 3 All 567; Imdad Khatun* v. *Bhagirath, I L. R. 10 All. 159,* and *Kausalia* v. *Gulab Kunwar, I. L. R 21 All 297,* referred to JANKI *v.* SHEVADHAR (1901)

I. L. R. 23 All. 211

30. ——— Tenants holding kudivaram rights in perpetuity—*Right to trees growing on the lands—Claim by zamindar—Madras Regulation XXV of 1802—Madras Regulation IV of 1822.* Plaintiffs, as lessees of a *zamindari* in the [illegible]

zamindar, or that the ordinary *kudivaram* right was limited, in their case, by any contract or special or local usage:—*Held*, that plaintiffs were not entitled to recover NARAYANA AYYANGAR *v.* ORR (1902) . . . . I. L. R. 26 Mad. 252

31. ——— Usage—*Civil Procedure Code (Act XIV of 1882), s. 584—Power of Court on second appeal to examine evidence of usage—Custom.* A ryot holding lands in a zamindari on a permanent tenure would, as regards land on which a money assessment is paid, be *primâ facie* entitled exclusively to the trees thereon Where the crops are shared between the ryot and zemindar, they will be jointly interested in such trees, but such presumptions may be rebutted by proof of usage or contract to the contrary. *Narayana Ayyangar* v. *Orr, I. L. R. 26 Mad 252,* followed. Although the provisions of [illegible]

force of law is unaffected by such disallowance. Consequently, it is the duty of the Court, when it has to pronounce an opinion upon such questions, to examine the evidence bearing on it, not only as to the sufficiency thereof to establish all the elements [illegible]

custom cannot be established by a few instances or by instances of recent date. Observations on the nature of evidence necessary to support custom. *Eranjoli Vishnu Nambudri* v. *Eranjoli Krishnan Nambudri, I L. R. 7 Mad. 3,* followed. *Hurry Churn Dass* v *Nimai Chand Keyal, I. L R. 10 Calc 138,* not followed. *Bai Shrinbai* v. *Kharshedji, I. L. R. 22 Bom 430,* not followed. KAKARLA ABBAYYA *v* VENKATA PAPAYYA RAO (1905)

I. L. R. 29 Mad. 24

32. ——— Raiyat with occupancy-right has no right to cut fruit trees—*Occupancy-right, nature of.* Raiyats with rights of occupancy possess in their lands a heritable and alienable interest of a permanent character, but not the sole interest. The landlord is interested in maintaining the saleability of the holding, and in protecting such interest he is entitled to restrain the raiyat from cutting fruit-bearing trees. *Rangayya Appa Rao* v. *Kadiyala Rathnam, I. L. R. 13 Mad 249,* followed. BODDA GODDEPPA *v.* THE MAHARAJA OF VIZIANAGRAM (1906) . . . I. L. R. 30 Mad. 155

33. ——— Landlord's right to cut down trees—*Landholder's and tenant's rights as to trees on tenant's holding* *Held*, that in the absence of special agreement a tenant has, as against his landlord, a right to insist that so long as his tenancy continues the landlord shall not cut down trees standing on the tenant's holding. *Deokinandan* v. *Dhian Singh, I. L. R 8 All 467; Kousalia* v. *Gulab Kunwar, I. L. R 21 All 297,* and *Ruttonji Edulji Shet* v. *The Collector of Thana, 11 Moo I. A. 295,* referred to. BADAM *v* GANGA DEI (1907)

I. L. R. 29 All. 484

21. FORFEITURE.

(a) BREACH OF CONDITIONS.

1. ——— Condition for forfeiture, construction of. A condition of forfeiture should not be extended beyond the words in [illegible]

LANDLORD AND TENANT—*contd.*

21. FORFEITURE—*contd.*

(*a*) BREACH OF CONDITIONS—*contd.*

RAM NURSINGH CHUCKERBUTTY *v.* DWARKANATH GANGOOLY . . . . 23 W. R. 10

2. ———— Condition for forfeiture—*Concurrent remedies for breach of conditions in lease—Damages.* There is nothing incompatible in the two remedies of damages and forfeiture for breach of the conditions of a lease. Here there is an obligation (as in this case by a lessee) to do several successive acts, the obligation is broken if any one of the acts is omitted when the time for its performance comes. The lessor is not obliged to wait until the expiration of the term; nor is the lease liable to several successive suits for each partial breach of the condition, and then to one general penalty for the whole. Nor is it usual, when a penalty is provided for breach of condition, to bring two suits—one to enquire into the existence of the breach, and the other to enforce the penalty. CHUNDER NATH MISSER *v.* SIRDAR KHAN 18 W. R. 218

3. ———— *Conveyance with agreement to re-purchase—Lease.* A conveyed land to B, with a collateral agreement to re-purchase within a certain period; the right . . .

lease and the condition to redeem, and that the clause for forfeiture was so vaguely worded as to have the . . .

s c. CHIDAMBARA PILLAI *v.* MANKIKKA CHETTI 1 Mad. 63

4. ———— *Perpetual lease granted for consideration—Clause providing for forfeiture on rent being in arrears—Whether re-payment of the consideration is a condition precedent to surrender of lands.* Consideration paid for a lease is exhausted by the grant of the lease, and a tenant's forfeit . . .

I. L. R. 18 Mad. 32

5. ———— Breach of conditions in lease. A breach of any of the stipulations in a lease does not cancel the lease or give a right to eject unless there has been an express provision to that effect in the lease. AUGUR SINGH *v.* MOHINEE DUTT SINGH . . 2 W. R., Act X, 101

LANDLORD AND TENANT—*contd.*

21. FORFEITURE—*contd.*

(*a*) BREACH OF CONDITIONS—*contd.*

MAHOMED FAEZ CHOWDHRY *v.* SHIB DOOLAREE TEWAREE . . . . 6 W. R. 103

TUMEEZOODDEEN CHOWDHRY *v.* SURWAR KHAN 7 W. R. 209

6. ———— *Ejectment—Raiyat with right of occupancy.* A raiyat with a right of occupancy, though holding under a temporary pottah . . .

7. ———— *Improper use of land—Ejectment.* Where a tenant has been guilty of a breach of duty in the use of his land, such . . .

I. L. R. 9 Calc. 609 : 12 C. L. R. 300

8. ———— *Destruction of trees and alteration of cultivation by tenant—Right of re-entry.* Some of the trees in a grove were destroyed and the tenant . . .

. . . ZUM ALI KHAN . . . . . 7 N. W. 58

9. ———— *Forfeiture for neglect to cultivate—Construction of lease.* Where . . .

. . . BHOSAI . . . . . 25 W. R. 221

10. ———— Right to cancel tenancy—*Zamindar—Resumption of land for non-cultivation.* A zamindar cannot put an end to the relation of landord and tenant, except in the manner provided by law. A tenancy is not determined by the mere fact that the tenant has allowed the land to remain uncultivated DINABHANDU *v* LOKANADHASAMI . . . . I. L. R. 6 Mad. 322

11. ———— *Non-payment of rent* Omission to pay rent may be a good ground for a suit for arrears of rent or for ejectment, but not for the cancelment of a pottah not otherwise impugned. UMRITHNATH CHOWDHRY *v* KOONJ BEHARY SINGH . . . W. R. F. B. 34

12. ———— *Non-payment of rent.* The right to cancel a lease for non-payment of rent by a lease-holder not having a permanent or

transferable interest in the land being given by s. 22, Act X of 1859, need not be provided for in the lease. Kadir Gazee *v* Mohadebee Dossia
6 W. R., Act X, 47

Hari valad Raghoji *v* Tukaram valad Darkoji
6 Bom. A. C. 86

14. ——— **Non-payment of rent**—*Lease, construction of—Conditions for forfeiture* Where a lease of 1847 contained two provisions, one for the payment of R1,300 as rent and the other was stipulation for forfeiture and re-entry on default of payment, and by a solenamah of 1848 that rent was put an end to, and in lieu thereof the lessor received back a portion of the land leased in 1847, but by a subsequent solenamah of 1858 the lessees agreed to pay R334 as rent, but no new provision was made for re-entry, and no fresh stipulation for forfeiture :—*Held*, that the clause of forfeiture and re-entry in respect of the R1,300 under the lease of 1847 did not apply to the R334 under the solenamah of 1858 Ruhmoonissa *v* Soorun Jan
18 W. R. 244

15. ——— *Ejectment—Right of occupancy—Beng. Act VIII of 1869, s. 52.* The mere omission to pay rent for five years

Law,—that is, under a decree for arrears of rent unsatisfied within fifteen days from the passing of the decree. Musyatulla *v.* Noorzahan
I. L R. 9 Calc. 808

16. ——— *Bengal Tenancy Act (VIII of 1885), s 3, cl 5, ss. 179, 195 (e).* A stipulation in a patni lease that by reason of non-

17. ——— **Failure to pay rent at due date**—*N.-W. P. Rent Act, XVIII of 1873, s. 93,*

had paid the rent to the Collector, on account of the revenue due in respect of the estate, instead of to him ; secondly, on the ground that they had failed to pay certain instalments of rent on the due dates ; there by committing breaches of the conditions of the lease involving its forfeiture *Held*, on the construction of the lease, with reference to the first ground, that as the lease was intended to be perpetual, and as the rent had been paid to the Collector for many years under an arrangement effected between the parties to the lease, and it was not shown that the plaintiff had repudiated this arrangement (even if he had the power of so doing) or demanded payment of the rent directly to himself, payment of rent by the lessees to the Collector did not amount to a breach of the conditions of the lease : with reference to the second ground, that the lease being intended to be perpetual and no arrears of rent being due, irregularity and unpunctuality in the payment of the instalments of rent in question were not breaches of the conditions of the lease involving its forfeiture Ablakh Rai *v.* Ahmad Khan . . **I L. R. 2 All. 437**

18. ——— *Breach of conditions of lease—Delay in payment of rent—Right to interest* In strict law a farmer forfeits his lease by the withdrawal of the personal security given by him at the time of taking the farm. But cases of forfeiture are not favoured when no injury has resulted, or when a money compensation is a sufficient remedy. Mere unpunctuality in the date of payment of rent is no ground for forfeiture. The zamindar, if he has sustained injury by such unpunctuality, may sue for the interest due during the period in which the different instalments remained unpaid and for conditional forfeiture, but he cannot demand at once the absolute forfeiture of the property Alum Chunder Shaw Chowdhry *v.* Moran . . . **W. R. 1874, Act X, 31**

19. ——— **Right to re-enter, accrual of**—*Relief against forfeiture for non-payment of rent.* It is not absolutely necessary for a lessor to take legal measures for obtaining possession of the demised property on accrual of right of re-entry for breach of covenant He may (if he can do so peaceably and quietly) take possession thereof without having recourse to civil proceedings (which are only necessary in case he apprehends resistance) ; and if he does so re-enter, he cannot be sued for trespass, inasmuch as the interest of the lessee becomes forfeited and the lessor enters on what is in fact his own property. The mere fact of demanding rent

LANDLORD AND TENANT—*contd.*

21. FORFEITURE—*contd*

(*a*) BREACH OF CONDITIONS—*contd.*

re-entry. GREAT EASTERN HOTEL COMPANY *v.* COLLECTOR OF ALLAHABAD **2 Agra Ex. O. C. 1**

20. ——————— *Use and occupation—Re-entry—Demand of rent—Stat. 32 Hen. VIII, c. 34—Waiver.* A covenant in a lease reserved

such third persons endeavoured to re-enter under the covenant *Held*, that although re-entry was reserved only of the lessor, yet his vendees could

been waived by subsequent demands for rent, and there being no legal demand for rent on the last day on which rent at a date subsequent to the waiver fell due, the vendees were not entitled to make use of their right of re-entry. KRISTO NATH KOONDOO *v* BROWN . . . **I. L. R. 14 Calc. 176**

21. ——— **Relief against forfeiture**—*Penalty—Non-payment of rent* Third defendant, purchaser of the interest of first and second defendants, held certain lands under the terms of a permanent kanam (A) which contained the following condition: "And (I have also agreed) that on failure to pay the said quantity of paddy the kanam amount of 550 fanams shall be received by me, and the land restored" In a suit by the kanamdar to

NAMBUDIRI . . . . **6 Mad. 258**

22. ——————— *Forfeiture for non-payment of rent—Transfer of reversion—Transfer of Property Act (IV of 1882), s. 6, cl. (b).* A condition in a lease providing that the landlord may re-enter on non-payment of rent is penal and will be relieved against, apart from the provisions of the Transfer of Property Act *Semble* The transfer of the reversion based on a clause for forfeiture is not invalid by reason of Transfer of Property Act, s 6, cl (*b*) VAGURAN *v* RANGAYYANGAR . . . **I. L. R. 15 Mad. 125**

23. ——————— *Condition in mokurari lease for forfeiture on non-payment of rent.* Where, in a mokurari lease, there was a condition that, in case of non-payment of one year's rent, and its falling into arrears, the mokurari settlement was to be cancelled, and default was made and a suit for ejectment was brought:—*Held*, that, independently of the Rent Act, the defendants should be allowed in equity a reasonable time to pay the landlord's dues in order to prevent forfeiture. MAHOMED AMEER *v.* PERYAG SINGH **I. L. R. 7 Calc. 566** **9 C. L. R. 185**

24. ——————— *Mulgaini lease, void for non-payment of rent or alienation—Relief against penalty* Where a perpetual lease was granted subject to a condition that if the rent was not paid in any year or if the land was alienated by the tenant the lease became void and all rights to improvements effected by the tenant forfeited:—*Held*, (1) that a sale of the tenant's right in execution

quently to those three years as the condition must

25. ——————— *Mulgaini lease —Non-payment of rent—Penal clause* In a mulgaini lease dated 1819, it was stipulated that, if the rent fell in arrear in any year, the lease should be cancelled. *Held*, that this clause must be construed as a penal clause which should be relieved against. *Kottal Uppi v. Edavalath Thathan Nambudri, 6 Mad. 258*, followed. NARAYANA SANABHOGA *v* NARAYANA NAYAK . **I. L. R. 6 Mad. 327**

26. ——————— *Condition restraining alienation—Alienation by act of law—Sale in execution of decree.* By a clause in a lease it was stipulated that the lessee would not transfer the land leased to him, and that if he did so, the sale was to be void The land was sold to the defend-

transferred his interest. *Tamaya* v. *Timapa Ganpaya, I. L. R 7 Bom 262*, and *Subbaraya* v. *Krishna, I. L. R. 6 Mad. 159*, approved. NIL MADHAB SIKDAR *v.* NARATTAM SIKDAR **I. L. R. 17 Calc. 826**

27. ——————— *Non-payment of rent.* The Court will not relieve against the forfeiture of a lease caused by non-payment of rent, although the lessor on previous occasions has waived the forfeiture. CUTENHO *v.* . SOUZA **1 Mad. 15**

LANDLORD AND TENANT—*contd.*

21. FORFEITURE—*contd.*

(a) BREACH OF CONDITIONS—*contd.*

28. ———— Planting trees—*Liability to ejectment—Consent of landlord. Held,* that a

TEZ SINGH *v.* RAM DASS
Agra F. B. 125: Ed 1874, 94

29. ———— *Right of tenants to plant trees without consent of zamindar* The question whether tenants have a right to keep up or renew existing baghs by planting new trees without the consent of zamindar must be determined with reference to the custom of the country JHONA SINGH *v.* NEAZ BEGUM 2 Agra, Pt. II, 183

30. ———— *Waste—Planting a mango tope on dry land.* In the absence of local custom, tenants are not entitled to convert land under cultivation into a mango grove Tenants from year to year are not at liberty to change the usual course of husbandry without the consent of the landlord. LAKSHMANA *v.* RAMACHANDRA
I. L. R. 10 Mad. 351

31. ———— *Agricultural land —Change in the nature of cultivation—Waste.* The defendant held from the plaintiff irrigable land which was cultivated with paddy, raggi, etc.

breach of the terms of his tenancy, and that the suit should be dismissed VENKAYYA *v.* RAMASAMI
I. L. R 22 Mad. 39

32. ———— *Muafidars of Government. Held,* that the plaintiffs, being mere muafidars of a moiety of the right of Government, had no right to plant trees themselves or to prevent the zamindars from planting the trees, as they had no right to the land. AZURROODEEN *v.* MOHUR SINGH . . . . . . 2 Agra 165

33. ———— *Ejectment for planting trees.* In an action of ejectment for planting trees, the penalty of forfeiture is not to be enforced as a matter of strict right; the Court may make a decree for removal of the trees KOORA *v.* DICK . . . . . . 3 N. W. 322

34. ———— *Ejectment—Liability to forfeiture of entire holding by planting on one portion.* A tenant planted trees on one of the plots of land comprising his holding, an act which rendered him liable to ejectment. He paid rent,

LANDLORD AND TENANT—*contd.*

21. FORFEITURE—*contd.*

(a) BREACH OF CONDITIONS—*contd*

35. ———— *Prohibition against planting trees and sinking wells.* The

the lessees had planted trees or sunk wells, and allowed their tenants to do the same, without the lessor's consent *Held,* also, that, assuming that the lessor was entitled, on that ground, to the cancelment of the lease, cancelment was not to be deemed the invariable penalty for the breach of such a condition as that mentioned in that ground The Full Bench ruling in *Sheo Churun* v. *Busunt Singh, 3 N.-W. 282* followed ABLAKH RAI *v.* SALIM AHMED KHAN . . I. L. R. 2 All. 437

36. ———— Sub-letting—*Right of tenants to let their houses.* Whether tenants are entitled to let their houses, or whether, in the event of their letting houses, the zamindar can claim forfeiture, must be determined with reference to the custom of the village. RAM BUKSH SINGH *v.* PURDUMUN KISHORE . 2 Agra, Pt. II, 202

37. ———— *Covenant not to sub-let, what constitutes breach of.* Where there

lease may not be so absolute and complete as to make the lease *ipso facto* void, yet it may be such a fraudulent evasion of the terms of the covenant as to entitle the plaintiff to equitable relief. The mere fixing of a sum to be paid by the sub-tenant to the farmer, and the declaration of the sub-tenant's right to all sums collected beyond that amount are not sufficient to convert an agency into a sub-lease. ALUM CHUNDER SHAW CHOWDHRY *v.* MORAN
W. R. 1864, Act X, 31

38. ———— *N.-W. P. Rent Act (XII of 1881), s. 93 (b)—Act inconsistent with the purpose for which the land was let—Sub-lease*

I. L. R. 20 All. 469

LANDLORD AND TENANT—*contd.*

21. FORFEITURE—*contd.*

(*a*) BREACH OF CONDITIONS—*contd.*

39.———— Alienation of tenure—*Liability to forfeiture.* A tenant who alienates his tenure does not thereby subject it to forfeiture. DWARKANATH MISREE *v.* KANAYE SIRDAR 16 W. R. 111

And *see* CASES UNDER RIGHT OF OCCUPANCY—TRANSFER OF RIGHT.

40. ———— Transfer of lease—*Effect of unlicensed transfer of lease—Suit for ejectment.* The plaintiffs were mokurari lease-holders, prior

plaintiff's consent on the part of the plaintiffs to *B's* sale was to maintain unimpaired *B's* liability to the landlord, without reference to the arrangement between *B* and any other parties. And therefore the plaintiffs were not entitled to eject the defendants. GORDON, STUART & CO. *v.* TAYLOR W. R. F. B. 9

41. ———— Transfer of tenure—*Transfer of non-transferable tenure.* The transfer of a tenure not transferable by the custom of the country gives the zamindar no right to take actual possession so long as the rent is paid by the recorded tenant or his heirs, and not by a stranger. JOY KISHEN MOOKERJEE *v* RAJ KISHEN MOOKERJEE 5 W. R. 147

42. ———————— *Cuttack, tenures in—Sarbarakari tenures—Alienation without consent of landlord—Alienation by one of several co-sharers.* The alienation of a sarbarakari tenure in Cuttack, and *a fortiori* the alienation of any portion of such tenure, is invalid without the consent of the landlord. Assuming that the sale of such a tenure would entitle the landlord to re-enter as upon a forfeiture, the sale of a portion there-

43. ———————— *Bengal Tenancy Act (VIII of 1885)—Occupancy-raiyat transferring part of his holding without notice to the landlord—Forfeiture, ground of* *D* was an occupancy-raiyat of the plaintiff, a 14 annas shareholder in a zamindari, and unknown to the plaintiff sold half of his holding to the sons of his brother. The plaintiff then sued *D* for arrears of rent. *D* pleaded that he could not be sued for the whole amount, as he was

Tenancy Act (VIII of 1885) the sale or parting with the whole or part of a holding is not a ground of forfeiture. KABIL SARDAR *v.* CHUNDER NATH NAG CHOWDHRY . . I. L. R. 20 Calc. 590

See CHANDRA MOHUN MOOKHOPADHAYA *v.* BISSESSAR CHATTERJEE . . 1 C. W. N. 158

KALINATH CHAKRAVARTI *v.* UPENDRA CHANDRA CHOWDHRY . . I. L. R. 24 Calc. 212

and WILSON *v.* RADHA DULABHI KOER 2 C. W. N. 63

44. ———————— *Tenant parting with portion of his holding—Right of landlord to eject sub-tenant and recover possession.* The trans-

by custom such transfer is not allowed *Durga Charan Roy v. Pandab Nath, Letters Patent appeal in Appeal from Appellate Decree No. 1440 of 1892,* followed. *Kabil Sardar v. Chandra Nath Nag*

45. ———————— The transfer by

46. ———————— *Assignment of lease contrary to term of lease—Waiver of forfeiture, effect of—Damages on forfeiture for breach of covenant to repair.* An assignment by way of mortgage of leasehold property in terms appropriate to fazendari property, the lease and mense assignments being handed over to the mortgagee of execution of the deed and a subsequent assignment of the

LANDLORD AND TENANT—*contd.*

21. FORFEITURE—*contd.*

(*a*) BREACH OF CONDITIONS—*contd.*

assignment without previous license of the lessor, the acceptance by the lessor of rent or insurance premia from the assignee without license or the entering into an agreement with him in respect of repairs, operates as a waiver of any and all causes of forfeiture of which the lessor is at the time aware. Where assignments of leaseholds are invalid as being in breach of a covenant not to assign without previous license and so causing forfeiture of the lease, but are valid in all other respects, on waiver of the forfeiture the assignments become operative and those taking under them become assignees of the lease with the consent of the lessor, and are subject to all the liabilities of such assignees. The rule in *Joyner* v *Weeks*, [1891] *2 Q B 31, 43*, that when there is a lease with a covenant to leave the premises in repair at the end of the term, and such covenant is broken, the lessee must pay what the lessor proves to be a reasonable and proper amount for putting the premises into the state of repair in which they ought to be left, applies where a term has ceased by forfeiture as well as where it has expired by efflux of time. SARAFALI TAYABALI *v* SUBRAYA BATERAYA . . . I. L. R. 20 Bom. 439

47. ——— **Waiver of forfeiture**—*Acceptance of rent* The acceptance of the rent by the landlord after the institution of a suit to recover possession of the land is not a waiver of a forfeiture by the tenant under a condition in the lease. A tenant, upon payment of all costs of the suit, will be relieved from the consequence of such forfeiture, in accordance with the practice of Courts of Equity in England and America. TIMMARSA PURANIK *v*. BADYIA . . . 2 Bom. 70 . 2nd Ed. 66

48. ——— *Acceptance of rent* Receipt of rent is not *per se* a waiver of every previous forfeiture; it is only evidence of a waiver. CHUNDER NATH MISSER *v* SIRDAR KHAN 18 W. R. 218

49. ——— *Acceptance of rent* A lease provided that every four years a measurement should be made either by the lessor or by the lessees, and additional rent paid for accretion to the land leased. It then provided for failure on the lessee's part to execute a kabuliat for the excess lands in the following terms: "If at the fixed time stated above, we do not take an Ameen and cause measurement to be made, you will appoint an Ameen and cause the entire land of the said chur to be measured, and no objection on the ground of our recording or not our presence on such measurement chitta shall be entertained and we

of our right of obtaining a settlement of such excess and, as well as of the land which will accrete in

execute a kabuliat for the rent of certain excess lands, and praying that the lessees might be ejected, the lessees pleaded that the lessor had waived his

ment by the lessees of the "remaining amount." *Held*, that such a qualification did not make the

Davenport v. *Queen*, *L R 3 App. Cas. 155*, followed. KALI KRISHNA TAGORE *v.* FUZLE ALI CHOWDHRY I. L. R. 9 Calc. 843 : 12 C. L. R. 592

50. ——— **Alienation**—*Permanent lease*

lease executed prior to its enactment. In 1862, *V*

operated as a forfeiture of the lease. The lease contained no express condition to that effect, nor did it provide that, on breach of the stipulation against alienation, the lessor might re-enter:—*Held*, that the alienation did not entitle the plaintiff to terminate the permanent lease and re-enter upon the land. PARAMESHRI *v.* VITTAPPA SHANBAGA (1902) I. L. R. 26 Mad. 157

51. ——— **Payment of rent**—*Relief against forfeiture for non-payment of rent, though stipulation for payment contained in com-*

made in payment of rent within the time fixed for payment each year, the lease should be forfeited. Default was made, and possession of the lands and the arrears of rent were sought for in execution of the decree, when it was objected that the stipulation for forfeiture for non-payment of rent was a penal

LANDLORD AND TENANT—*contd.*

21. FORFEITURE—*contd.*

(a) BREACH OF CONDITIONS—*contd.*

one, and should not be given effect to, even though it was contained in a decree which was capable of execution. *Held*, that, inasmuch as the decree passed by the Court was a mere adoption of the contract which existed between the parties to it, the

I. L. R. 24 Mad. 265

52. ——— Reclamation—*Landlord and tenant—Lease—Condition—Condition binding tenant to reclaim land—Meaning of the word "reclaim"—Construction.* On the 15th June, 1885, certain marshy land adjoining the sea, comprising about 760 acres, was leased by Government to the plaintiff in perpetuity, subject to the condition (*inter alia*) that, if the whole of it was not reclaimed (*navasádhya*) by the end of ten years, the lease might be cancelled. At the end of the ten years only 83 acres of the land were actually under cultivation. The remainder had been rendered safe against the inroad of salt water. In March, 1896, the Government cancelled the lease on the ground that the plaintiff had not brought the whole of the land into cultivation. The plaintiff

under the condition he was only bound to reclaim the land from the sea, and that he had done so; and that he was not bound to render the land fit for cultivation, but that, if he was, he had done so as far as it was possible. *Held*, awarding the plaintiff's claim, that, on the construction of the lease, the

I. L. R. 25 Bom. 32

53. ——— *Lease under*

unless there is a clause for forfeiture and re-entry in the contract by which the tenancy was created. *Dwarka Nath Misser* v. *Hurrish Chunder, I. L. R. 4*

LANDLORD AND TENANT—*contd.*

21. FORFEITURE—*contd.*

(a) BREACH OF CONDITIONS—*concld.*

Calc 925, distinguished. *Sristeedhar Biswas* v. *Mudan Sirdar, I. L. R. 9 Calc. 648*, referred to. NANDHU MANDAL v. KARTICK MANDAL (1905)

9 C. W. N. 56

54. ——— *Forfeiture of lease for non-payment of rent, when period of grace allowed for payment—Transfer of Property Act (IV of 1882), s. 114.* A Mulageni chit or permanent lease of 1866 for building purposes provided that the lessee should pay to the lessor a rent of R5 per annum by the 24th May of each year; and if any arrears remained due, they should be paid within a

not penal as a period of grace was allowed and consequently no relief against forfeiture could be given. *Narayana Kamti* v. *Nandu Shetty, S. A No 89 of 1900*, unreported, referred to and followed. The provisions of the Transfer of Property Act do not apply to the lease. Even under s 114 of the Transfer of Property Act, relief against forfeiture is discretionary and may depend on whether the lease allows a reasonable period of grace NARAINA NAIKA v VASUDEVA BHATTA (1905) . . . I. L. R. 28 Mad. 389

55. ——— *Forfeiture—Landlord not showing intention before suit to determine lease on the ground of forfeiture is not entitled to maintain suit for possession* A landlord is not

(b) DENIAL OF TITLE.

56. ——— Denial by tenant of title of

landlord; but he is not precluded or estopped from proving, when sued for rent, that that title has

LANDLORD AND TENANT—*contd.*

21. FORFEITURE—*contd.*

(b) Denial of Title—*contd.*

is entitled to recover his rent until the decree is put in force. Burn & Co. v. Busno Moyee Dassee 14 W. R. 85

57. ——— *Non-payment of rent—Relief against—Co-sharers—Lease from one of several co-sharers—Denial of lessor's title—Estoppel* A person taking a lease from one of several co-sharers cannot dispute his lessor's exclusive title to receive the rent or sue in ejectment. The plaintiff sued to eject the defendant, his tenant, for failure to pay rent, on the ground that such failure operated as a forfeiture under the terms of the lease. The defendant pleaded (1) that he had paid rent to plaintiff's co-sharer, and (2) that the plaintiff alone could not sue without joining his co-sharer The Subordinate Judge disallowed both these pleas, and passed a decree declaring the plaintiff entitled to eject the defendant, unless the latter paid up all arrears of rent up to date of decree, together with interest and costs of suit within three months. This decree was reversed by the District Judge on appeal, who awarded possession of the land to the plaintiff, on the ground that the defendant, having in his written statement denied the plaintiff's exclusive title, was not entitled to be relieved against the forfeiture clause in the lease *Held*, reversing the decree of the lower Appellate Court, that the plaintiff's alleged cause of action being, not a disclaimer or denial of his title, but merely non-payment of rent, forfeiture for breach of such a covenant in the lease could be relieved against by a Court of Equity. Jamsedji Sorabji v. Lakshmiram Rajram . . I. L. R. 13 Bom. 323

58. ——— *Assignee of* [illegible]

[illegible]

Roy v. Janoo Lathak . . 18 W. R. 465

59. ——— *Liability to ejectment* Where it is proved that one man has been the tenant of another, it is necessary before the [illegible]

[illegible]

himself from ejectment he [illegible]

[illegible]

60. ——— *Forfeiture of tenure—Ejectment.* The weight of authority of the decisions of the High Court is in favour of the view that when a tenant directly repudiates the relation of landlord and tenant and sets up an adverse title in himself the landlord is entitled to take possession irrespective of the period during which the tenant may have been in possession. Shumsher Ali v. Doya Bibi . . . 8 C. L. R. 150

61. ——— *Right of land-* [illegible]

[illegible]

Raghuji . . . I. L. R. 12 Bom. 352

62. ——— *A*, a raiyat with right of occupancy, in a rent-suit brought against him by *B*, the purchaser of an aima mehal, denied the existence of the relationship of landlord and tenant between himself and *B*, on the ground that the lands occupied by him were not included in the aima mehal purchased by *B* *B's* rent suit having been dismissed for failure of evidence on this point. *B* afterwards brought a regular suit to evict *A*, and for mesne profits *Held*, that *A*, by denying the title of *B* in the rent suit, thereby forfeited his rights of occupancy, and became liable to eviction. Mozhuruddin v. Gobind Chunder Nundi I. L. R. 6 Calc. 436

See Suttyabhama Dassee v. Krishna Chunder Chatterjee . . . I. L. R. 6 Calc. 55
8 C. L. R. 375

and Ishan Chunder Chattopadhya v. Shama Churn Dutt . . . I. L. R. 10 Calc. 41
12 C. L. R. 414

63. ——— *Bengal Tenancy Act (VIII of 1885), s. 178—Forfeiture completed before passing of Act.* The plaintiffs, purchasers of [illegible]

took place in March 1885, before the Bengal Tenancy Act came into operation. *Held*, that the forfeiture being complete before the passing of the Act, the case was not affected by s. 178 of that Act, and must be governed by the old law. Under the decided cases before the Bengal Tenancy Act such a denial by a [illegible]

to But *semble* Since the passing of that Act, in [illegible]

Abdur Rahim . . . I. L. R. 17 Calc. 196

64. ——— *Law as to denial of title before Bengal Tenancy Act.* A denial by the tenant of the landlord's title before the Bengal Tenancy Act was passed would operate as a forfeiture of the tenant's right, whether the case is

LANDLORD AND TENANT—*contd.*

21. FORFEITURE—*contd.*

(*b*) DENIAL OF TITLE—*contd.*

governed by the Transfer of Property Act or by the ordinary Rent Law which was in force before the passing of the Bengal Tenancy Act. ANANDA CHANDRA MONDUL *v.* ABBAHIM SOLEMAN 4 C. W. N. 42

65. ——— *Bengal Tenancy Act* (*VIII of 1885*), *s 49, cl.* (*b*), *and s. 178.* The plaintiffs sued to eject the defendant from certain land alleging that it formed part of their holding, and that the defendant was their sub-tenant. The defendant denied the plaintiff's title, and set up the title of a third person adverse to that of the plaintiffs. The lower Appellate Court found that the defendant was the plaintiff's tenant, and both the lower Courts held that the defendant, by denying the title of his landlord, had forfeited his rights as a tenant, and was therefore liable to be treated as a trespasser, and as such to be evicted

KAIBI . . . . I. L. R. 20 Calc. 101

66. ——— *Suit to recover khas possession—Successful denial of the relationship of landlord and tenant in previous rent-suits, effect of—Forfeiture—Estoppel.* The plaintiffs, owners of a dar-patni talukh, had sued defendant No. 1 for the rents of 1296-97. The defendant denied the relationship of landlord and tenant, and the plaintiffs withdrew the suit. They brought another suit for the rents of 1298-99, and were met by the same defence; this suit was ultimately dis-

Appellate Court, however, on the ground that the denial of the relationship of landlord and tenant does not operate as a forfeiture, modified the Munsif's decree by declaring the plaintiff's title as landlord and holding that they were not entitled to khas possession. *Held*, that the rule that a denial of the relationship of landlord and tenant does not

suit that the defendants are not their tenants, the defendants have no right to remain upon the land, and the plaintiffs are entitled to khas possession. *Debiruddi v. Abdur Rahim, I. L. R. 17 Calc. 196.* distinguished. NILMADHAB BOSE *v.* ANANT RAM BAGDI . . . . . 2 C. W. N. 755

67. ——— *Suit for ejectment.* In a suit for ejectment, where it is alleged that the defendant has forfeited his tenure by denying his landlord's title, the forfeiture must be strictly proved. It must be proved what the defendant said, and the judgment in the suit in which he is alleged to have denied the title is not sufficient. AHULLYA DEBIA *v.* BHYRUB CHUNDER PATTRO . . . . . 25 W. R. 147

68. ——— *Ejectment, suit*

question in the former suit against the same defendant and three others claiming under the same title as himself, the defence that the land was lakhiraj was set up by all. *Held*, that the case fell within the principle of the case of *Suttyabhama Dassee* v. *Krishna Chunder Chatterjee, I. L. R. 6 Calc. 55*, and that the plaintiff, who had successfully proved that he had collected rents from the predecessors of the defendants, was entitled to evict them as trespassers on their failure to prove their lakhiraj title. ISHAN CHUNDER CHATTOPADHYA *v* SHAMA CHURN DUTT . . I. L. R. 10 Calc. 41 : 12 C. L. R. 414

69. ——— *Setting up permanent tenure.* In a suit for ejectment, where the

70. ——— *Suit for ejectment—Cause of action—Written statement.* *P* and *R* brought a suit for ejectment on the allegation that their tenants had failed to come to a settlement in respect of a certain jote, and that a notice to quit had thereupon been served on them. The defendants (tenants) in their written statement denied the landlords' title. The lower Courts found that the jote belonged to the plaintiffs, and the defendants had been and still were in possession of the same as tenants; but dismissed the suit on the ground that the service of notice had not been proved. *Held* (on second appeal), that, inasmuch as the cause of action must be based on something that accrued antecedent to the suit, the denial by

71. ——— *Forfeiture by alienation—Written statement—Cause of action.* Lands

LANDLORD AND TENANT—*contd.*

21. FORFEITURE—*contd.*

(b) DENIAL OF TITLE—*contd.*

in Malabar were demised on anubhavom tenure. Some of them were alienated by the tenant, but the landlord subsequently accepted rent. More than twelve years after the alienation, the landlord sued to eject the tenant on the ground that the tenure was thereby forfeited. The tenant for the first time in his written statement denied the landlord's title. *Held*, that the plaintiff could not recover in this suit on the ground of the denial of his title in the written statement. MADAVAN *v* ATHI NANGIYAR I. L. R. 15 Mad. 123

72. ——— *Suit for ejectment—Repudiation of title—Setting up different tenure from that alleged by landlord* The plaintiff in 1870 brought a suit for rent, in which the defendant set up and filed a permanent howladari lease, but admitted that he held at the rent alleged by the plaintiff, and that suit was decreed, the Court thinking it unnecessary to decide the question of the validity of the tenure set up by the defendants. In a suit brought after a notice to quit, which was found to be invalid, to eject the defendant, and for a declaration that he had no such permanent howladari tenure as he alleged, the defendant again set up the howaldari lease under which he admitted he had paid a fixed rent to the plaintiff *Held*, that, though the defendant repudiated the particular holding which the plaintiff attributed to him, he did not question the plaintiff's right to receive the rent and therefore did not in any sense repudiate his landlord's title. What he did amounted merely to questioning the right of the landlord to enhance the rent, which was not such a disclaimer as would result in law in a forfeiture of his tenure. The plaintiff therefore was not entitled to eject the defendant without giving him a proper notice to quit. *Vivian v. Moat, L. R. 16 Ch. 730*, distinguished, on the ground that the principle on which it is based is wholly inapplicable in Bengal. *Baba v. Vishvanath Joshi, I. L. R. 8 Bom. 228*, dissented from. KALI KRISHNA TAGORE *v* GOLAM ALLY

I. L. R. 13 Calc. 248

The principle laid down in *Vivian v Moat, L. R. 16 Ch. D 730*, is not applicable to this country. KALI KISHEN TAGORE *v.* GOLAM ALI

I. L. R. 13 Calc. 3

73. ——— *Tenant setting up a permanent lease—Notice to quit—Ejectment suit* The plaintiff sued for possession of certain land which had been demised to him by the first defendant. The fourth defendant set up a previous purchase from the third defendant, who, he alleged, was a permanent lessee from the first defendant's father, and he contended (*inter alia*) that his vendor not having been served with a notice to quit, he could not be ejected. The lower Appellate Court *held* that the plaintiff could sue the defendant No. 1 only for specific performance, and could not eject the former tenants with or without notice. On appeal by the plaintiff to the High Court, it was

[illegible]

yearly tenancy (which was alleged by the plaintiff) being treated as cancelled. PURSHOTAM BAPU *v* DATTATRAYA . . I. L. R. 10 Bom. 669

74. ——— *Assertion of mulgeni (permanent) tenure—Right to notice to quit.* The setting up of a mulgeni right by a tenant is not a disclaimer of title such as disentitles him to a notice to quit in determination of the tenure. UNHAMMA DEVI *v.* VAIKUNTA HEGDE

I. L. R. 17 Mad. 218

75. ——— *Bombay Land* [illegible]

without notice to quit. The object of s. 84 of the [illegible]

LAKSHMAN DEVJI KANDAR

I. L. R. 20 Bom. 354

76. ——— *Permanent lease—Transfer of Property Act (IV of 1882), ss. 105,* [illegible]

general principle of law that a man cannot approbate and reprobate. KALLY DASS AHIRI *v.* MONMOHINI DASSEE . . I. L. R. 24 Calc. 440

1 C. W. N. 321

LANDLORD AND TENANT—*contd.*

21. FORFEITURE—*contd.*

(*b*) DENIAL OF TITLE—*contd.*

77. ———— *Denying landlord's title or parting with holding—Bengal Tenancy Act (VIII of 1885), s 44—Grounds of forfeiture* Parting with possession of a holding or denying the title of the person under whom a non-occupancy

SESSWAR CHATTERJEE . . 1 C. W. N. 158

See DURGA PROSAD SEN *v* DOULA GAZEE 1 C. W. N. 160

78. ———— *Transfer of Property Act (IV of 1882), s 2 (b) and (c) and ss. 105, 111 (g)—Maurasi-mokurari tenure* A lessor brought a suit for ejectment of the lessee for denying his title and asserting title in herself. The defendant in the Court below denied having renounced the title and pleaded that a maurasi-mokurari tenure was not subject to forfeiture. The lower Court gave a decree for the plaintiff The defendant appealed against the decree *Held*, that the defendant having denied her landlord's title, and a maurasi-mokurari lease being only a lease in perpetuity as defined in s 105 of the Transfer of Property Act, and not a conveyance in fee, it is subject to forfeiture by renunciation of the lessor's title under s. 111 (*g*) S. 2 (*b*) and (*c*) do not apply, as even before the Transfer of Property Act such a lease under similar circumstances would have been liable to forfeiture under the general law. MONMOHINI DASSI *v.* KALI DAS AHIRI . . . . 2 C. W. N. 292

79. ———— *Plea of sale by landlord to his tenant—Suit for possession by landlord before Mamlatdar* In a possessory suit before a Mamlatdar, though it is not competent to a tenant to deny his landlord's title at the date of his lease, it is open to him to show that it has since determined, *e g*, by sale to him by the landlord, in which case the tenant no longer holds under a title derived from the landlord. VEDU *v.* NILKANTH . . . I. L. R. 22 Bom. 428

80. ———— *Bengal Tenancy Act (VIII of 1885)—Bengal Act VIII of 1869—Suit for ejectment—Forfeiture—Denial by tenant of landlord's title—Denial in written statement*

I. L. R. 28 Calc. 135
s.c. 5 C. W. N. 263

81. ————

determination of tenancy by landlord The defend-

In 1871, defendants had, to the knowledge of

that time had not evinced any intention to determine the lease. In 1895, plaintiff, on behalf of himself and the other villagers, brought this suit for ejectment. On its being contended that the suit was barred by limitation, inasmuch as it was brought more than twelve years after the repudiation of the tenancy by defendants :—*Held*, that the suit was not barred by limitation A tenant repudiating the title under which he entered becomes liable to immediate eviction, at the option of the landlord ; but, until the landlord indicates that he

82. ———— *Bengal Tenancy Act (VIII of 1885)—Denial of landlord's title* Where, in a suit for rent, defendant denied plaintiff's title, and the suit failed, and subsequently plaintiff sued to eject the defendant on the ground of denial of landlord's title :—*Held*, that the rule that denial of landlord's title does not work as a forfeiture did

BUDDIN SIRDAR (1902) . 6 C. W. N. 575

83. ———— *Estoppel—Denial of kabuliyat—Pleading* The rule that a tenant is estopped from denying the title of his landlord applies only to the title of the landlord who lets the tenant in If the tenant did not obtain possession from a person who was recognised as landlord, either by express agreement, or by attornment, or by formal acknowledgment by payment of rent, he may always show that his conduct was due to mistake or ignorance of facts relating to title, misrepresentation or fraud *Gregory* v. *Doidge, 3 Bing. 474*, relied upon Where, in a suit for rent, the tenant denied the execution of the *kabuliyat* propounded by the plaintiffs, pleaded that it was forged, and denied payment of rent under it to the plaintiffs, and failed to

LANDLORD AND TENANT—*contd.*

21. FORFEITURE—*contd.*

(*b*) DENIAL OF TITLE—*contd.*

establish his pleas :—*Held*, that the tenant was not entitled to prove that the plaintiffs were not his landlords, although he had not been inducted into the land by the plaintiffs. *Protap Chandra Roy Chowdry v. Jogendra Chandra Ghosh, 4 C. L. R. 165*, followed. *Lal Mahomed v. Kallanus, I. L. R. 11 Calc. 519*, explained. KETU DAS v. SURENDRA NATH SINHA (1903) . 7 C. W. N. 596

84. ——— Ejectment, suit for—Service-tenure—Denial of landlord's title—Notice to quit—Determination of lease—Transfer of Property Act (IV of 1882), ss. 106, 111—Bengal Tenancy Act (VIII of 1885), ss. 155, 181. A lessee of a service-tenure incurs a forfeiture of his tenancy by denial of the landlord's title; and the landlord in a suit for ejectment would be entitled to recover judgment, if he did, by some act or other, declare his intention to determine the lease antecedent to the institution of the suit, notice to quit in such a case not being obviously necessary, otherwise the suit should be dismissed. Such a case falls within the Transfer of Property Act, and not under the Bengal Tenancy Act. *Haidri Begam v. Nathu, I. L. R. 17 All. 45*, and *Ansar Ali Jemadar v. C. E. Grey, 2 C. L. J. 103*, referred to. ANANDAMOYEE v. LAKHI CHANDRA MITRA (1906)
I. L. R. 33 Calc. 339

85. ——— Landlord and tenant—Disclaimer—Forfeiture. There was no disclaimer by *B* of the relationship of landlord and tenant with *A* such as would cause a forfeiture of tenancy, when *B* did not deny that he held the land as a tenant although he denied *A's* title to the interest of the landlord, *A's* case being that he acquired the landlord's interest at certain rent sales. *Jones v. Mills, 10 C. B. N. S. 788, 796*, *Williams v. Cooper, 1 M. & G. 135*, *Grey v. Stanion, 1 M. & G. 695*, referred to. MATHEWSON v. JADU MAHTO (1908) . . . 12 C. W. N. 525

22. ABANDONMENT, RELINQUISHMENT, OR SURRENDER OF TENURE.

1. ——— Verbal relinquishment—

24 W. R. 118

LANDLORD AND TENANT—*contd*

22. ABANDONMENT, RELINQUISHMENT, OR SURRENDER OF TENURE—*contd.*

relinquished the land. The relinquishment need not be in writing. MUNEERUDDEEN v. MAHOMED ALI
6 W. R. 67

3. ——— Relinquishment of tenure. When a raiyat, without giving any

mally relinquished the land. RAM CHUNG v. GORA CHAND CHUNG . . . 24 W. R. 344

4. ——— Determination of tenancy—Abandonment of tenure. Plaintiff, a

authority, the land was granted to the first defendant and made over to his possession. Plaintiff was admittedly in arrears of kist. In a suit by plaintiff to recover the land, it was contended that non-culti-

COLLECTOR OF CHINGLEPUT. . . 7 Mad. 98

5. ——— Surrender of tenancy. Mere non-occupation and non-cultivation were *held* not to amount to a surrender of the

BHIKAJI SOYARE PRABHU KANOLEKAR
I. L. R. 8 Bom. 164

VENKATESH NARAYAN PAI v. KRISHNAJI ARJUN
I. L. R. 8 Bom. 160

6. ———

MADHUB PAL v. KALEE CHURN PAL
18 W. R. 41

LANDLORD AND TENANT—*contd.*

22. ABANDONMENT, RELINQUISHMENT, OR SURRENDER OF TENURE—*contd.*

7. ———— **Abandonment of portion of jote**—*Liability for rent of entire jote.* As long as a raiyat retains possession of any portion of his jote, he is liable for the rent of the whole SARODA SOONDUREE DEBEE *v.* HAZEE MAHOMED MUNDUL
5 W. R., Act. X, 78

8. ———— **Abandonment of share of holding**—*Separated member of Hindu family.*

the same way as he is entitled by law to deal with the abandoned holding of a cultivating raiyat. LALLA NUKCHED LALL *v* FUTTEH BAHADOOR LALL . . . . . . 24 W. R. 39

9. ———— **Voluntary abandonment of permanent tenure**—*Express relinquishment—Determination of tenancy* A voluntary abandonment of a permanent and transferable tenure for a

NYA BHOOSUN *v.* SUMBHOO CHUNDER CHUCKERBUTTY . . . . . W. R. 1864, 270

SHOODAN KURMAKAR *v.* RAM CHURN PAL
2 W. R. 137

10. ———— **Non-payment of rent with loss of possession.** Non-payment of rent, coupled with the fact that the plaintiff was for five years out of possession, was *held* to amount to a relinquishment of land NUDDEAR CHAND PODDAR *v.* MODHOOSOODUN DEY PODDAR . 7 W. R. 153

11. ———— **Non-payment of rent for**

years prior to the institution of the suit; that he had occupied it for four years and then left the

iff had a right when he went away to occupy he land if he chose to do so, as he did not do so, he had no right on his return to eject the defendant MUTTY SOONUR *v* GUNDUR SOONUR
20 W. R. 129

12. ———— **Desertion of land and house by tenant**—*Right of landlord to take possession.* When the house had fallen to the ground and the land been deserted by the tenant, the zamindar was *held* justified in taking possession of the land as abandoned. BADAM *v* MICHEL . 1 Agra 266

BUNNOO BEBEE *v.* SHEO BUNS KANDO
3 Agra Rev. 9

LANDLORD AND TENANT—*contd.*

22. ABANDONMENT, RELINQUISHMENT, OR SURRENDER OF TENURE—*contd.*

13. ———— **Land left vacant by tenant**—*Zamindar's right to possession.* A zamindar who without unlawful means enters upon the land after the raiyat's tenancy is at an end, and takes possession, cannot be sued for illegal ejectment. MAHMOOD ALI KHAN *v.* GUNGA RAM
3 Agra 304

14. ———— **Desertion by one of two tenants**—*Relinquishment by the other—Lease by landlord—Right of deserter to claim land subsequently.* One of the two proprietors of a jote having deserted the land, the other proprietor, while ostensibly in possession of the entire jote, relinquished it to the landlord, who let it to the defendants. Some years after such relinquishment, the plaintiff, who

fact valid, the landlord was under the circumstances entitled to induct another tenant on the land, and

AUPURNA DABEE . . . 10 C. L. R. 15

15. ———— **Condition for liability for rent until express surrender**—*Lessor and lessee—Kabuliat—Suit for rent—Notice of surrender—Surrender of the land by tenant.* The plaintiff was a mortgagee of certain land, and sued the defendant for the rent thereof for the three years 1871, 1872, and 1873 He alleged that in

LANDLORD AND TENANT—*contd.*

22. ABANDONMENT, RELINQUISHMENT, OR SURRENDER OF TENURE—*contd.*

by a re-entry on the premises. The High Court accordingly, finding that there was no evidence in the case either of notice given to the plaintiff or of an opportunity afforded to him of resuming possession of the land remanded the case for the determination of that question observing that, if such notice were given and such opportunity afforded, the plaintiff could not legally claim rent after the end of the cultivating year VENKATESH NARAYAN PAI *v.* KRISHNAJI ARJUN

I. L. R. 8 Bom. 160

16. ———— **Omission to make express surrender**—*Notice of surrender of land by tenant —Splitting up of the cause of action—Son's liability on the father's contract of tenancy* On the 22nd April 1848, one *A* mortgaged certain land to the plaintiff *S* (the father of *B*, the defendant), who was then tenant in possession of the land, attorned to the mortgagee (plaintiff) by a kabuliat, dated the 1st June 1848 *S* died in 1870 in possession as tenant. In 1877 the plaintiff sued the defendant *B* as heir of *S* for three years' rent from 1871-72 to 1873-74 The defendant answered that he had had no possession or occupation of the land since the death of his father in 1870 It was decided in that

viz, from 1875-76 to 1877-78 The defendant answered that he had given up the land in 1871-72. He did not assert, either in the former or in the present suit, that he had given notice to the plaintiff of his intention to terminate his tenancy by surrendering the land to the defendant, nor did he allege that the plaintiff had assented to a surrender of it by the defendant without such notice The lower Courts found the kabuliat proved, but threw out the plaintiff's claim on the ground that he failed to prove the defendant's occupation of the land during the three years

under the kabuliat, but that he was not bound to

LANDLORD AND TENANT—*contd.*

22. ABANDONMENT, RELINQUISHMENT, OR SURRENDER OF TENURE—*contd.*

could not relieve him from his liability to pay the annual rent to the mortgagee (plaintiff), unless the latter assented to a surrender or abandonment of the land by the defendant. *Held*, also, that the

SITARAM NAIK SALGAVKAR *v.* BHIKAJI SOYARE PRABHU KANOLEKAR . I. L. R. 8 Bom. 164

17. ———— **Relinquishment by some of lessees**—*Joint lease.* Where a joint lease was given to many persons, with an entirety and

18. ———— **Relinquishment by manager for joint family**—*Joint lease.* Where a member of a joint family is registered as jotedar in a zamindar's serishta, not as for himself only, but as manager for the family, his relinquishment of the jote is not sufficient in law to authorize the zamindar to make arrangements with any others he pleases. BYKUNT NATH DOSS *v.* BISSONATH MAJHEE . . . . 9 W. R. 268

19. ———— **Relinquishment, effect of—**

v CHUNDEE LALL PANDEY . . 7 W. R. 250

20. ———————— *Liability for rent* Where land relinquished by the original

SHUNKER LALL . . . 11 W. R. 53

21 ———— **Relinquishment by tenant having a right of occupancy.** Ordinarily tenants having a right of occupancy may, on the expiry of any agricultural year, relinquish their holdings by giving the landlord due notice ; and the

3 N. W. 63 : Agra F. B. Ed. 1874, 250

LANDLORD AND TENANT—*contd.*

22 ABANDONMENT, RELINQUISHMENT, OR SURRENDER OF TENURE—*contd.*

22. ———— **Surrender to landlord, effect of, on under-tenant.** When a tenant who holds land for a term with consent of the landlord underlets that land, he parts with his own interest therein to the extent of the interest created

23. ———— *Surrender to landlord, effect of, on under-tenant.* Where a

operate to the prejudice of the sub-lessee. NEHALOONISSA *v.* DHUNNOO LALL CHOWDRY
13 W. R. 281

24. ———— **Relinquishment of mokuraridar**—*Mokurari tenure.* When a mokuraridar resigns his tenure, the dar-mokuraris created by him come to an end, but the position of raiyats holding rights of occupancy is not affected by the extinction of either the tenure or the under-tenures. KOYLASH CHUNDER BISWAS *v.* BISSESUREE DOSSEE . . . 10 W. R. 408

25. ———— **Ejectment of an under-raiyat**—*Bengal Tenancy Act (VIII of 1885), ss. 44, 85, 86, cls. (5) and (6)—Surrender by a raiyat—Notice to quit if necessary* Where a raiyat surrenders his holding, the landlord is entitled to re-enter by ejecting the under-raiyat if he is not protected by s 85 or 86, cl (6) In such a case no notice to quit is necessary. NILKANTA CHAKI *v.* GHATOO SHEIKH . . . 4 C. W. N. 667

26. ———— **Relinquishment of purchaser from whom tenant holds.** The rights of a tenant cannot be destroyed by the relinquishment of rights by the purchaser from a pattidar from whom the tenant held by pottah Before the

27. ———— **Mirasidar.** A mirasidar does not lose his mirasi rights by relinquishing his pottah. SUBBARAYA MUDALI *v* COLLECTOR OF CHINGLEPUT . . I. L. R. 6 Mad. 303

28. ———— **Inability to surrender to landlord**—*Mortgage with landlord's consent.* A

... the mortgagee is entitled to retain possession. SHEOUMBUR RAI *v.* SHEOBHUNG RAI
1 N. W. 45 : Ed. 1873, 41

29. ———— **Holder of survey field**—*Consent of heirs.* There is no precedent for ruling that the holder of a survey field is incompetent to resign it without the consent of his heirs. DAVALATA BIN BHUJANGA *v.* BERU BIN YADOJI
4 Bom. A. C. 197

30. ———— **Patnidar**—*Refusal to pay rent.* It is not open to a patnidar of his own choice to throw up the patni, and by so doing escape his liability to pay rent. The contract, though not indissoluble, can only be dissolved by an act of the Court, and as the result of proper enquiry. HEERA LALL PAL *v.* NEEL MONEE PAL
20 W. R. 383

31. ———— **Dar-mirasi mokurari tenure**—*Notice of relinquishment—Surrender of lease.* A tenure under a dar-mirasi mokurari lease of land, which is not let for agricultural purposes, cannot be put an end to by a mere relinquishment on the part of the lessee, although after notice to the landlord. *Per* FIELD, J.—The principle laid down in the case of *Heera Lal Pal* v. *Neel Monee Pal, 20 W. R. 383,* where it was *held* that a patnidar cannot, of his own option, relinquish his tenure, is applicable of all intermediate tenures between the zamindar and the cultivator of the soil, except those held on farming leases JUDOONATH GHOSE *v* SCHOENE, KILBURN & Co. . I. L. R. 9 Calc. 971 : 12 C. L. R. 343

32. ———— **Ex proprietary tenant**—*Relinquishment of ex-proprietary rights—Act XII of 1881 (N.-W. P. Rent Act), ss. 9, 31* *Held*, by the Full Bench, that an ex-proprietary tenant is not competent to relinquish his holding to his landlord by private arrangement. *Per* PETHERAM, C J.—S. 31 of the N.-W. P. Rent Act (XII of 1881) was enacted absolutely in the interests of the cultivator, and provides in effect that, although the occupancy-

must not be taking advantage of by letting the zamindar buy the holding, and thus introducing a new cultivator, contrary to the prohibition contained in s. 9. INDAR SEN *v.* NAUBAT SINGH
I. L. R. 7 All. 847

33. ———— *N.-W. P. Rent Act (XII of 1881), ss. 9, 31—Relinquishment of ex-*

34. ———— **Surrender by abandonment**—*Madras Rent Recovery Act (Mad Act VIII of 1865), s. 12.* In a suit to recover possession of certain land comprised in an unexpired lease granted to the plaintiff by the first defendant it was pleaded that the plaintiff had left the land waste, and had refused to pay rent or give a written relin-

LANDLORD AND TENANT—*contd.*

22. ABANDONMENT, RELINQUISHMENT, OR SURRENDER OF TENURE—*contd.*

quishment of the land, and that the first defendant had accordingly let it to the second defendant. *Held*, that, although the defence did not disclose a surrender by the plaintiff, recorded as prescribed in the Rent Recovery Act, s. 12, yet inasmuch as a surrender is not necessarily invalid because it has not been so recorded, and an oral relinquishment followed by abandonment of the land is not inoperative as a surrender under s. 12 of that Act, the Court should determine the issue whether there had been a surrender by the plaintiff. NARASIMMA *v.* LAKSHMANA . . . I. L. R. 13 Mad. 124

35. ——— **Mulgeni holding**—*Madras Rent Recovery Act* (*Mad. Act VIII of 1865*), *s. 12—Right of tenant to relinquish his lease.* It is not competent to a mulgeni tenant in South Canara to relinquish his lease and free himself from his obligation for rent without the consent of the landlord. KRISHNA *v.* LAKSHMINARANAPPA

I. L. R. 15 Mad. 67

36. ——— **Surrender of lease**—*Perpetual lease*. The ...

possession of the land. *Held*, that the perpetual lease as being of an improvident character was *ultra vires* and void; and that the original lease was not surrendered by the acceptance of the subsequent lease. RAMUNNI *v.* KERALA VARMA VALIA RAJA

I. L. R. 15 Mad. 166

37. ——— **Tenant remaining in occupation after passing a rajinama**—*Bombay Land Revenue Act V of 1879, s. 74—Effect of the rajinama—Construction—Practice—Ejectment suit by owner of "inter esse termini."* The first and second defendants were sub-tenants of the third ...

date of this rajinama, the inamdar gave the land to the plaintiff, who now sued to obtain it from the defendants, who had remained in possession. *Held*, that the plaintiff was entitled to the land. The rajinama operated as a relinquishment of the tenancy by defendant No. 3 under s. 74 of Bombay Act V of 1879. *Held*, also, that the plaintiff was entitled to sue in ejectment, although he had not been put in possession of the land. BHUTIA DHONDU *v.* AMBO . . I. L. R. 13 Bom. 294

38. ——— **Relinquishment of possession**—*Proof of reconveyance—Receipt of consideration.* The mokurandar having granted a darmokurari lease of part of his holding, which was afterwards surrendered for good consideration, ikrarnamas to this effect were executed, but not being registered were not receivable in evidence. *Held*, that to prove a formal deed of reconveyance was not necessary, the receipt of the money and the relinquishment of possession sufficiently showing what had become of the dar-mokurari interest. IMAMBANDI BEGUM *v.* KAMLESWARI PERSHAD

I. L. R. 14 Calc. 109
L. R. 13 I. A. 160

39. ——— **Sufficiency of notice of relinquishment of land by tenant**—*Inamdar—Land Revenue Code (Bom. Act V of 1879) s. 74—Remedy of landlord when vacant possession not given—Damages.* On the 20th March 1893, the defendants, who held seven fields as tenants of the plaintiff, the inamdar of the village of Kaneri, gave him notice of relinquishment of six of them. The notice stated that these six fields were no longer in their possession, and that they would not be responsible for the assessment. The plaintiff notwithstanding brought this suit to recover assessment for the year 1893-94. The Subordinate Judge held that the defendants continued to be tenants of the fields ...

Land Revenue Code (Bombay Act V of 1879) only declares the customary common law on the subject of relinquishment of tenancy. A notice of relinquishment is not invalid because it does not purport to give and does not in fact give vacant possession to the inamdar. The result is the same, whether the fact that the possession is not vacant appears on the face of the notice or is shown otherwise. A tenant giving up demised land to his landlord is bound to give him vacant possession. The result, ...

in recovering possession of the land. BALLARAMAIRI RAMCHANDRAGIRI *v.* VASUDEV MORESHVAR NIPHADKAR . . . I. L. R. 22 Bom. 348

40. ——— **Construction of a contract in a pottah allowing relinquishment of the land leased, in whole or in part.** A pottah granted a permanent mokurari lease for mining purposes, and gave to the tenant the privilege of

LANDLORD AND TENANT—*contd.*

22. ABANDONMENT, RELINQUISHMENT, OR SURRENDER OF TENURE—*contd.*

surrendering either the whole or part of the land included in the lease, with a deduction to be made in the rent for the extent of the land that might be found on measurement to have been surrendered *Held*, that this privilege could only be exercised by

the other of 9 bighas. *Held*, that, according to the true construction of the contract, there was error in the judgment of the High Court which decided that the retention of the plots did not altogether deprive the relinquishment of its effect. This retention did more than lessen the area actually surrendered. It was a mistake to suppose that an increased rent to be paid by the relinquishing tenant in proportion to the areas retained and surrendered, respectively, would adjust the point disputed as a matter of law The contract was that, in case the tenant surrendered a part, the future rent was to be ascertained by the measurement of the area relinquished. To have made a new surrender would have been within the competency of

surrender, but not surrendered Therefore the surrender upon which rested the defence to a suit by the lessor for the full rent was invalid in law. RAMCHURN SINGH *v* RANIGANJ COAL ASSOCIATION I. L. R. 26 Calc. 29 L. R. 25 I. A. 210 2 C. W. N. 697

41. ———— Abandonment of holding —*Bengal Tenancy Act (VIII of 1885), s 87—Transfer of holding by a raiyat—Notice.* In a case

would be for the Court in each case to determine whether the tenancy had terminated. LAL MAHUD MANDAL *v* ABDULLAH SHEIKH 1 C. W. N. 198

42. ———— *Bengal Tenancy Act (VIII of 1885), s. 87—Transfer of non-transferable occupancy holding—Forfeiture—Ejectment—Notice* Where the non-transferable occupancy holding of plaintiff's tenant

LANDLORD AND TENANT—*contd.*

22. ABANDONMENT, RELINQUISHMENT, OR SURRENDER OF TENURE—*contd.*

of the tenants standing thereon, and it was found that the said tenant had abandoned the possession of the holding ;—*Held*, that, in a suit for khas possession, the plaintiff was entitled to succeed, and a notice under s. 87 of the Bengal Tenancy Act to the old tenant was not necessary. BHAGABAN CHANDRA MISSRI *v* BISSESSWARI DEBYA CHOWDHURANI . . . . 3 C. W. N. 46

43. ———— Necessity of notice—*Bengal Tenancy Act (VIII of 1885), s 87—Ejectment—Non-transferable raiyati holding, transfer of.* Where a raiyat sold his non-transferable holding and was no longer in possession of the same and paid no rent for it, and the landlord brought a suit to eject both the transferor and transferee :—*Held*, that the landlord was entitled to a decree, and that no notice

Missri v. Bissesswari Debya Chowdhurani, 3 C. W. N. 46, relied on. *Held*, also, that the provisions of s. 87 of the Bengal Tenancy Act are not exhaustive. SAMUGAN ROY *v.* MAHATON 4 C. W. N. 493

44. ———— Relinquishment not made in writing—*Act XII of 1881 (N.-W. P. Rent Act), s. 31—Landholder and tenant—Relinquishment of part of holding.* A relinquishment made by a tenant of his holding, when he does not hold under a lease, need not necessarily be in writing, nor need such relinquishment necessarily extent to the whole of

45. ———— Possession of land under

46. ———— Relinquishment of tenancy during the term of the mortgagee.

LANDLORD AND TENANT—*cont'd.*

22 ABANDONMENT, RELINQUISHMENT, OR SURRENDER OF TENURE—*contd.*

Occupancy tenant—Usufructuary mortgage. Held, that, an occupancy tenant, who was made a usufructuary mortgage of his holding and put the mortgagee in possession cannot during the subsistence of such mortgage relinquish his holding to the prejudice of the mortgagee's rights. *Badri Prasad* v. *Sheodhian, I L R 18 All. 354*, followed RANNU RAI v. RAFI-UD-DIN (1905)

I. L. R. 27 All. 82

47 ———— **Fictitious transfer of holding**—*Determination of tenancy—Abandonment—Transfer of non-transferable holding—Effect of transfer* Where a raiyat of a non-transferable holding executed a conveyance in respect thereof in favour of the defendants, but continued notwithstanding to reside on the property and carry on the cultivation for some time, and the rent of the holding was paid by the defendants in the name of the raiyat *Held* (GHOSE, *C J*, and GEIDT, *J*.) that, if the transfer was not intended to be an operative transaction, the mere fact that the raiyat went away from the holding to reside elsewhere would not be sufficient to make out a case of abandonment so as to entitle the landlord to re-enter MATHURA MANDAL v. GANGA CHARAN GOPE (1906) . I. L. R. 33 Calc. 1219 s.c. 10 C. W. N. 1033

48 - **Original tenant remaining in possession as sub-tenant of the transferee**—*Transfer—Right of occupancy—Abandonment*

on abandonment by the tenant, it must be an aban-

49. ———— **Non-transferable occupancy holding, transfer of**—*Abandonment—Permissive possession under transferee—Landlord's suit for khas possession.* Where a tenant having a right of occupancy not transferrable by custom, had given up to the purchaser possession of all the culturable lands of the holding but remained in possession of homestead lands only by permission of the purchaser :—*Held*, that this was sufficient to indicate that the raiyat had abandoned his

23 EJECTMENT.

(*a*) GENERALLY.

See EJECTMENT, SUIT FOR.

1. — **Interference with tenant by zamindar**—*Inducing sub-tenants to pay rent to zamindar.* Where a zamindar so interferes with the possession of a tenant not personally occupying the land as to induce the under-tenants to pay rent to him (the zamindar), his interference amounts to dispossession. HOYMOBUTTY DASSEE *v.* SREEKISSEN NUNDEE . . . . 14 W. R. 58

See RADHA MADHUB PANDA *v.* JUGGERNATH DOOAB . . . . . 14 W. R. 183

2. ———— **Right of landlord to eject and re-enter**—*Expiration of lease and omission to take renewal.* Where an old lease has expired, and the lessee, having the option of renewal on apply-

contract DEB POOREE BOISTOBEE *v* KENOO SINGH ROY . . . . . 20 W. R. 357

3. ———— **Right of lessee of zamin-**

4. ———— **Right of joint lessor**—*Suit for ejectment.* One of several joint lessors can eject a lessee after expiry of the lease. MUDUN SINGH *v.* NURPUT SINGH . . 2 W. R. 291

5. ———— **Right of purchaser**—*Patni taluk—Sale for arrears of rent—"Optimus interpres rerum usus."* The plaintiff, purchaser of a

evidence as to the nature of the enjoyment what the origin of the tenure really was. It being shown that

LANDLORD AND TENANT—*contd.*

23. EJECTMENT—*contd.*

(*a*) GENERALLY—*contd.*

the interest in the tank had been frequently transferred during a period of more than sixty years without any change in the terms of the holding or the amount of rent paid, and that one of the transferees of the tank had been the owner of the talukh in which it was, it was held that the plaintiff was not entitled to a decree for khas possession NIDHIKRISHNA BOSE *v.* NISTARINI DASI
13 B. L. R. 416 : 21 W. R. 386

6. ——— *Summary ejectment—Person not in receipt of rent.* Tenants long in possession and paying rent cannot be summarily ejected in an action by an alleged purchaser suing for possession ; they can only be ejected in a suit in the Revenue Court by the person entitled to receive the rent. THAKOOR DOSS ROY *v.* BHYRUB CHUNDER BHUTTACHARJEE . . 11 W. R. 509

7. ——— Liability to ejectment—*Long tenancy, Nature of* Where the defendant had been in possession as tenant for more than thirty years, and there was no lease or agreement showing the nature of the original tenancy, the presumption of law is that he is a tenant from year to year, and therefore liable to be ejected Regulation V of 1827, s 1, does not apply to such a case. BAI GANGA *v.* DULLABH PARAG . 5 Bom. A. C. 179

8. ——— *Inamdar—Perpetual right of occupancy—Suit for ejectment* Where a family of kulkarnis in the Konkan was proved to have been in actual occupation of land under an inamdar for ninety years at a uniform rent: —*Held*, in the absence of proof of any lease for a more limited term as alleged by the plaintiff, that the occupants were entitled to hold as long as they paid the usual rent. ANNAJI APPAJI *v* KASI ATMAJI . . . . 3 Bom. A. C. 124

9. ——— *Tenants of inamdar—Right to raise rent—Tenants in possession before grant.* An inamdar, though he cannot eject his tenants who have been in possession before [illegible]

10. ——— *Position of sub-lessee under unexpired lease* The fact that a [illegible]

KHAN . . . . . 2 N. W. 6

11. ——— *Status of kashtkar.* The plaintiff occupied as kashtkar a piece of land in a mouzah which was subsequently leased in farm The farmer granted a pottah of a portion of the mouzah, including the plaintiff's holding, to *S*, to whom, instead of the farmer, the plaintiff subsequently paid rent. In the absence of any evidence as to the nature of the pottah granted to *S*, and of any consent on the part of the plaintiff to change his status, he did not lose his status of kashtkar, and was not liable to ejectment by reason of the ejectment of *S*. MATAPULUT SINGH *v.* MATA DYAL
3 Agra 275

12. ——— *Lessees from lakhirajdar—Right of zamindar to eject.* A party in legal possession under a lease from a lakhirajdar cannot be summarily evicted by the zamindar without the intervention of the Court, even if the zamindar is entitled to resume the land as invalid lakhiraj, or as lands which have lapsed on non-performance of stipulated service. INDRABUTTY KOONWAREE *v.* HOLLOWAY . 9 W. R. 168

13. ——— Illegal ejectment—*Right of tenant to be restored to possession if dispossessed before tenure is put an end to.* In a suit for possession by a tenant who claimed to hold under a permanent tenure, it was found that the tenure under which the plaintiffs claimed had not, though not found to be permanent, been put an end to. *Held*, that the plaintiffs were entitled to succeed. CHUNDAR KUMAR GUHA *v.* MUNGUL MOLLAH
11 C. L. R. 387

14. ——— *Suit by tenant* [illegible] A tenant suing to recover posses- [illegible]

[illegible] W. R. [illegible]

15. ——— *Act X of 1859, s. 25.* An ejectment by a zamindar without [illegible]

MAREE . . . W. R. 1864, Act X, [illegible]

16. ——— *Act X of 1859, s. 23, cl. 6, and s. 25—Limitation Act, 1859, s. 15* [illegible]

of the zamindar to eject him, in a suit under s. 15, Act XIV of 1859; but if the tenant sue under cl. 6, s 23, Act X of 1859, the question is open as to whether the tenancy was at an end or not; and if it was at an end, the tenant must fail in his suit. JONARDUN ACHARJEE *v.* HARADUN ACHARJEE
B. L. R. Sup. Vol. 1020 : 9 W. R. 513

URJOON DUTT BONICK *v.* RAM NATH KURMOKAR . . . . . . 21 W. R. 123

LANDLORD AND TENANT—*contd.*

23. EJECTMENT—*contd.*

(*a*) GENERALLY—*contd.*

17. ——————— *Restoration to tenancy after wrongful eviction.* If a raiyat, holding at a particular rent, is unlawfully evicted, he does not necessarily cease to hold at that rent; and if he is restored to possession, he is restored to his original holding RASHBEHARY GHOSE *v.* RAM COOMAR GHOSE . . . **22 W. R. 487**

LUTTEEFUNNISSA BIBEE *v.* POOLIN BEHAREE SEIN . . . . . **W. R. F. B. 91**

18. ——————— *Liability to damages for ejectment.* In a suit by an ejected lessee to recover a year's balance of rent from his lessor, who had given a lease to another party and dispossessed plaintiff:—*Held*, that, by granting the later lease, defendant had made himself responsible for any loss which might thereby be occasioned to plaintiff even though he (the lessor) had not collected the rent himself GOBIND CHUND JUTTEE *v.* MUN MOHUN JHA . . . **14 W. R. 43**

19. ——— **Effect of order of ejectment** —*Bengal Rent Act, 1869, s. 53—Right to standing crops on land.* The effect of an order of ejectment under s. 53 of the Rent Act is to dispossess the raiyats, not only of the land, but also of the crop standing thereon, the object of such an ejectment being to terminate completely the connection between the parties as landlord and tenant. *In the matter of* DUTJAN MAHTON *v.* WAJID HOSSEIN **I. L. R. 5 Calc. 135**

20. ——————— *Suit for arrears of rent—Bengal Rent Act (Beng. Act VIII of 1869), ss. 22, 52.* A landlord who sues for arrears of rent, for the whole of one year, and a portion of the next, and also for ejectment, is not entitled to a decree for the latter. The right to ejectment under s. 22 of the Rent Act (Bengal Act VIII of 1869) accrues at the end of the year, and forfeiture or determinaton of the tenancy thereupon takes place, but if *the landlord sues for subsequent arrears*, he treats the defendant as his tenant, and the right acquired under that section must be taken to have been waived. JOGESHURI CHOWDHRAIN *v.* MAHOMED EBRAHIM . . **I. L. R. 14 Calc. 33**

21. ——————— *Agreement by occupancy-tenant to relinquish his holding—Agreement not enforceable—Suit for specific performance of agreement—Jurisdiction of Civil Courts.* The defendant ...

... on the expiry of the term fixed in the kabuliat he should have no claim to retain possession of the cultivatory holding, but that he should give it up. Plaintiffs sued for ejectment of the defendant on the basis of the agreement and obtained a decree from the lower Appellate Court. On second appeal by the defendant:—*Held*, that, inasmuch as the plaintiffs sought to enforce the covenant contained in the kabuliat in such a manner as to extinguish the rights of occupancy found upon the facts of the case to have been acquired by the defendant in the land in suit, such suit must fail, as opposed to the policy of the law as shown in the provisions of s. 9 of the Rent Act (Act XII of 1881) Such a tenant may ...

22. ——————— *Evidence Act (I of 1872), s. 116—Estoppel—Kumaki land—Unassessed waste reclaimed by plaintiff—Pottah granted to defendant* The plaintiff, who was the holder of a warg in Canara, demised adjacent waste land to one who brought it into cultivation and remained in occupation for two years. The land was not assessed to revenue in the name of either of these persons. ...

... became adverse when the pottah was granted to him; (ii) that the plaintiff was not entitled to eject the defendant. SUBBARAYA *v.* KRISHNAPPA **I. L. R. 12 Mad. 422**

23. ——————— *Mirasi tenure —Suit by an inamdar to recover possession from a trespasser, claiming to have redeemed a mortgage made by mirasidar—Possession not adverse.* An inamdar sued to eject the defendants from certain lands, alleging them to be trespassers. The Courts found that the lands were mirasi lands, and that one *G* was mirasdar. *The defendants had redeemed a* ...

... whether or not they had any rights as against the mortgagee VINAYAK JANARDAN *v.* MAINAI **I. L. R. 19 Bom. 138**

24. ——————— *Ejectment, suit for—Onus—Dispossession by tenant—Presumption.* When a tenant has been in long and peaceable ...

... brought a suit for ejectment, and it was found that neither party had possession of the tree and its site: *Held*, that the fact of defendant's pos-

LANDLORD AND TENANT—*contd.*

23. EJECTMENT—*contd.*

(a) GENERALLY—*contd.*

session of a tenure of limited extent, within the plaintiff's *patni*, raises no presumption upon the defendant's seizure of a piece of land and claiming it as part of his tenure *Rhidoy Kristo Mistri* v. *Nobin Chunder Sen, 12 C. L. R. 457 ; Batai Ahir* v. *Bhuggabutty Koer, 11 C L. R. 476 ; Ram Monee* v. *Aleemoodeen, 20 W. R. 374 ;Rajkishen Mookerjee* v. *Pearee Mohun Mookerjee, 20 W. R 421 ;* and *Rajendro Kumar Bose* v. *Mohim Chandra Ghose, 3 C. W. N. 763,* distinguished NANDA LAL GOSWAMI *v.* JAJNESWAR HALDER (1901) . **6 C. W. N. 105**

25. ——————— *Ejectment, suit for—Permanency of tenure, circumstances justifying inference as to—Rent, uniform payment of, for a long period—Origin of tenancy not traceable—Transfers without objection by landlord—Existence of building* [illegible] lord either to enhance or to eject, that some pucca building has existed on the land for a very long period and that the property had from time to time been transferred to the knowledge of the landlord without any objection on his part, a Court is justified in inferring that the tenancy originally created was of a permanent nature That in such circumstances *the tenants are not liable to be ejected upon* the footing of the tenancy being merely an annual one. *Ismail Khan Mahomed* v *Joygoon Bibee, 4 C. W N 210,* distinguished ISMAIL KHAN MHOMED *v* ASMATULLA SARENG and JAMLU BIBI (1904) . . . . **8 C. W. N. 297**

26. ——————— *Ejectment—Permanent tenancy, how proved* Where for a very long time a certain holding had from time to time been transferred and had descended by inheritance, and had further been subdivided by the tenant, and there had never been any objection on the part of the landlord during all the time (although the property was situated in a place where such property had increased enormously in value), nor had the [illegible]

27. ——————— *Partial ejectment—Joint estate—Co-sharer landlord, rights of—Service tenure—Fair and equitable rent—Bengal Tenancy Act (VIII of 1885)* Where tenants were originally let into possession of land by all the co-sharers in a zamindari, a co-sharer landlord is not competent to obtain a partial ejectment of the tenants to the extent of his share unless the tenancy has been determined by all the co-sharers. *Huladhur Sen* v. *Gooroo Doss Roy, 20 W. R. 126 ; Radha Prosad Wasti* v. *Esuf, I. L. R. 7 Calc. 414 ;* and *Kamal Kumari Chowdhurani* v. *Kiran Chandra Roy, 2 C. W. N 229,* distinguished. *Semble :* In the case of a service tenure created by all the co-sharers [illegible]

I. L. R. 31 Calc. 786

28. ——————— *Ejectment, suit for—Permanency, plea of—Transmission by sale and mortgage of permanent right, recognised by landlord—Matwali landlord, recognition by—Effect—Rent, uniformity of* A tenant proved (i) a series of sales and mortgages of the subject matter of the tenancy, dating from 1826 and purporting in each case to transfer a permanent inheritable right—and also (ii) uninterrupted payment of the same rent. (iii) A *Labuliat* of 1830 mentioned that the tenant-executant had under a bill of sale purchased the "former holding" of the precedessor of the executant's vendors : *Held,* that the *Labuliat* evidenced recognition by the landlord of the transfer which the bill of sale purported to make, and that in the absence of evidence to the contrary, the tenant had made *out a permanent title. The fact that the landlord* to whom the *Labuliat* was given, had only the limited rights of a *matwali*, did not affect the tenant's title, which already existed independently of the *matwali* and which the *matwali* recognised. UPENDRA KRISHNA MANDAL *v.* ISMAIL KHAN MAHOMED (1904) . . . **I. L. R. 32 Calc. 41**
8 C. W. N. 889
s c. L. R. 31 I. A. 144

29. ——————— *Incumbrances by tenant and subsequent ejectment—Effect of eject-* [illegible] directing him to accept a pottah as settled by the judgment. On his failure to do so the tenant was ejected. The mortgagee now sued the tenant and the shrotriemdar claiming, a personal decree as against the tenant and the sale of the mortgaged property as against the shrotriemdar, in whose possession it was *Held,* that the mortgagee was not entitled to an order for the sale of the mortgaged property. EKAMBARA AYYAR *v* MEENATCHI AMMAL (1904) . . **I. L. R. 27 Mad. 401**

30. ——————— *Accommodation provided in the abadi for agricultural tenant—Suit*

for ejectment. Some agricultural tenants had been occupying a room in an inclosure in the *abadi* for thirty years. *Held*, on a suit by the zamindar to eject them, that the plaintiff had no cause of action; either the defendants had acquired a title by adverse possession, or if their possession was permissive, they could not according to custom be ejected, while their tenancy was still undetermined. NAZIR HASSAN *v.* SHIBBA (1905)

I. L. R. 27 All. 81

31. ——————— *Presumption as to tenancy being permanent—Long continuous possession on payment of unchanged rent—Transfers of holding and erection of buildings on it—Recognition by landlord of transfer of holding—Surrender by tenant—Construction of pottah and kabuliyat.* Suit for ejectment in which the defendant claimed a permanent tenure in the land in dispute, basing his title upon a series of transmissions of it by sale or mortgage, which went as far back as 1852, each transmission purporting to be of a permanent inheritable right, and upon the continuous possession of his predecessors in title at an unchanged rent. The plaintiff, who was a lessee of the land under the Matwali of the Hooghly Imambara, alleged that the defendant was merely a tenant-at-will, and that the transmissions were not recognized by his [illegible]

construction of those documents there was at the date of them an "istifa," or surrender, of the land to the landlord by the former tenant. No document of surrender was produced:—*Held* (reversing the decision of the High Court), that on the true construction of the pottah and kabuliyat (which referred to a deed of sale to the defendant's predecessor of the same date and spoke of the jumma as "according to former custom and practice") no more was implied than that the seller acknowledged that he had parted with the land. No inference of a surrender by the tenant could be made from them, but they attested the landlord's recognition of the transmission of the property by an instrument purporting to convey a permanent inheritable right, and taken, with the other facts of the case, they established the defendant's title. In such cases the question is whether the true inference from the facts is that the tenure is permanent or precarious, the burden of proof being on the tenant. See *Upendra Krishna Mandal* v. *Ismail Khan Mahomed, I. L. R. 32 Calc. 41.* NILRATAN MANDAL *v.* ISMAIL KHAN MAHOMED (1904)

I. L. R. 32 Calc. 51
s.c. L. R. 31 I. A. 149
8 C. W. N. 895

32. ——————— *Agricultural tenancy—Disclaimer of landlord's title—Forfeiture—"Disclaimer," what amounts to—Putting landlord to proof of his title—Denying landlord's right to receive the entire rent—Estoppel by matter of record—Disclaimer made in written statement in a suit to eject.* There is no disclaimer of the relationship of landlord and tenant where the tenant merely puts the landlord to the proof of his alleged title by purchase; nor where the tenant merely questions the extent of the landlord's interest and his title to receive the entire rent. When in a previous rent suit, the tenancy being agricultural, the defendant objected that the plaintiff alone was not entitled to realise the whole rent and the suit was dismissed, because the plaintiffs' right to collect any share of the rent separately from his alleged co-sharers was not established. *Held*, that, in a subsequent suit for ejectment brought by the plaintiff in which he succeeded in establishing his exclusive title to the land, the defendant was not "estopped by a matter of record" from relying on his tenancy as a defence to such a suit. *Nilmadhab* v. *Anantram, 2 C. W. N. 755*, and *Fyaj Dhali* v. *Aftabuddin, 6 C. W. N. 575*, doubted as being in conflict with *Debiruddi* v. *Abdur Rahim, I. L. R. 17 Calc 196*, and *Dhora* v. *Ramjewan, I. L. R. 20 Calc. 101*, distinguished. The disclaimer of landlord's title which is relied on as a ground for ejecting the tenant must have been made before the suit in ejectment was instituted. A disclaimer contained in the written statements of the defendant cannot be made the basis of a decree for ejectment in the suit. MALLIKA DASSI *v.* MAKHAM LAL CHOWDHURY (1905) **9 C. W. N. 928**

33. ——————— *Usufructuary mortgage—Ejectment.* When the tenant of a non-transferable holding executes a usufructuary mortgage of it, places the mortgagee in possession, abandons the holding and leaves the village, the landlord is entitled to treat the mortgagee as a trespasser and to ask for his ejectment. *Krishna Chandra Dutt* v. *Miran Bajania, 10 C. W. N. 499*, s.c. *3 C. L. J. 222*, followed. RASIK LAL DATTA *v.* BIDHU MUKHI DASI (1906)

I. L. R. 33 Calc. 1094
s.c. 10 C. W. N. 719

34. ——————— *Ejectment—Res judicata—Denial of landlord's title—Dismissal of previous suit for rent, on denial of relationship of landlord and tenant.* In a previous suit brought by the plaintiff against the defendant for rent, the latter denied the existence of the relat[illegible]

ment. *Nilmadhab Bose* v. *Ananta Ram Bagdi, 2 C. W. N. 755; Fayj Dhali* v. *Aftabuddin Sirdar, 6 C. W. N. 575*, and *Ramgati Mohurer* v. *Pran*

LANDLORD AND TENANT—*contd.*

23. EJECTMENT—*contd.*

(*a*) GENERALLY—*contd.*

Hari Seal, 3 C. L. J. 201, followed. *Mallika Dassi* v. *Makham Lal Chowdhry, 9 C. W. N. 928,* referred to. KHATER MISTRI *v.* SADRUDDI KHAN (1907) . . . **I. L. R. 34 Calc. 922**

35. ———————— *Easements Act (V of 1882), s. 60—Landlord and tenant—Occupation of building-site in abadi—Erection of permanent building—Suit for ejectment.* The defendants were

rendering service as patwaris The defendants had ceased to perform the duties of patwaris, but still occupied the land, and had built houses thereon of a permanent character. *Held,* on suit by the zemindar to eject the defendants, who had denied the zemindar's title, that the principles laid down in *Bani Ram* v. *Kundan Lal, I L. R. 21 All. 496,* applied, and that there was no such

situate did not give the defendants any title to retain possession of the site in the abadi from which the plaintiff was suing to eject them BUDH SINGH *v.* PARBATI (1907) . . **I. L. R. 29 All. 652**

36.———————— *Lease—Covenant for renewal*

by the tenant, and was too vague to be given effect to, and could not be set up as a defence to the suit. SURENDRA NATH SEN *v* DINABANDHU NAIK (1908) **13 C. W. N. 595**

37. ———————— *Bengal Tenancy Act (VIII of 1885), ss 52, 188—Suit by co-sharer landlord for compensation for use and occupation by tenant of excess land—Parties, all landlords if must be—Absence of prayer for ejectment in such suit—Waiver of right to eject—Suit virtually for rent.* A plaintiff who sues for compensation for use and occupation of land but does not ask for ejectment therefrom of the defendant waives his right to eject and must be taken to have recognised the defendant as a tenant Such a suit was treated by the Court as a suit for rent When a tenant is found in possession of land which formed no part of

LANDLORD AND TENANT—*contd.*

23. EJECTMENT—*contd.*

(*a*) GENERALLY—*concld.*

and therefore s. 188 of the Act is no bar to a co-sharer landlord suing for his share of compensation for the use and occupation of the land by the tenant. *Khondakar Abdul* v. *Mohini Kant Saha, 4 C. W. N. 508,* doubted. ABDUL HAKIM SAHA *v.* RAJENDRA NARAYAN RAI (1909) **13 C. W. N. 635**

38. ———————— *Beng. Act VIII of 1869, s. 52—Landlord and Tenant—Procedure Act (Beng. VIII of 1869), s. 52—Decree for ejectment if arrears of rent not paid within 15 days—Appeal, payment of amount pending—Dismissal of appeal with costs—Failure to pay costs within 15 days, if entails ejectment* Where a decree was passed under s. 52 of Beng. Act VIII of 1869 for arrears of rent and for ejectment if the arrears were not paid within 15 days, and an appeal by the judgment-debtor during the pendency of which the decretal amount was paid was dismissed with costs, but these costs were not paid within 15 days of the appellate decree :—*Held,* that the Munsif did not

must be presumed to have incorporated the terms of the original decree. *Noor Ali Choudhuri* v. *Koni Meah, I. L. R. 13 Calc. 13,* relied on. THAMAL MARAP *v.* ABHOYESSURI DEBI (1909) **13 C. W. N. 1060**

(*b*) NOTICE TO QUIT.

39. ———— **Necessity of notice**—*Mode of determination of tenancy* Notice to quit is a necessary part of the landlord's title to eject the tenant ABDULLA RAWUTAN *v.* PAKKERI MOHOMED RAWUTAN . . . **I. L R. 2 Mad. 346**

40. ———————— *Mode of determination of tenancy.* In a suit by a lessee to oust the tenant in possession :—*Held,* that the tenancy must be shown to have been legally determined by notice to quit, demand of possession, or otherwise. FITZPATRICK *v.* WALLACE

2 B. L. R. A. C. 317 : 11 W. R. 231

NARAIN MUNDUL *v.* BHOOKTO MAHATO **25 W. R 56**

41. ———————— *Surrender of*

4 C. W. N. 667

LANDLORD AND TENANT—*contd.*

23. EJECTMENT—*contd.*

(b) NOTICE TO QUIT—*contd.*

42. ———— *Raiyat without right of occupancy. Quære:* Can a zamindar eject a raiyat not having a right of occupancy without giving any notice. KOMUL SANOATH v. ROMANATH GOOSSAMEE . . . **21 W. R. 332**

43. ———— *Suit for ejectment brought without notice.* A raiyat whose tenancy can only be determined by a reasonable notice to quit, expiring at the end of the year, can claim to have a suit for ejectment brought against him by his landlord dismissed on the ground that he has received no such notice. RAJENDRONATH MOOKHOPADHYA v. BASSIDER RUHMAN KHONDKHAR **I. L. R. 2 Calc. 146 : 25 W. R. 329**

44. ———— *Tenant-at-will—Evidence of local custom.* The nature of a holding, as between landlord and tenant, must always be a matter of contract, either expressed or implied. If there is no express agreement, a tenant becomes a tenant-at-will, or from year to year, and is liable to be ejected upon a reasonable notice to quit, unless some local custom to the contrary is proved. PROSUNNO COOMAREE DEBEA v. RUTTON BEHARY **I. L. R. 3 Calc. 696 ; 1 C. L. R. 577**

ABDOOL KUREEM v. OMER CHAND LAHATA **24 W. R. 461**

TARUCKPODO GHOSAL v. SHYAMA CHURAN NAPIT **8 C. L. R. 50**

45. ———— *Chota Nagpur Landlord and Tenant Procedure Act (Beng. Act I of 1879)—Notice whether necessary in Chota Nagpur.* In a district in which Bengal Act I of 1879 is in force, no notice to quit is necessary to eject a tenant who holds over after the expiry of his agricultural lease, there being no provision in the Act for such a notice. RAM NARAIN SAHA v. MAANORU URAO . . . . **4 C. W. N. 792**

46. ———— *Receipt of rent—Creation of tenancy.* The recognition by the owner of lands of the interest of parties in possession by the receipt of rent from them constitutes a tenancy requiring to be determined by notice or otherwise before such parties can be treated as trespassers. SONET KOOER v. HIMMUT BAHADOO **I. L. R. 1 Calc. 391 : 25 W. R. 239 L. R. 3 I. A. 92**

47. ———— *Lease at small* [illegible]

paid his rent for several years. *Held*, reversing the decree of the Principal Sudder Ameen, that the smallness of the rent showed that the lessee was merely a tenant-at-will, and the hakdar of the endowment, having regained possession, might oust him at his pleasure. Regulation V of 1822, s. 8, refers only to zamindars and other proprietors of estates permanently settled under the Regulation of 1802. NALLATAMBI PATTAR v. CHINNADEYVANAYAGAM PILLAI . . . **Mad 109**

48. ———— *Suit for partition and ejectment of raiyats—Right of occupancy.* In a suit for partition of the joint inam lands of a Hindu family, it was not disputed that the plaintiffs were entitled to the share which they claimed, but they joined as defendants a number of cultivating raiyats whom they sought to eject. The raiyats pleaded that the lands had been reclaimed by their forefathers, and that they and their fathers had been in possession ever since, and that they had thereby acquired a permanent right of occupancy. *Semble*: That, even if the raiyats had not a permanent tenure, they could not be ejected except upon notice at the end of the Fasli, so long as they paid the rent due upon the lands. SAMINADA PILLAI v. SUBBA REDDIAR . **I. L. R. 1 Mad. 333**

49. ———— *Mittadar, right of—Kudivaram or tenant-right, presumption as to—Right to eject.* The kudivaram (tenant right) does not necessarily vest in a mittadar, as such, so as to entitle him to eject the raiyats on his mitta on notice as tenants from year to year. SRINIVASA CHETTI v. NUNJUNDA CHETTI **I. L. R. 4 Mad. 174**

50. ———— *Tenure transferable by custom.* The mere fact that a tenure is transferable under the custom of the district does not make it one which is not terminable by the landlord on sufficient notice. SHAMA SUNDARI DABI v. NOBIN CHUNDER KOIYA . **6 C. L. R. 117**

51. ———— *Claims of rival tenants—Pottah by landlord to tenant out of possession.* In a suit between two rival tenants having the same landlord, the one striving to obtain, and the other to maintain, possession of a particular parcel of land, where it is found that the defendant [illegible]

defendant, or enable the plaintiff to stand in the shoes of the zamindar and serve the occupant tenant with a notice to quit. CHUNDER MONEE CHANDA v. BRINDABUN NATH . **25 W. R. 132**

52. ———— *Permanent tenancy pleaded.* Suit to eject defendants from certain land held by them from the plaintiff under a chalgeni (yearly) demise of 1869. The defendants pleaded that they were kattugudi (permanent) tenants of the land in question: they had set up their title as kattugudi tenants previous to the chalgeni demise, but it did not appear that they had re-asserted it up to date of suit. *Held*, that the issue whether the plaintiff had given a notice

LANDLORD AND TENANT—*contd.*

23. EJECTMENT—*contd.*

(b) NOTICE TO QUIT—*contd.*

to quit, reasonable and in accordance with local usage, should be tried. *Baba* v *Vishanath Joshi, I. L. R. 8 Bom. 228,* considered SUBBA *v* NAGAPPA . . . I. L. R. 12 Mad. 353

53. ——————— *Notice under s. 84 of Bom Act V of 1879—Plea of permanent tenancy, raised for the first time in defendants' written statement in ejectment suit—Denial of landlord's title—Objection of want of proper notice raised first in second appeal.* The plaintiff sued to eject the defendants as tenants holding over after notice to quit. The notice required the defendants to vacate within eight days. The defendants pleaded that they were mirasi or permanent tenants This plea was not proved. The Court of first instance passed a decree awarding immediate possession

recover possession "at the end of the year"

the plea of permanent tenancy set up for the first time in the defendants' written statement in the present case was not such a disclaimer of the landlord's title as to dispense with proof of a legal notice to quit on the part of the plaintiff: *Baba* v. *Vishvanath Joshi, I. L R 8 Bom 228,* dissented from. *Held,* further, that it was open to the defendants for the first time in second appeal to raise the objection of want of proper notice. VITHU *v.* DHONDI . . I. L. R 15 Bom. 407

See also HAJI SAYYAD *v* VENKTA
I. L. R. 15 Bom. 414 note

and RAM CHANDRA APPAJI ANGAL *v* DAULATJI
I. L R. 15 Bom. 415 note

54. ——————— *Plea of permanent tenancy—Decree, form of.* The plaintiff sued to eject the defendants from certain land. The defendants pleaded that they were permanent tenants under a lease granted to their ancestor by the plaintiff's grandfather in 1805. The Court of

tenants) had continued in possession paying the stipulated rent, they were entitled to a reasonable notice to quit. The District Judge accordingly

LANDLORD AND TENANT—*contd.*

23. EJECTMENT—*contd.*

(b) NOTICE TO QUIT—*contd.*

iff's suit must fail for want of notice. ABU BAKAR SAIBA *v* VENKATRAMANA VISHVESHVAR
I. L. R. 18 Bom. 107

55. ——————— *Plea of permanent tenancy—Denial of title—Forfeiture—Waiver—Objection taken in second appeal.* The plaintiff sued the jaghirdars of a certain village (defendants Nos 1 to 11) and certain of their tenants (defendants Nos. 12 to 18) for specific performance of an agreement made between the plaintiff and the

Nos. 12 to 18) were permanent tenants and refused to quit the land The tenants (defendants Nos 12 to 18) put in a separate defence, also alleging that they were permanent tenants of the jaghirdars. The lower Appellate Court *held* that the tenants (defendants Nos 12 to 18) were yearly tenants and did not hold in perpetuity, and that the jaghirdars had power to eject them That Court therefore passed a decree for the plaintiff for specific performance of the agreement as against the jagirdars and for possession as against the other defendants The latter defendants (the tenants) appealed to the High Court. They there contended that if they were yearly tenants, as held by the decree of the lower Court, they could not be dispossessed without notice to quit, and that no such notice had been

the said defendants were mere yearly and not permanent tenants (ii) That the tenant (defendants Nos 12 to 18) had claimed to be permanent tenants before the suit was filed, and at that time they were not tenants of the plaintiff, but of the jaghirdars. Under the circumstances, that claim could not be

it as an answer to the defendants' contention that a notice to quit was necessary (iii) That the objection as to the necessity of notice to quit was one which might be taken in second appeal DODHU *v.* MADHAVRAO NARAYAN GADRE
I. L. R. 18 Bom. 110

56. ——————— *Transfer of Property Act (IV of 1882), s 106—Denial of landlord's title by defendant prior to suit.* In a suit by a landlord for ejectment of a tenant, no notice

tenancy between them. *Unhimmi Devi* v. *Vai-*

LANDLORD AND TENANT—*contd.*

23. EJECTMENT—*contd.*

(*b*) NOTICE TO QUIT—*contd.*

Ivnta Hegde, I. L. R. 17 Mad. 218, and *Dodhu v. Madhavrao Narayan Gadre, I. L. R. 18 Bom. 100,* referred to. HAIDRI BEGUM *v.* NATHU

I. L. R. 17 All. 45

57. ———————— *Disclaimer of title—Khoti Act (Bom. Act I of 1880), ss. 20, 21, 22—Decision of Survey Officer as to nature of tenure.* Where a tenant under a plea of ownership has succeeded in obtaining a possessory order in a suit before a Mamlatdar, it is not necessary for the evicted landlord to give notice to quit before suing in ejectment on his title. It would be otherwise where the possessory order was sought on the ground of a disturbance of an existing tenancy. The plaintiffs were khots and defendants were their yearly tenants in occupation of their khoti khasgi lands. In 1890, the Survey officer purporting to act under s. 20 of the Bombay Khoti Act (Bombay Act I of 1880) decided that defendants were occupancy tenant but the plaintiffs did not come to know of this decision till 1893, when the botkhat was prepared and signed. Shortly afterwards the plaintiffs took forcible possession of the lands. Thereupon the defendants filed a suit in the Mamlatdar's Court to recover possession, alleging that they were owners of the land, and that they had been illegally dispossessed. The Mamlatdar restored them to possession. In 1896, plaintiffs filed the present suit to eject defendants. Defendants pleaded (*inter alia*) that the suit was bad for want of notice to quit, and that the claim was time-barred. *Held*, that, defendants having distinctly repudiated the landlord's title in the possessory suit, were not entitled to a notice to quit. MAHIPAT RANE *v.* LAKSHMAN . . . . . **I. L. R. 24 Bom. 426**

58. ———————— *Permanent tenancy—Tenancy from year to year—Ejectment.* Where the plaintiff sued in ejectment, and the defendant set up a right as a permanent tenant:—

defendant had set up a tenancy from year to year. BABA *v.* VISHVANATH JOSHI **I. L. R. 8 Bom. 228**

59. ———————— *Tenant from year to year.* When there is no custom of the

6 Bom. A. C. 31

60. ———————— *Tenant from*

61. ———————— *Yearly tenant—Reasonable notice to quit—Disclaimer of landlord's title in the course of pleadings—Transfer of Property Act (IV of 1882), ss. 106, 111 (b), and 116.* The sections of the Transfer of Property Act (IV of 1882) relating to notice do not apply to suits instituted before that Act came into operation. Before that Act came into operation, a tenant other than a monthly tenant, holding over on the terms of his lease, was entitled to reasonable—that is to say, in the case of lands and in the absence of usage or stipulation to the contrary, to six months'—notice to quit. Disclaimer of a landlord's title in the pleadings after suit brought does not of itself determine the tenancy and render notice to quit unnecessary. AMBABAI *v.* BHAU

I. L. R. 20 Bom. 759

62. ———————— *Tenant of agri-*

63. ———————— *Tenant-at-will—Reasonable notice to quit.* In a suit for eject-

I. L. R. 25 Calc. 200

64. ———————— *Effect of determinating tenancy on sub-tenants—Bombay Land Revenue Code (Bom. Act V of 1879), s. 84.* A landlord putting an end, by proper notice, to the tenancy of his tenant, thereby determines the estate of the under tenants of the latter. TIMMAPPA KUPPAYYA *v.* RAMA VENKANNA NAIK

I. L. R. 21 Bom. 311

LANDLORD AND TENANT—*contd.*

23. EJECTMENT—*contd.*

(*b*) NOTICE TO QUIT—*contd.*

65. ——— *Tenancy reserving an annual rent—What notice a raiyat hold-*

66. ——— *Bengal Tenancy Act (VIII of 1885), s. 49—Suit for ejectment—Written lease—Holding over.* A suit to eject an under-raiyat under s. 49, cl (*b*), of the Bengal

kabuliat for a year, but held over for a number

67. ——— *Monthly tenancy* By indenture, dated 1st February 1856, *A* leased certain premises in Calcutta to *B* for a term of ten years, as from 1st November 1855, at a rent of R100 per month payable monthly *A*

ber 1866, and on that date demanded possession from *B* and from the defendant *Held*, that the tenancy after 31st October 1865 was a monthly tenancy in the name of *B*, and was terminated on the 31st October 1866 by the notice of 6th September 1866. BROJONATH MULLICK *v.* WESKINS

2 Ind. Jur. N. S. 163

68. ——— *Tenant from year to year—Occupancy, right of.* If a tenant from year to year receive no notice determining the tenancy at the end of eleven years, and is allowed to remain on the land after the commencement of the twelfth year, he cannot be ejected until the end of the twelfth year, when he will acquire a right of occupancy DARIAO BISHOON *v.* DOWLUTA

5 N. W. 9

69. ——— *Limitation —Patni lease—Receipt of rent—Notice.* *A*, a Hindu, died leaving his widow *B* and his mother *C*. *B* adopted *D*. *C* granted a patni pottah to *E* of

rent from *E* by suits under Act X of 1859. Twelve years after attaining majority, *D* sued for cancellation of the patni lease and for obtaining khas possession of the property. *Held*, that the suit was not barred. The receipt of rent was no confirma-

termined by a reasonable notice *Semble:* Such notice should expire at the end of the year. BUNWARI LAL ROY *v.* MAHIMA CHANDRA KNUALL

4 B. L. R. Ap. 86: 13 W. R. 267

70. ——— *Denial of title—Suit for possession by purchaser at sale in execution of decree.* In a suit by the plaintiff, a purchaser at a sale in execution of a decree who had obtained possession through the Court, and been subsequently ejected, to recover the lands he purchased, it appeared that *R* and *G*, two of the defendants, had mortgaged the lands in 1867 to *G R* the third defendant, and in 1870 *G R* had obtained against his mortgagors *R* and *G* a decree on his mortgage in execution of which the lands were sold and purchased by the plaintiff in 1872. The

prove that *R* and *G* were his tenants. *Held*, that the plaintiff was entitled to recover. *Held*, that, as *R* and *G* claimed only to be tenants of *G R*, they could not retain possession of the land, merely because the plaintiff had failed to prove that he had let the land to them They denied the plaintiff's title, and were not therefore entitled to any notice to quit. AGARCHAND GUMANCHAND *v.* RAKHMA HANMANT

I. L. R. 12 Bom. 678

71. ——— *Notice of eject-*

1883,

pro-

to be

40 of

that

if a land-holder has failed to give his tenant the

notice of ejectment required by s 33 of the Act having been given by the lessor, possession was taken and rents collected by persons claiming under a subsequent lease;—*Held*, that the tenancy of the

LANDLORD AND TENANT—*contd.*

23. EJECTMENT—*contd.*

(b) Notice to quit—*contd.*

first lessees did not cease upon the determination of the term of their lease; and that the second lessees were wrong-doers in usurping possession and collecting rents and profits, and were liable in a suit for damages by way of mesne profits after deduction of a sum paid by them for Government revenue, but without deduction of what they had paid the lessor or of the expenses they had incurred in collecting the rents. Shitab Dei v. Ajudhia Prasad . . . **I. L. R. 10 All 13**

72. ——— *Kasavargam tenant—Transfer by tenant without consent of landlord.* The mirasidars of a village in the Tanjore District sued to recover a manai which had been put into the possession of the ancestors of defendant No. 8, who were village blacksmiths, as kasavargam tenants. Defendant No. 8 had left the village and sold the land as if it were his ancestral property to others of the defendants, who were now in occupation. *Held*, that the plaintiffs were entitled to recover the land without proof of notice to quit to the occupants. Subbaraya v. Natarata **I. L. R. 14 Mad. 98**

73. ——— *License to occupy.* The plaintiffs, who were mirasidars of a village, permitted the defendants to occupy their land on the condition that they should do blacksmith's work for the plaintiffs. The defendants ceased to do the work after a time. *Held*, that the plaintiffs were entitled to evict the defendants without notice to quit. Athakutti v. Govinda **I. L. R. 16 Mad. 97**

74. ——— *Plea of permanent tenancy.* In a suit for possession of land, the plaintiffs claimed title under a lease from the shrotriemdars of the village where the land was situated. The defendants, who had obstructed the plaintiffs from taking possession of part of the land, *claimed to have permanent occupancy-rights, and* asserted that the shrotriemdars were entitled not to the land itself, but to melvaram only. To meet this allegation, the plaintiffs tendered in evidence documents executed by other tenants in the same village showing that they were purakudis merely. The defendants had received no notice to quit before suit. *Held*, that the plaintiffs were entitled to eject [illegible]

I. L. R. 16 Mad. 194

75. ——— *Suit by tenant to recover possession claiming as full owner—Subsequent claim as yearly tenant unjustly dispossessed—Denial of landlord's title—Variance in statement between pleading and proof.* A plaintiff sued to recover possession of certain fields, etc., alleging that he was a permanent tenant of the defendant, having purchased the right of occupancy from previous occupants of the land. The lower Court *held* that the plaintiff's vendors were mere yearly tenants and not permanent tenants, but that the sale of their right to the plaintiff was valid, and that the plaintiff had been wrongfully dispossessed by the defendant, no notice to quit having [illegible]

owner, and he could not afterwards claim to be [illegible]

I. L. R. 17 Bom. 651

76. [illegible]

Certain land was let by the zamindar to the defendants on lease for a term of eight years. After the expiry of the lease the plaintiffs obtained a lease of the land, and, giving a month's notice to quit to the defendants, who had continued in possession after their lease expired, brought a suit to eject them. *Held*, that the defendants could not be considered as trespassers, but that s. 45 of the Bengal Tenancy Act applied to the case, and that the [illegible]

77. ——— *Bengal Tenancy Act (VIII of 1885), s. 49—Ejectment of under-tenant not holding under written lease.* S. 9 of the Begnal Tenancy Act does not prescribe any period of notice, or that the suit for ejectment shall not be [illegible]

78. ——— *Sufficiency of notice* [illegible]

Jadoonundun Singh v. Faujdar Khan **5 N. W. Ap. 1**

LANDLORD AND TENANT—*contd.*

23. EJECTMENT—*contd.*

(b) NOTICE TO QUIT—*contd.*

79. ——————— *Unreasonable notice.* A notice to quit within thirty days, served by a landlord on his tenant at a time when the crops are ripening, is unreasonable and insufficient. Where such a notice was given, the Court refused to determine what would have been a sufficient no-

80. ——————— *Reasonable notice —Tenant other than occupancy-raiyat.* A tenant other than an occupancy-raiyat is entitled to a reasonable notice to quit. What is a reasonable notice is a question of fact, which must be decided in each case according to the particular circumstances and the local customs as to reaping crops and letting land. It is not necessary that the notice must expire at the end of the year. *Janoo Mundur* v *Brijo Singh, 22 W. R 548*, and *Rajendronath Mookhopadhya* v. *Bassider Ruhman Khondkar, I. L. R. 2 Calc. 146*, considered JAGUT CHUNDER ROY *alias* BASHI CHUNDER ROY *v.* RUP CHAND CHANGO . I. L. R. 9 Calc. 48 : 11 C. L. R 143

81. ——————— *Reasonableness of notice.* There is no authority for the proposition that a notice to quit to a raiyat other than an occupancy-raiyat must terminate at the end of a cultivating year or be a three months' notice. Such a raiyat is only entitled to a "reasonable" notice, and such as will enable him to reap his crop ; what is a "reasonable" notice is a question of fact to be

82. ——————— *Reasonable notice.* It is not necessary that the period allowed in a notice to quit by a landlord to his tenant should terminate at the end of the year, but the notice must be in respect of the date of determination of the tenancy as well as in other respects a reasonable

DABEA CHOWDHRAIN *v* KEFYUTULLAH
I. L. R. 12 Calc. 93

83. ——————— *Korfa raiyats in Manbhum—Ejectment—Act X of 1859.* There is no authority for the proposition that notice to quit to a korfa raiyat in Manbhum must be a six months' notice. Such a raiyat is only entitled to a "reasonable notice." What is a reasonable notice is a question of fact, which must be decided in each case according to the particular circumstances and local customs as to reaping crops and letting land. *Kishori Mohan Roy Chowdhry* v. *Nund Kumar Ghosal, I. L. R. 24 Calc. 720*, distinguished. *Jagut Chunder Roy* v. *Rup Chand Chango, I. L. R. 9 Calc. 48* ; *Radha Gobind Koer* v. *Rakhal Das Mukherji, I. L. R. 12 Calc. 82* ; *Bidhumukhi Dabea Chowdhrain* v. *Kefyutullah, I. L. R. 12 Calc. 93* ; and *Kali Kishen Tagore* v. *Golam Ali, I. L. R 13 Calc. 3*, referred to and followed. DIGAMBAR MAHTO *v.* JHARI MAHTO . . I. L. R. 26 Calc. 761

84. ——————— *Determination of tenancy—Inamdars.* An inam, existing under grant made in 1811, became in 1863 the subject

to the zamindar, or a new grant of an estate in all respects, save as to the rent, similar to the previously existing estate, which was a tenancy in perpetuity. To a suit brought by certain mortgagees against the inamdars to enforce mortgage rights existing since 1842, the defence was made that possession taken of the inam lands by the Collector in 1845 had determined the original inam rights therein, as well as the lien of the mortgagees. The present zamindar, son and successor of the grantor of 1813, now claiming that he had determined the tenancy by a notice to quit : *Held*, that the tenancy was not determinable by such notice MAHARAJAH OF VIZIANAGRAM *v.* SURYANARAYANA
I. L. R. 9 Mad. 307
L. R. 13 I. A. 32

85. ——————— *Notice ending*

the expiration of their term of years or other interest in the land. Where a family of inamdars disagree among themselves, and one of them obtains a decree for partition against the others, he cannot, in execution thereof, eject (without due

86. ——————— *Inamdar.* Tenants cannot be ejected as mere trespassers. If they are yearly tenants, they are entitled to a clear six months' notice to quit before they can be evicted. If they are tenants for a term of years or for a life or lives, there must be proof of an expiration of th

LANDLORD AND TENANT—*cont'd*

23. EJECTMENT—*contd.*

(*b*) NOTICE TO QUIT—*contd.*

term by efflux1on of time or of the falling of the life or lives. PANDURANG SAKHARAM *v.* YESWESHWAR I. L. R. 6 Bom 70

87. ——— *Holding from year to year* Even in the case of a tenant from year to year, the landlord cannot evict without giving previous notice to quit. To be reasonable, a notice must not be peremptory, but must fix a time within which the raiyat is required to quit the land. BETTS *v* JAMIE SHAIKH . 23 W. R. 271

See, also, MAHOMED RASID KHAN CHOWDHRY *v* JADOO MIRDHA . . 20 W. R. 401

88. ——— *Transfer of Property Act (IV of 1882), ss 106, 111* On the 11th December 1882, *A*, who had, on the 1st July 1882, let rooms in a dwelling-house to *B*, sent a letter to the tenant in the following terms: "If the rooms you occupy in the house No. 5, Thornhill Road, are not vacated within a month from this date, I will file a suit against you for ejectment as well as for recovery of rent due at the enhanced rate." On the 1st February 1883 the lessor instituted a suit against the tenant for ejectment with reference to the above letter. *Held*, by OLDFIELD, *J.* (MAHMOOD, *J*, dissenting), that, with reference to the terms of s. 106 of the Transfer of Property Act, the letter was not such a notice to quit as the law required, inasmuch as the notice did not expire with the end of a month of the

of Property Act, and sufficient to determine the tenancy, inasmuch as it gave the tenant more than fifteen days' notice, and its terms were such that he could with perfect safety have acted upon it by quitting the premises at the proper time, namely, by the end of the month, which he must be pre-

Exch. D 201; *Nocoordass Mullick* v. *Jeuraj Baboo, 12 B. L R. 263*; and *Jagat Chunder Roy* v. *Rup Chand Chango, I. L. R. 9 Calc. 48*, referred to. Also *per* MAHMOOD, *J*,—The words "fifteen days" in s 106 of the Transfer of Property Act imply a fixation of the shortest period of notice allowed by the section; and the term "expiring"

LANDLORD AND TENANT—*contd.*

23. EJECTMENT—*contd.*

(*b*) NOTICE TO QUIT—*contd.*

of rent for any subsequent period. BRADLEY *v.* ATKINSON . . . I. L. R. 7 All. 596

Held, on appeal under the Letters Patent, that, with reference to the terms of s. 106 of the Transfer of Property Act, the letter was not such a notice to quit as the law required, inasmuch as it was not a notice of the lessor's intention to terminate the contract at the end of a month of the tenancy. *Per* STRAIGHT, *J.*—*Quære:* Whether the letter was a notice to quit at all. Also, *per* STRAIGHT, *J.*—A notice to quit must be certain, at all events in respect of the date of the determination of the tenancy in other words, there must be a clear and explicit intimation to the tenant as to the date after which he will, if he remains in occupation of the premises, become a trespasser. *Ahearn* v *Bellman, L. R. 4 Exch. D 201*, distinguished. The judgment of MAHMOOD, *J.*, reversed, and that of OLDFIELD, *J.*, affirmed. BRADLEY *v.* ATKINSON

I. L. R. 7 All. 899

89. ——— *Ejectment by patnidar—Verbal notice to quit.* A patnidar, desirous of ejecting a tenant whose lease has expired, need not give him a written notice to quit; a verbal notice being sufficient. GOLAM MEHDEE *v.* AMJUD ALI . . . 23 W. R. 312

90. ——— *Tenant without right of occupancy* The "reasonable notice to quit," which a raiyat without a right of occupancy may claim from his landlord before he can be ejected,

suit for ejectment against a tenant-at-will is a sufficient demand of possession and would justify a decree containing a date fixed for ejectment. HEM CHUNDER GHOSE *v.* RADHA PERSHAD PALEET 23 W. R. 440

91. ——— *Notice to quit or pay an enhanced rent—Two-fold claim, both for rent and ejectment, not sustainable—Decree for rent and ejectment—Beng. Act VIII of 1869, s 14* Where *A* after notice to his tenants to ...

LANDLORD AND TENANT—*contd.*

23. EJECTMENT—*contd.*

(*b*) NOTICE TO QUIT—*contd.*

548, doubted MOHAMAYA GOOPTA *v.* NILMADHAB RAI . . . I. L. R. 11 Calc. 533

92. ——— *Yearly tenancy —Notice to make a fresh agreement with the landlord or to quit at the end of the year.* On the 28th September 1891, the plaintiff gave defendants who held his land as annual tenants a notice in the following terms: "Therefore, within two days from the receipt of this notice, meet us, increase the rent and give us a legal writing, or in default, on the 31st March 1892, we shall keep present two good men and take full possession of the said land with all trees, etc., on that day, and no contention of yours in that matter will avail; and if you raise a contention, we shall have recourse to a regular suit to obtain possession, and you will be responsible, etc" *Held*, that the notice was a good and valid notice to terminate the tenancy. KIKABHAI GANDABHAI *v.* KALU GHELA . . . I. L. R. 22 Bom. 241

93. ——— *Bengal Tenancy Act (VIII of 1885)—Suit for ejectment—Notice including some land of which the defendant is found to be not in possession.* A notice to quit is not bad in law simply because of a small error in

2 C. W. N. 106

94. ——— *Tenancy created by a kabuliat—Six months' notice requiring the tenant to vacate the holding before the expiry of the last day of the year, whether good.* In a tenancy created by a kabuliat with an annual rent reserved a six months' notice to quit requiring the tenant to vacate the holding within, instead of on, the expiry of the last day of a year of the tenancy, is a

4 C. W. N. 210

95. ——— *Co-owners— Notice to quit by one co-owner—Notice to quit before expiry of term of lease—Suit in ejectment by one co-owner—Parties.* K and P were co-owners of

moiety of the said property to the plaintiff. On the 30th January 1886, *i.e.*, a month before the expiration of the lease, the plaintiff gave the defendant notice to determine the tenancy, and required him to quit on the 1st March then next. The defendant refused, and the plaintiff brought this suit for possession and for occupation-rent from the 1st March 1886 The defendant pleaded that the notice to quit, being given by one of the co-owners only, was invalid, and further that the plaintiff was not entitled to sue alone *Held*, that the notice was a valid notice, and that the suit was maintainable by the plaintiff alone. The second clause of the lease was as follows: "If you mean me to vacate at the completion of the term, you must give one month's notice In accordance therewith, I will vacate and give up possession to you." *Held*, that the notice to quit was not invalid under the above clause of the lease, although given before, instead of after, the expiry of the term EBRAHIM PIR MAHOMED *v* CURSETJI SORABJI DE VITRE . . I. L. R. 11 Bom. 644

96. ——— *Transfer of Property Act (IV of 1882), s 106—Notice to quit— "Expiring with the end of a month of tenancy."* Where fifteen days' notice to quit was served upon a tenant on the 7th of Assin: *Held*, that the Court

... the notice *Bradley* SONA

2 C. W. N. 383

97. ——— *Transfer of Property Act (IV of 1882), s 106—Meaning of "fifteen days'" notice.* The fifteen days' notice to quit referred to in s. 106 of the Transfer of Property Act means notice of fifteen clear days. SUBODINI *v.* DURGA CHARAN LAW

I. L. R. 28 Calc. 118
4 C. W. N. 790

98. ——— Service of notice—*Proof of service—Publication in newspaper—Termination of tenancy—Adverse possession.* Proof of service of a notice to quit on a tenant, which is confined to

tenant, is not, without more, such proof of service as will suffice to terminate the tenancy, or entitle the tenant to contend that he remained, after the date fixed by the notice for vacation, in adverse possession of the premises CHANDMAL *v.* BACHRAJ I. L. R. 7 Bom. 474

99. ——— *Service of notice to quit by registered letter, sufficiency of.* Where a notice to quit was sent by a registered letter the posting of which was proved, and which was produced in Court in the cover in which it was

LANDLORD AND TENANT—*contd.*

23. EJECTMENT—*contd.*

(b) NOTICE TO QUIT—*contd.*

despatched, that cover containing the notice with

v. *Brunton, 5 H & N. 518*, referred to JOGENDRO CHUNDER GHOSE v DWARKA NATH KARMOKER I. L. R. 15 Calc. 681

100. ———— *Necessity of proof of service.* In answer to the plaintiff's suit in ejectment, the defendant denied the plaintiff's title and asserted his son. *Held*, that, assuming the

101. ———— *Mode of ser-*

Act was sent by post in a registered cover, and it was found that the notice was delivered to the defendant. *Held*, that the notice had not been properly served, the mode of service being as described in the Rules made by the Government under the Bengal Tenancy Act. TARA DAS MALAKAR v RAM DOYAL MALAKAR . . 2 C. W. N. 125

102. ———— *Suit for ejectment—Notice to quit by post—Bengal Tenancy Act (VIII of 1885), s 189—Mode of service of the notice under the Act—Bengal Government Rule 3, Ch. I, under s. 189 of the Bengal Tenancy Act* The plaintiffs served a notice, by post, upon

and the suit for ejectment based upon such a notice must fail. *Tara Das Malakar v Ram Doyal Malakar, 2 C. W. N 125*, referred to. LALA MAKHAN LAL v. LALA KULDIP NARAIN I. L. R. 27 Calc. 774

103. ———— *Notice to quit —Transfer of Property Act (IV of 1882), s 106* The plaintiff sued the defendant to recover possession of a certain house in Bombay and for arrears of rent The defendant pleaded that the house in

sent to the solicitors of the defendant. It was contended that this was not sufficient service under s. 106 of the Transfer of Property Act (IV of 1882). *Held*, that the service was sufficient BHOJABHAI v. HAYEM SAMUEL . . I. L. R. 22 Bom. 754

104. ———— *Bengal Tenancy Act (VIII of 1885), Sch III, Art 3, and Rule 3, Ch. I, of the Rules framed by the Local Government* In a suit to eject the defendants (under-raiyats) from their holding, a plea was taken in the first Court that the notice to quit was not

is that it should be served in the same manner as provided for in the Civil Procedure Code. That the objection to the notice taken here for the first time cannot be entertained in second appeal LOKE NATH GOPE v PITAMBAR GHOSE 3 C. W. N. 215

105. ———— *Transfer of Property Act (IV of 1882), s. 106—Suit for ejectment.—Service of notice upon one of several joint-*

106. ———— *Transfer of Property Act (IV of 1882), s. 106, cl. 2—Service of notice through post office by registered letter.* Service of notice to quit by a registered letter through the post office is not necessarily a non-

107. ———— **Period**—*Bengal Tenancy Act (VIII of 1885), s. 49, cl (b)—Under-raiyat—Ejectment—Notice to quit—Period of notice—Transfer of Property Act (IV of 1882), s 106* It is not neces-

108. ———— **Reasons**—*Bengal Tenancy Act*

LANDLORD AND TENANT—*contd.*

23. EJECTMENT—*contd.*

(*b*) NOTICE TO QUIT—*contd.*

rent. MADAN CHANDRA KAPALI *v.* JAKI KARIKAR (1902) . . . . . 6 C. W. N. 377

109. ———— **Service**—*Necessity of proving service of proper notice to quit—Land-revenue Code (Bombay Act V of 1879), s. 84—Issues to be raised by the Court—Practice—Procedure.* The plaintiffs sued to eject the defendants from certain land, alleging that they were yearly tenants. The defendants *inter alia* pleaded that they were permanent tenants The plaintiffs at the hearing did not prove service of notice to quit, as required by s. 84 of the Land-revenue Code (Bombay Act V of 1879), but contended that service of notice was admitted by the defendants in their written statement. *Held,* that the defendants in their written statement, although not expressly denying the receipt of notice, disputed its legality, and thereby threw on the plaintiffs the burden of proving the service of proper notice. No such proof was given Consequently, even assuming that the defendants were yearly tenants, the plaintiffs had not proved the termination of the tenancy or their right to recover possession The fact that no issue is raised as to matters which the plaintiff is bound to prove does not justify the inference that the defendant intends to admit them The duty of raising issues rests, under the Civil Procedure Code, with the Court. GANOO *v.* SHRI DEV SIDHESHWAR (1901)

I. L. R. 26 Bom. 360

to the under-raiyat that the landlord has called upon him to quit the land, whether sufficient In a notice to an under-raiyat to quit, s 49, cl. (*b*), of the Bengal Tenancy Act, does not prescribe any

I. L. R. 29 Calc. 231
s.c. 6 C. W. N. 183

111. ———— *Permanent tenancy—Origin of tenancy known—Claim of tenant to compensation for buildings erected by him.* Where

parate notices to the present holders to quit the

rent, at an unvaried rate, to the landlord, who happened to be a *mutualli*, the *mahal* having been always let out by the *mutualli* in *ijara*: *Held*,

being evicted on the termination of his tenancy. ISMAIL KHAN MOHOMED *v* KALI KRISHNA MONDOL (1901) . . . . . 6 C. W. N. 134

112. ———— **Suit**—*Bengal Rent Act (X of 1859), s 23, cl (5)* When land was let out to a tenant under a lease in 1876, in a district where Act X of 1859 prevails, and a suit for ejectment was brought in 1896, the *raiyat* must be taken to have acquired rights of occupancy, and is liable to be ejected under cl. (*5*), s. 23, of Act X of 1859, on account of a breach of the conditions of his contract. In such a case a notice to quit must be served before the suit is brought, and the institution of the suit cannot be regarded as a sufficient notice to quit. *Rajendro Nath Mookerjee* v. *Raseedur Rahaman Khundkar, 25 W. R. 329,* referred to and followed. *Ram Lal Patak* v. *Dina Nath Patak, I. L. R. 23 Calc 200,* doubted and distinguished. NABIN MAJHI *v.* RAJ KUMAR GOURI LAL SINGH DEO (1900) 6 C. W. N. 199

113. ———— *Whether suit itself is sufficient notice—Annual tenancy* A *raiyat,* whose tenancy can only be determined by a

decree, subsequent to the date of the institution of the suit. *Ram Lal Patak* v. *Dina Nath Patak, I. L. R. 23 Calc. 200,* not followed *Rajendra Nath Mookhopadhya* v. *Bassider Ruhman Khondkhar, I. L R. 2 Calc. 146,* followed. HEMANGINI CHOWDHRANI *v* SRIGOBINDA CHOWDHURY (1901) . . I. L. R. 29 Calc. 203
s c. 6 C. W. N. 69

114. ———— *Notice to quit—Suit instituted without prior notice—Assertion of*

LANDLORD AND TENANT—contd.

23. EJECTMENT—contd.

(b) Notice to quit—contd.

permanent occupancy rights not a denial of relationship of landlord and tenant. The assertion by a tenant of permanent occupancy rights and his denying the landlord's title to give a lease of the

115. ———————— *Ejectment suit —Pleadings—Neither party setting up tenancy—Notice to quit—Second appeal—Finding inconsistent with pleading* In a suit for ejectment in which neither party set up a tenancy, the lower Appellate Court found the defence set up to be a fraudulent one, but refused to make a decree for ejectment, holding that the defendant was a yearly tenant and so entitled to a proper notice to quit :—*Held*, that the suit ought to have been decreed The lower Appellate Court could not make for the defendant a case which was different from, and inconsistent with, that set up by him *Kali Krishna Tagore v Golamali, I. L R 13 Calc 248*, *Unpamma Devi v Vaikanta Hegle, I L R 17 Mad 218*, and *Vithu v. Dhondi, I L R 15 Bom 407*, distinguished SUJJAD AHMED CHOWDHRY v GANGA CHARAN GHOSE (1905) . . . **9 C. W. N. 460**

116 ———————— *Liability to ejectment—Right of occupancy—Effect of acquisition of right of occupancy over portion of holding* On the expiry of the term of lease, by which a *ghat* together with certain *jote* lands belonging to the plaintiffs were let out at a certain annual *jama* for both the *jote* lands and the *ghat*, the defendants held over for many years on the same terms The plaintiffs, having given the defendants notice to quit, sued to recover *khas* possession of the *ghat* *Held*, that the plaintiffs were entitled to recover *khas* possession of the *ghat*, although the defendants had acquired the position of occupancy raiyats as regards the *jote* lands HAYES v. GHINA BARHI (1906)

I L. R. 33 Calc. 459

117. ———————— *Ejectment—*

from him at a private sale :—*Held*, that although

lessee without serving upon him a notice to quit under the provisions of s. 49 of the Bengal Tenancy Act. *Peary Mohan Mookerjee v. Badul Chandra Bagdi, I L R 28 Calc. 205*, distinguished AMIRULLAH MAHOMED v NAZIR MAHOMED (1905)

I. L. R. 34 Calc. 104

118. ———————— *Ejectment—Notice to quit—Tenant-at-will—Tenant from year to year—Revenue sale—Record of rights, correctness of.* In a suit by an auction purchaser for ejectment of the defendant in possession of land sold for arrears of revenue, if the defendant be a trespasser the question of giving him notice to quit does not arise But if he be a yearly tenant, he would be entitled to a reasonable notice If he, however, be a tenant of inferior status, a verbal demand for possession of the land might be sufficient. *Sulatu Dass v Jadu Nath Dass, 8 C W. N 774*, referred to *Ram Narain Sahu v Mangru Urao, 4 C W. N. 792*, distinguished A mere request by the plaintiff to the defendant to give up possession of the land in question and to pay the produce of the land, or price thereof, during his occupation, cannot be regarded as a demand for rent, and is not sufficient to create the relationship of landlord and tenant, which is a matter of contract In the absence of any statutory provision or of any agreement, a verbal *notice to quit, whether given by the landlord* or the tenant is sufficient especially where the lease is verbal DEO NANDAN PERSHAD v MEGHU MAHTON (1906) . . **I. L. R. 34 Calc. 57**

119. ———————— *Landlord and tenant—Ejectment—Notice to quit—Annual tenancy created before the Transfer of Property Act—Bengali Calendar, six months' notice under, if sufficient—Transfer of Property Act (IV of 1882), ss. 106, 107—Unregistered lease, not for agricultural or manufacturing purpose—Monthly tenancy though rent annual* In the case of a tenancy not governed by the Transfer of Property Act, a six-months' notice calculated according to the Bengali Calendar was *held* to be sufficient to terminate the tenancy, the tenancy appearing to have been regulated according to the Bengali year When a tenant holds under a lease which is not written or registered and is governed by the Transfer of Property Act, the land was not let out for a manufacturing or agricultural purpose, the tenancy must be taken to be a monthly one terminable by 15 days' notice, even though the rent appears to have been payable annually DEBENDRA NATH BHOWMIK v SYAMA PROSANNA BHOWMIK (1906) . **11 C. W. N. 1124**

120. ———————— *Landlord and*

which gives the owner thereof an immediate right of entry, and, consequently, entitles him to serve a notice to quit to the tenant in possession. The plaintiff who had an *interesse termini* gave notice

LANDLORD AND TENANT—*contd.*

23. EJECTMENT—*contd.*

(*b*) NOTICE TO QUIT—*contd.*

to quit, through his attorneys, to the defendant, a tenant in possession, in the following terms "* * * We give you notice that our client will require you to vacate and give up possession of the premises on the 29th February now next and that, should you fail to comply with the request, our client will take proceedings against you to eject you from the premises and he will charge you the sum of R350 per mensem as damages sustained by him during such period as you continue in possession after the 29th proximo." *Held*, that it was a good clear notice to quit and the addition of the second portion of the notice did not vitiate it. *Ahearn* v. *Bellman, 4 Ex. D. 201*, followed *Bradley* v. *Atkinson, I. L. R 7 All. 899*, dissented from *Doe* v. *Jackson, 1 Douglas*

ruary. *Held*, that the notice to expire on the 29th February was good, although it would be more usual to make the notice expire on the 1st March.

SHRAGER *v.* PRICE (1908) **12 C. W. N. 1059**

121. ——— *Notice determining tenancy—Denial of landlord's title after suit does not render previous notice unnecessary* A tenant is entitled to reasonable notice before ejectment, and fifteen days' notice to a cultivating tenant in the middle of the cultivating season, is not sufficient

up want of proper notice before the institution of the suit. *Abdulla Naha* v. *Moidan Kutti, 17 Mad L. J. 287*, not followed. *Unhama Devi* v. *Vaikunta Hedge, I. L. R 17 Mad. 218*, followed. PERIA KARUPPAN *v* SUBRAMANIAN CHETTI (1908) **I. L. R. 31 Mad. 261**

122. ——— *Notice to quit—Denial of landlord's title in the written statement, whether such denial makes Notice unnecessary—Reasonable Notice.* In a suit for ejectment under

cular case for it to determine with the year. PRATAP NARAIN DEO *v* HARIHAR SINGH (1909) **I. L. R. 36 Calc. 927**

123. ——— *Civil Procedure Code (Act XIV of 1882), s. 13—Res judicata—Point taken in defence but not considered—Adverse decision against Defendant—Effect—Lessee taking a superior tenure from lessor's landlord, if trustee for*

he had terminated the defendant's tenancy by a notice to quit The suit having been decreed, although the plea taken was not specifically considered: *Held*, that the result of the decision was that the notice which was given before the institution of the suit was ineffectual. It would not bar a suit by the plaintiff for ejectment brought after giving the defendant a second notice to quit. The plaintiff who was allowed by the defendant to live on the premises upon his agreeing to act as mukhtear for the defendant, in taking an intermediate lease from the defendant's landlord behind the defendant's back, could not (by reason of his

the person in possession under a lease from a tenant obtains a lease of a superior interest and of [a

the tenant or his representatives could not be ejected so long as they continued to pay rent. Such a lease is a lease from month to month by the operation of s. 106 of the Transfer of Property Act. *Juhooree Lall Shahoo* v. *M. H. Dear, 23 W. R. 399*, not followed. MOHIM CHANDRA SARKAR *v.* ANIL BANDHU ADHIKARY (1909) **13 C. W. N. 513**

124. ——— *Ejectment—Denial of title of landlord in written statement, if dispenses with proof of notice—Notice to quit—Tenancy from year to year—Agricultural tenancy—Transfer of Property Act (IV of 1882), if applies—Length of notice—Reasonable notice—Question of fact—Finding set aside on second appeal—Question*

of permanency—Judgment not dealing with point with sufficient fulness—Civil Procedure Code (Act XIV of 1882), s 574. Plaintiff, as zemindar, sued to eject the defendant, a tenant, who in his written statement pleaded that the plaintiff had no title to the zemindari, that the defendant had a permanent right and that in any case the suit could not succeed for want of a proper notice to quit. The first two defences having failed : *Held*, that, even if the written statement were treated as a denial of the landlord's title, there was no disclaimer which did away with the necessity of the plaintiff proving a proper notice to quit *Gopal Rav v Kishore Kalidas, I. L R 9 Bom 527, Purshotam Bapu v Dattatraya Rayaji, I L R 10 Bom. 669; Vithu v Dhondi, I L R 15 Bom. 407, Dodhu v Madhavrao, I L R 18 Bom 110, Chidambaram v. Sabapathy 1 Mad L J 218, Abdulla Naha v. Moidin Kutti, 17 Mad L. J. 287, Per* ... *I L R 31 Mad 261, Pra* ... *13 Calc* ... *28 Calc* ... *Messon* ... distinctio ... as a waiver of the requisite notice in a tenancy determinable by notice and a disclaimer operating by way of forfeiture in the case of a fixed lease indicated. *Quære* Whether there can be a waiver of notice by a denial in the written statement in the case of tenancies to which the Transfer of Property Act applies Where 18 days' notice ending neither with the year of the defendant's tenancy nor with the end of the Fasli year was given for the determination of an agricultural tenancy from year to year :—*Held*, that the tenancy was not governed by the Transfer of Property Act. That the state of authorities ... such a case would be suffi-

... sarily determine the tenancy at the end of a year. It would be for the final Court of fact in each case *to determine what is a reasonable notice* having regard to all the circumstances and whether it would not be reasonable in the circumstances of the particular case for it to determine with the year. The cases have not established a fixed ... that is

... *Calc 720*, referred to As the lower Appellate Court had not sufficiently considered these matters in determining the question of the sufficiency of the notice, its decision that the notice was sufficient was set aside and the case remanded to it for further consideration. The question of the permanency of the tenure was discussed in considerable detail by the first Court and decided against the defendant, and although the lower Appellate Court came to the same conclusion, it did not deal with it as fully as the importance of the question to the parties deserved. On second appeal, the finding was set aside as not being in compliance with s. 574 of the Code of Civil Procedure (Act XIV of 1882). PERTAB NARAIN *v.* MAIGH LAL SINGH (1909) . . **13 C. W. N. 949**

24. BUILDINGS ON LAND, RIGHT TO REMOVE, AND COMPENSATION FOR IMPROVEMENTS

1. ——— **Removal of buildings by tenant**—*Tenant holding over after expiry of lease* By indenture, dated 1st February 1856, *A* leased certain premises in Calcutta to *B* for a term of ten years, as from 1st November 1855, at a rent of R100 per month, payable monthly *A* covenanted with *B* to grant to her on her request, to be made within three months of the expiry of the term, a fresh lease on the same terms, for three years, and that it should be lawful for *B* at any time during the second lease, or extended lease, to remove or sell ... of the ... and ... iting ... term ... upon ... the *term or extended term to remove, etc*, the buildings, etc, which then were or might at any time, during the term or extended term, be erected on the premises by *B*, her executors, administrators or assigns *B* erected buildings during her tenancy under the lease The defendant, on 24th August 1858, became, by various mesne assignments, the assignee of the lease, without notice to *A*, and subsequently repaired and erected buildings on the land The defendant continued to occupy the premises, and paid the rent in the name of *B* up to August 1866 No renewal of the lease (which expired on 31st October 1865) was ever demanded by ... The plaint- ...

... notice of the 6th of September, demanded possession ... of the defendant who was in actual ...

... lease for three years; that the defendant was not entitled to a renewal for three years; that the tenancy after 1st October 1865 was a monthly

LANDLORD AND TENANT—*contd.*

24. BUILDINGS ON LAND, RIGHT TO REMOVE, AND COMPENSATION FOR IMPROVEMENTS—*contd.*

tenancy in the name of *B*, and was terminated on 31st October 1866 by the notice of 6th September

2. ———— Removal of material of house by outgoing tenant—*Custom of Calcutta—Injunction* In an action of ejectment the defendant set up a claim by custom to remove the materials of a house erected by him on the premises in dispute; but the Court granted an injunction to restrain him from doing so, though giving him leave to bring a suit to establish the special custom: in default of such suit being brought the injunction to be perpetual. DOYAL CHAND LAHA *v.* BHOYRUBNATH KHETTRY . Cor. 117

3. ———— Huts, right of tenant to—*Custom for outgoing tenant to remove huts—Acquiescence* On a case stating that the plaintiff became tenant to the defendant of certain land in Calcutta, and at their time of becoming such tenant pur-

such tenants, and such huts were by such practice treated as the property of the tenants, who, by such practice, were in the habit of disposing of them without the consent of their landlords;" that relying on the abovementioned practice the plaintiff, with the defendant's knowledge, had partially pulled down and rebuilt such huts; that the plaintiff's tenancy was determined, and the plaintiff ejected from the land by the defendant; that before leaving she endeavoured to pull down and remove the huts, but that she was prevented from so doing by the defendant, who claimed the huts as her property:—*Held*, that the plaintiff, by the practice stated, was entitled, before giving up possession of the land, to pull down and remove the tiled huts *Held*, further, that, apart from the existence of a valid custom

4. ———— Removal of buildings on land—*Ownership in land and buildings.* Accord-

provement is not a mere trespasser, but is in possession under any *bonâ fide* title or claim of title, he is entitled either to remove the materials, restoring the land to the state in which it was before the improvement was made, or to obtain compensation

the matter of the petition of THAKOOR CHUNDER PARAMANICK

B. L. R. Sup. Vol. 595: 6 W. R. 228

This case contemplates the case of an admitted sale by a vendor in possession, not a case where the title and possession are disputed. MUDHOO SOODUN CHATTERJEE *v.* JUDDOOPUTTY CHUCKERBUTTY 9 W. R 115

Held, not applicable to other than innocent purchasers. SOHUN SINGH *v.* KEOLA BIBEE 16 W. R. 169

5. ———— Removal of buildings—*Illegal possession.* In a suit for possession on the ground that the defendant has become illegally possessed of certain land, the Court, while giving plaintiff a decree, allowed the defendant to remove or get compensation for a house which he had erected thereon. DOORGA CHURN *v* KOONJ BEHARY PANDEY . . . 3 Agra 23

6. ———— *Sale by tenant without consent of landlord—Position of purchaser—Erection of brick-built house by tenant—Right of*

house was built were sold separately to two individuals from whom the defendant purchased both. On the 31st July 1866 the tenure itself was sold for arrears of rent to one *N*, from whom the plaintiff purchased it. The plaintiff brought this suit to recover possession of the land free from all incumbrance by the removal of the house. The Court refused to give the plaintiff a decree for possession.

LANDLORD AND TENANT—*contd.*

24. BUILDINGS ON LAND, RIGHT TO REMOVE, AND COMPENSATION FOR IMPROVEMENTS—*contd.*

SHIBDAS BANDOPADHYA *v.* BAMANDAS MUKHOPADHYA . **8 B. L. R. 237 : 15 W. R. 360**

7. ——————— *Additions to existing building.* A tenant making additions to an [illegible]

8. ——————— *Erection of indigo factory—Right to remove materials.* Where a lessee of land under an ijara erected an indigo factory thereon, with the knowledge of, and without any objection by, the lessor, upon the determination of the ijara lease, and the delivery of possession to the lessor, the lessee was held entitled to remove the materials KINOO SINGH ROY *v.* NUSSEEROODEEN MAHOMED CHOWDRY . . **17 W. R. 97**

9. ——————— *Contract Act, 1872, s 1.* The law laid down by *In re Thakoor Chunder Paramanick, B L R, Sup Vol 595,* viz, that a person building on the land of another is *primâ facie* entitled to remove the buildings erected upon the land demised, or to receive compensation, —when applied to a contract of tenancy, is not inconsistent with anything in the Contract Act, and therefore is unaffected by it RUSSIKLOLL MUDDUCK *v.* LOKENATH KURMOKAR
I. L. R. 5 Calc. 688 : 5 C. L. R. 492

10. ——————— *Ownership in land and buildings—Suits between Hindu inhabitants of Calcutta—21 Geo III, c 70, s 17—Difference in law applicable in Calcutta and the mofussil—Equity and good conscience* At a Sheriff's sale one Templeton bought a Hindu widow's interest in certain land in Calcutta, after passing [illegible]

[illegible] sionary heir to the estate after the widow's death sued the defendant to recover possession of the house and land. The defendant admitted the plaintiff's claim to possession, but contended that he was entitled to be paid a fair price for the buildings, or to remove the materials *Held,* that he was neither entitled to compensation nor to remove the [illegible]

LANDLORD AND TENANNT—*contd*

24. BUILDINGS ON LAND, RIGHT TO REMOVE, AND COMPENSATION FOR IMPROVEMENTS—*contd.*

cussed JUGGUT MOHINEE DOSSEE *v.* DWARKA NATH BYSACK . . **I. L. R. 8 Calc. 582**

11. ——————— *Suit to eject tenant—Right to remove buildings or get value for them* In a suit to eject defendants (who held under a lease) from a house-ground and to compel them to remove the buildings thereon erected, the defend- [illegible]

lease, decreed as sued for The Appellate Court [illegible]

6 Mad. 2[illegible]

12. ———— **Compensation**—*Kasavargam tenant—Right to buildings—Compensation on evic-* [illegible]

v. SAVUNDARATHAMMAL . **I. L. R. 2[illegible] Mad. [illegible]**

13. ——————— *Hindu law—Wells dug with consent of landlord.* Where ten- [illegible]

compensation therefor from the landlord after the determination of the tenancy VENKATAVARAGAPPA *v.* THIRUMALAI . **I. L. R. 10 Mad. 112**

14. ——————— *Malabar kanam—Change in character of land—Passive acquiescence of landlord—Estoppel—Compensation for improvements by tenant.* Land was demised on kanam for wet cultivation The demise changed the character of the holding by making various improvements, which were held to be inconsistent with the purpose for which the land was demised. On a finding that the landlord had stood by while the character of the holding was being changed and [illegible]

v. NARAYANAN MUSSAD . **I. L. R. 12 Mad. 320**

See RAVI VARMAN *v.* MATHISSEN.
I. L. R. 12 Mad. 323 note

[illegible] lowed to remove them.

15. ——————— *Tenant expending money on land with landlord's knowledge and*

LANDLORD AND TENANT—*contd.*

24. BUILDINGS ON LAND, RIGHT TO REMOVE, AND COMPENSATION FOR IMPROVEMENTS—*contd.*

consent—Acquiescence—Estoppel—Right of tenant on eviction to be recouped the money so expended—Buildings erected on land held under lease, removal of. The defendant entered into occupation of certain land with the permission of the plaintiff, who was the owner, and erected buildings and otherwise experded money upon it The plaintiff and the defendant were relations and lived near each other. The plaintiff constantly visited the land and knew what the defendant was doing, but made no objection. Subsequently the plaintiff, being anxious to obtain from the defendant an acknowledgment of his (the plaintiff's) title, induced (but without misrepresentation or fraud) the defendant to sign a rent-note. The Court found that, although this rent-note was, in terms, a lease for one year, yet the intention of the parties was not that the defendant should at the expiration of the year or on any subsequent demand, hand over to the plaintiff,

of the rent-note the defendant had erected other buildings, and that the plaintiff knew of this, and made no objection *Held*, that the plaintiff could not recover possession of the land, or require the removal of the buildings without recouping the defendant the money he had expended The plaintiff was estopped from denying the claim of defendant He had stood by in silence while his tenant had spent money on his land DATTATRAYA RAYAJI PAI *v.* SHRIDHAR NARAYAN PAI

I. L. R. 17 Bom. 736

16. ——— *Claim of tenant to compensation for buildings erected by him* A tenant of land demised to him cannot, on the termination of his tenancy, claim compensation for buildings erected by him HUSAIN *v* GOVARDHANDAS PARMANANDAS . I. L. R. 20 Bom. 1

17. ——— *Buildings erected by tenant—Acquiescence by landlord—Estoppel—Presumption of grant for building purposes* Where a landlord had not objected to buildings erected by his tenant for a period of twenty-five

pensation. YESHWADABAI *v* RAMCHANDRA TUKARAM . . . . . I. L. R. 18 Bom. 66

See KRISHNA KISHORE NEOGI *v.* MAHAMED ALI 3 C. W. N. 255

18. ——— *Buildings erected by tenant without consent of landlord.* Where it is proved that the tenancy is not a permanent one, that the tenant erected a pucca building on the land without the consent of the landlord, the tenant on eviction is not entitled to any compensation for the building from the landlord. *Dattatraya Rayaji Pai* v. *Shidhar Narayan Pai, I. L. R. 17 Bom. 736; Yeshwadabai* v. *Ram Chandra Tukaram, I. L. R. 18 Bom. 66*, distinguished. ISMAIL KHAN MAHOMED *v.* JAIGUN BIBI . I. L. R. 27 Calc. 570 4 C. W. N. 210

19. ——— *Additions made by tenant to property of landlord without permission—Acquiescence of landlord—Obligation to compensate tenant—Estoppel.* Where the lessee of a dwelling-house, being fully aware of his position as such lessee, made certain additions to the leased premises without the permission of his lessor, but

that the lessor was entitled to recover possession from the lessee without paying him compensation. *Ramsden* v. *Dyson, L. R 1 H. L. 129* and *Willmott* v. *Barber, L. R 15 Ch D. 96*, referred to. NAUNIHAL BHAGAT *v.* RAMESHAR BHAGAT

I. L. R. 16 All. 328

20. ——— *Buildings on land—Ownership in land and buildings—Right of tenants to compensation under the Land Acquisition Act for buildings erected by them—Transfer of Property Act (IV of 1882), s. 108, cl (h)* A plot of land was acquired under Act X of 1870 for the construction of a road within the town of Calcutta; the tenants who had erected masonry buildings on portions of the land and who were in possession at the time of the acquisition claimed before the Collector the value of their interest; but the owner of the land claiming the whole of the compensation money, the matter was referred to the District Judge, who found that the lands were originally granted for building purposes, and who allowed a share of the compensation money, *viz.*, the value of the buildings, to the tenants. On appeal to the High Court by the owner of the land, on the ground that the respondents' tenures, which were of a tem-

subsisting between the parties, and having regard to s. 108, cl. (*h*), of the Transfer of Property Act which applies to Calcutta as well as to the mofussil, the tenants were entitled to the compensation for

LANDLORD AND TENANT—*contd.*

24. BUILDINGS ON LAND, RIGHT TO REMOVE, AND COMPENSATION FOR IMPROVEMENTS—*contd.*

the buildings. *Juggut Mohinee Dossee* v. *Dwarka Nath Bysack*, *I. L. R 8 Calc. 582*, distinguished. DUNIA LAL SEAL v. GOPI NATH KHETRY

I. L. R. 22 Calc 820

21. ——— *Lease granted by Hindu widow for long term of years—Death of widow—Voidable lease—Suit by heir to recover property from lessee six years after widow's death—Compensation for tenants' improvements—Acquiescence.* A Hindu widow adopted a son, but reserved to herself for life the right of managing her husband's property The adopted son sold his interest in the property to the plaintiff In 1885, the widow granted a lease of the property to defendants for fifty-nine years at a rent of R50 a year. She died the following year (1886) The defendants continued in possession of the property under the lease and expended money in improvements In 1892, the plaintiff as purchaser from the adopted son sued for possession *Held*, that he was entitled to recover and to have the lease set aside, but only on payment to the defendants of compensation for the sum properly expended by them in improving the land after the widow's death. The lease granted by the widow was not *ipso facto* void, but only voidable by the plaintiff, on her death. It did not necessarily determine at her death. That being the legal position of the defendants, the plaintiff allowed the defendants to go on improving the property, and took no steps to warn the defendants until he brought this suit to recover possession His conduct was such as to induce a belief in the minds of the defendants that the lease would be treated as valid There was not merely a lying by, but a lying by under such circumstances as to induce a belief that a voidable lease would be treated as valid. DATTAJI SAKHARAM RAJADIKSH v. KALBA YESE PARABHU

I. L. R. 21 Bom. 749

22. ——— *Tenant erecting buildings and making improvements under mistaken belief of his landlord, having larger interest in property than he really had.* A tenant who has erected buildings and effected improvements on the landlord's property is not entitled to be paid their value on the determination of the tenancy, merely because he has acted under the mistaken belief [illegible]

23. ——— *Malabar Compensation for Tenants Improvements Act (Mad. Act I of 1887), ss 1, 2, 4, 6—Mode of assessing* [illegible]

LANDLORD AND TENANT—*contd.*

24. BUILDINGS ON LAND, RIGHT TO REMOVE, AND COMPENSATION FOR IMPROVEMENTS—*contd.*

a reasonable sum should be awarded assessed with reference to the amount by which the market-value or the letting-value or both has been increased thereby; and the Court should take into consideration the actual condition of the improvement at the time of the eviction, its probable duration, the labour and capital which the tenant has expended in effecting it, and any reduction or remission of rent or other advantage which the landlord has given to the tenant in consideration of the improvement. In the absence of evidence as to the actual market value in the place where the land is situated, the reasonable mode of estimating the compensation consists in taking the cost of the improvement and interest thereon and in adjusting the compensation to be awarded with reference to the matters specified in s. 6. VALIA TAMBURATTI v. PARVATI. PARVATI v VALIA TAMBURATTI . I. L. R. 13 Mad. 454

24. ——— *Malabar Com-* [illegible]

came into force *Held*, on the construction of ss 1, 5, 7, that the tenants' right to compensation should be dealt with in accordance with the provisions of that Act. MALIKAN v. SHANKUNNI

I. L. R. 13 Mad 502

25. ——— *Malabar Compensation for Tenants Improvements Act (Mad. Act I of 1887), ss 3 and 6—Cocoanut trees—Valuation of improvements—Redemption of kanom tenure.* In a suit to redeem a kanom in Malabar, it appeared that the plaintiff paid into Court the kanom amount, together with a sum on account of the defendants' improvements, but subsequently with- [illegible]

to redeem, and that the defendant was not entitled to have the whole of the future annual produce of the trees taken into consideration in computing the value of improvements under the Malabar Compensation for Tenants Improvements Act, 1887. SHANGUNNI MENON v. VEERAPPAN PILLAI . I. L. R. 18 Mad. 407

26. ——— *Malabar Compensation for Tenants Improvements Act (Mad. Act I of 1887), s. 3—Suit to redeem kanom.* The sum to be allowed for tenants' compensation for [illegible]

LANDLORD AND TENANT—*contd.*

24. BUILDINGS ON LAND, RIGHT TO REMOVE, AND COMPENSATION FOR IMPROVEMENTS—*contd.*

27. ——————— *Malabar Compensation for Tenants Improvements Act (Mad. Act I of 1887), ss. 6 (c) and 7—Tenant's agreement in 1890 not to claim compensation for improvements already made—Reduction of rent—Claim to make*

ment executed in 1890, in which it was recited that the tenant's father had been let into possession thirty years previously at a certain rate of rent and had made improvements on the land, and the defendant agreed to hold at a lower rate of rent, and not to demand compensation for the previous improvements The plaintiff relied on the last-mentioned provisions of the agreement, which admittedly related to improvements made since January 1886 *Held*, that, the provisions relied on by the plaintiff were invalid under the Malabar Compensation for Tenants Improvements Act, 1887, s 12. *Held*, also, *per* SUBRAMANIA AYYAR, J.

from any deduction UTHUNGANAKATH AVUTHALA *v.* THAZHATHARAYIL KUNHALI

I. L. R. 20 Mad. 435

28. ——————— *Compensation for improvements and arrears of rent set off.* As regards the right to the value of improvements there is no distinction between a tenant under a kanom and under a verumpattom The right of the landlord to set off against the value of the improvements any rent due to him must prevail against any alienation made by the tenant of his right to compensation. ERESSA MENON *v* SHAMU PATTAR

I. L. R. 21 Mad. 138

See ACHUTA *v.* KAL **I. L. R. 7 Mad 545**

29. ——————— *Malabar Compensation for Tenants Improvements Act (Mad. Act I of 1887), ss 4 and 7—Improvements made before and after 1st January 1886.* Malabar Compensation for Tenants Improvements Act, 1887, s. 7, cannot be construed retrospectively so as to invalidate agreements made with respect to improvements prior to the passing of the Act. In computing, therefore, the value of improvements made by a tenant in Malabar who was let into possession under an agreement before the passing of the Act, it is necessary to ascertain the value of improvements

LANDLORD AND TENANT—*con'd.*

24. BUILDINGS ON LAND, RIGHT TO REMOVE, AND COMPENSATION FOR IMPROVEMENTS—*contd.*

made by him before the 7th January, 1887, calculated according to the scales specified in his contract, and also the value of improvements effected subsequently, calculated under the provisions of the Act. VIRU MAMMAD *v.* KRISHNAN

I. L. R. 21 Mad. 149

30. ——————— *Malabar Compensation for Tenants Improvements Act (Mad. Act I of 1887)—Timber trees—Suit to redeem mortgage.* In a suit to redeem a kanom of land on which timber has grown, the jenmi is not entitled to be credited with half the value of the timber. ACHUTAN NAYAR *v.* NARASIMHAM PATTER

I. L. R. 21 Mad. 411

31. ——————— *Tenant's right to compensation—Mortgage by tenant without notice to landlord—Acceptance of surrender by landlord—Rights of landlord and mortgagee.* The right of a tenant in Malabar to compensation is analogous to

demised and settles the accounts with his tenant in reference to arrears of rent and the amount due as compensation. *Quære :* Whether notice to a landlord of such a transfer would affect his right to set off arrears of rent due to him against the amount payable as compensation. VASUDEVA SHENOI *v.* DAMODARAN . . **I. L. R. 23 Mad. 88**

32. ——————— *Acquiescence—Compensation.* In order to raise an estoppel against the landlord, it must be shown that the landlord had purposely allowed or encouraged the tenant to build, knowing that the tenant was building on the mistaken notion that he had rights beyond those of a mere tenant from year to year. ISMAIL KHAN MAHOMED *v.* BROUGHTON (1901)

5 C. W. N. 846

33 ——— **Building mosque in the place of old hut**—*Rights of tenants in the village abadi—Wajib-ul-arz—Suit to remove building erected by tenant without permission of the zamindars.* In the courtyard of a tenant lawfully in possession of a house site in the village *abadi*

LANDLORD AND TENANT—*contd.*

25. MIRASIDARS.

1. ———— Nature of tenancy——*Yearly or permanent tenancy—Right of mirasidars—Custom of country.* The defendants entered on land as tenants of a mirasidar on terms which they could not prove, but held it at a uniform rent for three generations and for more than fifty years *Held*, that the defendants, in the absence of any special agreement to the contrary, had not acquired by prescription a right of permanent tenancy Whatever right of permanent tenancy a tenant may, by prescription, acquire as against an inamdar, or a khot, it would be contrary to the custom of the country, and to the nature of mirasi tenure to hold that he could acquire such a right as against a mirasidar NARAYAN VISAJI *v.* LAKSHUMAN BAPUJI
10 Bom. 324

2. ———————— *Right to perpetual tenancy—Sanad—Evidence of title—Perpetual cultivation—Long possession—Local custom.* Mirasidars who had sanads but who have lost them, and those who never had them, may prove their title by other evidence, and long possession is a strong element in such proof A sanad is not indispensable to the proof of mirasi tenure. A mirasi right or perpetuity of tenure, like other facts, may be proved by various means Accordingly, where a plaintiff claimed to hold certain lands in miras and under a right of perpetual cultivation by the custom of the country, and sought to recover the lands from the defendant who claimed as purchaser, at a Court sale, of the right, title, and interest of the inamdar of the said lands, and the lower Courts dismissed the suit on the ground that the plaintiff had failed to prove any right of perpetual cultivation, the District Court, in appeal,

lands, the High Court in special appeal reversed the decrees of the Court below, and remanded the case for a new trial on the point whether the plaintiff as a mirasidar or by local usage in virtue of his long possession and uniformity of payment of rent or assessment or otherwise, previously to the Court sale to defendant, had acquired the right to hold the lands in perpetuity on payment of a fixed or other rent ascertainable by local usage. BABAJI *v.* NARAYAN . **I. L. R. 3 Bom. 340**

VISHNUBHAT *v.* BABAJI
I. L. R. 3 Bom. 345 note

3. ———————— *Mirasi tenures —Right of occupancy in mirasi land* The mirasidar is the real proprietor of mirasi land, but raiyats may be entitled to the perpetual occupancy of

BALLA *v.* SAMINADA PILLAI . . **1 Mad. 264**

LANDLORD AND TENANT—*contd.*

25. MIRASIDARS—*contd.*

4. ———— Right to dues from suka-

rent from 1856 Defendants denied plaintiff's title.

of the suit *Held* (reversing the decree of the Civil Judge), that if the defendants were sukavasi raiyats and the plaintiff was sole mirasdidar, and in that right entitled to certain annual dues for all lands cultivated by such raiyats immediately on their being brought under cultivation, plaintiff's suit was not barred, except as to rent payable more than three years before suit. KRISHNAMA CHARYAR *v.* TOPPAI GAUNDAN . . . **3 Mad. 381**

5. ———— Right to dues from culti-

6. ———— Right of occupancy— *Abandonment—Waste lands—Mad. Act II of*

duct of plaintiffs justified the Revenue authorities in the course they had adopted. The District Judge reversed the decree of the Munsif, on the authority of *Rajagopala Ayyangar* v. *Collector of Chingleput, 7 Mad. 98.* On special appeal, the case was heard before MORGAN, *C.J.*, and INNES,

LANDLORD AND TENANT—*contd.*

25. MIRASIDARS—*contd.*

J., and on a difference of opinion was referred to a Full Bench (MORGAN, *C.J.*, HOLLOWAY and INNES, *JJ.*) *Held*, by MORGAN, *C. J.*, and HOLLOWAY, *J.*, allowing the special appeal, that the Collector's settlement with the mirasidars was in form an an- [illegible]

in the case of *Rajagopala Ayyangar* v. *Collector of Chingleput, 7 Mad. 98*: that it was apparent that the mirasidars had no intention either to cultivate the land or (except on legal compulsion) to pay the assessment, and that in such circumstances it was competent to the Revenue officials to decline to accept the plaintiffs as tenants. By HOLLOWAY, *J.*, [illegible]

incommensurate with the injury complained of. By INNES, *J.* (dissenting), that plaintiffs, having lawfully purchased at a Government sale, had become by the express provisions of the law the occupiers of the land, and that they could not be ejected except for the reasons and by the process prescribed by Madras Act II of 1864; that, not having been lawfully ejected, they were still the rightful holders, and, twelve years not having elapsed since the date of their ejectment, could claim to be restored; and that the special appeal should accordingly be dismissed. FAKIR MUHAMMAD *v.* TIRUMALA CHARIAR . **I. L. R. 1 Mad. 205**

7. ——— Pottah-holder, status of— *Raiyatwar pottah.* The correctness of the decision of the majority of the Full Bench in *Fakir Muhammad* v. *Tirumala Chariar, I. L. R 1 Mad 205*, that a raiyatwar pottah enures only for a year, and that a pottah-holder is merely a tenant from year to year, question SECRETARY OF STATE FOR INDIA *v.* NUNJA . . . **I. L. R. 5 Mad. 163**

8. ——— Relinquishment of pottah —*Tenure of pottahdar under Government. Per* TURNER, *C J.*—A mirasidar does not lose his mirasi right by relinquishing his pottah. A pottah issued by Government will, unless it is otherwise stipulated be construed to enure so long as the raiyat pays the revenue he has engaged to pay. SUBBARAYA MUDALI *v* COLLECTOR OF CHINGLEPUT

I. L. R. 6 Mad. 303

9. ——— *Suit for ejectment—Permanency of tenure, proof of—Lease, new or confirmatory—Words, meaning of—" Purakudi"—" Ulavada mirasidar"—Charitable endowment—Trustee's competence to grant permanent tenure—Power of Collector under Madras Regulation VII of 1817. Held*, on the whole evidence, that a muchilika executed in 1832 evidenced the creation of a new lease and not the confirmation of a previous permanent grant of 1813. The expression "ulavadai mirasidars" is of doubtful signification, whilst the word "purakudis" has a well-understood and definite meaning The mere fact that in some documents produced by the tenants they were described as "ulavadia mirasidars" ought not, in the circumstances of the case, to have been taken as proving the permanent character of the tenure, when in other more important documents they were described as purakudis. *Chockalinga Pillai* v. *Vythealinga Pundara Sunnady, (1871) Mad. H. C. 164*, and *Thiagaraja* v. *Giyanasambandho Pandara, I. L. R. 11 Mad 77*, approved. *Krishnasami Pillai* v. *Varardaraja Ayyangar, I. L. R. 5 Mad. 345*, referred to. Powers of a Collector under Madras Regulation VII of 1817 with regard to charitable endowments considered. Propriety of permanent grants by trustees questioned. *Maharanee Shibessouree Debia* v. *Mothooranath Acharia, 13 Moo I. A 270*, referred to. MAYANDI CHETTIYAR *v* CHOKKALINGAM PILLAY (1904)

I. L. R. 27 Mad. 291
s.c. 8 C. W. N. 545
L. R. 31 I. A. 83

26. EASEMENT.

——— *Prescription.* A tenant of land cannot acquire an easement by prescription in other lands of his lessor. *Udit Singh* v. *Kashi Ram, I L R. 14 All. 185*; *Jeenab Ali* v. *Allahuddin, I C. W. N. 151*, referred to. It does not make any difference, if the tenant has permanent rights in the land. A tenant always derives his rights from the lessor and as the latter [illegible]

27. ENHANCEMENT OF RENT.

1. ——— *Bengal Tenancy* [illegible] *—Average* [illegible] (i) to s. 29 [illegible] does not [illegible]

[illegible]

LANDLORD AND TENANT—*contd.*

27. ENHANCEMENT OF RENT—*concld.*

2. ——————— *Rent—Second appeal—Bengal Tenancy Act (VIII of 1885), as amended by Act III of 1898, ss. 105 and 109A—Case where the existing rent is not varied and the increase of rent is sought for on the ground of increase in area—Whether decision in such a case is a "decision settling a rent."* The words in sub-s. (3) of s

increase in the area of the holdings. Therefore, where the Special Judge on appeal held that no case was made out for enhancement of rent on the ground of increase in the area of the holdings, no appeal lies against that decision to the High Court. RAMESWAR SINGH v BHUBANESWAR JHA (1906)
I. L R. 33 Calc. 837

3. ——————— *Notice to quit—*

creased rent, and concluded by saying otherwise I shall take steps to eject you and hence you consider this as 15 days' notice expiring with the end of this month: " *Held*, that this was a good notice to quit GANGA DAS SIL v. ANANDA CHANDRA ROY (1908) . 13 C. W. N. 146

28 INAMDARS.

1. ——————— *Inamdar, tenant under—No presumption that tenant has permanent occupancy right* The position of inamdars differs materially from that of zamindars and the presumption that persons becoming tenants of zamindars after the permanent settlement become occupancy tenants does not apply to persons who become tenants under inamdars. *Cheekati Zemindar v Ranasoori Dhora, I L R. 23 Mad 318*, referred to MARAPU THARALU v TELUKULA NELLAKANTA BEHARA (1907) . . I. L. R 30 Mad. 502

29. LEASE.

1. ——————— — *When patta once tendered and accepted, landlord cannot tender a second patta and enforce the terms of such second patta* When a patta has been tendered by the landlord and the tenant accepting such patta has executed a muchilika, the result is an agreement binding on the parties for the period to which the instruments relate, so long as they are in force, and the landlord cannot during such period tender a second patta and proceed for the rent claimed to be due under such second patta *Krishna Doss Bala*

LANDLORD AND TENANT—*contd.*

29. LEASE—*concld.*

2. ——————— *Rent suits—Objection to terms of patta not taken in previous summary suit cannot be taken in suits for subsequent*

enforce patta for a subsequent year. *Venkatchallapati v. Krishna, I L R 13 Mad. 287*, followed.

A VELAYUTHA TEVAN (1907)
I. L. R. 30 Mad. 498

5. ——————— *Patta, grant of—*

who claims to have a patta granted to him as transferee from a tenant is bound to produce the transfer for the inspection of the landlord, if so desired.

I L. R 29 Mad 83, explained. VADLAMANNATI VENKATRAMIAH PANTULU v. VENUKATA RANGIAH APPA ROW (1907) . I. L. R. 31 Mad. 64

4. ——————— It cannot be

13 C. W. N. 167

30. PRE EMPTION.

1. ——————— *Re-sale of pro-*

plaintiff impleaded the new

LANDLORD AND TENANT—*contd.*

30. PRE-EMPTION—*contd.*

favour of the plaintiff. *Held*, that the plaintiff

I. L. R. 27 All. 644

2. ——— *Wajib-ul-arz—Interpretation of document—Mortgage by conditional sale—Cause of action* The pre-emptive clause of wajib-ul-arz ran as follows :—" If any co sharer would sell his share, he must first offer it to the *Biradaran haqiqi shariq haqiyat.* If they refuse

property cannot be transferred to an outsider (*wo kul badast ghair muntaqil na karsakega*)." *Held*, that in the case of a mortgage by conditional sale two causes of action arose, first, when the

was of the nature of a covenant running with the land and was enforcible even against a *bond fide* purchaser. *Karim Bakhsh Khan* v *Bhula Bibi*, *I. L. R 8 All 108*, referred to BAHADUR SINGH v. RAM SINGH (1905) . I. L. R. 27 All. 12

3. ——— *Wajib-ul-arz—Interpretation of document.* A claim for pre emption was put forward on the basis of a wajib-ul-arz, the material clause of which ran as follows —" Up to now there has been no suit for pre-emption, but we accept the right of pre-emption " The previous wajib ul arz of the village, of date some 22 years earlier, contained this provision as to the right of pre-emption :—" If a co-sharer is desirous of transferring his share, he shall transfer it, first to his near relative, and next to co-sharers in the village, and on their refusal he may mortgage or sell it to any one he likes " *Held*, on a construction of these two documents, that they amounted to a record of a custom of pre-emption as prevailing in the village , also that a near relative need not also be a co-sharer , the two were distinct classes of pre-emptors, the near relative having the prior claim. *Abdul Wahid* v *Wilayat Husain, All. Weekly Notes (1902) 109*, referred to. RAMDIN v. POKHAR SINGH (1905) . I. L. R. 27 All. 553

4. ——— *Wajib-ul-arz—Construction of document—Partition of village into separate mahals—Provisions of existing wajib-ul-arz as to pre-emption copied verbatim into wajib-ul-arzes*

LANDLORD AND TENANT—*contd.*

30. PRE-EMPTION—*concld.*

of new mahals. Where on partition of a village into two separate mahals the provisions of a former wajib-ul-urz, which recorded a custom of pre-emption as existing in favour of, amongst others, " co-sharers in the village," were copied *verbatim* into the wajib-ul-arz of each of the new mahals, it was *held* that the effect of this was to leave to the co-sharers in each of the new mahals rights of pre-emption *inter se.* A " village " (*gaon mauza* or *deh*) is not the same thing as a " mahal " and must

Ghure v. *Man Singh, I. L. R. 17 All 226*, and *Dalganjan Singh* v. *Kalka Singh, I. L. R. 22 All. 1*, referred to AUSERI LAL v. RAM BHAJAN LAL (1905) . . . . I. L. R. 27 All. 602

31. SALE IN EXECUTION.

1. ——— *Sale of non-transferable occupancy holding in execution of decree—Knowledge of judgment-debtor—Confirmation of sale —Civil Procedure Code (Act XIV of 1882), s. 244.* Defendant owned a non-transferable occupancy holding, which was sold in execution of a decree against him, and one *K* was the purchaser ; *K* transferred his interest to the present plaintiff, who instituted the present suit for recovery of possession. *Held*, that the defendant, having had full knowledge of the execution proceedings and not having objected to the sale, was not competent to resist the purchaser after confirmation of sale. *Durga Charan Mondal* v. *Kali Prosanno Sircar, 3 C. W N 586 : s c. I. L R. 26 Calc. 727*, followed. *Bhiram Ali* v *Gopi Kanth, I. L. R. 24 Calc. 355*, referred to. As between the purchaser and the defendant the title to the property vested in the purchaser on the confirmation of sale. MURULLAH v BURULLAH (1905) . . 9 C. W. N. 972

2. ——— *Mortgage of*

Tenancy Act. In order to take advantage of special provisions relating to sales for arrears of rent, the landlord must cause the sale of each holding or

3. ——— *Landlord and tenant—Decree for consolidated rent of several tenures*

LANDLORD AND TENANT—*contd.*

31. SALE IN EXECUTION—*concld.*

whether bind tenures—Decree whether obtained against sole recorded tenant—Proof—Onus—Right of auction-purchaser of share in tenure—Chota Nagpur Landlord and Tenant Procedure Act (Beng I of 1879), ss 123 and 125 A decree for the consolidated rent of several tenures held by the same tenants does not bind the tenures or any of them. Where a tenure was sought to be sold in execution of a decree for rent obtained against one of the tenants after the shares of the other tenants had passed by auction sale to a stranger, on the allegation that the tenant against whom it had been obtained was the sole recorded tenant of the landlord · *Held*, that whether this was so or not was a matter specially within the knowledge of the landlord and the onus was on him to prove it. BAIKANTA NATH ROY *v* DEBENDRA NATH SAHI (1906) . . **11 C. W. N. 676**

4 ———————— *Co-sharer landlord's decree for share of rent against registered tenants—Sale in execution if affects interest of unrecorded tenants—Representation, doctrine of* A sale in execution of a decree for his share of the rent obtained by a co-sharer landlord against the registered tenants passes only the right, title and interest of such registered tenants and not the interest of their unregistered co-sharers as well *Doorgadhur Biswas* v. *Huro Mohinee Dabee, 13 C W N. 270,* followed. *Jeo Lal Singh* v *Gunga Pershad, I. L. R 10 Calc. 996, Nitayi Behari Saha Pramanik* v. *Hari Govinda Saha, I L R 26 Calc 677,* distinguished BIJOY SANKAR SIKDAR *v* RAJENDRA KUMAR BASU (1909) . . **13 C. W N. 746**

32 UNDER-GROUND RIGHTS.

See MINERAL RIGHTS.

1. ———————— *Permanent tenure-holder—Under-ground rights—Mines and Minerals—Agricultural land—Transfer of Property Act (IV of 1882), ss 108 (o), 117.* Where a zemindar had created a permanent tenure in respect of agricultural land at a rental fixed in perpetuity : *Held*, that the tenure-holder would possess all under-[illegible]

[illegible]

with the land short of altogether destroying it [illegible]

[illegible]

Bhojamoni, 2 C. L J. 20, and *In re Parmanandas*

LANDLORD AND TENANT—*concld.*

32. UNDER-GROUND RIGHTS—*concld.*

2. ———————— *Mineral rights, reservation by lessor of—Grant of surface rights—Lessor's right to prospect—Reasonable exercise of right.* When the surface land is granted and the minerals are excepted or when minerals are granted and the surface land is excepted, such powers as are necessary to get the minerals are granted or reserved as the case may be as a necessary incident of the [illegible]

[illegible] liminary operations by boring or otherwise to ascertain (when it is not known) if there are minerals underground. The owner of the underground rights will however be justified in doing such acts only as may be reasonably necessary for the above purposes KUMAR RAMESSUR MALIA *v.* RAM NATH BHATTACHARJEE (1905) . **10 C. W. N. 17**

3. ———————— *Permanent lease—Minerals.* A permanent lease including " all rights of various kinds, with the exception only of homestead," would include the minerals. SHAMACHARAN NANDI *v.* ABHIRAM GOSWAMI (1906)
I. L. R. 33 Calc. 511
s.c. 10 C. W. N. 738

LANDLORD AND TENANT ACT (BENG. ACT VIII OF 1869).

See BENGAL RENT ACT.

See BENGAL TENANCY ACT, s 21. **9 C. W. N. 141**

See OCCUPANCY RIGHT . **8 C. W. N. 860**

LANDLORD'S FEE.

———— non-payment of—

See BENGAL TENANCY VALIDATION ACT, s. 1 . . . **8 C. W. N. 239**

LANDLORDS.

See LAND-HOLDERS.

LANDMARKS.

See EVIDENCE—CIVIL CASES—MAPS **6 C. W. N. 629**

———— obliteration of—

See ACCRETION—NEW FORMATION OF ALLUVIAL LAND—GENERALLY. **9 B. L. R. 150**

———————— *Arbitrator—Public servant—Mischief—Penal Code (Act XLV of 1860), ss. 21, 434.* The parties to a proceeding

LANDMARKS—*concld*

under s 145 of the Criminal Procedure Code, by mutual consent referred the dispute as to the possession to the arbitration of *A*, and the Magistrate thereupon cancelled the proceedings under s. 145. The arbitrator, in order to define the boundary, erected certain pillars, which were destroyed by the accused, and they were in consequence convicted under s. 434 of the Penal Code. *Held*, that the conviction was illegal, as *A* was not an arbitrator within the definition of s. 21, cl (6), of the Penal Code, nor was he a public servant authorized to fix the pillars, within the meaning of s. 434 of that Code SUNDAR MAJHI *v.* EMPEROR (1903)

I. L. R. 30 Calc. 1084

LAND REGISTRATION.

See LAND REGISTRATION ACT.

——————— *Refusal to register—Suit for declaration of title—Limitation Act Sch. II, Art 120* . An order under the Land Registration Act refusing to register an applicant's name does not in law amount to a dispossession of the applicant and the putting in possession of the party upon whose objection the application was refused. When the party whose application for the registration of his name was refused continued in

11 C. W. N. 186

LAND REGISTRATION ACT (BENG. ACT VII OF 1876).

See BENGAL TENANCY ACT, s 60

5 C. W. N. 482

See ONUS OF PROOF—POSSESSION AND PROOF OF TITLE **I. L. R. 8 Calc. 923**

See POSSESSION—EVIDENCE OF POSSESSION . **I. L R. 8 Calc. 853**

See RENT, SUIT FOR . **7 C. W. N. 720**

See TITLE—EVIDENCE AND PROOF OF TITLE—GENERALLY.

I. L R. 8 Calc. 853

——————— *Person holding land in the khas mehal under the Collector if required to register his name—Estate—Rent—Revenue.* It is not necessary for a person to register his name under the Land Registration Act when he holds land in the *khas mehal* under the Collector MADAN MOHAN ROY *v.* LOKHI KANT SEN (1902)

6 C. W. N. 631

——————— s. 7—*Delimitation of land of adjoining proprietors—Correction of entry in register.* On a claim for the correction of the entry of the names of proprietors in the general register of revenue-paying lands in a district kept

LAND REGISTRATION ACT (BENG. ACT VII OF 1876)—*contd.*

——————— s. 7—*concld.*

in accordance with Bengal Act VII of 1876, the limits of the area of the estate had not been defined, further than by boundaries mentioned in the plaint, which were disputed by the defendants who were the owners of land adjoining, and who had obtained from the revenue authorities an order for the entry now alleged to be incorrect The properties were both parts of an ascertained number of bighas forming a chuckla The High Court, while affirming the decision of the Court below in the plaintiffs' favour, ordered a local enquiry, with a view to the accurate delimitation of their estate. This, with the subsequent decree, resulted in the area being defined therein by reference to a map made and marked by an Ameen This was not a just division; for, while it divided the chuckla so as to give the defendants their full share, it went beyond it, to make up the full area of the plaintiffs' share. Their Lordships therefore made a new order, calculated to secure the division of the whole chuckla in due proportions for the purposes of the entry in the register. HEMMUNI SINGH *v.* CAUTY . . . **I. L. R. 17 Calc. 304**

——————— ss. 38 and 78—*Patnidar—Proprietor—Right of suit—Suit for rent.* A patnidar is not a proprietor within the meaning of ss 38 and 78 of the Land Registration Act, and he need not therefore get his name registered before suing for rent SUKURULLAH KAZI *v.* BAMA SUNDARI DASI

I. L. R. 24 Calc. 404

1. ——————— s. 42—*Suit for rent by unregistered proprietor—Transfer of proprietary right by succession.* S. 42 of the Land Registration Act makes it clear that every person succeeding to the proprietary right in any estate must apply for registration of his name PUNUK LALL MUNDAR *v.* THAKUR PROSAD SINGH . **I. L. R. 25 Calc. 717**

2. ——————— *Land registration—Co-sharer's interest by amicable settlement—Registration of proprietor's share—Partition Act (Ben. Act V of 1897), s 12.* The Land Registration Act (Ben. Act VII of 1876) requires the registration by the various proprietors of their shares in the estates only, and does not seem to contemplate a registration of shares in separate *mouzas* in the estate. The provisions of s 42 of the Act have therefore no application to the case of a co-sharer who, by an

I. L. R. 30 Calc. 773

3. ——————— ss. 42, 78—*Administrator—Obligation of administrator to register his name before bringing suits for rent—Right of suit.* A person who is an administrator, and as such the representative of a deceased proprietor of an estate

LAND REGISTRATION ACT (BENG. ACT VII OF 1876)—*contd.*

——— **s. 42**—*concld.*

and legal owner of his property, is bound to be registered under s. 42 of of the Land Registration Act (Bengal Act VII of 1876) before he can sue the tenants of the estate for rent. MCINTOSH v. JHARU MOLLA . . **I. L. R. 22 Calc. 454**

——— **ss. 42, 44 and 78**—*Land registration—Registration of share in an estate—Share in specific mouzas in an estate.* The Land Registration Act (Bengal Act VII of 1876) provides for the registration by proprietors or mortgagees of their shares in an estate, but does not make it incumbent upon them to register their shares in specific *mouzas* or other portions of land within the estate. *Parashmoni Dasi v. Nabokishore Lahiri (1903), I. L. R. 30 Calc. 773,* followed. DEOKI SINGH v. LAKSHMAN ROY (1903)
I. L. R. 30 Calc. 880

——— **ss. 52, 55.**

See JURISDICTION OF CIVIL COURT—REGISTRATION OF TENURES
I. L. R. 10 Calc. 350

——— *Effect of orders under the Act—Possession, confirmation of.* An

order made under s. 52 of the same Act has not that effect. OMBUNISSA BIBEE v. DILAWAR ALLY KHAN
I. L. R. 10 Calc. 350

——— **ss. 52, 55, 62**—*Reference to Civil Court, conditions of—"Possession," meaning of, in s. 55—Mahomedan widow—Dower, claim for—Jurisdiction—Revision by High Court, power of.* When a person alleges that he has by succession acquired an interest in an estate and is in possession of such interest, and on this basis, seeks registration of his name, if his claim is disputed by any other person, who sets up a conflicting claim in respect of the same interest, the Collector must enter into the question of possession. If he finds that possession is with the applicant and that the title set up is also proved, he may enter his name in the register. If, however, it is not proved to his satisfaction that any person is in possession of the disputed interest, he may either deter-

or fraud, she is *primâ facie* entitled, as against the other heirs of her husband, to retain possession, until her dower-debt, or any portion of it, which is due and unpaid, is paid. The jurisdiction, which the Civil Court acquires upon a reference to it under s. 55 of the Land Registration Act, is that

LAND REGISTRATION ACT (BENG. ACT VII OF 1876)—*contd.*

——— **s. 52**—*concld.*

of a Civil and not of a Revenue Court, and its decision is subject to revision by the High Court. UMATUL MEHDI v. KULSUM (1907)
I. L. R. 35 Calc. 120
s.c. 12 C. W. N. 16

——— *Co-trustee, application by, for registration—Refusal by the Revenue authorities—Civil Court's authority to direct registra-*

petent to direct the action of the Revenue authorities under the Land Registration Act, and a suit brought by the plaintiff with the object of obtaining an order from the Court, which would bring about a re-consideration of the order passed by the Revenue authorities so as to obtain the registration of the plaintiff's name as a co-trustee, is not maintainable. *Held*, further, on the construction of a compromise decree on the basis of which the suit was brought, that the plaintiff was not entitled to a declaration of his right to the possession of the trust property jointly with the defendant—his order, however, not affecting the right of the plaintiff or any one else to take action in the case of any malversation by the defendant. CHHATTRAPAT SING DUGAR v. MAHARAJ BAHADUR SINGH (1908)
12 C. W. N. 441

——— **s. 55.**

See DECLARATORY DECREE, SUIT FOR—DECLARATION OF TITLE.
12 C. L. R. 139
I. L. R. 26 Calc. 845

See EVIDENCE ACT, s. 35
I. L. R. 9 Calc. 431

See POSSESSION—EVIDENCE OF POSSESSION . . **I. L. R. 9 Calc. 431**

——— **s. 56.**

See PUBLIC SERVANT.
I. L. R. 29 Calc. 236

——— **ss. 59, 63**—*Competent Court, meaning of, in s. 59—Jurisdiction—Revision by High Court, power of.* The High Court has juris-

I. L. R. 35 Calc. 5..

LAND REGISTRATION ACT (BENG. ACT VII OF 1876)—*contd.*

———— s. 78.

See ante, ss. 42, 44 AND 78.

See ante, ss. 42 AND 78.

See BENGAL TENANCY ACT, s. 95. I. L. R. 22 Calc. 634

See LANDLORD AND TENANT—CONSTITUTION OF RELATION—ACKNOWLEDGMENT OF TENANCY BY RECEIPT OF RENT. I. L. R. 9 Calc. 517 : 2 C. L. R. 141

See LIMITATION ACT, 1877, s 22 I. L. R. 19 Calc. 760

See MERGER . I. L. R. 19 Calc. 760

1. ———— *Suit for rent by unregistered proprietor—Application for registration as proprietor.* S. 78 of the Land Registration Act, 1876, precludes a person claiming as proprietor from suing a tenant for rent until his name has been actually registered as such under the Act A mere application to be registered is not sufficient for the purpose SURYA KANT ACHARYA BAHADUR *v.* HEMANT KUMARI DEBI . I. L. R. 16 Calc. 706

DHORONIDHUR SEN *v.* WAJIDUNNISSA KHATTON I. L. R. 16 Calc. 708 note

2. ———— *Suit for arrears of rent—Unregistered proprietor—Bengal Tenancy Act (VIII of 1885), ss. 60, 61, and 62—Act XXVII of 1860, s 2—Guardians and Wards Act (XL of 1858)—Succession Certificate Act (VII of 1889), s 4—Transfer of Property Act (IV of 1882), s 131* The plaintiff sued the defendants in the Calcutta Small Cause Court for arrears of rent of certain premises in Calcutta, without having previously caused his name to be registered under the Land Registration Act (Bengal Act VII of 1876), but at the first hearing he produced the certificate of registration, which he had obtained since bringing the suit. The defendants objected that the suit [illegible]

of the Land Registration Act is that the right to the rent of an estate is in the true proprietor, [illegible]

law by obtaining registration of his name as proprietor. The case of *Dhoronidhur Sen* v. *Wajidunnisa Khatoon, I L. R 16 Calc. 708,* being a mo- [illegible]

and relating to property in Calcutta where the Bengal Tenancy Act is not applicable *Per* NORRIS, J.—The case of *Dhoronidhur Sen* v. *Wajidunnissa Khatoon,* as reported, is wrongly decided. *Held* by PETHERAM, *C.J.,* and BEVERLEY, *J.,* that on the construction of the Land Registration Act, an unregistered proprietor of an estate has no cause of act[illegible] the rent. [illegible] registration [illegible] therefore [illegible] brought whilst he was an unregistered proprietor. [illegible]

3. ———— *Suit for rent by unregistered proprietor—Transfer of proprietary right by succession.* S. 78 of the Land Registration Act, 1876, precludes a person claiming as proprietor from suing a tenant for rent unless his name has ben registered as such under the Act. It is immaterial how the transfer of proprietorship is effected, whether it is a case of transfer by purchase or a case of transfer by succession *Surya Kant Acharya Bahadur* v. *Hemant Kumari, I. L. R. 16 Calc 706,* applied. PUNUK LALL MUNDAR *v* THAKUR PROSAD SINGH . I. L. R. 25 Calc. 717

4. ———— *Registration in regard to a share—Right to receive rent.* When some out of several proprietors of an estate, who collect the rent jointly, have registered their names under the Land Registration Act, all the proprietors are entitled to join in an action for the whole rent, but a decree will be made only in respect of the rent proportionate to the share registered. Under s. 78 of the Land Registration Act, the penalty of non-registration is the forfeiture, [illegible]

GOBINDA CHANDRA PATRA *v.* ISHAN CHANDRA SINGH . . . . . 2 C. W. N. 600

5. ———— *Suit for rent, with-* [illegible] *whether maintainable by the* [illegible] ne [illegible] or [illegible] his [illegible] as [illegible] re

not registered proprietors, and had no certificate under the Succession Certificate Act. *Held,* that

LAND REGISTRATION ACT (BENG. ACT VII OF 1876)—*contd.*

——— s. 78—*contd.*

s. 78 of the Land Registration Act is not a bar to the realization of rent accruing due during the lifetime of the registered proprietor, but a suit for rent accruing due after the death of the registered proprietor is not maintainable by his representatives without having their names registered under the Land Registration Act. NAGENDRA NATH BASU *v.* SATADAL BASINI BASU . I. L. R. 26 Calc. 536
3 C. W. N. 294

See SHERIFF *v.* JOGEMAYA DASI
I. L. R. 27 Calc. 535

decided under the Bengal Tenancy Act.

6. ——— *Bengal Tenancy Act (VIII of 1885), s. 60—Right of suit—Suit for rent—Unregistered proprietor.* There is

is registered *Dhoronidhur Sen v. Wajidunnissa Khatoon, I. L. R. 16 Calc. 708,* dissented from. *Alimuddin Khan v. Hira Lall Sen, I. L. R. 23. Calc. 87,* explained and followed. *Belchambers v. Hassan Ali Mirza Bahadur 2 C. W. N. 493,* followed. ABUL KHAIR *v.* MEHER ALI
I. L. R. 26 Calc. 712

ABDUL KHAIR *v.* MEHER ALI. 3 C. W. N. 381

7. ——— *Suit for rent—Legal representative of registered proprietor—Landlord and tenant.* A suit for rent was instituted by the registered proprietor of an estate, who died during the pendency of the suit. His widow, the present plaintiff, was then substituted on the record in his place, but her name was not registered under the provisions of the Land Registration Act before the disposal of the suit in the first Court. *Held,* that, as the present plaintiff was claiming rent due to the deceased plaintiff in a representative character, s. 78 of the Land Registration Act did

8. ——— *Suit for rent—Registration not effected at time of suit—Sufficiency of registration of name before decree.* A suit for arrear of rent cannot be dismissed merely on the

explained. HAREHKRISHNA DAS *v.* BRINDABUN SHAHA . . . . . 1 C. W. N. 712

9. ——— *Suit for rent—Liability to parent—Person whose name is "required" to be registered—Want of registration at the time the suit is brought—Landlord and tenant.* The proprietor of two estates, numbered 822 and 837, died

LAND REGISTRATION ACT (BENG. ACT VII OF 1876)—*contd.*

——— s. 78—*contd.*

in September 1893. On the 7th February 1894, plaintiff No. 1 was appointed receiver of his estate

In May

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subsequent rents for the years 1893 and 1894 as well. As to the rents for the years 1891 and 1892, is was contended that plaintiff No. 1 could not recover, as he had not been registered under Act VII of 1876. *Held, per* MACLEAN, *C.J.*—That with regard to these rents plaintiff No. 1 could hardly be said to be suing either as proprietor or as manager of the estate, and that he was suing as the officer of the Court appointed to get in arrears of rent due to the registered proprietor. *Held,* further, that plaintiff No. 1 could not be regarded as a person who was "required" to be registered within the meaning of the section, as he could not be registered either before or after the death of the testator, for the testator was the registered proprietor when the arrears accrued and the estate had been sold before his death. *Held, per* MACPHERSON *J.*—That the provisions of the Act relating to registration do not apply to the case of a person who is seeking to recover rent as the representative of a deceased proprietor whose name was registered, the rent having become due during the lifetime of that proprietor. With regard to the subsequent rents for the years 1893 and 1894, it was contended that, as plaintiff No. 2 had not been registered at the time when the suit was instituted, he could not maintain the suit. *Held,* that this

f the suit.

R. 23 *Calc.*

Shaha, 1

HASSAN

W. N. 493

10. ——— *Actual registration—Order of Civil Court for registration.* The

11 ——— *Suit for rent by assignee from unregistered proprietor—Maintainability.* S. 78 of the Land Registration Act (VII B. C. of 1876) has no application to the case of a person to whom rent has been assigneed by a proprietor whose name has not been registered under the Act. SERAFAT HUSSEIN *v.* TARINI PROSAD DOBEY (1906) . . . 11 C. W. N. 141

12. ——— *Milkiat property—Entry in register of revenue-free estates—Regulation II of 1819.* There is a distinction between a *milkiat* or revenue-free estate, which is covered by an entry in the register of revenue-free estates after proceedings held under Regulation II of 1819 and a revenue-free *milkiat* estate not so

LAND REGISTRATION ACT (BENG. ACT VII OF 1876)—*concld.*

——— **s. 78**—*concld.*

entered. In respect of the latter there need be no registration under the Land Registration Act (Ben. Act VII of 1876) and the provisions of s. 78 of the Act do not apply to them. PITAMBER SINGH *v.* SUKRIM (1908) . **I. L. R. 35 Calc. 747**

——— **s. 82**—*Costs in a proceeding under Ben. Act VII of 1876—Public Demands Recovery Act (Ben. Act I of 1895), s. 7* Where, in land-registration proceedings, one party gets an order for costs against another, the Deputy Collector has no jurisdiction to make and file a certificate for the realisation of the amount of those costs under the provisions of the Public Demands Recovery Act (Ben. Act I of 1895). MAJIR BAKSH CHOWDHURY *v* SADAGAR MIA. (1903) . . . . . **7 C. W. N. 568**

——— **s. 88**

See BOARD OF REVENUE, RULES OF. **11 C. W. N. 470**

——— **s. 89.**

See LIMITATION ACT, 1877, ART. 14. **I. L. R 10 Calc. 525**

See RELIEF . **I. L. R. 10 Calc. 525**

LAND-REVENUE

See CONTRIBUTION, SUIT FOR—VOLUNTARY PAYMENT **I. L. R. 26 Bom. 437**

See DEKKHAN AGRICULTURISTS' RELIEF ACT, s. 3 . **I. L. R. 25 Bom. 244**

See EVIDENCE—CIVIL CASES—MAPS. **I. L. R. 30 Calc. 291**

See INTEREST—MISCELLANEOUS CASES—ARREARS OF REVENUE

See JURISDICTION OF CIVIL COURT—RENT AND REVENUE SUITS.

See LAND REVENUE ACT.

See LAND REVENUE CODE (BOM.).

See LIMITATION ACT, 1877, SCH II, ARTS. 120 AND 110. **I. L. R. 25 Bom. 556**

See N.-W. P LAND REVENUE ACT (XIX OF 1873).

See NORTH-WEST PROVINCES RENT ACT, s. 23 . . **I. L. R. 24 All. 465**

See PENSIONS ACT, s. 3 AND s 6 **I. L. R. 25 All. 73**

See SALE FOR ARREARS OF REVENUE

See SETTLEMENT—CONSTRUCTION. **I. L. R. 17 Bom. 407**

1. ——— **Assignment of**—*Direction by Government to holder on raiyatwari tenure to pay crop assessment to charity in lieu of direct payment by Government—Effect—Rights of*

LAND-REVENUE—*contd.*

trustees of charity—Limitation Act (XV of 1877), Sch. II, Arts. 110, 120 Prior to 1863, Government had been paying from the Public treasury R233-5-3 to the trustees of a charity (of which the plaintiffs in this suit were the present trustees) In that year, Government, in lieu of this payment in cash, directed the predecessor of defendants Nos. 1 to 4, who was the holder, on *raiyatwari* tenure, of over 5 *velis of* land, to pay the first crop assessment payable on the land amounting to R233-5-3, to the trustees of the *mutt*, instead of to the Government, and obtained from him an agreement that he would do so; and the promise appeared to have been performed. In

with its rights to such revenue Assuming the plaintiffs were assignees of Government, they could not proceed under *ss 2 and 42 of the Revenue* Recovery Act, but had only a personal claim against the persons who, but for the assignment, would have been liable to pay the revenue to Government. This claim was not a claim for rent under the Rent Recovery Act, falling within Art. 110 of Sch. II to the Limitation Act, and consequently it fell within Art. 120. KASTURI GOPALA AYYANGAR *v.* ANANTARAM THIVARI (1902) . **I. L. R. 26 Mad. 730**

2. ——— **Enhancement of assessment** —*Land-revenue in Bombay—Bombay Act II of 1876—Sale of land by Government to a purchaser assessed at a certain rate—Subsequent enhancement—Vendor and purchaser—Estoppel—Evidence Act (I of 1872), s. 115.* Certain lands in Bombay, consisting of three separate plots, were held by the Trustees of the Free Church of Scotland Mission under a grant from Government (no deed, however, being executed) for the purposes of a school for native girls No assessment was paid for a part of the land, and a

and assigns for ever, subject to a right of resumption, but without any mention of assessment Plots 2 and 3 were conveyed by Government to them, " their heirs, executors, administrators and assigns for ever," but in this case the conveyance was " subject to the payment of all taxes, rates, charges and assessments leviable or chargeable in

LAND-REVENUE—*contd.*

freehold tenure or for a nominal Government tax." The Trustees desired to accept this offer, and communications took place between them and Government with reference to it. On the 21st June, 1887, they wrote to Government stating that it was most desirable that the offer should be accepted, but that the purchaser required that the amount of assessment on the land should not exceed what ...

land would be assessed at for the purposes of the land-revenue, it being assumed that the land was of the pension and tax tenure." On the 11th ...

or of the purchaser, Mr Janardhan Gopal, to state what the assessment of the land-revenue will be and what are the rules affecting the amount of the assessment" Acting on this Resolution, Messrs. Ardesir, Hormasji & Co, as attorneys for both the Trustees and the purchaser, wrote to the Collector on the 14th July, 1887, setting forth the above Resolution, and requesting him to furnish the desired information On the 25th July, 1887, the Collector replied "I have the honour to inform you that the land will be assessed at the rate of nine pies per square yard per annum This is the rate of assessment which is charged for Government land in this locality which has been followed for the last six years" With a view to facilitate the sale by the Trustees to Janardhan Gopal, the Government on the 20th December, 1887 ...

ment, had resolved to sell the said land, and that they had agreed with the said Janardhan Gopal for the absolute sale of the same to him On the 16th January, 1888, the land was conveyed to Janardhan Gopal, the purchaser. The parties to the deed were the Trustees of the Mission, the Secretary of State, and the said Janardhan Gopal, and it recited that the Trustees had agreed for the absolute sale of the land to Janardhan Gopal, and with the consent of Government it conveyed the same to him, "his heirs, executors, administrators and ...

LAND-REVENUE—*contd.*

partition) in the plaintiff, who was Janardhan Gopal's son. Until 1899 the assessment of nine pies per square yard was paid, but in August, 1899, the plaintiff received from the Collector a notice under s. 8 of Bombay Act II of 1876 that the assessment was enhanced to six annas and six pies per square yard per annum. The plaintiff thereupon filed this suit in the Court of the Revenue Judge under s. 14 of Bombay Act II of 1876, contesting the legality of the enhancement. The Revenue Judge dismissed the suit On appeal to the High Court *Held*, reversing the decree and setting aside the order of enhancement, that the plaintiff had a right to hold the land for ever on payment of assessment at the rate of nine pies per square yard per annum, and that the Government had no right to enhance the said rate Janardhan Gopal had purchased the property out-and-out for its full value To such a purchaser the right to enhance the assessment should in all fairness have been clearly disclosed The meaning that a reasonable man would under the circumstances ascribe to the Collector's letter of the ...

conduct of Government, coupled with the statement of Government made on their behalf for the purposes of the purchase, was, under the circum- ...

to themselves an unfettered right to destroy the value of that property and practically to confiscate that which had been sold. DADOBA JANARDHAN *v.* COLLECTOR OF BOMBAY (1901)

I. L. R. 25 Bom. 714

3. —————— *Land-revenue in Bombay—Bombay Act II of 1876—Purchase of* ...

was acquired by encroachment, and was sold in ...

LAND-REVENUE—*contd.*

yard per annum. The plaintiff thereupon filed this suit under s. 14 of Bombay Act II of 1876. The Revenue Judge dismissed the suit, with costs. On appeal: *Held,* reversing the decree, that the Government had no right to enhance the assessment. The sale of plot No. 1 was expressly stated

maximum assessment without reserving to himself any right, could not now enhance the assessment. As to plot No. 3, the reasonable inference from the known facts was that the limit was fixed as in the case of plot No. 1. JETHABHOY RUTTONSEY *v.* COLLECTOR OF BOMBAY (1901)

I. L. R. 25 Bom. 752

4. ——— *Land reclaimed from sea granted in perpetuity by village officers at fixed rent—Grant adopted by Government—Money expended on land in belief that the assessment would not be enhanced—Estoppel* In 1801 the *Gávkars* (village officers) of a village, who were responsible to Government for the revenue, granted the land in suit to the plaintiff's grandfather, who undertook to keep in repair a certain embankment necessary for the purpose of protecting the village from the sea The writing given by the *Gávkars* provided that the grantee

to treat the land in question as '*Katuban*,' that is, as land held in perpetuity at a fixed rent. The plaintiff and his predecessors had improved and spent money on the land. It was assessed as '*Katuban*' until 1889, when the Survey officer gave notice to the plaintiff that it could no longer be treated as '*Katuban*' In 1897 the Collector called upon the plaintiff to pay R1,035-8-0 as

entitled to recover the sum claimed The facts of the case brought it within the equitable principle which protects one who expends money on the

I. L. R. 26 Bom. 211

5. ———
revenue Act
Settlement o
—Notice of
owner of property before assessment In the year 1884 the plaintiff acquired certain waste land from the Collector of Bombay, who granted it on the plaintiff's agreement to pay ground rent at one

plaintiff protested against the enhancement, and brought the present suit against the Collector, contending that the enhancement was illegal, first, because he had acquired the land on a permanent tenure at a fixed assessment, and, secondly, because there had been no "settlement" with him as required by Bombay Act II of 1876, inasmuch as he had received no prior notice from the Collector of the intention to enhance the assessment *Held,* (i) that there was no evidence in the case to show that the assessment had been permanently fixed; (ii) that the words "settlement of assessment" in s. 9 of the Bombay City Land-revenue Act (Bom. Act II of 1876) do not by themselves imply the necessity of prior notice to the superior holder before the assessment is enhanced: they mean no more than that when the settlement is fixed the fact shall be communicated to the superior holder VINAYAK ATMARAM *v* COLLECTOR OF BOMBAY (1901) I. L. R. 26 Bom. 339

6. ——— Local Fund cess—*Bombay Act III of 1869, s 8—Liability for Local Fund cess—*

maintenance allotted to the cadets of the ruling family. From the date of the passing of the

LAND-REVENUE—*contd.*

to the declaration prayed for. The plaintiff was not the 'superior holder of the village of Kamijala, and was not responsible for the Local Fund cess nor under any liability to pay it. The supreme holders under s. 106 of the Land-revenue Code (Bombay Act V of 1879) were the defendants as *Bhayats*, to whom the village had been granted as '*jival giras*'. They were primarily responsible to Government *Held*, also, that the plaintiff, as Chief of the State, had such an interest in the village of Kamijala as would entitle him to pay the cess to Government if there were any danger of forfeiture in consequence of non-payment by the defendants. In such a case s 69 of the Contract Act (IX of 1872) would enable him to sue for reimbursement. But in the present case it did not appear that any such emergency had arisen or was likely to arise. S 70 of the Contract Act had no

1895 as claimed in the plaint GORDHANLAL *v* DARBAR SHRI SURAJMALJI (1902)

I. L. R. 26 Bom. 504

7. ——— **Liability of lands in Kanara district to revenue**—*Maxim, "Nullum tempus occurrit regi"—Bom Act VII of 1863, s 21—Bom Reg XVII of 1827, ss. 4 and 7—Bom Act I of 1865, ss 25 and 49* The mulavargdar, a holder of land on muli tenure in Kanara, enjoys an hereditary and transferable property in the soil and cannot be ousted so long he pays the land-revenue assessed upon his land In the absence of special terms to the contrary, Government may enhance the land-revenue payable in respect of land so held. The history of the land revenue in Kanara narrated. The question of the cultivating raiyat's property in the soil considered both with reference to the Hindu and the Mahomedan law. Similarity of the mirasi, knaiyatchi, the janmakari, *the swasthyan, and the muli tenures mentioned* The rule of the Hindu and Mahomedan as well as of the English law is *nullum tempus occurrit regi* The extent to which that maxim has been restrained by legislation in the Presidency of Bombay considered. Construction of Bombay Act VII of 1863, s. 21, and Bombay Act I of 1865, ss 25 and 49 The revenue system of Akbar under Todar Mul and of Aurangzeb discussed. If there be no specific limit either by grant, contract, or law, to the right of Government to assess land for the

8. ——— **Liability to land-revenue of village of Kabilpur in district of Surat**—*Maxim "Nullum tempus occurrit regi"—Bom. Act VII of 1863, s. 21—Bom Act I of 1865, ss. 25 and 49—Bom. Reg. XVII of 1827, ss. 2 and 8.* The

jurisdiction of the Civil Courts, in the Presidency of Bombay, in matters of revenue and land assessment considered and defined. The enactments

exemption mentioned in Bombay Act VII of 1863, s 21 Whether s 2, cl 1, and s 8 of Regulation XVII of 1827, and s. 21 of Bombay Act VII of 1863

9. ——— **Exemption from assessment**—*Wanta or rent-free lands—Summary settlement—Bom Act VII of 1863—Talukhdari settlement—Bom Act VI of 1862—Right to hold wanta lands*

the talukhdar mortgaged the same lands to the

plaintiff had failed to prove that the lands were rent-free, and that he was liable to pay the assessment, and he therefore rejected the plaintiff's claim. *Held*, on appeal, that the Government was bound by the statements in its own

LAND-REVENUE—*contd.*

khardas, which admitted that part of the land was wanta, which must be regarded as meaning rent-free or tax-free land, and that it lay upon Government to prove that land so denominated was assessable, which it had failed to do; the plaintiff, therefore, as to so much of the land as was entered in the Government khardas as wanta, was entitled to hold it free of Government assessment. But as to the residue of the land in the hands of the plaintiff, and to which as against the talukhdar the plaintiff was entitled, the Court could not interfere with the rate of assessment fixed upon it by the Government. There not being any specific limit fixed by law, grant, sanad, contract, or otherwise, to the assessment of that residue for the purpose of land revenue, the Civil Courts had no jurisdiction to regulate such assessment, even if, having regard to the value of the land, it were excessive. GULAM MOHIDIN *v.* COLLECTOR OF AHMEDABAD

12 Bom. Ap. 276

See, also, GOVERNMENT OF BOMBAY *v* SUNDARJI SAVRAM . . . . . **12 Bom. Ap. 275**

10. ———— **Mode of realization**—*Bom.*

revenue, to realize it from the inferior holder. The laws for realizing the land revenue establish a kind of privity of estate between the superior and inferior holders, by which the latter, taking the profits of the land, must satisfy the obligations of the former to Government, independently of, and even in opposition to, any agreement between the two contracting parties. The liability to pay adheres to the occupation and enjoyment, and cannot be got rid of, except through its resignation by the Sovereign or the Sovereign's representatives. *Held*, accordingly, that when the person, who was the "occupant" of certain land within the meaning of the Bombay Survey Act, failed to pay the revenue due thereon, the kabuliatdar khot might recover the amount from that person's mortgagee in possession KRISHNAJI RAVZI GODBOLE *v.* RAMCHANDRA SADASHIV

I. L. R. 1 Bom. 70

11. ———— **"Farmers"**—*Bom. Reg.*

and the raiyats as possessors of the ground. RUTTONJEE EDULJEE SHET *v.* COLLECTOR OF THANNA

10 W. R. P. C. 13
11 Moo. I. A. 295

12. ———— **Assessment of revenue**—*Bom. Reg. XVII of 1821, s 3—Right of Government to enhance—Foras or foras-toka land—Proof of right to hold at fixed rate.* The plaintiff was the holder of certain land in the Island of Bombay, called foras or foras-toka land. He and his predecessors in title had held the said land for upwards of sixty

LAND-REVENUE—*concld.*

years, and had paid a certain fixed assessment to Government On the 31st July 1882, the Collector of Bombay, claiming to act under powers conferred by Bombay Act II of 1876 and under the order and with the sanction of Government contained in a Government Resolution, dated the 14th August 1879, gave notice to the plaintiff that the assessment payable in respect of the said lands was enhanced. He claimed the increased rent not merely for the future, but also for two previous years (1879-80 and 1880-81) subsequent to the date of the Government Resolution of the 14th August 1879. The plaintiff paid under protest, for the said two years, the sum of R442-8-2 in excess of his previous assessment, and now sued to recover that amount from the defendant. The plaint prayed for a declaration that there was "a right on the part of the plaintiff in limitation of the right of Government, in consequence of a specific limit to assessment having been established and preserved in respect of the said lands, to possess and hold the same at the rent or assessment hitherto paid by the plaintiff; and that the Collector of Bombay had no right to increase the plaintiff's rent or assessment beyond such specific limit; and that the defendant should be ordered to repay to the plaintiff the said sum of R442-8 2" *Held*, that no grant, contract or law emanating from Government being proved to have emanated from Government conferring on the lands in question a right to a fixed and permanent rate of assessment, the assessment on these lands was liable to enhancement *Held*, also, that the plaintiff was only liable to the enhanced rate of assessment from the time at which it was actually made by the Collector, and that he (the plaintiff) was therefore entitled to be repaid the

the assessment in respect of such lands. SHAPURJI JIVANJI *v.* COLLECTOR OF BOMBAY

I. L. R. 9 Bom. 483

LAND REVENUE ACT (BOMBAY).

See BOMBAY LAND REVENUE ACT (V OF 1879).

See LAND-REVENUE CODE, BOMBAY.

LAND REVENUE CODE (BOM. ACT V OF 1879).

See BOMBAY LAND REVENUE ACT

———— *Right to hold land*

LAND REVENUE CODE (BOM. ACT V OF 1879)—*contd.*

from the right to money or revenue, and a suit relating to the former is distinct from a suit relating to the latter. The right of an alienee of the revenue to possession of the land may survive the resumption of the grant of exemptions from liability to land revenue. The decided cases make no distinction between holdings, which an Inamdar has acquired by purchase from a kadim occupant or by lapse of prior occupancies, and the rights, which he may have obtained directly from the grant itself, to hold at his disposal lands comprised therein which at date thereof no other person had a right to occupy If the grant places land at the disposal of the alienee of the revenue, where there are no pre-existing claims to hold it, the alienee, though not an owner of the soil, *is entitled to dispose of it as he chooses* *He is* not bound to give it out to tenants, but may retain it in his own possession, and becomes the holder thereof within the meaning of Bombay Land Revenue Code, 1879; and his rights are as indefeasible so far as the right to possession is concerned as the rights of an occupant of unalienated land The right to hold land, even though it be not as proprietor of the soil, is incontestably one of which the Civil Courts can take cognizance, if not barred by statutory provision BALVANT RAMCHANDRA *v* SECRETARY OF STATE (1905)
I. L. R. 29 Bom 480

———— s. 37—————— *Khots—Khots of the whole village—Alluvions—Right of the Khot to the alluvion.* The Khots of the village of Bele [illegible]

village. The lands in question were treated for nearly a hundred years as part of the village *Held,* that plaintiffs were entitled to the right claimed and that s 37 of the Land Revenue Code (Bombay Act V of 1879) presented no bar to the same The construction to be placed on the words "are hereby declared" in a statute discussed SECRETARY OF STATE *v.* WASUDEO (1907)
I. L. R 31 Bom 456

1. ———— s. 83—*Inamdar—Grantee of Royal share of revenue or of soil—Mirasi tenant—Enhancement of rent—Sheri lands—Contractual relation—Usage of the locality—Enhancement to be just and reasonable.* A grant to an Inamdar may be either of the Royal share of revenue or of the soil; but ordinarily it is of the former description and the burden rests on the Inamdar to show that he is an alienee of the soil Where an Inamdar is alienee only of the land revenue, then his relations towards those who [illegible]

revenue or assessment; for he has no interest in the soil in respect of which rent would be paid; but if the holding be later in its origin than the Inam

LAND REVENUE CODE (BOM. ACT V OF 1879)—*concld.*

———— s 83—*concld.*

grant the lands then comprised in such holding would be the Sheri lands of the Inamdar and he would be entitled to place tenants in possession of them, even if only a grantee of revenue With respect to the latter class of holding, direct contractual relations would be established between the Inamdar *and the holder* *If no such contract* can be proved, recourse must be had to s. 83 of the Land Revenue Code (Bombay Act V [illegible]

enhance rent of Miras land, it must be determined whether what was paid was rent and whether the Inamdar has a right to enhance as against one, who holds on the same terms as the defendant does; the test is whether there has been any and what enhancement according to the usage of the locality in respect of land of the same description held on the same tenure RAJAYA *v* BALKRISHNA GANGADHAR (1905) . . **I. L. R. 29 Bom. 415**

2. ———————— *Bhagdari and Narwadari Act (Bom Act V of 1862), s 3—Fruit-yielding trees standing on a portion of a Bhag—Permanent tenancy—Annual tenancy—Construction—Obstruction to tenant in the enjoyment of trees—Permanent injunction* S 83 of the Land Revenue Code (Bom V of 1879) creates no new rights; it simply insists on the Courts adopting a better method of ascertaining whether in fact the right existed. NAHANCHAND *v.* MODI KEKHUSHRU (1906)
I. L. R. 31 Bom 183

———— s. 84—*Landlord and tenant—Annual tenancy—Determination—Notice.* An annual tenancy, to which the Land Revenue Code applies, cannot be determined under s. 84 of the Code without the notice in writing required by that section. OCHHAVLAL *v* GOPAL (1907)
I. L. R. 32 Bom. 78

LAND-REVENUE SALES ACT (BENG.) 1859.

See ACT—1859—XI.

See SALE FOR ARREARS OF REVENUE.

LAND TENURE.

See SERVICE TENURE
I. L. R. 26 Mad. 403

LAND TENURE IN BOMBAY.

———————— *Real and chattel property—Husband and wife—Agreement by husband alone for renewal of lease—"Pension and tax"—Nature of Bombay land tenures—Fergusson's Act IX Geo, IV, c 33—Act IX of 1837.* Immoveable property situated in the Island of Bombay, conveyed in 1859 to *N* and his wife (Parsis), their heirs, executors, administrators, and assigns, was subsequently mortgaged by *N* and his wife, but

LAND TENURE IN BOMBAY—*concld.*

the mortgagee did not enter into possession.

applied), might dispose, either wholly or in part,

years, the lease would, as against the wife surviving, be voidable only, and not void The proposition laid down by the Judge of the Division Court, that all immoveable property in Bombay was of the nature of chattel real, and that there was not any property of the nature of freehold of inheritance

Aungier's convention stated, and the origin of "pension and tax" in Bombay traced. The tenure of land in Bombay under the Portuguese was of a feudal character Creation and tenure of the ancient manor of Mazagon described Doctrine that the fief of the Middle Ages has sprung from the Roman tenure in emphyteusis mentioned. *Ceremonies of enfeoffment and livery of seisin in Bombay.* Statement of the circumstances which

4 Bom. O. C. 1

LAND TENURE IN CALCUTTA.

1. ———— Lands held in fee-simple—*Unattested will, devise by.* Lands in the East Indies held by a tenure of the nature of fee-simple do not pass by an unattested will, but descend to the person who would be heir-at-law in England. *A* by an unattested will devised lands to *B*. *B* received the rents, and by a will, also unattested,

the heir-

ht receive

the rents

1 Moo. I. A. 299

2. ———— Freehold land—*Unattested will, devise by.* The tenure of land in Calcutta was of the nature of freehold, and real estate would not therefore pass by an unattested will. FREEMAN *v* FAIRLIE . . . 1 Moo I. A. 305

LAND TENURE IN KANARA.

1. ———— Liability to land revenue—*Maxim "Nullum tempus occurrit regi" considered.*

LAND TENURE IN KANARA—*contd.*

The mulavargdar, a holder of land on muli tenure in Kanara, enjoys an hereditary and transferable property in the soil, and cannot be ousted so long as he pays the land revenue assessed upon his land. The question of the cultivating raiyat's property in the soil considered both with reference to the Hindu and Mahomedan laws. Similarity of the mirasi, kaniyatchi, the janmakari, the swasthyam, and the muli tenures mentioned. The rule of Hindu and Mahomedan as well as of the English law is *nullum tempus occurrit regi.* The extent to which that maxim has been restrained by legislation in the Presidency of Bombay considered. VYAKUNTA BAPUJI *v* GOVERNMENT OF BOMBAY . . . . . 12 Bom. Ap. 1

2. ———— *Nature of Kumri cultivation—Kumri assessment—Rights of vargdars—Korlaya.* The plaintiff sued to recover possession of

Kumri cultivation. As to three of the tracts of the

pepper, and farmaish, or in particular of kumri assessment, and the entry of such charge in the chitta of a vargdar muli or geni, gives to such

an increased assessment thereon Subject to these rights on the part of Government, the plaintiff claimed an absolute right to have kumri cultivation carried on within the limits specified; that he and no other had a right to cultivate and give in cultivation as rice land jungle land within those limits, and an exclusive right to cut down and dispose of timber within those limits *Held*, by GREEN, J., on the evidence, that the sanads put

LAND TENURE IN KANARA—*contd.*

such account relates Kumri assessment was in its origin an assessment upon, or having reference to the actual number of labourers employed cutting down forest, and not with reference to any particular portion or quantity of land or its produce.

kumried by his labourers, and whether or not the Government may have had, or, having had, may have ceased to have, any right to collect korlaya (tax on bill-hooks) direct from the cutters so long as kumri cultivation at all is or was carried on ; yet it has a right to stop the cultivation altogether (remitting the kumri assessment entered in the vargs) in all the forests of *North Kanara*, including those in question in the present case, not shown to be private property on some other ground than the mere entry of kumri assessment in a particular varg or number of vargs. The plaintiff's suit, therefore, which was *to recover possession of* particular tracts of

LAND TENURE IN KANARA—*contd.*

therefore, established a permanent and exclusive right to carry on kumri cultivation within the limits specified in his plaint, yet his suit, which was *directed to recover possession on the ground of* general ownership, should have been dismissed.

to be inferred, as to an extensive tract of forest, from the payment and receipt of some insignificant sum—*e g.*, a moiety of the rent realized on a small number of acres—which may most naturally be referred to rateability, or the mere participation by the State, according to an immemorial rule, in all profits arising from the land. As there must be certainty in a grant as to the area conferred, so there must be certainty as to the area, or, at least, as to identity of the object occupied, if the occupation is to raise the presumption of a grant, or of acquiescence in a definite occupation. It is not inconsistent with this principle, but rather as complementary to it, that the farther rule is accepted, that the possession and the ownership springing from possession of a farm or varg as a whole, and within the limits as to which certainty is attainable, are not prevented or destroyed by an undoubted encroachment, or by a want of certainty as to some particular plot of ground or as to the precise delimitation here or there of its proper boundary line A suit to ascertain boundaries does not imply that

LAND TENURE IN KANARA—*contd.*

prescription. Under these conditions, a true owner-

iff established any exclusive possession of, or proprietary right in, any part of the forest claimed; while the evidence showed a continued and consistent exercise, on behalf of the Government, of its proprietary right over the timber and even the firewood in the forests in dispute from the time that the assertion of the right became a matter of appreciable consequence, and that the plaintiff's family knew this, and submitted to it, and them-

ownership of Government. That ownership had not been parted with at all in the opinion of the parties most interested. If it had been parted with and become vested in the plaintiff's ancestors as an integral portion of the estate in the land which the plaintiff claimed was theirs, then the assumption and the exercise of ownership by the Government over the trees from 1841 down to the filing of the suit was itself a perpetual ouster of the family from a portion of their estate, and would constitute a complete eviction of the owner as such. If there was such an ouster proved as to the whole by a multiplicity of acts bearing on the several parts of the estate, but all referrible to the same principle or purpose, then the plaintiff had a cause of action in the nature of ejectment so soon as he was disturbed in his possession by any of these acts, in their legal nature such as to contradict and annihilate his right throughout the estate, even though their immediate physical incidence was on but particular parts of it—a

kumri cultivation, and to reclamation and disposal at his own mere will, as parts, so far as the right was concerned, of a single legal unit, the cause of action had arisen more than twelve years before the institution of the suit The plaintiff's right, so far

the advantages conferred by the grants, and on an assertion of rights which, if the grants were to be construed as the plaintiff desired, called for immediate action in the Court on his part The claim was also contradicted by a series of transactions in which the Government officers disposed, from time to time, of portions of land included within the confines of the estate which the plaintiff claimed. His

LAND TENURE IN KANARA—*contd.*

afforded by itself no certain evidence either of the place of that occupation or of its nature as temporary or permanent, as held on proprietary right, or as merely casual and precarious. It is the possibility of referring the exaction levied to some particular area, shown to have been actually and exclusively held by the taxpayer, either by extrinsic evidence, or by that of the Government accounts themselves, that makes the payment and receipt of a tax a practical assertion and admission of private owner-

one system would be necessarily regarded as contradictions of any ownership over the object on which they were exercised except that from which they spring may, under another system, be quite compatible with an ownership subsisting unimpaired side by side with the limited right to which they would be attributed. The reserve of timber

were to be exercised. As to the former point, whether the plaintiff's predecessors gained a general

1842 downwards As to the latter point, the evidence showed that the plaintiff's family

the soil had been during the same time at least uniformly asserted, and the plaintiff's suit was therefore barred by limitation. BHASKARAPPA *v.* COLLECTOR OF NORTH KANARA I. L. R. 3 Bom. 452

3. ———————— *Mula-vargdars—Power of, to raise rent of mul-gaimdar—Enhancement of assessment by Government—Power of State.* The plaintiff, who was a mula-vargdar (supe-

LAND TENURE IN KANARA—*concld.*

rior holder) of certain land situated in a village in the district of Kanara, sued to recover from the defendant, his mul-gaimdar (permanent tenant), the enhanced assessment levied on the land by Government, and the local cess. Plaintiff also claimed rent for one year The plaint alleged that the assessment had been enhanced, because of the defendant's encroachment on the adjoining land

have been acquired by encroachment, had been included in the lease Both the lower Courts allowed the plaintiff's claim with respect to the enhanced assessment and local cess, together with rent for one year On an issue being sent to the District Judge by the High Court on second appeal, it was found that defendant was in possession of land other than that which he held under the lease, that he had acquired this other land by encroachment subsequently to the date of the lease; that both the lands were entered in the plaintiff's name in the Government survey, at which the assessment on the land originally demised to the defendant was *raised to* R36-12-0 (the original assessment being R12), while the land subsequently acquired by defendant was assessed at R5 *Held*, that the plaintiff could not recover from the defendant any

also, that the defendant was liable for the local cess in respect of both the lands. It is not within the power of a Court of law, in the face of the contracts originally made between the mula-vargdars (superior holders) and their mul-gaimdars (permanent tenants), to relieve the former from the hardship caused to them by reason of the enhance-

between private persons The remedy lies rather in the hands of the Legislature RANGA *v.* SUBA HEGDE . . . I. L. R. 4 Bom. 473

See also BABSHETTI *v* VENKATARAMANA.
I. L R. 3 Bom. 154

and RAM KRISHNA KINE *v* NARSHIVA SHANBOG
I. L. R. 4 Bom. 478 note

See RAM TUKOJI *v* GOPAL DHONDI.
I. L R. 17 Bom. 54

LAND TENURE IN ORISSA.

——— **Maurasi sarvarakari tenure, the mode of succession to**—*Consent of the zamindar to the transfer of tenure.* The tenure known in Orissa as maurasi sarvarakari, although recorded in the name of a single member, is descendible to all the heirs as joint heritable property, and cannot be transferred without the consent of the zamindar BHUBAN PARI *v.* SHAMANAND DEY
I. L. R 11 Calc. 699

LAND TENURE IN SURAT.

——— **Village of Kabilpur**—*Maxim "Nullum tempus occurrit regi"* The enactments limiting the operation in the Presidency of Bombay of the maxim *nullum tempus occurrit regi* con-

the Peishwa in 1802 to the British, held by the co-sharers in it and their predecessors in title parti-

LAW, IGNORANCE OF.

See DIVORCE ACT, s. 14.
I. L. R. 20 Bom. 362

LAW OFFICERS.

——— **remuneration of**—

See COSTS—TAXATION OF COSTS
I. L. R. 17 Mad. 162

LAW REPORTS ACT (XVIII OF 1875).

——— **s. 3—Unreported judgments.** *Per* MACLEAN, *C.J.*—S 3 of the Indian Law

I. L. R. 28 Calc. 289:
s.c. 5 C. W. N. 326

LAWFUL GUARDIANSHIP.

——— **of minor married girl**—

See KIDNAPPING . 13 C. W. N. 754

LAWS LOCAL EXTENT ACT (XV OF 1874).

——— **ss. 3, 4**

See CRIMINAL PROCEEDINGS
I. L. R. 13 Mad. 353

LEASE.

LEASE—*contd.*

See ADVERSE POSSESSION.
I. L. R. 29 All. 593

See BENGAL MUNICIPAL ACT (BENGAL ACT III OF 1884) . 12 C. W. N. 50

See BENGAL PRIVATE FISHERIES PROTECTION ACT . . 6 C. W. N. 118

See BENGAL TENANCY ACT, 1885, ss. 49, 65, 153.

See CONSTRUCTION OF DOCUMENT.
I. L. R. 27 All. 190

See DEBUTTER PROPERTY.
12 C. W. N. 63

See EJECTMENT, SUIT FOR.
11 C. W. N. 661

See ENHANCEMENT . 10 C. W. N. 607

See FIRST CHARGE.
I. L. R. 31 Calc. 550

See GHATWALI TENURE 6 C. W. N. 94

See HINDU LAW—WIDOW—POWER OF WIDOW—POWER OF DISPOSITION OR ALIENATION . I. L. R. 28 Calc. 532
I. L. R. 30 Calc. 990

See ILLEGAL CESS.
I. L. R. 31 Calc. 834

See ISTEMRARI TENURE.

See KABULIYAT.

See LAMBARDAR AND CO-SHARER.
I. L. R. 29 All. 20 ; 554

See LANDLORD AND TENANT—LEASE.

See LANDLORD AND TENANT.
I. L. R. 29 Bom. 323
9 C. W. N. 97 ; 387

See LIMITATION . I. L. R. 32 Calc. 169

See MORTGAGE . I. L. R. 27 All. 313

See NOTICE TO QUIT
I. L. R. 32 Calc. 123

See PERMANENT TENURE.

See RECEIVER . 12 C. W. N. 1023
I. L. R. 36 Calc. 52

See REGISTRATION ACT, s. 17, CL. (*d*).

See RIGHT OF OCCUPANCY.
11 C. W. N. 397

See SALT ACT (BOM. II OF 1890), ss. 11, 47 . . I. L. R. 33 Bom. 636

See SPECIFIC PERFORMANCE.
I. L. R. 27 All. 696

See STAMP ACT (I OF 1879), s. 7.
I. L. R. 26 Mad. 473

See STAMP ACT, 1879, SCH. II, ART. 13.
I. L. R. 6 Bom. 691
I. L. R. 5 All. 360
I. L. R. 15 Bom. 73
I. L. R. 18 Bom. 546

See STAMP ACT (II OF 1899), s. 5, AND SCH. I, ART. 35 . I. L. R. 25 Mad. 3

See TANK . . 8 C. W. N. 804

See TRANSFER OF PROPERTY ACT, s. 50.
I. L. R. 33 Bom. 96

See TRANSFER OF PROPERTY ACT, ss. 106, 116 . . 8 C. W. N. 901, 904

See TRANSFER OF PROPERTY ACT, s. 107.
I. L. R. 26 All. 368
I. L. R. 27 All. 136

———— agreement collateral to—

See EVIDENCE—PAROL EVIDENCE—VARYING OR CONTRADICTING WRITTEN INSTRUMENTS . L. R. 29 I. A. 138

———— agreement for—

See REGISTRATION ACT, s. 17.
3 B. L. R. Ap. 1
7 B. L. R. Ap. 21
10 W. R. 177
12 W. R. 394
17 W. R. 509
I. L. R. 10 Bom. 101
I. L. R. 7 Calc. 703, 708, 717
I. L. R. 9 Calc. 865
21 W. R. 315 : L. R. 1 I. A. 124

See STAMP ACT, 1879, SCH. I, ART. 4.
I. L. R. 17 Calc. 548
I. L. R. 17 Mad. 280

See STAMP ACT, 1879, SCH. I, ART. 5.
I. L. R. 13 Bom. 87

———— agricultural—

See REGISTRATION ACT, s. 17 CL. (*d*).
I. L. R. 24 Mad. 421

———— boundaries—

See LANDLORD AND TENANT.
13 C. W. N. 702

———— breach of conditions in—

See LANDLORD AND TENANT—FORFEITURE—BREACH OF CONDITIONS.

See BENGAL RENT ACT, 1869, s. 52 (ACT X OF 1859, s. 78).

———— building—

See LANDLORD AND TENANT.
13 C. W. N. 513

———— by Hindu widow—

See HINDU LAW—WIDOW
I. L. R. 34 Calc. 329

———— by morgagee to mortgagor—

See TRANSFER OF PROPERTY ACT, ss. 67, 111, 116 . I. L. R. 31 All. 318

———— by transferor under transferee—

See OCCUPANCY HOLDING.
13 C. W. N. 220

LEASE—*contd.*

——— cancellation of—

See Bengal Rent Act, 1869, s 52 (1857, s. 78).

See Co-sharers—Suits by Co-sharers with respect to the Joint Property—Rent . I. L. R. 4 Calc. 96

See Declaratory Decree, Suit for—Suits concerning Documents L. R. 29 I. A. 203

——— exchange of leasehold rights—

See Transfer of Property Act, s 118 6 C. W. N. 905

——— for a term of years—

See Limitation Act, 1877, Sch. II, Art. 139 . I. L. R. 31 All. 514

——— granted while lessor is out of possession.

See Transfer of Property.

——— in perpetuity—

See Lease . I. L. R. 36 Calc. 675

——— power to grant—

See Hindu Law—Widow 13 C. W. N 201

——— renewal of—

See Landlord and Tenant. 13 C. W. N 595

——— unregistered, non-validity of—

See Compromise—Compromise of Suits under Civil Procedure Code. 7 C. W. N. 90

1. CONSTRUCTION.

1. ——— Rule for construction—*Na-*

possession given by the grantor and accepted by the grantee. Janokee Nath Dutt *v* Mahomed Ismail 22 W. R. 285

2. ——— Uncertainty as to amount of rent—*Madras Rent Recovery Act, s. 4* An agreement in a pottah to pay whatever rent the landlord may impose for any land not assessed, which the tenant may take up, is bad for uncertainty Ramasami *v.* Rajagopala . I. L. R. 11 Mad. 200

3. ——— "Projah," meaning of—*Status of tenant.* The word "projah" does not define the status of a tenant. Kedarnath Mitter *v.* Sookoomaree Debia . 22 W. R. 398

4. ——— "Karindah," meaning of—"*Nij-jote,*" *meaning of—Status of tenant.* The word "karindah," as used in a pottah, was held to

LEASE—*contd.*

1. CONSTRUCTION—*contd.*

be merely a term used to set forth what the status

lands held by the zamindars in their own possession or their own private lands Wajoodeen Hossein *v* Madhoo Chowdhry . . 17 W. R. 404

5. ——— "Abadkari talukhdari," meaning of—*Effect on talukhdari right of accepting farming leases* Construction of the term "abadkari talukhdari" in a lease explained. Neither the acceptance of farming leases by the talukhdar *qua* farmer, subject to the Government proprie-

jee *v.* Byhrub Chunder Mojoomdar 8 W. R. 391

6. ——— Lease to commence in future—*Temporary lease.* An instrument which is in terms a temporary lease is as binding on the lessor *qua* lease, where the tenancy is to commence at a future day, or on the determination of an existing lease under which another lessee is in possession, as where it commences immediately. Pitchakutti Chetti *v.* Kamala Nayakkan . 1 Mad. 153

7. ——— Duration of lease—*Lease where no term is specified* Where no term is mentioned in a lease it may be either a tenancy terminable at the end of every year, or one for the life of the tenant, according to the terms of the lease. Watson *v.* Dost Mahomed Khan . 2 Hay 4

8. ——— *Lease of land for building purposes without term—Liability to ejectment* Where land is given to a lessee for the purpose of building a house to live in, without any term being fixed for the tenancy, the tenure of house and land cannot be taken away from the lessee's heir or his vendee so long as he continues to pay the rent assessed on it. Juhooree Lall Sahoo *v* Dear . . . . 23 W. R. 399

9. ——— *Lease for specified term where no provision for continuance is used.*

seven years contains no words to import a continu-

LEASE—*contd.*

1. CONSTRUCTION—*contd.*

construction is contrary to the Hindu law, or the

[illegible]

damages for the time they were deprived of the beneficial enjoyment of the farm, according to the increased rent which the new lessee had undertaken to pay TEJ CHUND *v.* SREE KANTH GHOSE **6 W. R. P. C. 48: 3 Moo. I. A. 261**

10. ———— *Construction of lease as to the inheritance of it by the heir on the lessee's death* An ijara for one hundred and twenty-five years granted to a wife stated that it was for the performance of pious acts by her, and that on her death her sons were to take. Her only son died before her, leaving a son. *Held*, that the construction that the grandson inherited the term on the death of the lessee was correct. *Tej Chund Bahadoor* v *Srikanth Ghose, 3 Moo. I. A. 261*, referred to. GOBIND LAL ROY *v.* HEMENDRA NARAIN ROY CHOWDHRY . **I. L. R. 17 Calc. 686**

11. ———— *Tenancy year by year.* A tenancy which is to continue year by year is a continuing tenancy so long as the parties are Satisfied; and though terminable at the option of either party at the end of any year is not *ipso facto* terminated at the end of every year. MALODDEE NOSHYO *v* BULLUBBEE KANT DHUR **13 W. R. 190**

12. ———— *Tenancy from*

[illegible]

on account of cesses," do not create a permanent tenancy, but only a tenancy from year to year. GUNGABAI *v.* KALAPA DABI MUKRYA **I. L. R 9 Bom. 419**

13. ———— *Lease from year to year—Mode of determining tenancy.* In a suit

[illegible]

plaintiff on a specified yearly rent, and promised to pay the same yearly, proceeded as follows: "If

[illegible]

second sarkhat, after reciting that the executants had taken the land from the plaintiff on a yearly rent specified for six years, and promised to pay the same year by year, proceeded thus: "And if the said Shaikh wishes to have the land vacated within the said term, he shall first give us fifteen days' notice, and we will vacate it wthout objection." The lower Courts held that the sarkhats were not admissible in evidence, as they required registration [illegible]

[illegible]

the effect that at any time, at the will of the lessor, the lessees were to give up the land at fifteen days' notice, governed all the previous clauses, and the defendants could be asked to quit at any time before the lapse of the term at fifteen days' notice. KHUDA BAKHSH *v* SHEO DIN . **I. L. R. 8 All. 405**

14. ———— *Right of occupancy—Permanent cultivator—Paracudi.* The defendant's ancestors or predecessors in title were the

[illegible]

managed the temple, whereby they agreed among other things to pay certain dues. They were described in the muchalka as paracudis In 1857, the plaintiff's predecessors took over the management of the temple from, and executed a muchalka to, the Collector whereby he agreed, among other things, not to eject the raiyats as long as they paid kist. In 1882 the dues (which were payable separately) having fallen into arrear, the manager of the temple

[illegible]

Krishnasami v. *Varadaraja, I L R. 5 Mad 345*, discussed and distinguished. THIAGARAJA *v.* GIYANA SAMBANDHA PANDARA SANNADHI **I. L. R. 11 Mad. 77**

15. ———— *Permanent ijara lease—Right of heirs of demisee* A fixed permanent ijara pottah confers no rights on the heirs of the demisee. RAJARAM *v.* NARASINGHA **I. L. R. 15 Mad. 199**

16. ———— [illegible]

[illegible]

v. BABAJI . . **I. L. R. [illegible]**

[illegible]

land in which the tenant had already a [illegible] The

[illegible]

LEASE—*contd.*

I. CONSTRUCTION—*contd.*

the date of the pottah and also less than that payable upon neighbouring lands of similar quality and description *Held*, that the facts of the case were distinguishable from those of *Rajaram v Narasingha, I. L R. 15 Mad 199*, and that the pottah fixing the rent was binding upon the representatives in title of the grantor and the grantee, respectively FOULKES v MUTHUSAMI GOUNDAN

I. L. R 21 Mad. 503

18. ——— ——— ——— *Permanent tenancy only modifiable by revision of rent—Right of ejectment—Exclusion of lessor's right of terminating lease.* Ejectment by landlord against tenant It appeared that the land in dispute was the property of a muttum of which the plaintiff was the trustee, and had been let to the defendant's father under a muchalka (Exhibit A), dated 14th August 1837, entered into with the Collector, the manager of the property on behalf of the Government The tenancy continued to be regulated by his agreement until plaintiff, in 1867, demanded an increased rent, which the defendant refused to agree to pay Upon that demand and refusal the plaintiff, at the end of the

agreement *Held*, by SCOTLAND, *C.J*, upon the construction of the muchalka, that the plaintiff possessed the absolute right to put an end to the tenancy at the end of the Fasli, unless the condition relied upon by the appellant was by force of established general custom (which had not been alleged) or positive law made a part of the contract of tenancy. that neither the Rent Recovery Act nor the Regulations operated to extend a tenancy beyond the period of its duration secured by the express or implied terms of the contract creating it, and that therefore the plaintiff had a right to eject the defendant at the end of a Fasli By HOLLOWAY, *J* That whether the express contract was binding on the pagoda or not, it gave no right to hold permanently, and that there is nothing in any

19. ——— *Permanent tenancy on continuing to pay rent.* Suit to recover the proprietary right in a village belonging to plaintiff's muttah, which was let to defendant's father under a pottah and muchalka, and which on the death of her father and since the defendant refused to surrender, upon the grounds (i) that the right had been leased permanently, subject to the regular payment of the stipulated rent, which condition had been strictly fulfilled : (ii) that her father had expended large sums in making substantial permanent improvements in the village, and that he had by gift transferred the tenancy to her *Held*, that, on the true construction of the terms of the pottah and muchalka, only a tenancy from Fasli to Fasli was created. Neither Regulation XXX of 1802 nor Madras Act VIII of 1865 operated to make a tenancy

Vythealinga Pandura Sunnady, 6 Mad 164, followed FOULKES v RAJAHRATHNA MUDALI

6 Mad. 175

20. ——— **Lease of jungle lands**—*Continuous possession—Commencement of lease* In a lease which provides for rent-free possession for twelve years, the rent-free possession contemplated does not necessarily date from the year of the lease so that in a suit more than twelve years after the granting of the lease the lessee is entitled to plead that he has not yet had possession rent-free for twelve years BHARUT CHUNDER ROY v ISSUR CHUNDER SIRCAR . . 2 W. R. Act X, 78

21. ——— **Death of lessee, effect of**—*Lease not limited to life of lessee.* Any leasehold estate, when not expressly limited to the life of the lessee, passes to his heirs in the same way as other property, and if the heirs take the estate of the deceased lessee, they take it with all rights and responsibilities. DANOOLLAH v AMANUTOOLLAH

16 W. R. 147

RADHA KISHORE ROY v SITTOO SIRDAR

24 W. R. 172

22. ——— *Lease at will of lessee* A lease of land, whereby the lessee is given the power of holding the land as long as he pleases, is determined by the death of the lessee. VAMAN SHRIPAD v MAKI . I. L. R. 4 Bom. 424

23. ——— **Death of lessor or lessee**—*Lease for term of years—Joint liability of lessees.*

whether the lessees in this case were jointly as well as severally liable :—*Held*, that the terms of the lease indicated that the liability of the lessees was intended to be several, but equal in extent. BADRINATH v. BHAJAN LAL . I. L. R. 5 All. 191

24. ——— **Extension of term for which lease is granted**—*Leave to remain till called on to vacate.* A provision in the lease that the tenant might after six months remain in occupation at a monthly rent till called on to vacate does

LEASE—*contd.*

1. CONSTRUCTION—*contd.*

not extend the term for which the lease is granted. MORA VITHAL *v.* TUKARAM VALAD MALHARJI
5 Bom. A. C. 92

25. ———— Tenancy at will—*Agreement to pay rent—Custom—Notice to quit.* An agreement to pay rent in the ordinary form of muchalka given by tenants from year to year already in possession is not a lease. A tenancy from Fasli to Fasli is not a tenancy at-will, but a tenancy from year to year. In the absence of custom to the contrary, no tenant from year to year in this country can be ejected without being served at a reasonable time beforehand with a notice to quit at the period of the year at which the tenancy commenced. ABDULLA RAWUTAN *v.* PAKKERI MOHOMED RAWUTAN
I. L. R. 2 Mad. 346

26. ———————— *Suit for ejectment.* Disputes arose between the Government and an adjacent proprietor, *M S*, respecting a piece of alluvial land gained by accretion of which *M S* was then in possession The Government required the land for public improvements After some cor-

neighbourhood having been made by Government and *M S* being dead, notice to quit was served on his representatives, who refused to quit, on the ground that the improvements were not such public improvements as were contemplated by the corres-

the action ANUNDOMOHEY DOSSEE *v.* DOE D EAST INDIA COMPANY
8 Moo. I. A. 43 : 4 W. R. P. C. 51

27. ———— Lease to widow—*Re-marriage and death of widow—Right of second husband to possession.* Upon the death of a tenant under a jaghirdar, his widow passed a kabuliat agreeing to hold the land on the same terms as her late husband

plaintiff had no right to recover possession, and his wife had merely a personal interest in the holding, which ceased upon her death KAMALUDDIN HUSEN KHAN *v* BHIKA MANJI 4 Bom. A. C. 49

LEASE—*contd.*

1. CONSTRUCTION—*contd.*

28. ———— Provision for renewal—*Suit for possession—Stipulation as to duration.* Where, upon a consideration of the terms set forth in the lease, it was found to be a stipulation that the jote was not to terminate *ipso facto* with the conclusion of the ijra, but that it was open to the parties to make a fresh agreement in respect of the land, upon the quantity and rents being measured and assessed, in accordance with the productive power of the land :—*Held*, that the plaintiff was entitled to a decree for

v BINNY (JARDINE, SKINNER & Co)
25 W. R. 347

29. ———— Nature of grant— *Intention of parties—Estate for life or inheritance.* In order to determine the question whether a pottah granted by a zamindar conveyed an estate for life only or an estate of inheritance :—*Held*, that it was necessary to arrive, as well as could be done, at the real intention of the parties, to be collected chiefly from the terms of the instrument, but to a certain extent also from the circumstances existing at the time, and further by the conduct of the parties since its execution. WATSON & CO. *v.* MOHESH NARAIN ROY
24 W. R. 176

30. ———— Words conveying right to hold at fixed rates. It is not absolutely necessary that any particular form of words should be used in conveying rights to hold at fixed rates. UNNODA PERSHAD BANERJEE *v.* CHUNDER SEKHUR DEB . . . . . . 7 W. R. 394

AFSAR MUNDUL *v.* AMEEN MUNDUL
8 W. R. 502

KAILAS CHANDRA ROY *v.* HIRALAL SEAL. FAKIR CHAND GHOSE *v.* HIRALAL SEAL
2 B. L. R. A. C. 93 : 10 W. R. 403

31. ———— Hereditary lease—*Continuance of lease dependent on continuance of superior*

32. ———— *Pottah for building purposes—Omission of words defining grant.*

HARY ROY *v* MASSEYK 15 W. R. 484

33. ———————— *Absence of words of inheritance in pottah.* A pottah must not, *primâ*

LEASE—contd

1. CONSTRUCTION—contd.

facie, be assumed to give an hereditary interest,

34. ——————— *Absence of words fixing rent—Lease for building purposes.* Where a pottah recited that the rent was to be paid from father to son, who were to occupy the land and built a house thereon, although there were no formal words to the effect that the rent was never to be changed, the fixed character of the rent was presumed from long and uninterrupted enjoyment and the descent of the tenure to the present occupant. PEAREE MOHUN MOOKERJEE *v* RAJ KRISTO MOOKERJEE 11 W. R. 259

35 ——————— *Istemrari—Hereditary tenure.*

by evidence of long and uninterrupted enjoyment, and of the descent of tenure from father to son, whence that hereditary and istemrari character might be legally presumed SATYA SARAN GHOSAL *v.* MAHESH CHANDRA MITTER 2 B. L. R. P. C. 23: 12 Moo. I. A. 63 11 W. R. P. C 10

36. ——————— *Long uninterrupted enjoyment—Onus probandi* To rebut the evidence afforded by long uninterrupted enjoyment, and the descent of the tenure from father to son, it lies upon the party asserting the holding to be from year to year only and determinable at will to prove such assertion DEEN DYAL SINGH *v* HEERA SINGH . . . 2 N. W. 338

37. ———————Although a pottah purported to be a grant only to the particular person to whom it was made, yet as it passed from father to son, and son to grandson, and possession was taken under it and continued from between 75 and 80

NATH ROY . . 24 W. R 301

38. ——————— *Assessment, right of—Assessment in perpetuity* Where a lease of lands to be reclaimed from the sea by the lessee,

LEASE—contd.

1. CONSTRUCTION—contd.

increasing at the rate of ¼ of a rupee per bigha

10 Bom. 216

39. ——————— *"Talukh," meaning of* The word "talukh" imports a permanent tenure, and where a chitta describes the land to which it relates as a "talukh," the presumption, in the absence of any evidence to the contrary, is that it implies a permanent interest. KRISHNO CHUNDER GOOPTO *v.* MEER SAFDUR ALI . 22 W. R. 326

40 ——————— *Meaning of tubahali bundobust sircar.* A pottah, under the ordi-

41. ——————— *Mokurari istemrari—Hereditary right* The words "mokurari istemrari" contained in a pottah must be taken in themselves to convey an hereditary right in perpetuity LAKHU COWAR *v* ROY HARI KRISHNA SINGH . 3 B. L. R. A C. 226: 12 W. R. 3

MUNRUNJAN SINGH *v.* LEELANUND SINGH 3 W. R. 84

LEELANUND SINGH *v* MONORANJAN SINGH 5 W. R. 101

42. ——————— *"Mokurari istemrari" Quære* Whether, in the absence of any usage, the words "mokurari istemrari" mean

43. ——————— *Perpetual lease —Suit for enhancement of rent* A zamindar in the

enhancement of rent:—*Held*, that the pottah was a

LEASE—*contd.*

I. CONSTRUCTION—*contd.*

hereditary lease fixing the rent in perpetuity, and that it was binding on the representatives of the grantor. KARUNAKAR MAHATI *v* NILADHRO CHOWDHRY . **5 B. L. R. 652 : 14 W. R. 107**

44. ——————— *Mokurari—Words of inheritance.* In 1798 a mokurari pottah of a portion of a zamindari was granted to *A* at a consolidated jama of R6 for the term of four years,

stances under which it was made, and the intention of the parties. SHEO PERSHAD SINGH *v.* KALI DASS SINGH . **I. L. R. 5 Calc 543 : 5 C. L. R. 138**

In the same case on appeal to the Privy Council —*Held*, that word "mokurari" does not necessarily

zamindari, without words of inheritance On the death of the grantee, who brought the land under cultivation and died in possession many years after, the question arose whether the pottah was for life or for a heritable and transferable estate. *Held*, that, there being in the pottah no words importing

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v. CHLOPERSHAD SINGH

I. L. R. 8 Calc. 664 . L. R. 9 I. A. 33
11 C. L. R. 215

45. ——————— *Construction of pottah as to duration—Use of the word "mokurari."* A ghatwali estate having been sold for arrears of revenue, the purchaser brought suits to set aside under-tenures, and in so doing sued a tenant, who alleged himself to be a ghatwali. The latter

LEASE—*contd.*

I. CONSTRUCTION—*contd.*

compromised the suit, receiving a mokurari pottah not containing any words importing an hereditary interest. *Held*, that the above circumstances were no ground for declining to give effect to the pottah as it stood, the word "mokurari" not importing inheritance. PERMESWAR PERTAB SINGH *v.* PADMANAND SINGH . **I. L. R. 15 Calc. 342**

46. ——————— *Meaning of the words "istemrari mokurari" in connection with grant of lands—Intention of parties* The words "istemrari mokurari" in a pottah granting land do not of themselves denote that the estate granted is an estate of inheritance. Not that such an estate cannot be so

words, such

'naslan bad

Without the

ment, the circumstances under which it has been made, or the conduct of the parties, may show the intention with sufficient certainty to enable the Courts to pronounce the grant to be perpetual; the above words not being inconsistent therewith,

question was whether the intention of the parties that the grant should be perpetual had, or had not, been shown with sufficient certainty in any other way,—*e.g.*, by the other terms, by the objects or circumstances, of the grant, or by the acts of the parties And held that in the present case the intention was so shown. TULSHI PERSHAD SINGH *v* RAMNARAIN SINGH

I. L. R. 12 Calc. 117 : L. R. 12 I. A. 205

47. ——————— *Istemrari pottahs—Hereditary title—Construction of pottah* In an instrument described as a perpetual lease (pottah istemrari) the lessor covenanted as follows:

that it may be used when needed." Upon the death

as to create an estate of inheritance in the lessee; that the words "so long as the rent is paid I shall have no power to resume the land" did not show any meaning or intention that the lease was to be in perpetuity; and that the defendant (even

LEASE—contd.

1. CONSTRUCTION—*contd.*

GAYA JATI *v.* RAMJIWAN RAM
I. L. R. 8 All. 569

48. ——— *Lease containing words of inheritance not inalienable—Khoti Act (Bom.) I of 1880, s. 9.* The khots of the village of *A* in 1854 leased certain land to *B* by a lease which declared that "you (*B*) are to enjoy, you and your sons, grandsons, from generation to generation." The rent fixed by the lease was eleven maunds and six and a-half pallis of bhat per year. *B* having died, his widow in 1878 transferred the lease to the plaintiff, who entered into possession and offered to pay to the defendants, who were khots of the village and the successors of the grantors of the lease in 1854, the annual rent fixed by the lease. The defendant refused to accept it and contended that the plaintiff was liable to pay the rent paid by other occupying tenants in the village The plaintiff thereupon sued to have it declared that he was entitled under the lease to hold the lands permanently at the rent thereby fixed. *Held*, by the High Court, that he was entitled to the declaration. The lease was one to hold in perpetuity at the fixed rent, but there were no words making the lease inalienable There was no

I. L. R. 13 Bom. 378

49. ——— Amount of land leased—*Boundaries—Estimated area* In order to ascertain what land is actually leased, it is necessary to look to the boundaries mentioned in the lease and not to the estimated area ABDOOL MANNAH *v.* BAPODA KANT BANERJEE . . . . . 15 W. R. 394

50. ——— *Boundaries—Estimated area* Where a pottah purports to convey so many bighas of lands "more or less" within certain boundaries, the test of what is really conveyed is not the area of the land, but its boundaries SHEEB CHUNDAR MAHNEEAH *v* BROJONATH ADITYA 14 W. R 301

51. ——— *Ascertainment by measurement—Provision for rate of rent* Plaintiff let to defendant a quantity of land, of which he was

by effecting a measurement within six months, until which time defendant should pay a provisional jama at 12 annas a bigha on a given number of bighas, amounting to a specified sum. Plaintiff sued for arrears of rent, no measurement having taken place though years had elapsed. *Held*, that, until ascertainment by measurement of a settled jama, the rent due under the terms of the pottah would be the provisional sum mentioned above; but if the delay in such ascertainment were due to default of plaintiff, defendant would be entitled to set up the state of things which he believed would be arrived at if measurement were effected. BHARUTH CHUNDER ROY *v* BEPIN BEHAREE CHUCKERBUTTY
9 W. R. 495

52. ——— *Excess land, rent*

rent on the entire quantity of land *Held*, that *B* was liable to pay rent for the excess at the rate of R1 a bigha, and that the tender of a pottah by *A* to *B* was not necessary. RADHIKA PROSUNNO CHUNDER *v.* NEHALEE CHURN DEY . . 15 W. R. 410

53. ——— Grant at fixed annual rent—

rary interest, but which lands were included in the pottah The bheel bhuruttee lands were afterwards resumed by Government under Bengal Regulation II of 1819, and assessed separately from the zamindari, the jama being paid by the lessee for a period of nine years *Held*, in a suit brought by the lessees against the lessor's representative for remission of the rent paid on the resumed lands, out of the fixed annual rent, that by the terms of the pottah the bheel bhuruttee lands were not included in the fixed annual rent PRANNATH CHOWDRY *v* SURNOMOYE DOSSEE . . . . 9 Moo. I. A. 431

54. ——— Covenant in lease to grant a new lease—*Subsequent lease without covenant for renewal* *Held*, by the Court of first instance, and confirmed on appeal, that a covenant in a lease

NOYLALL DUTT . . . . . 2 Hyd 21

55. ——— Stipulation to renew lease —*Re-letting—Holding over* Where a kabuliat

LEASE—*contd.*

1. CONSTRUCTION—*contd.*

shall not be entitled to erect any permanent building or to excavate a tank: *Held*, that under these stipulations the landlord was not bound to re-let the land to *A* at the close of the term of the lease. *Held*, also, that the fact of his allowing the tenant to hold over did not affect the landlord's right to resume possession after due notice. FUKEEROONISSA BEGUM *v.* CHUNDER MONEE DOSSEE

12 W. R. 538

56. ———— **Covenant for renewal**—*Ambiguous covenant—Right to remove soil and open mines—Interpretation by acts of the parties—Estoppel—Confirmation—Land Acquisition Act, X of 1870.* A lease for ninety-nine years made in 1794 by the East India Company to *W* contained a covenant that the said Company, upon application of the heirs, executors, administrators, and assigns of the said *W*, would re-grant and renew the said lease thereby made "on the terms and conditions above mentioned," etc *Held*, that the above covenant was not a covenant for perpetual renewal of the lease, but [illegible] The above [illegible] ors, ad- [illegible] "*with* [illegible] *en and* [illegible] *his own occupation or possession.*" It was contended that this clause, if not on the face of it granting the right to remove and sell the soil, was, at all events, ambiguous, and had been interpreted by the subsequent conduct of the parties themselves, who had always recognized the right of the holders of the lease to the soil and stones of the land in question. It appeared that in 1864 the holders of the lease had permitted the E Company to enter upon the land and to remove the earth and stones of the hill for purposes of reclamation; and that on May 10th, 1870, an indenture had been executed to which the Secretary of State, the E. Company, and all persons interested in the lease were parties, which indenture recited the above facts and contained mutual releases by the persons interested in the lease, the E Company, and the Secretary of State in respect of any claims that might be made against any of them on account of the excavation of the said hill and the removal of the earth and stones therefrom The said indenture also contained a confirmation, by the Secretary of State, of the lease of 1794 A schedule to the indenture described the property comprised in the lease and specified (*inter alia*) the "quarries situated at Bhandarvada Hill." *Held*, that the words of the lease of 1794 were not ambiguous, and gave no right to remove the soil and stones, and that the acts of the parties could not be admitted to affect the cons- [illegible] *poranea expositio*" Even if the words quarries or mines had been used in the lease of 1794, they would have given no right to work quarries or mines other than those open when the tenant came in, which moreover he might have worked in the absence of such words. To allow the opening of new quarries or mines, an express power to that effect must be given *Held*, also, that the Secretary of State was not estopped by the indenture of May 10th, 1870, from disputing the claimant's right to remove the soil and stones. The claimant's position had not been altered so as to make it inequitable in the Secretary of State now to assert his claims under the lease *Held*, also, that the indenture of May 10th, 1870, did not operate as a fresh demise of the premises in their condition at the date of the indenture. A confirmation does not operate so as to make [illegible]

57. ———— **Kabuliat, construction of**—*Stipulation as to rent of new chur—Hawaladari tenure—Measurement and assessment of chur land—Landlord and tenant—Beng. Act VIII of 1869, s 14* A kabuliat, executed by the tenant of land held in hawala tenure, provided that on an adjoining chur becoming fit for cultivation the whole land, old and new, held by the tenant should be measured, and the old having been deducted from the total, rent should be paid for the excess [illegible] settled with others Such a chur having been formed, the zamindar measured without notice to, and in the absence of, the hawaladar. He then served a notice on the latter requiring him to execute a kabuliat within fifteen days for payment of a fixed rent upon the excess land as found by the measurement, or to yield up possession. Disregard of this led to a suit in which the zamindar claimed either khas possesion or rent on measurement by order of Court *Held*, that neither the kabuliat nor the terms of s. 14 of Bengal Act VIII of 1869 precluded a suit for assessment of the rent upon measurement; nor did the absence of authentic measurement as prescribed by the kabuliat have that effect, or affect the measurement by the Amin; but that, until both the measurement and the assessment of the rent had taken place (which might be either in the manner prescribed or by judicial termination) the zamindar could not put the hawaladar to his choice between (*b*) executing a kabuliat for the rent and (*c*) yielding up possession. RAMKUMAR GHOSE *v.* KALIKUMAR TAGORE . **I. L. R. 14 Calc. 99**

L. R. 13 I. A. 116

58. ———— **Provision for indigo concern passing into hands of others**—*Assign-*

LEASE—*contd.*

1. CONSTRUCTION—*contd.*

ment of lease from two joint lessees to one of them. *N* and *D*, having taken a lease of certain lands, jointly give a kabuliat, agreeing that if within the term of the lease they die, or if in any other way the concern passed into the hands of others, then their heirs, or those who would succeed to their rights, would pay the rent. After the kabuliat was given *N* made over his interest in the lease to *D*. *Held*, that, in passing from *N* and *D* to *D* alone, the lease had passed into the hands of "others" within the meaning of the kabuliat, and that *D* occupied the position of the persons contemplated by the terms "those who will succeed to our rights" BHOBANEE CHUNDRA MITTRA *v* MACNAIR 10 W. R. 464

59 ——— **Joint lease**—*Joint liability for rent* When a lease is granted jointly to two tenants, both are jointly liable for the rent due under the lease, and one of them cannot divide this joint liability. JOGENDRA DEB ROY KUT *v* KISHEN BUNDHOO ROY . . . . 7 W. R. 272

ROOPNARAIN SINGH *v.* JUGGOO SINGH 10 W. R. 304

BHOLANATH SIRCAR *v* BAHARAM KHAN 10 W. R. 392

GOUR MOHUN ROY *v.* ANUND MUNDUL 22 W. R. 295

60. ——— *Definition of right of each lessee in pottah—Separation of tenures* The fact that at the foot of a pottah the right of each lessee was defined was held not to bind the lessor to recognize each part as an independent and separate tenure, and the subsequent separate payments of rents by the tenants was held not to vary the nature of the tenure BULORAM PAUL *v* SUROOP CHUNDER GHOOHO . 21 W. R. 256

61. ——— **Lease of jungle lands**—*Suit alleging interruption of lease to cut trees, etc—Form of lease.* Where an application for a lease for farm- [illegible]

A lessee who sues, alleging that there has been an interruption to his lease to cut or sell the trees on [illegible]

62. ——— **Lease of jungle lands by Government**—*Right to cut timber* Where jungle land was let by Government to a tenant for the express purpose of being brought into cultivation, and the lease contained no reservation of the rights of the Government in respect of the cutting of timber trees, the Court held that the parties contemplated that the cutting of such trees by the tenant would be necessary for carrying out the purposes of the lease KOTEN RAM DOSS *v* COLLECTOR OF SYLHET . . 22 W. R. 523

63. ——— **Breach of covenant not to injure trees**—*Construction of kabuliat* A kabuliat on which the tenant undertook to preserve certain trees in a jungle and not to injure them in any way, providing that, if he relinquished the talukh after destroying the jungle, he would pay R2,000 as the value of the trees, was construed to contain two distinct covenants, the second being a covenant not to injure the trees, on breach of which damages could be recovered. WOOMA SOONDUREE DOSSEE *v* RAJKISTO ROY 21 W. R. 366

64. ——— **Agreement for certain dues in nature of rent**—*Subsequent Government notification as to tenure* By an agreement entered into between the predecessors of the plaintiff, durmakurtahs of a temple, and the defendants, it was provided that the defendants should have a permanent right of cultivating certain lands belonging to the temple upon payment of the circar tirva and a swamibogam mentioned in the agreement Subsequently to the agreement, the Government notified that the melvarum payable to the Government would be thenceforth permanent and not according to the nerick ascertained by reference to the market prices in certain towns, and the Government stated that any advantage arising from the change of system should go to the raiyats themselves The plaintiffs sued the defendants to recover the balance [illegible]

mentioned in the agreement, and that no right was acquired by the plaintiffs by virtue of the subsequent arrangement made by the Government THESIKAM IYENGAR *v* GANAPATHY IYER . 4 Mad. 320

65 ——— **Fishery pottah**—*Deprivation of fishery by order of Court* The provision in a fishery pottah that the lessee cannot sue for recovery if, through his own neglect or otherwise, he fails to catch fish, was held to be no bar to the lessee's claim to a refund of rent from the time that possession of [illegible]

66. ——— **Stipulation in lease for conversion of dry land into wet land**—*Stipulation in accordance with local custom.* A pottah is enforceable which contains a stipulation that "if nunja cultivation be made on punja land permanently converted into nunja with or without water of the landlord's tank, nunja tirva according to the rate fixed for such cultivation shall be paid,"

LEASE—*contd.*

1. CONSTRUCTION—*contd.*

when such stipulation is in accordance with local custom SATTAPPA PILLAI *v.* RAMAN CHETTI
I. L. R. 17 Mad. 1

67. ——— Agricultural lease—Lease

t. MAYAN . . . **I. L. R. 17 Mad. 98**

68. ——— Payment of rent by instalments—*Provision for payment by instalments.* Where a pottah after providing for payment of rent by the dar-patnidar "year by year, month by month, and kist by kist" contained a distinct declaration that if the dar-patnidar did not at the end of each month pay up the amount due for that month he should from the first day of the succeeding month pay interest upon the amount in arrear, the Court *held* that the Judge below was not correct in his construction of the pottah that the dar-patnidar was not bound to pay rent in equal monthly kists nor liable to interest if he did not so pay it. BHYRUB CHUNDER BANERJEE *v.* AMEEROODEEN . . . . . **17 W. R. 173**

69. ——— *Payment by instalments.* ... kists unless ... effect. JO... MOOKERJEE ...

70. ——— Proviso for re-letting in case of default in payment of rent—*Lease in perpetuity* A lease purporting to be for a certain term of years contained a proviso that if at any time the lessee should make default in payment of rent the lessor should be at liberty to let the lands to another lessee *Held*, that the introduction of this ...

tenant in paying the rent SHAHYE ROYREE *v* BARTON . . . **Marsh. 250 : 2 Hay 14**

71. ——— Proviso for default in payment of rent—*Appointment of sezawal—Condition precedent* A lease for a term of years contained a proviso that, if in any year the rent should be three kists in arrear, the lessor might appoint a sezawal, and the lessee would pay his salary; and if, notwithstanding the appointment of such sezawal, the arrears of rent were not paid by the end of the year, the lessor should be at liberty to rescind the lease. *Held*, that it was a condition precedent to the right of the lessor to rescind the lease, that he should have appointed a sezawal LALL LUTCHMEE PERSHAUD *v* BHOODHUN SINGH . **Marsh. 474**

72. ——— Right of re-entry for non-payment of rent—*Act X of 1859, s 22.* Where a lease provided that in case of a default in the payment of rent, the lessor should have the power of re-entry without expressly mentioning the mode of effecting it, the lessor was bound to exercise this power according to the provisions of the law, s 22, Act X of 1859. SOLANO *v.* HOORMUT BAHADUR
1 Hay 573

73. ——— Right of re-entry—*Implied right of re-entry.* Although a pottah does not contain words specifying the right of re-entry, the Court will give effect to words which, reasonably construed, involve that right SHADHOO JHA *v* BHUGWAN CHUNDER OPADHIA . **1 Ind. Jur. N. S. 75**
5 W. R., Act X, 17

74. ——— *Conditional lease—Right to recover property.* If a party leases an estate in patni, reserving to himself the right of re-entry on condition of his wishing to hold the property khas, he cannot sue to recover possession for the purpose of leasing it to a third party. RUGHOONATH COONDOO *v.* HURISH CHUNDER ROY
W. R. 1864, 326

75. ——— *Hereditary tenures—Lessor's right of re-entry—Cause of action* Where there are no words in a lease extending its provisions to other parties beyond the lessee its term must be interpreted as applicable to the lessee only, unless the Court is able, from the conduct of the parties and the surrounding circumstances, to come to a different conclusion Where a lease contains a condition whereby the lessor agrees not to put an end to the mokurari of his lessee, except on the occurrence of a fresh settlement on the part of Government it does not follow that the lessor intends to constitute a hereditary lease if no Government settlement took place. In such a case a ...

permit him to re-enter. LEKHRAJ ROY *v* KANHYA SINGH . . **14 W. R. 262**

76. ——— Proviso against sub-letting—*Breach of condition in lease—Omission of clause for re-entry—Act X of 1859, s. 23, cl. 5—Suit for* ...

no proviso for forfeiture, or right of re-entry for the breach of this covenant, the landlord was not entitled upon such breach to maintain a suit under Act X of 1859, s. 23, cl. 5, to eject the raiyat GOOROOPERSAUD SIRCAR *v* PHILIPPE
Marsh. 366 : 2 Hay 451

77. ——— *Breach of condition.* Where a lease contained a stipulation against sub-letting without the lessor's consent and the lease violated this stipulation, it was held that the stipulation was a reasonable one, and that the lessor might either bring an action for damages for its

LEASE—*contd.*

1. CONSTRUCTION—*contd.*

breach, or a suit for an injunction to restrain such sub-letting by the lessee. MOHANA *v.* SADODIN **7 Bom. A. C. 69**

78. ———— Right to assign or sub-let —*Conditions attached to zamindar's estate—Construction of lease.* The right to assign or sub-let is as well established an incident of a tenancy at a rent for a determinate period when the contract of letting is silent on the subject, as it is of an estate for life or of inheritance had, there is nothing in the nature of the conditions attached to a zamindari estate which renders an assignment of a lease of such estate an exception to the general rules *Held*, on the construction of a lease, that the language did not evidence a contract purely personal to the lessee and his heir so as to exclude the right to assign VENKATASAMY NAICK *v.* MUTHUVIJIA RAGHUNADA RANI KATHAMA NATCHIAR *alias* KULANDAPURI NATCHIAR . . **5 Mad. 227**

79. ———— Prohibition against alienation. A pottah which provided that the grantor was not to alienate or lease the property to any other party during the term of the pottah, without giving the lessees under the pottah the refusal, was upheld MOHIMA CHUNDER SEIN *v.* PITAMBUR SHAHA **9 W. R 147**

80. ———————— *Mulgeni tenure, History and nature of—Alienation not a necessary incident—Clause against suffering attachment and sale valid—Right of re-entry—Clauses against alienation—Policy of the law—Transfer of Property Act IV of 1882.* The plaintiff sued to establish his right to attach and sell certain land in execution of a decree obtained by him against a third party who held the land from the defendant under a mulgeni lease. The lease contained a clause which after forbidding the tenant from alienating it by mortgage, sale, or lease stipulated that the tenant was not to let it, be sold, or attached and sold in satisfaction of judgment-debts, and that, if he did, the landlord might take away the land and give it to others for cultivation. The defendant contended that the land could not be attached and sold by reason of this clause. The lower Courts held that the clause was invalid, both because such a restriction on alienation was repugnant to the mulgeni tenure in contemplation of law, and because, occurring in a lease which was virtually in per-

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that, although technically there would be no breach or right of re-entry until attachment and sale had been suffered by the tenant, yet, as the attachment of itself could be of no use to the creditor, since the debtor was already prevented by his lease from alienating, and as it would be necessary, even if the attachment were allowed, to forbid the sale

81. ———————— *Lease to an undivided Hindu family—Partition—Covenant against alienation—Alienation voluntary or by act of law—Attachment and sale—No clause of forfeiture or re-entry—No payment of rent—Rights of the mulgeni or landlord.* The plaintiff leased his land under a mulgeni chetti, or lease at a fixed rent, to defendant No 1, who then lived in union with his brothers, defendants 2 and 3, and acted as manager of the

brothers subsequently took place. The shares of defendants 1 and 2 were afterwards sold, the former at a Court sale in execution of a decree and the latter by private contract, and were purchased respectively by defendants 4 and 5, who entered into possession Plaintiff now sued to recover his land,

but went no further than to prohibit alienation by the act of the parties themselves, and then even did not provide for forfeiture or re-entry on breach, and had no application to the case of an alienation by act of law as by attachment and sale in execution of a decree That the plaintiff had therefore no right to recover possession from any of the defendants,—his only remedy being in damages for breach of the covenant against alienation *Held*, further, that defendants 1, 2, and 3 were severally liable for

82. ———————— *Ovathoula—Re-entry—Forfeiture—Sale in execution of decree—Saleable interest—Alienation by operation of law—Conditions restraining alienation* A sued to

re entry by reason of an assignment in violation of its

LEASE—*contd.*

1. CONSTRUCTION—*contd.*

terms, nor was there any provision restricting a sale in execution of decree. The osathowla passed to *B*'s executor and was sold in execution of a decree against *B*. *Held*, that the sale passed a good title. It is clear law in India, as in England, that a general

Timapa Ganpaya, I. L. R 7 Bom 262, referred to *Held*, also, that, even if there had been a provision in the lease for forfeiture or for re-entry by reason of an assignment in violation of its provisions, it would not have the effect of invalidating the sale in execution, which has always been held not to be of itself a breach of a covenant not to assign GOLAK NATH ROY CHOWDHRY *v.* MATHURA NATH ROY CHOWDHRY . . I. L. R. 20 Calc. 273

83. ——— *Condition restraining alienation—Alienation voluntary or by act of law—Condition for benefit of lessor—Re-entry—Forfeiture—Transfer of Property Act (IV of 1882), ss 10, 11, 12, 111, cl. (g).* By a clause in a lease it was stipulated that the lessee would not transfer in writing the land leased to him, and that, if he did so, the sale was to be void. The land was sold to the defendants in execution of a decree obtained against the lessee. In a suit in ejectment by the assigns of the lessors:—*Held*, that the condition was void under s 10 of the Transfer of Property Act, no right of re-entry being reserved to the lessors by the lease. NIL MADHAB SIKDAR *v.* NARATTAM SIKDAR . I L R. 17 Calc. 826

84. ——— *Covenant by lessee not to purchase under-tenant's holding—Validity thereof—Covenant running with land.* The defendants, who were patnidars of 10 annas of a certain pergunnah, gave a temporary lease of their share to the plaintiffs, the lease containing the following stipulation: "You shall not purchase the jote

2 annas and a mokurari of another 2 annas out of the 6 annas already leased out by the zamindars to the plaintiffs. The plaintiffs during the term of

Held, that the stipulation in the deed was a valid one and there was nothing against public policy in such

LEASE—*contd.*

1. CONSTRUCTION—*contd.*

a restriction as was contained in those leases, and that the defendants were entitled to the benefit of the stipulation not only in respect of the 10 annas which they originally held as patnidars, but also in respect of the 4 annas which they subsequently acquired, because a covenant such as that contained in the lease of the zamindar is one the benefit of which ought to run with land, and that the defendants were rightly in possession. WATSON & Co. *v.* RAM CHAND DUTT . . 1 C. W. N. 174

85. ——— "Mokurari istemrari," meaning of—*Conduct and intention of parties—*

character in the grant, as the term *maurasi* does. They imply permanency, from which, in a secondary sense, such heritable character might be inferred, it being always doubtful whether they mean permanent during the lifetime of the grantee or permanent as regards hereditary character. The words do not *per se* convey an estate of inheritance; but such an estate can be created without the addition of any other words, the circumstances under which the lease was granted and the subsequent conduct of the parties being capable of showing the intention with sufficient certainty to enable the Court to hold that the grant was perpetual The rule is perfectly general, and is not subject to the qualification that it is by local custom the meaning of the terms is restricted. *Lilanand Singh* v. *Munorunjun Singh, 13 B. L R. 124; Tulshi Pershad Singh* v. *Ramnarain Singh, I L R 12 Calc. 117;* and *Agin Bindh Upadhya* v. *Mohan Bikram Shah, I. L. R 30 Calc. 20*, relied upon. In such a case, no extrinsic evidence, as to any assurances given by the grantor of the lease that it was intended to last for ever, is

they relate to a fairly large number of the leases, and not otherwise. But the fact that rents were received from the successors of the grantees in several instances, the names of the deceased grantees being retained in the rent receipts, in which the successors, who were not recognised as *mokurari-istemraridars*, were merely described as *marfatdars*, is not relevant, and cannot be taken as indicative of any such intention. *Croft* v. *Lumley, 6 H. L. C. 672, 713*, and *Kali Krishna Tagore* v. *Fuzle Ali Chowdhry, I. L. R. 9 Calc.*

LEASE—*contd.*

1. CONSTRUCTION—*contd.*

843, distinguished. NARSHINGH DYAL SAHU *v.* RAM NARAIN SINGH (1903) **I. L. R. 30 Calc. 883**

86. ———— Redemption. *G* executed a *maurasi* lease in favour of *J*, and stipulated that *J* was to defray costs of litigation for redeeming the property under lease, and that, if he succeeded in redeeming it, he was to obtain possession of it and was to pay rent to *G* from the date of such possession. *Held*, that such a document could not transfer the property leased, but was only a contract to be performed in future and upon the happening of a contingency. *Rajah Sahib Perhlad Sein* v. *Doorga Persaud Tewarree, 12 Moo I. A. 286*, and *Ranee Bhobo Soondree Dasseah* v. *Issur Chunder Dutt, 11 B. L. R. 36*, referred to. MOHENDRA NATH MOOKERJEE *v.* KALI PROSAD JOHURI (1902)

I. L. R. 30 Calc. 265 : s.c. 7 C. W. N. 229

87. ———— Renewal—*Mortgage of a jote—Lease, renewal of, by mortgagee—Right of mortgagor.* The rule that the renewal of a lease, obtained by the mortgagee thereof, enures to the mortgagor's benefit, applies in the case of the mortgagee of a jote BAIJNATH SINGH *v* HARIKISHEN BHAGAT (1901) . . . . **8 C. W. N. 372**

88. ———————— *Offer by lessor to renew lease without stating terms, effect of—Arbitration—Award—Valuation—Civil Procedure Code (Act XIV of 1882), s 525.* In an agreement to lease there was a proviso to the following effect:—"At the expiration of the period of the lease, in the event of a new lease not being given, the said lessor shall be at liberty to resume direct possession of the land demised, and to take over all the buildings then standing thereon, at a valuation arrived at by three arbitrators" *Held*, that the mere offer on the part

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East 1, referred to *In re Carus-Wilson and Green, L. R. 18 Q B D. 7; Chooney Money Dassee* v *Ram Kinkur Dutt, I. L R 28 Calc 155*, followed MACNAGHTEN *v* RAMESWAR SINGH (1903)

I. L. R. 30 Calc. 831

89. ———— Resumption—*Deed, construction of—Patta of ancestral estate executed by members of Mitakshara family to give maintenance to female relative and her descendants—Power to resume on failure or breach of conditions—Estate, nature of, granted—Descendant not in existence at time of grant.* In 1858 a Hindu, whose family was governed by the *Mithila* law, made a grant to his daughter *J* of certain *mauzas* which formed a part of the ancestral Raj estate, at a fixed reserve rent, for the maintenance of herself

execution, in June 1874, of a *patta* by the plaintiff and his father of the *mauzas* in favour of *J* to the following effect: "*J* shall get an allowance of R6,000 per annum during her lifetime, and her descendants who may, under the Hindu law, become his heirs shall get one-half thereof in perpetuity, and in lieu of the same whatever profit the *mauzas* which are held by the said *J* under the deed sought to be set aside may yield annually over and above R6,000, being fixed as the *jamma* of those *mauzas*,

presentatives should have power to resume and to take possession of the remaining one-half and the properties mentioned in the *patta* should revert to the Raj On the same date *J* executed, in favour of her father and brother, a *kabuliyat*, in which the compromise was stated in substantially the same terms *J* had one son born some years after the execution of the *patta* In 1885 *J* gave a mortgage and lease of one of the *mauzas* to the defend-

ing the decision of the High Court), that *J*'s son being incapable of taking under the *patta*, not

as was contended for the defendant, an estate of

LEASE—*contd.*

1. CONSTRUCTION—*contd.*

inheritance in one-half of the *mauza*, as that restriction would have been repugnant to such a gift. *Bhoobun Mohini Debia* v. *Hurish Chunder Chowdhry, L. R 5 I. A 138*, distinguished. The High Court held that *J's* son had under the circumstances of the case an equity to compel the plaintiff to carry out the terms of the *patta*, but the Judicial Committee thought that holding entirely erroneous. PUDMANAND SINGH *v* HAYES (1901)
I. L. R. 28 Calc. 720 : s.c. 5 C. W. N. 808
L R. 28 I. A. 152

90. ——————— *Building lease—Lease from year to year—Ejectment, suit for* Where a kabuliat did not specify any period during which a lease was to subsist and the land was to be held by the lessee from year to year at an annual rent, and should a masonry building be erected, rent would be assessed at the prevailing rate; and the lessee built a structure on the land.—*Held*, that the parties contemplated the possibility of a *pucca* structure being erected on the land and therefore the lease was for building purposes and the Court could presume that the lease was intended to be permanent, and the plaintiff was not entitled to eject the defendant *Jahoorulal Sahoor* v *H Dear, 23 W. R 399*; *Ismail Khan Mahomed* v. *Jaigun Bibi, I L R 27 Calc. 570*, followed *Lala Beni Ram* v *Kundanlal, L. R 26 I. A. 58*, referred to *Held*, also, that the absence of the words "maurasi, mokurari" in a lease did not necessarily indicate that it was not the lessor's intention to grant a permanent lease PROMADA NATH ROY *v* SRIGOBIND CHOWDHRY (1905) . . . **I. L. R. 32 Calc. 648**

91. ——— **Assignment of lease**—*Mortgage of lease—Liability of the mortgagee to the landlord—Possession of the mortgagee* The plaintiff, the Savantvadi State, leased certain lands to defendants 1 to 10. Of these, defendants 1, 2, 3 and 9 mortgaged their shares in the lands to defendant 11; the mortgagee was not put in actual possession of the lands, but subsequently to the execution

ants 1—11 to recover the rent of the lands demised The lower Appellate Court passed a decree against all the defendants, including defendant 11. On appeal by defendant 11 to the High Court.—*Held*, that, although it did not clearly appear whether the mortgagee (defendant 11) did receive any of the rents of the property, still he put himself into possession and must be treated as if he had received such rent and that, therefore, he was liable to pay to the plaintiff his share of rent. In India there is no distinction between legal and equitable estates, although in ordinary parlance the distinction is often referred to Hence, when a lessee mortgages his interest in the land, the mortgagee becomes liable for the rent to the lessor only if he (the mortgagee) enters into possession of the land or does any act equivalent to entry into possession. VITHAL NARAYAN *v* SHRIRAM SAVANT (1905)
I. L. R. 29 Bom. 391

92. ——— **Service tenure**—*Medical practitioner, services of, in lieu of rent—Notice to quit—Transfer of Property Act (IV of 1882), ss 105, 106* Where *A*, the owner of a house, by an agreement allowed *B* to occupy the house in consideration of his rendering services, as a medical practitioner, to *A* and his family in lieu of rent:—*Held*, that such an agreement amounted to a "lease" as defined in s 105 of the Transfer of Property Act, 1882, and was terminable at the option of either party by 15 days' notice expiring with the end of a month of the tenancy JYOTISH CHANDRA MUKERJEE *v* RAMANATH BHADRA (1905)
I. L. R. 32 Calc. 243

93. ——— **Lease by mortgagor**—*Sub-lease pendente lite—Rights of mortgagee* *Held*, that if a mortgagor left in possession grants a lease without the concurrence of the mortgagee the lessee has a precarious title, inasmuch as, although the lease is good as between himself and the mortgagor who granted it, the paramount title of the mortgagee may be asserted against both of them. MACLEOD *v* KISSAN (1904)
I. L. R. 30 Bom. 250

94. ——— **Assignment of lease**—*Transfer of Property Act, s 108 (j)—Assignee of lease, liability of, to lessor—Liable for rent from date of assignment and not from date of obtaining possession—Principle applies to agricultural leases* Under s. 108 of the Transfer of Property Act a lessee may transfer his privity of estate to an assignee, thus rendering the latter liable to the lessor on covenants running with the land, while he himself will continue liable to the lessor by reason of his

Mad. 296, referred to. Although the Transfer of Property Act does not apply to agricultural leases, there is no reason why the above rule should not be applied to them as well as to non-agricultural leases The assignee of an agricultural lease becomes liable for the rent payable to the lessor from the date of assignment *Kamala Nayak* v. *Ranga Rao, 1 Mad H C. 24*, and *Macnaghten* v. *Lala Mewa Lall, 3 C. L R. 285*, dissented from. MONICA KITHERIA SALDANHA *v.* SUBRAYA HEBBARA (1907) . . . **I. L. R. 30 Mad. 410**

95. ——— **Lease to Municipality**—*Contract in violation of the Bengal Municipal Act—Commissioners, power of, under the Bengal Municipal Act (III of 1884, B. C.), ss. 34, 37—Ultra vires—Fraud.* S. 34 of the Bengal Municipal Act must be read along

LEASE—*contd.*

1. CONSTRUCTION—*contd.*

with s. 37 of the said Act. Where in a suit by the Chairman of the Municipality to set aside a permanent lease executed by the defendant it was found that the contract was sanctioned by the Commissioners at a meeting and that it involved a value exceeding R500 but that the *kabuliat* executed on behalf of the Municipality was signed only by the Chairman, and although two of the Commissioners witnessed it they did not sign it as contracting parties, and furthermore it was not sealed with the seal of the Commissioners *Held*, that the contract was not binding on the Commissioners. CHAIRMAN, SOUTH BARRACKPORE MUNICIPALITY *v* AMULYA NATH CHATTERJEE (1907) **I. L. R. 34 Calc. 1030**

96. ———— Right to hold over—*Construction of lease—Five years' terms with option to lessee to hold over indefinitely on the same conditions—Nature of tenancy after expiration of term—Ejectment—Notice—Unequal bargain—Undue influence—Pleadings.* A lease was executed for a term of five years giving lessee the option of quitting the premises during the continuance of the term on giving a month's previous notice to quit There was a further stipulation that the lessee would be entitled to hold and

in the lessee the interest of tenant from month to month from the expiration of the term of five years, and the lessor could not, after the expiration of the

his lifetime by means of a month's notice *Vaman Shripad v Maki, I L R 4 Bom 424*, followed A doubtful grant must be construed in favour of the grantee HIGGINS *v* NOBIN CHUNDER SEN (1907) **11 C. W. N. 809**

97. ———— Transfer of Property Act, ss. 105, 107—*Lease, within the meaning of, can only be effected by written instrument signed by the lessor* A 'lease' as defined by s 105 of the Transfer of Property Act, is a transfer of property, and such a transfer can only be made by the person in whom the property to be transferred is vested

19 Mad. 52; Seshachela Naiker v Varadachariar, I. L. R 25 Mad 55, distinguished TUROF SAHIB *v* ESUF SAHIB (1907) **I. L. R. 30 Mad. 322**

98. ———— Notice to quit—*Transfer of Property Act (IV of 1882), s 106—Monthly period of tenancy not necessarily reckoned from date of lease—May be calculated from different date if such was the intention of the parties* It is open

Property Act. Where a lease is executed and the tenant enters on possession and is liable for rent from the middle of a month but the rent is made payable, not on dates calculated from the date of such lease but at the end of the calendar month, the reasonable inference, in the absence of anything to the contrary in the instrument, is that for determining when the tenancy was to expire, the parties agreed that the monthly tenancy should coincide with the calendar month ARUNACHELLA CHETTIAR *v* RAMIAH NAIDU (1906) **I. L. R. 30 Mad. 109**

99. ———— Condition for payment of rent in advance—*Suit by purchaser of demised property for rent—Registration—Notice.* Certain property was leased for a term of 10 years, the lease containing a provision to the effect that, if at any time during the currency of the lease the lessor should demand any portion of the rent in advance from the lessee, the latter should be bound to pay it on obtaining a receipt. Subsequently to the execution of this lease the demised property was sold by auction in execution of a decree. The auction purchaser sued the lessee for rent but was met by the plea that the rent claimed had been paid to the lessor in advance under the terms of the lease. The lease was registered and it was found that the auction purchaser had not made inquiry of either the lessor or the lessee as to whether or not any rent had been paid in advance according to the terms of the lease *Held*, that under these circumstances the plaintiff was not entitled to recover NAND KISHORE *v* ANWAR HUSAIN (1907) **I. L. R. 30 All. 82**

100. ———— Covenant restraining alienation—*Assignment notwithstanding such covenant, whether operative* A lease contained a covenant in these terms. "you (the lessee) shall not be able to dig pits and tanks or to transfer the land in any way without a letter from me to that effect" There was no right of re-entry reserved

101. ———— Lease by Municipality—*Covenant—Calcutta Municipal Act (Bengal Act III of 1899), s 556—Tenders, invitation of, when not obligatory—Specific Relief Act (I of 1877), s 45—Mandamus.* S. 556 of the Calcutta Municipal Act enables the Corporation to lease any property vested in them on any terms they think fit, without previously calling

LEASE—*contd.*

1. CONSTRUCTION—*contd.*

for any tenders: however, the form of a lease cannot be given to a transaction, which properly falls under s. *88* of the Act. Although a covenant in a lease, or in respect of a lease, is in a sense a contract; if it relates to the demised premises and is not independent of them, it does not fall within the purview of s. 88 of the Calcutta Municipal Act, and it is not obligatory upon the Corporation to call for tenders in respect of such a contract. *In the matter of* JOGENDRA NATH MUKHUTI AND OTHERS (1908) . . . **I. L. R. 36 Calc. 271**

102. ——— Leases in contravention of s. 29 of the Bengal Tenancy Act—*Bengal Tenancy Act (VIII of 1885), s. 29—Effect of payment of rent for a number of years—Onus of proving increase of area* Leases executed in contravention of the provisions of section 29 of the Bengal Tenancy Act are void and not voidable, though rent has been paid under them for a number of years. *Probat Chander Gangapadhya v. Chirag Ali, I. L. R. 33 Calc 607,* referred to. A contract of such a nature is not legal or operative to the extent of the enhancement allowed by the rent law. *Kristodhone Ghose v. Brojo Gobindo Roy, I. L. R. 24 Calc 895,* referred to. When it is shown what the previous rent of the tenant defendant was, it is for the plaintiff to justify the enhancement of rent claimed which is obviously in excess of the enhancement allowed by the Act. MANINDRA CHANDRA NANDI *v.* UPENDRA CHANDRA HAZRA (1908)

I. L. R. 36 Calc. 604

103. ——— Lease under Chota Nagpur Encumbered Estates Act—*Limitation Act (XV of 1877), s. 22. Parties, addition of—Limitation—Mocurrari Lease—Fraud—Suit to recover Possession—Notice to quit—Chota Nagpur Encumbered Estates Act (VI of 1876), as amended by Act V of 1884, ss. 7, 12, 17, and 18—Manager's power to grant Lease in perpetuity—Liability, notice of—Specific Performance—Rule against Perpetuities—Covenant running with the Land* S. 22 of the Limitation Act applies to a case even where a person is not a necessary party but only a proper party to a suit, and such a person cannot be added as a party after the expiry of the period of limitation as provided for by that section. *Ravji* v. *Mahadev, I. L. R. 22 Bom. 672,* and *Guruvayya* v. *Dattatraya, I. L. R. 28 Bom. 11,* dissented from. *Abdul Rahman v. Amir Ali, I. L. R. 34 Calc 612,* followed In a suit to recover possession of a certain land by setting aside a *mocurrari* lease granted by the manager under the Chota Nagpur Encumbered Estates Act (VI of 1876), on the ground that it was obtained by the lessee by fraudulent misrepresentation it was objected to that a tenancy from year to year was created between the manager and the defendant by the payment and acceptance of rent under the lease, and that, therefore, the suit was not maintainable without a valid notice to quit.—*Held, per* DOSS, *J.*, that the lease being a voidable one, when rent was paid under such a lease, the

LEASE—*contd.*

1. CONSTRUCTION—*contd.*

payment of rent was under the lease, and was in satisfaction of the recurrent [illegible]

[illegible]

soon as that relation was determined, the obligation to pay rent which is dependent on the continuance of such relation ceased; and the payment of rent [illegible]

[illegible]

sion for the demised land to the lessor on the ground that, despite the cancellation and delivery of the lease, there was yet a subsisting tenancy outstanding which entitled him to retain possession of land until such tenancy was determined by proper notice to quit. *Held, per* RICHARDSON, *J.*, that having regard to the frame of the suit, notice to quit was unnecessary. A manager appointed under Chota Nagpur Encumbered Estates Act has power to grant a lease in perpetuity with or without fine, only in case money is required for the settlement of debts and liabilities of the proprietor. *A* executed in favour of *W* an *ijara* lease for a term of years; the lease, amongst others, contained the following covenant on the part of the lessor:—"If out of the *ijara* mehal you required any land for the purpose of [illegible]

[illegible]

M, who, before the termination of the said lease, applied to the manager for a *mocurrari* lease of [illegible]

[illegible]

power to grant such a lease without the consent of the proprietor:—*Held, per* DOSS, *J.*, RICHARDSON, *J.*, concurring as to (i) and (ii), that under the amending Act (V of 1884), (i) the manager was entitled to sell or demise in perpetuity without such consent; (ii) that the mere absence of notice of the debts and liabilities as contemplated by s 7 of the Act was not a valid ground for setting aside the lease; (iii) that the lease was a valid lease, and if a suit for specific performance of the covenant had been brought by *M* against the manager, it would have been allowed, inasmuch as the covenant did not infringe the rule against perpetuities; (iv) that there was a substantial part-performance of

LEASE—*contd.*

1. CONSTRUCTION—*concld.*

the covenant for a perpetual lease such as would entitle the covenantee to claim specific performance of the covenant, on the ground that it would be inequitable and fraudulent for the covenantor to refuse to perform the covenant and (v) that *M* was entitled to the benefit of the covenant as it was one running with the land, and that the covenant did not inflict any hardship on *A*. *Held, per* RICHARDSON, *J.*, that it was, in the circumstances, unnecessary to consider whether specific performance of the covenant would have been granted. MATHEWSON *v* RAM KANAI SINGH DEB (1909) **I. L. R. 36 Calc. 675**

2. MINERAL RIGHTS.

1. ———— *Coal—Surface rights—Sub-soil rights—Mineral right—Landlord and tenant—Transfer of Property Act (IV of 1882), s. 108, cl (o)—Damages—Injunction—Specific Relief Act (I of 1877), s 52.* Of the land in suit, which belonged to the Jheria Raj, a lease was granted in 1824 to the principal defendants, who on 11th October 1893 transferred their rights as lessees to the other defendants to whom on 2nd April 1896 the

be presumed to be more than a grant of the rents of the land for the life of the grantee, and did not carry with it the right to open mines and raise

entitle him to object to the working of minerals in or under it without his consent *Held*, that the plaintiff's right being limited to the receipt of rents for the life of his lessor, and there being no evidence that the security of those rents would be in any degree impaired by anything the defendants had done or might do, or that the enjoyment of the right vested in the plaintiff had been or would be interfered with by them, the Court in the exercise of the discretion given by s. 52 of the Specific Relief Act (I of 1877) refused to grant an injunction TITURAM MUKERJI *v.* COHEN (1905) **I. L. R. 33 Calc. 203**

2. ———— *Construction—Mining rights—Exception of minerals—Implied reservation of incidental rights—Decree—Form of decree.* Where a lessor in granting a lease of surface lands had excepted the minerals;—*Held*, that, in

LEASE—*contd.*

2. MINERAL RIGHTS—*concld.*

excepting the minerals the lessor impliedly reserved to himself as a necessary incident the right to dig for and win them. The reservation of mineral rights apart from the surface rights must be taken to carry as incident to it the power not only to go upon the land and work the minerals known to be under-

Rowbotham v. *Wilson, 8 H L. C. 348, Earl of Cardigan* v. *Armitage, 2 B & C 197, Ramsay* v. *Blair, 1 App. Cas. 701,* referred to Form of the

(1905) **I. L. R. 33 Calc. 462**

3 PROOF OF LEASE.

1. ———— *Proof of* A tenant can prove his tenancy without proving his lease. *Lala Surubn arain Lal* v. *Catharine Sophia, 1 C W. N. 248,* relied on SITA NATH PAL *v.* KARTICK GHARAMI (1904) **8 C. W. N. 434**

2. ———— *Lease unregis-*

time to another as a deposit to secure the perform-

Q B D. 284, referred to. S 107 of the Transfer of Property Act does not say that if the parties without any such instrument (*i e*, a lease) conduct themselves towards each other as if they were landlord

LEASE—*contd.*

3. PROOF OF LEASE—*concld.*

Cornish v. *Abington, 4 H. & N. 549,* referred

Where a creditor purports to create a lien or charge on the debt due to him in favour of another person the words lien or charge have no meaning, except

I. L. R. 33 Bom. 610

4. ZUR-I-PESHGI LEASE.

1. ———— **Nature of zur-i-peshgi lease** —*Mortgage.* A zur-i-peshgi lease is nothing but a simple mortgage, and may at any time be cancelled on the advance being proved to have been discharged with interest from the usufruct, or otherwise liquidated by the mortgagor, notwithstanding the non-expiry of the term mentioned in the deed NUND LALL *v.* BALUK . . . **2 Agra 122**

PULTUN SINGH *v.* RESHAL SINGH . **1 W. R. 7**

2. ———— **Suit to set aside zur-i-peshgi lease**—*Act X of 1859, s. 25—Ejectment* A zur-i-peshgi lease (which does not provide for its cancelment in the event of a breach of any of its conditions, but provides for the cancelment of all subleases) cannot be set aside because of the act of the zur-i-peshgidar granting a kutkina. The kutkina may be set aside, and the zur-i-peshgidar be liable in damages for any injury which may have accrued to the zamindar. S. 25, Act X of 1859, was not applicable to such a case, but only to cases when the period of the lease had expired. But as a zur-i-peshgi lease has always been treated as a mortgage, a suit to set it aside cannot be brought in the Collector's Court unless the terms of the lease distinctly provide for such a course of procedure in the event of a breach of any of its conditions. MAHOMED ALI *v.* BATOOK DAO NARAIN SINGH **1 W. R. 52**

RUTTUN SINGH *v.* GREEDHAREE LALL **8 W. R. 310**

3. ———— **Rent not paid when due**—*Right to set off against advances.* Where a plaintiff let out

that the plaintiff was entitled to set off the rent so withheld against the money advanced, and was entitled to claim an account as against the defendant, although the period for which the zur-i-peshgi lease had to run had not expired. NURSINGH NARAYAN SINGH *v.* LUKPUTTY SINGH **I. L. R. 5 Calc. 333**

4. ———— **Zur-i-peshgi pottah, construction and effect of**—*Raiyati holding,*

LEASE—*concld.*

4 ZUR-I-PESHGI LEASE—*concld.*

creation of. The plaintiffs granted to the defendants a zur-i-peshgi pottah which provided for a lease for five years. It provided further that the whole of the rent for that period was to be taken by the zur-i-

Raghobur Das, I. L. R. 24 Calc. 272, referred to. RAM KHALAWAN ROY *v.* SAMBHOO ROY **2 C. W. N. 758**

5. ———— **Collection of rents by zamindar**—*Right to recover rents so collected.* A zamindar, after he had granted a zur-i-peshgi lease, collected the rents from the raiyats *Held, first,* that the lessee was entitled to treat the rents so received as a payment of rent under the lease; and, *secondly,* was entitled to recover from the zamindar the amounts of rents so received in excess of the rent due under the lease. RAMPERSHAD VOGUT *v.* RAM TOHUL SINGH . . **Marsh. 655**

6. ———— **Suit by mortgagee for balance uncollected.** A mortgagor granted a

the deed of assignment, he could not, either according to law or the terms of the contract, call upon the mortgagor or his representatives to pay the balance of the mortgage-debt or to have that balance realized from the sale of the mortgaged property. JUNESSUR DASS *v* LALLA RAMDHUNEE LALL **17 W. R. 263**

7. ———— **Usufructuary lease**—*Right to have property sold.* Where a lease gives the lessee the right to continue in possession until money

LEASEHOLD PROPERTY.

See SECURITY FOR COSTS—SUITS **7 B. L. R. Ap. 60**

LEAVE OF COURT.

See COMPROMISE—COMPROMISE OF SUITS UNDER CIVIL PROCEDURE CODE. **7 C. W. N. 90**

See LETTERS PATENT. **I. L. R. 32 Bom. 106**
I. L. R. 35 Calc. 394

LEAVE TO APPEAL.

See APPEAL TO PRIVY COUNCIL—CASES IN WHICH APPEAL LIES OR NOT—

SUBSTANTIAL QUESTIONS OF LAW I. L. R. 25 Mad. 215

CONCURRENT JUDGMENTS ON FACTS . 5 C. W. N. 455

PRACTICE AND PROCEDURE—LEAVE TO APPEAL.

See LETTERS PATENT, CLS. 10, 39
I. L. R. 32 Bom. 106

See PRIVY COUNCIL
8 C. W. N. 294 ; 296
I. L. R. 32 Bom. 108
12 C. W. N. 1081

See PRIVY COUNCIL, PRACTICE OF—SPECIAL LEAVE TO APPEAL.

———— in forma pauperis—

See LIMITATION ACT, 1877, s 5
I. L. R. 30 Calc. 790

———— to Privy Council—

See CRIMINAL PROCEDURE CODE, SS 233 TO 239 . . I. L. R. 33 Bom. 221

LEAVE TO BID.

See LIMITATION ACT (XV OF 1877), SCH. II, ART. 179 12 C. W. N. 621

See MORTGAGE—SALE OF MORTGAGED PROPERTY—PURCHASERS.
I. L. R. 18 Mad. 153

See MORTGAGE—SALE OF MORTGAGED PROPERTY—RIGHTS OF MORTGAGEES.
I. L. R. 16 Calc. 132 ; 682
L. R. 16 I. A. 107
I. L. R. 19 Calc 4
4 C. W. N. 474

See SALE IN EXECUTION OF DECREE—MORTGAGED PROPERTY
I. L. R. 18 Mad. 153
I. L. R. 18 All. 31

———— application for—

See LIMITATION ACT, ART 179—STEP IN AID OF EXECUTION
I. L. R. 13 All. 211
I. L. R. 21 Bom. 331
I. L. R. 23 Calc. 690

LEAVE TO DEFEND SUIT.

See COMPENSATION—CIVIL CASES
I. L. R. 18 Bom. 717

See INSOLVENCY ACT, s 36.
7 B. L. R. Ap. 611

See NEGOTIABLE INSTRUMENTS, SUMMARY PROCEDURE ON
6 B. L. R. Ap. 64
1 Ind. Jur. N. S. 395
9 B. L. R. 441

LEAVE TO DEFEND SUIT—*concld.*

See PRACTICE—CIVIL CASES—LEAVE TO SUE OR DEFEND

———— application for—

See LIMITATION ACT, ART. 159.
I. L. R. 23 Calc. 573

———— extension of time to apply for—

See NEGOTIABLE INSTRUMENTS, SUMMARY PROCEDURE ON . 5 C. W. N. 259

LEAVE TO SUE.

See ACT—1863—XX, s 18
I. L. R. 24 Mad. 685
I. L. R. 26 Mad. 166

See APPEAL . I. L. R. 34 Calc. 584

See COMPANY—WINDING UP—GENERAL CASES . . I. L. R. 16 Bom. 644

See EXECUTION OF DECREE—MODE OF EXECUTION—MORTGAGE
I. L. R. 24 Calc. 190

See JOINDER OF CAUSES OF ACTION
7 C W. N. 353

See JURISDICTION—CAUSES OF JURISDICTION—CAUSE OF ACTION.
1 Ind. Jur. N. S. 218
I. L. R. 11 Bom. 649
I. L. R. 13 Bom. 404
I. L. R. 15 Bom. 93
I. L. R. 17 Bom. 466

See JURISDICTION—CAUSES OF JURISDICTION—DWELLING, CARRYING ON BUSINESS, OR WORKING FOR GAIN
9 Bom. 429
I. L. R. 20 Bom. 767

See JURISDICTION—SUITS FOR LAND—GENERAL CASES . 6 B. L. R. 686
21 W. R. 204
I. L. R. 4 Bom 482
I. L. R. 19 Mad. 448
I. L. R. 26 Calc. 891
3 C. W. N. 670

See LETTERS PATENT, HIGH COURTS, 1865, CL 12 . I. L. R. 24 Mad. 293
I. L. R. 18 Mad. 142
I. L. R. 20 Bom. 767
I. L. R. 24 Calc. 190
1 C. W. N. 156
11 C. W. N. 663

See PARTIES—SUITS BY SOME OF A CLASS AS REPRESENTATIVES OF CLASS.
I. L. R. 21 Calc. 180, 181 note
I. L. R. 15 Bom. 309
I. L. R. 21 Bom. 784
I. L. R. 22 All. 269
I. L. R. 25 Mad. 399

See PRACTICE—CIVIL CASES—LEAVE TO SUE OR DEFEND

See RECEIVER . 6 C. W. N. 829

LEAVE TO SUE—*concld.*

See RIGHT OF APPEAL
I. L. R. 17 Bom. 466

See RIGHT OF SUIT—FRAUD.
7 C. W. N. 353

See RIGHT OF SUIT—CHARITIES AND TRUSTS . I. L. R. 10 Mad. 185
I. L. R. 21 Bom. 257

See SMALL CAUSE COURT, PRESIDENCY TOWNS—JURISDICTION—ARMY ACT.
I. L. R. 18 Calc. 144

See SMALL CAUSE COURT, PRESIDENCY TOWNS—PRACTICE AND PROCEDURE —LEAVE TO SUE.
I. L. R. 18 Mad. 236

See WAIVER . I. L. R. 35 Calc. 394

1. ——— *Letters Patent,* [illegible]

act; the leave has to be granted by a Judge of the Court, and it is not competent to the Court to delegate this function to one of its officers *Hadjee Ismail Hadjee Hubeeb* v *Hadjee Mohamed Hadjee Joosub, 13 B. L. R 91; DeSouza* v. *Coles, 3 Mad. H C. 384; Mudelly* v *Mudelly, 8 Mad H C. 210; Rajam Chetti* v. *Seshayya, I. L. R. 18 Mad. 236, Rampurtab Samruthroy* v. *Premsukh Chandamal, I. L. R. 15 Bom 93,* referred to Rule 515A of the Rules and Orders of the High Court, in so far as it authorises the Registrar or Master to grant leave under cl 12 of the Letters Patent, is *ultra vires* LALITESHWAR SINGH v. RAMESHWAR SINGH (1907)
I. L. R. 34 Calc. 619

LEAVE TO WITHDRAW.

See CIVIL PROCEDURE CODE (ACT XIV OF 1882), s. 373 . 12 C. W. N. 921

See LIMITATION ACT, 1877, s. 14
I. L. R. 35 Calc. 924

LEGACY.

See HUSBAND AND WIFE
I. L. R. 1 All. 762; 772

See LEGATEE.

See WILL—CONSTRUCTION.

——— lapse of—

See SUCCESSION ACT, s 96
I. L. R. 24 Mad. 299
I. L. R. 16 Calc. 549

——— suit for—

See JURISDICTION—CAUSES OF JURISDICTION—CAUSE OF ACTION—LEGACY.
16 W. R. 305

LEGACY—*concld.*

——— suit for—*concld.*

See LIMITATION ACT, 1877, SCH II, ART. 123 . . I. L. R. 25 Mad. 361
2 Agra 171
13 W. R. 354
I. L. R. 9 Calc. 79
I. L. R. 19 Mad. 425

See MORTGAGE . L. R. 35 I. A. 139
12 C. W. N. 993

See PARTIES—PARTIES TO SUITS—LEGACY, SUIT FOR . 13 B. L. R. 142

See PROBATE—EFFECT OF PROBATE.
I. L. R. 18 All. 260

See SECURITY FOR COSTS—SUITS.
I. L. R. 21 Calc. 832

See SMALL CAUSE COURT, PRESIDENCY TOWNS—JURISDICTION—LEGACY, SUIT FOR . . I. L. R. 17 Calc. 387

——— to person appointed executor—
See SUCCESSION ACT, s. 128
I. L. R. 15 Calc. 83

——— Assignment of, to executors—*Void assignment. Semble* · That an assignment by a legatee to an executor of a legacy is void. VAUGHAN v. HESELTINE. I. L. R. 1 All. 753

See HURST v MUSSOORIE BANK.
I. L R. 1 All. 762

and BERESFORD v HURST . I. L. R. 1 All. 772

LEGAL CRUELTY.

See RESTITUTION OF CONJUGAL RIGHTS.
I. L. R. 29 All. 222
I. L. R. 34 Calc. 971

LEGAL NECESSITY.

See CHAMPERTY AND MAINTENANCE
I. L R. 35 Calc. 420

See HINDU LAW—ALIENATION—ALIENATION BY WIDOW—LEGAL NECESSITY. ALIENATION FOR LEGAL NECESSITY; WHAT CONSTITUTES LEGAL NECESSITY.

See HINDU LAW—ALIENATION.
13 C. W. N. 1117

See HINDU LAW—WIDOW.
13 C. W. N. 201

See HINDU LAW—ALIENATION BY WIDOW.
13 C. W. N. 353

LEGAL PRACTITIONERS.

See ADVOCATE.

See LEGAL PRACTITIONERS ACT (XVIII OF 1879).

See MOOKTEAR.

See PLEADER.

See UNPROFESSIONAL CONDUCT.

See VAKIL.

LEGAL PRACTITIONERS ACT (XVIII OF 1879).

See CRIMINAL PROCEEDINGS.
I. L. R. 6 Mad. 252

See FALSE EVIDENCE—GENERAL CASES
I. L. R. 6 Mad. 252

See PLEADER.

See SUPERINTENDENCE OF HIGH COURT—CIVIL PROCEDURE CODE, 1882, s 622.
I. L. R. 9 Mad. 375

See UNPROFESSIONAL CONDUCT.

———— **Authority of Munsif to direct a pleader to dismiss his clerk.** *A Munsif has* no authority in law to direct any pleader to dismiss any of his clerks; he has no inherent power to refuse to recognise as a pleader's clerk a person who is not a *bonâ fide* clerk. If anybody acts unprofessionally or in any way not warranted by law, he can take proceedings under the Legal Practitioners Act or under any other Act that may be applicable PROMOTHA NATH MAJUMDAR, *in re* (1905) . . . . 10 C. W. N. 49

———— **ss. 6 and 8**—*Act XIV of 1874 (Scheduled Districts Act), ss. 3, 5 and 6—Kumaun Rules, 27th July, 1894, rules 2 and 11—Jurisdiction of the High Court as regards enrolment of vakils in the province of Kumaun and Garhwal.* For the purposes of the Legal Practitioners Act, 1879, the Commissioner of Kumaun is the High Court for the Province of Kumaun and Garhwal. A vakil, therefore, whose name is enrolled in the High Court of Judicature for the North-Western Provinces is not, by virtue of such enrolment, entitled to practise in the Courts of Kumaun and Garhwal, nor has the High Court of Judicature for the North-Western Provinces any

petition of PADMA DAT JOSHI (1902)
I. L. R. 24 All. 348

———— **ss. 7, 12, 14**—*Pleader—Renewal of certificate, right to—Character certificate from presiding officer if necessary—Rule 25 of High Court Rules, ultra vires.* Rule 25 of the rules of the High Court made under the Legal Practitioners Act laying down that with his application for the renewal of his certificate a pleader

that the District Judge had no authority to refuse to renew the certificate of a pleader practising in the Munsif's Court merely because he had formed an unfavourable opinion of his character in the course of the trial of a case in which the pleader was

LEGAL PRACTITIONERS ACT (XVIII OF 1879)—*contd.*

———— **s. 7, 12, 14**—*concld.*

a party, when the pleader produced with his application for renewal a certificate from the Munsif to the effect that he knew nothing against the pleader's character. *In the matter of* JADAB CHANDRA CHAKRAVARTI (1909) . . 13 C. W. N. 415

———— **s. 9**—

See CRIMINAL PROCEDURE CODE (ACT V OF 1898), s 4 (*r*) I. L. R. 30 All. 66

———— **s. 10**—

See MUKHTEAR . I. L. R. 4 All. 375

———— **s. 12**—

See ante, ss. 7, 12, 14 13 C. W. N. 415

———— **ss. 12, 13 (f), 14, 36**—

See ante, ss 7, 12, 14. 13 C. W. N. 415

See MOOKTEAR . I. L. R. 29 Calc. 890

———— **s. 13**—

See PLEADER—REMOVAL, SUSPENSION AND DISMISSAL . I. L. R. 26 Mad. 448

———— **Appropriation of client's money by pleader** A pleader by virtue of a power-of-attorney given to him by his client, drew out a certain decretal amount from Court and applied the same to his own purposes. When the client asked for the money, the pleader promised to pay at a subsequent date On that date the amount was not paid, but he gave a promissory note to his client for the sum Ultimately the client had

dissented from *In re* PURNA CHANDRA DUTT (1904) . . . I. L. R. 31 Calc. 44

———— **ss. 13 and 14**—

See MOOKTEAR 7 C. W. N. 281

1 ———— **Professional misconduct**—*Legal Practitioners Act (XVIII of 1879), as amended by Act XI of 1896, ss 13, 14—Grossly improper conduct—Legal practitioner advising payment of*

the truth or to prevent him from giving false

NRITYA GOPAL SEN (1900) . 5 C. W. N. 45

LEGAL PRACTITIONERS ACT (XVIII OF 1879)—*contd*

——— ss. 13, 14—*contd.*

2. ——— *Legal Practitioners Act (XVIII of 1879, as amended by Act XI of 1896), ss. 13, cl. (f), 14—Pleader, when he does something as a litigant or member of the public and not as pleader, if to be regarded as guilty of professional misconduct—"Any other reasonable cause," con-*

instance of the plaintiff, did not amount to professional misconduct. In the words "any other reasonable cause," in s 13, cl (*f*), of the Legal Practitioners Act, the expression "other" means "other" *ejusdem generis*, that is, of the class or description of misconduct which is referred to in the preceding clause, that is to say, professional misconduct. The Legal Practitioners Act is aimed against the misconduct of legal practitioners in relation to their professional duties, and not in relation to other matters. *In the matter of* JOGENDRA NARAYAN BOSE (1900) . . **5 C. W. N. 48**

3. ——— *Pleader—Unprofessional conduct—Refusal of brief for political reasons—Right to refuse—Reasons for refusal must be stated—Right to move High Court to quash proceedings when called upon to show cause.* A pleader is not bound to accept a brief offered to him, nor to state his reasons for refusing to accept it. A pleader having refused a brief offered to him was

called upon to show cause why he should not be reported to the High Court for unprofessional conduct. Without waiting to show cause the pleader at once moved the High Court to quash

[illegible]

4 ——— *Unprofessional conduct—Suspicion—Muktear—Renewal of license.* The renewal of the license of a legal practitioner cannot be refused on the mere suspicion that he was implicated in and privy to the sending of anonymous petitions making serious allegations against a Sub-divisional Officer and other Government Officers *In the matter of* NIRAJAN PROSAD MOHANTY (1908) . . **12 C. W N. 919**

5. ——— **Disrespectful language**—*Petition, containing disrespectful language, presented by co-plaintiff who was also a pleader in the Court—Act committed by a suitor.* Two persons filed a

LEGAL PRACTITIONERS ACT (XVIII OF 1879)—*contd.*

——— ss. 13, 14—*concld.*

proceedings, giving in detail the reasons for his doubts and ordering that the Official Assignee should be added as a defendant in the suit The pleader and his co-plaintiff thereupon filed a petition objecting to their having been ...

Act, 1879. The pleader, while disclaiming any intention to be disrespectful, contended that no offence had been committed under the Legal Practitioners Act, inasmuch as he had, in writing the petition, acted as a party and not as a pleader. On the case being referred to the High Court ... *Held* that

L. R. 1 P. C. 283, referred to. *In the matter of a first-grade* PLEADER (1900). **I. L. R. 24 Mad. 17**

6. ——— **Jurisdiction**—*Inquiry by Court subordinate to the High Court into conduct of pleader practising before it* *Held*, that the words "any such misconduct as aforesaid" as used in s. 14 of the Legal Practitioners Act, 1879, relate to all the cases set out in s. 13 of the Act. The authority therefore to inquire into a matter falling

448, referred to. MUHAMMAD ABDUL HAI, *In the matter of the petition of.* (1906)
I. L R. 29 All. 61

——— s. 13, cl. (f), and s. 14—

See MUKHTEAR. **I. L. R. 27 Calc. 1023**

——— ss. 13, 14 and 40—

See PLEADER-REMOVAL—SUSPENSION AND DISMISSAL . **I. L. R. 24 Mad. 83**

——— s. 14—

See ante, ss. 12, 13 (*f*), 14, 36.

See ante, ss. 13 AND 14.

See ante, ss. 13, 14 AND 40.

See CIVIL PROCEDURE CODE, 1882, s. 622
I. L. R. 31 All. 38

——— ss. 14 and 40—*Irregularity in procedure in dismissing a mukhtear.* A charge of un-

LEGAL PRACTITIONERS ACT (XVIII OF 1879)—*contd.*

———— **s. 14 and 40—*concld.***

should be dismissed, and the same having been reported, in conformity with s. 14 of that Act, to the

one of the practitioners before it, to take steps to have the matter adjudicated upon *In the matter of* SOUTHEKAL KRISHNA RAO

I. L. R. 15 Calc. 152
L. R. 14 I. A. 154

———— **s. 27—**

———— **rules made under—**

See PLEADER—REMUNERATION.
7 C. W. N. 300

———— **s. 28—**

See PLEADER—REMUNERATION.
7 C. W. N. 300

1. ———— Agreement not filed in Court—*Contract Act (IX of 1872), ss 217, 218—Lien.* The Legal Practitioners Act does not enact that *no claim by a pleader for professional services* rendered or for recovery of out-fees advanced shall be sustainable, unless an agreement in writing for the same has been entered into with the client and filed in Court, but only that an agreement, if any, in respect thereto, shall be void, unless the

of the Legal Practitioners Act, an agreement respecting the amount of payment for charges incurred or disbursements made by the pleader in

recover the out-fees advanced by him, and, under

2. ———— Oral agreement to pay full legal fee A suit for damages for breach of contract based on an oral promise "to pay full legal fees and to engage the plaintiff as a pleader on behalf of the defendant" is barred by s 28 of the Legal Practitioners Act. *Fazi-ud-din* v. *Karim Bakhsh, I. L R 12 All 169, Rama* v. *Kunji, I. L. R 9 Mad. 375, Sarat Chunder Roy Choudhury* v. *Chandra Kanta Roy, I L. R 25 Calc. 805,* and

LEGAL PRACTITIONERS ACT (XVIII OF 1879)—*contd.*

———— **s. 28—*concld.***

Subba Pillai v. *Rama Sami Ayyar, I. L. R 29 Mad. 512,* referred to. RAGHUNATH SARAN SINGH *v.* SRI RAM (1906) . . **I. L. R. 28 All. 764**

3. ———— Set-off—*Pleader—Agreement to allow legal fees to be set-off against money advanced to a pleader by a client.* A client advanced certain money to a pleader who subsequently appeared for the lender in various cases. On suit by the lender to recover his loan, the pleader set up an agreement entitling him to set off against the money borrowed his fees for professional services. *Held*, that the pleader was entitled to a set-off in the shape of reasonable remuneration for services actually rendered, although there was no such agreement as required by the Legal Practitioners Act, s. 28 *Raghunath Saran Singh* v. *Sri Ram, I L. R. 28 All 764,* and *Razi-ud-din* v *Karim Bakhsh, I. L. R. 12 All 169,* referred to CHHANNU LAL *v.* ASHARFI LAL (1907) **I. L. R. 29 All. 649**

———— **S. 32—**

See MUKHTEAR . **I. L. R. 4 All. 375; 8 C. W N. 401**

See PROFESSIONAL MISCONDUCT.
I. L. R. 31 Calc. 44

1. ———— Outsider practising as mukhtear, his liability to punishment—*Mukhtears, their functions—Civil Procedure Code,*

tears who have failed to take out their certifi-

LEGAL PRACTITIONERS ACT (XVIII OF 1879)—*contd.*

——— **s. 32**—*concld.*

s. 32 of the Legal Practitioners Act for having practised as a mukhtear. *Held,* also, that, having regard to the Court in which *G N* practised, the words in

R250." *In the matter of the petition of* Girhar Narain. Tussuduq Husain *v.* Girhar Narain
I. L. R. 14 Calc. 556

2. ——— **Illegally practising as a pleader.** *Semble*, that the expression "Practices in any Court" as used in s. 32 of the Legal Practitioners Act, 1879, does not mean "habitually acts as a pleader or mukhtear," but signifies the doing of acts, as it may be, a single act, in a professional capacity as of right, which could not be done as of right by a non-professional person. Emperor *v.* Beni Bahadur (1904)
I. L. R. 26 All. 380

3. ——— **Mukhtears practising in Civil Courts as pleaders**—*Rule made by the High Court—Special leave of Court, if to be taken in such case—Leave when to be given—Violation of rule, with implied permission of Court, if punishable under the Act.* Special leave must be obtained from the Court in each case by a mukhtear, who is desirous of offering any legal argument or examining any witness before a Civil Court. Such leave should be given only in exceptional cases and for sufficient

against them. Raj Mohan Mukhopadhya *v* Basiruddin Ahmed (1904) . **8 C. W. N. 401**

——— **s. 36**—

See ante, ss. 12, 13 (*f*), 14, 36.

See Superintendence of High Court—Charter Act—Civil Cases.
I. L. R. 21 All. 181
4 C. W. N. 36

1. ——— **Touts**—*Legal Practitioners*

an unverified report purporting to come from the Secretary of a Bar Association framed and
s in the list
oved to their
f 1896, refer
to the law
exercise its

LEGAL PRACTITIONERS ACT (XVIII OF 1879)—*contd.*

——— **s. 36**—*contd.*

judicial determination, and the judge had acted without having before him any legal evidence as required by s. 36, Legal Practitioners Act. The
the

4 C. W. N. 36

See In the petition of Madho Ram.
I. L. R. 21 All. 181

2. ——— *Order declaring certain persons to be touts—Revision—Jurisdiction—Practice—Statute 24 and 25 Vict., Cap. CIV, s. 15—Rules of High Court of the 18th January 1898,*

3. ——— *Tout—Inquiry and evidence of general repute must be made before the officer empowered to make the list—Delegation of authority* The officer empowered to make a list of touts under s. 36 of the Legal Practitioners Act cannot delegate the task of making the inquiry or taking evidence to an officer subordinate to himself, and the evidence must be evidence adduced before the officer himself. *In the matter of* Madho Pershad (1901) . . . **6 C. W. N. 289**

4. ——— *Application to have persons declared as touts—Hearing on affidavits—Validity—Operation of order limited to Sessions District.* Where application is made to a Court to declare persons to be touts, under s. 36 of the Legal Practitioners Act, it is desirable that the Court

District Judge of Madura (1903)
I. L. R. 26 Mad. 596

LEGAL PRACTITIONERS ACT (XVIII OF 1879)—contd.

——— s. 36—*concld.*

5. ——— *Tout, declaring a person to be—District Judge to take evidence himself—Power to direct Munsif to take it—Opportunity to show cause—Procedure when Munsif suspects a person to be a tout.* S. 36 of the Legal Practitioners

Judge has no power to delegate to the Munsif the special statutory powers conferred upon him by that section. When a Munsif has reason to suspect that any person is acting as a tout he should inform the District Judge of his suspicions giving him the names of witnesses and leaving it to him to take and hear evidence. *In the matter of* PRASANNA KUMAR DAS (1897) . . 12 C. W. N. 843 note

6. ——— *District Magistrate declaring a person to be a tout—Procedure—Personal enquiry necessary—Opportunity to show cause.*

divisional Officer called on a person to show cause why he should not be declared a tout and he

6 C. W. N. 289, followed. *In the matter of* CHANDI CHARAN DEY (1908) . 12 C. W. N. 842

——— s 40—

See ante, ss 13, 14 AND 40.

ADVOCATES.

1. ——— Libel on the Judges—*Letters Patent of the Allahabad High Court, ss 7, 8—Rules of the Court No. 197—Disciplinary authority over an advocate—Reasonable cause for suspension from practice* *Held,* that the High Court at Allahabad had jurisdiction under ss 7, 8 of its Letters Patent and the rules framed thereunder, to deal with the alleged misconduct of the appellant

Judges (five being then present in Allahabad) was properly constituted in that behalf *Held,* further, that it was the intention of s. 8 to give a wide discretion to the High Court in regard to the exercise of disciplinary authority It is "reasonable cause" for suspending an advocate from practice

LEGAL PRACTITIONERS ACT (XVIII OF 1879)—concld.

ADVOCATES—*concld.*

that he has been found guilty of contempt, whilst defending, in a publication for which he was solely responsible, his misbehaviour as an advocate

2. ——— Charges against an Advocate—*Evidence—Conviction reversed.* The appellant, a barrister and advocate of the Chief Court of Lower Burma, was charegd before the said Court with gross professional misconduct in that (i) whilst employed as an advocate for the prosecution in an abduction case, he advised the prosecutor's family to say nothing about letters having been received from his abducted daughter, and designedly withheld from the police and the senior advocate for the prosecution the fact that such letters had

improper means a certain expert witness in handwriting to give evidence favourable to the prosecution in connection with certain letters produced. He was acquitted on the first charge, but convicted on the second and dismissed from his office as an advocate of the said Court:—*Held,* on an examination of the evidence, that he must be acquitted on the second charge also Evidence given by the said senior advocate and by the Government advocate of the prosecutor's statements to them in the absence of the appellant, even if admissible, could not avail to contradict the prosecutor's sworn denial that the appellant had advised him to bribe Other evidence given was wholly insufficient, and the improbabilities of the appellant having acted as charged were very great BOMANJEE COWASJEE *v.* CHIEF JUDGE AND JUDGES OF THE CHIEF COURT OF LOWER BURMA (1906) I. L. R. 34 I. A. 55
s.c. I. L. R 34 Calc. 129

LEGAL PRACTITIONERS AMENDMENT ACT (XI OF 1896).

See LEGAL PRACTITIONERS ACT, s 36.
4 C. W. N. 36

See MUKHTEAR I. L. R. 27 Calc. 1023

LEGAL REMEMBRANCER.

——— appearance by—

See PRACTICE—CRIMINAL CASES—RULE TO SHOW CAUSE . I. L. R. 4 Calc. 20

LEGAL REPRESENTATIVES.

See APPEAL, ABATEMENT OF.
11 C. W. N. 504

See CIVIL PROCEDURE CODE, 1882, s 367.
I. L. R. 28 All. 109

LEGAL REPRESENTATIVES—*concld.*

——— **application to bring in—**

See HINDU LAW—JOINT FAMILY.
I. L. R. 34 Calc. 642

See LIMITATION.
I. L. R. 34 Calc. 1020

1. ——— *Application for substitution of names—Civil Procedure Code (Act XIV of 1882), s. 362—Limitation Act (XV of 1877), Sch. II, Art 178.* During the pendency of a de-

cedure Code and is governed by Art. 178, Sch II of the Limitation Act. S. 362, Civil Procedure Code,

right vested in them antecedent to the suit. SHAMANUND DAS *v.* RAJNARAIN DAS (1906)
11 C. W. N. 186

2. ——— *Civil Procedure Code (Act XIV of 1892), ss. 371, 582—Death of one defendant—Representative of deceased defendant when can be substituted—Omission to substitute at death of defendant, effect of—Agreement between surviving defendant and plaintiffs* Where the legal representatives of a deceased defendant (who died after appealing to the lower Court and before the appeal to the High Court) were under the impression that the co-defendant was prosecuting the appeal and challenging the validity of the entire decree, they could not be blamed for their omission to take any steps to have themselves brought on the

legal representatives of the deceased defendant. CHANDRA KUMAR MAJHI *v.* SANDHYMANI (1909)
I. L. R. 36 Calc. 418

LEGAL REPRESENTATIVES' SUITS ACT (MAD. XII OF 1855).

——— **s. 1, cl. 2**—*Does not apply to suits against the original wrong-doer.* Cl. 2 of s. 1 of Act XII of 1855 does not apply to an action com-

against the wrong-doer in his lifetime, such suit abates on his death. *Haridas Ramdas v. Ramdas Mathuradas, I. L. R. 13 Bom. 677,* followed. *Krishna Behary Sen v. The Corporation of Calcutta,*

LEGAL REPRESENTATIVES' SUITS ACT (MAD. XII OF 1855)—*concld.*

——— **s. 1, cl. 2**—*contd.*

I. L. R. 31 Calc. 406, referred to and approved. RAMCHODE DASS *v.* RUKMANY BHOY (1905)
I. L. R. 28 Mad. 487

LEGAL TENDER.

——— **certain coins not—**

See STOLEN PROPERTY—DISPOSAL OF, BY THE COURT . **I. L. R. 24 Bom. 703**

——— *Indian Coinage and Paper Currency Act (XXII of 1899), ss. 2, 3—Tender by cheque—Irregular tender, waiver of—Valid tender, if stops interest—Bengal Tenancy Act (VIII of 1885), s. 61—Contract Act (IX of 1872), s. 38.* A legal tender as defined by the Indian Coinage Act, the Indian Paper Currency Act, and the Indian Coinage and Paper Currency Act does not include a tender by cheque. But when a tender is actually made, but in a currency different from that required by law, *viz.*, by a cheque, the objection to the form of the tender may be expressly or impliedly waived by the creditor, and he will be deemed to have waived the objection, if he rejects the tender on

833; *Ball v. Stanley, 5 Yerger 599; Caine v Coulton, 1 H. & C. 764; Ward v. Smith, 7 Wal-*

Clark, 5 C B. 365; 75 R. R. 747, referred to. Where, therefore, a tenant wrote a letter to one of the sons of the deceased landlord offering to pay the whole amount of the rent due, by a cheque or in

eldest one with a request that a proper receipt might be sent for the amount, but the cheque was returned as there was a serious dispute amongst the brothers and they were not in a position to grant a joint receipt, and repeated attempts by the tenant to pay the money having failed, she deposited the amount in Court under s 61 of the Bengal Tenancy Act. *Held,* that as there was a valid tender in the case, which was improperly refused, interest ceased to run from the date of the tender. JAGAT TARINI DASI, *v.* NABA GOPAL CHAKI (1907)
I. L. R. 34 Calc. 305

LEGATEE.

See LEGACY.

See OUDH ESTATES ACT, ss. 2, 13, 14, 15 AND 22 . **I. L. R. 20 All. 393**

LETTER.

See LETTERS.

See STAMP ACT (II OF 1899), S. 24 AND SCH. I, ART. 23.
I. L. R. 27 Bom. 150

——— from Judge—

See EVIDENCE—CIVIL CASES—MISCELLANEOUS DOCUMENTS—LETTERS.
1 C. L. R. 239

——— of advice—

See EVIDENCE ACT, S. 32, CL. 2
9 B. L. R. Ap. 42

LETTER OF CREDIT.

——— *Bill of exchange—Meaning of the word "honoured" in reference to a bill of exchange—Right of acceptor of bill to shipping documents*

acceptance, the shipping documents relating to the goods in respect of which the bill is drawn. The primary purpose of a letter of credit is to secure an obligation to accept the bills or drafts drawn under it An acceptance of itself imposes an obligation to pay. Where a letter of credit stipulates for security, the purpose is to obtain that security at acceptance, for it is then that the acceptor's liability on the draft arises. A letter of credit addressed by the firm of S. R. & Co. to the defendant stated that his drafts to the extent of £4,000 would be "duly honoured by us against delivery of shipping documents and invoices" A bill was drawn by the defendant upon the firm against this credit, and was sold and handed over by him to the Bank, together with shipping documents relating to a consignment of goods made by him in respect of which the bill was drawn. The Bank presented the bill to S. R. & Co, by whom it was duly accepted

Held, that it was in accordance with ordinary

391, referred to NATIONAL BANK OF INDIA *v.* SALEH MAHAMED BALAXA (1901)
I. L. R. 25 Bom. 706

LETTER OF LICENSE.

See CONSIDERATION
2 Ind. Jur. N. S. 243

LETTERS.

See EVIDENCE—CIVIL CASES—MISCELLANEOUS DOCUMENTS—LETTERS.
12 B. L. R. 317
19 W. R. 356

See EVIDENCE—CRIMINAL CASES—LETTERS.
9 B. L. R. 36; 17 W. R. Cr. 15

——— in post office—

See ATTACHMENT—SUBJECTS OF ATTACHMENT—LETTERS IN POST OFFICE.
I. L. R. 13 Mad. 242

——— of assignment—

See STAMP ACT, 1869, S. 3, ART. 18
I. L. R. 2 Calc. 58

LETTERS OF ADMINISTRATION.

See ADMINISTRATION.

See ADMINISTRATOR.

See CERTIFICATE OF ADMINISTRATION.

See COSTS—SPECIAL CASES—LETTERS OF ADMINISTRATION . I. L. R. 2 Bom. 9

See HINDU LAW—ADOPTION.
I. L. R. 36 Calc. 824

See ILLEGITIMACY. 11 B. L. R. Ap. 6

See POWER OF ATTORNEY.
13 C. W. N. 1190

See PRACTICE—CIVIL CASES—PROBATE AND LETTERS OF ADMINISTRATION.

See PROBATE . 10 C. W. N. 1001

See PROBATE AND ADMINISTRATION ACT (V OF 1881), S. 41 12 C. W. N. 747

See PROBATE AND ADMINISTRATION ACT (V OF 1881), S. 47 6 C. W. N 581

LETTERS OF ADMINISTRATION—*contd.*

——— application for, by legal Representative of Executor—

See Right to sue, survival of
I. L. R. 36 Calc. 799

——— duty payable on—

See Court Fees Act, Sch. I, Art. 11.

——— if obligatory on Hindu heir—

See Hindu Law . 13 C. W. N. 1190

——— inquiry as to value of property—

See Court-fees Act (VII of 1870), s 19H . . 6 C. W. N. 898

——— prostitute's estate—

See Letters of Administration, application for . 10 C. W. N. 1085

——— with will annexed, grant of—

See Probate—To whom granted.
I. L. R. 19 Calc. 582
I. L. R. 15 Mad. 360
I. L. R. 22 Mad. 345

See Succession Act, s. 258.
I. L. R. 1 Calc. 149

1. ——— Application for—*Probate and Administration Act (V of 1881), s. 50—Heir—Purchaser—Locus standi.* A purchaser of properties from the heir of a deceased person has a *locus standi* to apply for revocation of letters of administration of a will said to have been executed [illegible]

Navadip Chandra Kaparia (1901)
I. L. R. 28 Calc. 587

2. ——— *Application for,* [illegible]

escheated to Government *Held*, that, according to the custom prevalent amongst the sect, the preceptor's preceptor was entitled to the letters of administration. Collector of Dacca v. Jagat Chunder Goswami (1901)
I. L. R. 28 Calc. 608
s.c. 5 C. W. N. 873

3. ——— *Mitakshara family—Widow, application by—Jurisdiction.* A Hindu widow governed by the *Mitakshara* law is entitled to obtain letters of administration of her husband's estate on the mere allegation that he left separate property. The Court cannot go into the question whether the property left was joint or separate *In the goods of Raghubar Hazam* v. *Bahadur Hazam, 3 C. W. N cclxxvii,* followed Raghu Nath Misser v Pate Koer (1901)
6 C. W N. 345

4. ——— Prostitute's estate—*Application for letters of administration by natural heir—Right to succeed—Escheat* When persons claiming to be brother's sons of a deceased prostitute [illegible]

Buneanee, 7 Sel Rep 273 ; In the goods of Kamini Mony Bewa, I. L. R 21 Calc. 697 ; Surnomoyee Bewa v. *Secretary of State, I. L. R 25 Calc. 254,* followed *Subaraya Pillai* v *Rama Sami Pillai, I. L R 23 Mad 171,* referred to. Bhutnath Mondol v Secretary of State for India (1906)
10 C. W. N. 1085

5. ——— Duty on—*Probate duty—Letters* [illegible]

and Art [illegible] A Hindu died intestate [illegible]

LETTERS OF ADMINISTRATION—*contd.*

deceased, and that it was his estate. Having invoked the jurisdiction of the Court by means of that statement, the applicant could not be allowed to say that the statement was incorrect and that no letters of administration were necessary. COLLECTOR OF AHMEDABAD *v.* SAVCHAND LADUKCHAND (1902) . . . . . I. L. R. 27 Bom. 140

6. ———— **Scope of enquiry prior to grant**—*Practice.* On the hearing of a petition for issue of letters of administration to the estate of a deceased person, it is not the province of the Court to go into questions of title to the property to which the letters of administration refer. OCHAVARAM NANABHAI *v.* DOLATRAM JAMIETRAM (1904) I. L. R. 28 Bom. 644

7. ———— **Jurisdiction of High Court**—*British-born subject dying at Moulmein.* In the

8. ———— *High Court, N.-W. P.—Administrative operation in Bengal* A British subject died intestate, leaving property within the jurisdiction of the High Court of the

jurisdiction of the latter Court, the Administrator

throughout the whole of the Presidency of Bengal *In the goods of* NECHTERLEIN 1 B. L. R. O. C. 19

9.———— *Attorney of executor—Administrator General* The High Court had no power to grant letters of administration to the attorney of the executor of a deceased in respect of assets situate in the Punjab The High Court has power to grant letters of administration in respect of such assets to the Administrator General *In the goods of* DUNCAN . 1 B. L. R. O. C. 3

10. ———— *Succession Act (X of 1865), ss 212, 213—Attorney within jurisdiction of Court* Under ss 212 and 213, Act X of 1865,

LETTERS OF ADMINISTRATION—*contd.*

11. ———— *Letters of administration or probate from Supreme Court* The obtaining of probate or letters of administration

administration were so obtained. LESLIE *v.* INGLIS . . . . . . 1 Hyde 67

12. ———— *Widow not resi-*

on the consent of the widow, directed to issue to the Administrator General. *In the matter of* DAMOODAR DOSS . . . . . . Bourke, Test, 6

13. ———— *Probate or Letters of Administration—Jurisdiction of High Court to grant—Estate of a deceased who had not dwelt or left goods within limits of presidency—Succession Act (X of 1865), s. 240—Letters Patent, 1862, cl 34.* The High Court of Madras has no jurisdiction to grant probate of the will of a testator, or letters of administration of the estate of an intestate, who did not dwell and who did not leave assets within the limits of the presidency. *In the matter of* ROSE LEARMOUTH (1900) I. L. R. 24 Mad 120

14 ———— **Jurisdiction of Recorder's Court.** The Recorder's Court had the same powers in respect to the grant of probates to the estates of natives as the High Court before and after the

a will; and, in dealing with the will after probate

or succession of such native and it cannot grant administration to the estate of a Hindu, Mahomedan, or Bhuddist which would interfere with such law. *In the matter of the petition of* FUKEEROODEEN ADAM SHAH . . . . . 11 W. R. 413

15 ———— **Administration with will annexed**—*Act VIII of 1855, s 17—Pecuniary legatee—Administrator General.* A pecuniary legatee is not entitled to letters of administration with will annexed in preference to a creditor, and therefore is not entitled, under ss. 10 and 17 of Act VIII of 1855, to a grant of administration in preference to the Administrator General. *In the goods of* VIRJAL . . . . . . 1 Bom 103

16. ———— **Ground for refusing letters of administration**—*Act VIII of 1885, s. 30.*

LETTERS OF ADMINISTRATION—*contd.*

The statement of a belief by the Administrator

1 Ind. Jur. O. S. 139

17. ——————— *Minor Hindu widow—Guardian—Special citation—Caveat* Upon an application by the father of an infant Hindu

constituting himself the representative of the

maintenance A special citation had been served on the step-mother of the husband, and she had entered a caveat *Held*, also, that she had no right to enter a caveat simply because she had received a special citation *In the goods of* HURRY DOSS BONERJEE . . . I. L. R. 4 Calc. 87

18. ——————— *Citation—De-*

applied for probate of the testator's will The

not now apply to have the letters of administration cancelled *Held*, that the letters of administration granted to *D* should be revoked, and that probate should be granted to the appellant. The only citation which had been issued to the appellant was in 1882, when *D* commenced his proceedings

LETTERS OF ADMINISTRATION—*contd.*

to obtain letters of administration At that time *H*, who was the executrix named in the will (the appellant *H N* being only named as executor on her death), was still alive, and the citation did not therefore call on him to accept or renounce executorship. On *H's* death, however, which took place

letters of administration, under s 50 of Act V of 1881. HORMUSJI NAVROJI *v* BAI DHANBAIJI I. L. R. 12 Bom. 164

19. ——————— *Administration de bonis non—Will relating to self-acquired property—Suit by testator's son—Probate and Administration Act (V of 1881), ss. 45, 82.* A Hindu

taken out, and that, since the plaintiff did not represent the estate of the testator, he was not competent to maintain the suit NARASIMMULU *v.* GULAM HUSSAIN SAIT . I. L. R. 16 Mad. 71

20. ——————— *Deceased having no property or fixed place of abode within district —Jurisdiction of the District Judge—Succession Act (X of 1865), s. 240.* A District Judge cannot grant letters of administration to a Parsi if the

I. L. R. 11 Bom. 506

21. ——————— *Probate and Administration Act (V of 1881), ss 23, 41—Power*

person who is legally entitled to letters of administration ought to be superseded, and the grant made to another person. ANNOPURNA DASI *v.* KALLAYANI DASI . . . . I. L. R. 21 Calc. 164

22. ——————— *Grant of administration without determining title to property.* In an application for letters of administration: *Held*, on the evidence, that the deceased left pro-

LETTERS OF ADMINISTRATION—*contd.*

perty to which administration could be granted without finally determining the title to such property. MOHUN PERSHAD NARAIN SINGH *v.* KISHEN KISHORE NARAIN SINGH **I. L. R. 21 Calc. 344**

23. ———— *Probate and*

I. L. R. 21 Calc. 911

24. ———— *Promissory note given to a firm consisting of two undivided Hindu*

the debt, and, moreover, the other members of the family should have been joined as plaintiffs. *Venkataramanna* v *Venkayya, I. L R. 14 Mad. 377,* distinguished. CHOCKALINGA PILLAI *v.* NATESA AYYAR . . . **I. L. R. 17 Mad. 147**

25. ———— *Application for letters de bonis non—Contents of petition—Succession Act (X of 1865), s. 269—Powers of administrator.* In an application for letters of administration *de bonis non:—Held,* that it is not necessary to ask in the petition for leave to dispose of the property in any particular way. S 269 of the Succession Act gives the administrator full powers in this respect. *In the goods of* HEMMING

I. L. R. 23 Calc. 579

26. ———— *Succession Act (X of 1865), s. 190—Dispute as to ownership of*

to set aside the Mamlatdar's order, and for a declaration that he was owner of the land, and that defendant had no right of way over it. Both the lower Courts rejected the plaintiff's claim on the ground that under s. 190 of the Succession Act

TULJARAM *v* BAMANJI KHARSEDJI
I. L. R. 19 Bom. 828

27. ———— *Letters of administration with will annexed—Non-acceptance of duties of executor—Refusal to take out probate—*

28. ———— *Court of Wards —" Person "* The Court of Wards is not a "person" and letters of administration cannot under the law be granted to it. GANJESSAR KOER *v* COLLECTOR OF PATNA . . . **I. L. R. 25 Calc. 795**
C. W. N. 349

29. ———— *Revocation of letters of administration—Omission to cite necessary party—Just cause—Probate and Administration Act (V of 1881), s. 50* Letters of administration may be revoked on the ground that proper

LETTERS OF ADMINISTRATION— *contd.*

citation were not served, whereby a necessary party was not, served with a citation—that being a "just cause" within s 50 of the Probate and Administration Act. *In the goods of* GUNGA BISSEN MUNDRA
2 C. W. N. 607

See REBELLS *v.* REBELLS . 2 C. W. N. 100

30. ———— *Probate and Administration Act (V of 1881), s 50—Effect of revocation of grant of letters of administration on*

that the cause of revocation being removed, the Judge had jurisdiction to entertain a fresh application for the same object. BRIJ LAL *v* SECRETARY OF STATE FOR INDIA . I. L. R. 20 All. 109

31. ———— *Suit by unsuccessful claimant to letters of administration—Right of suit—Suit to determine right of inheritance or to be appointed shebait of temple* Where letters of administration were granted to the defendant, in preference to the plaintiff, the order granting the letters of administration is not a bar to the plaintiff

PRASAD GUPTA *v.* RUNJIT SINGH
I. L. R. 25 Calc. 354

32. ———— **Limited grant**—*Succession Act (X of 1865), s 190—Hindu Wills Act (XXI*

33. ———— *Court Fees Act (VII of 1870), s 19D—Court Fees Amendment Act (XI of 1899), s. 191—Letters of Administration—Limited grant—Trust property—Exemption from probate duty* One Harilal died possessed of certain shares in Joint Stock Companies and in the Bank of

estates from the payment of *ad valorem* Court-fee is not conditional on the circumstance that there

LETTERS OF ADMINISTRATION— *contd.*

had been a previous grant of probate or letters of administration on which a Court-fee had been paid. The exemption has reference to the character of the property and not to the procedure adopted. *The Collector of Ahmedabad v. Savchand, I. L. R 29* *Pokurmul*
COL-

I. L. R. 26 Bom. 161

34. ———— *Grant to Hindu*

parties (who died after the decree) was declared entitled to a 5-30th share in the joint estate. Subsequently to this decree, several orders were made in

remainder of the unpartitioned property being in the hands of the receiver. On the taking of the account it was ascertained that the deceased sharer had during his lifetime over-drawn from the joint estate, and that the sums overdrawn by him would have to be made good out of the 5-30th share decreed to him. It being alleged by the present petition that the sum allotted to him would be insufficient to cover the deficiency, and there being certain Government securities and a small sum in cash belonging to the private estate of such deceased

rule laid down *In the goods of Ram Chand Seal, I. L. R. 5 Calc 2. In the goods of* SUTTYA KRISHNA GHOSAL I. L. R. 10 Calc. 556

35. ———— **Grant in respect of immoveable and moveable property**—*Estate of deceased Hindu consisting of immoveable and moveable property* Except under special circumstances,

MITTER
I. L. R. 6 Calc. 483: 7 C. L. R. 593

the will was executed after the 1st of September

LETTERS OF ADMINISTRATION—*contd.*

1870. ISHUR CHUNDER SURMAH *v.* DOYAMOYE DEBEA

I. L. R. 8 Calc. 864 : 11 C. L. R. 135

37. ———— Minor wife—*Grant for the use and benefit of minor—Husband, grant to—Guardian—Probate and Administration Act (V of 1881), s. 33—Practice* Where a husband applied under s. 33 for the Probate and Administration Act for letters of administration for the use and benefit of his minor wife : *Held*,—that such application was not maintainable until the applicant had been appointed guardian of his minor wife. NIROJINI DEBI, *In the goods of.* (1907) . **I. L. R. 34 Calc. 706**

38. ———— Administrator of estate of deceased Hindu—*Suits brought and attachments issued before grant of letters of administration* The legal statuts of the administrator of the estate of a deceased Hindu, as compared with the legal status of the administrator of the estate of a deceased person who in his lifetime was governed by English law, pointed out. Where a Hindu died leaving a widow and no male issue, and two of the creditors of

widow, an application on behalf of the Administrator General, who, at the widow's request, but after the judgments were obtained, took out letters of

time to the passing of the judgments ; and the judgment-creditors were held entitled to be paid out of the property attached so far as the same proved sufficient for that purpose. LALLCHAUND RAMDAYAL *v.* GUMTIBAI GHELLA PEMA *v* GUMTIBAI

8 Bom. O. C. 140

39 ———— Security from administrator of Hindu estate—*Personalty.* The security required from the administrator of the effects of a deceased Hindu extends, as in the case of an English administrator, only so far as to cover the personalty of the deceased *In the goods of* GOUR CHUNDER THAKOOR

1 Ind. Jur. N. S. 229

40. ———— Khoja Mahomedan estate—*Succession in cases of intestacy of Khoja Mahomedans—Custom* A Khoja, having died intestate and without leaving issue, was survived by his mother (a widow), his wife and a married sister, *Held*, that, according to the custom of the Khojas, his mother was entitled to the management of his estate, and therefore to letters of administration in preference to his wife or sister. HIRBAI *v* GORBAI . . . . . **12 Bom. 294**

41. ———— ———— Mahomedan Khoja administrator, powers of. The powers of a Khoja Mahomedan executor or administrator, like those of a Cutchi Mahomedan executor or administrator, seem to be generally limited to recovering debts and securing debtors paying such debts. Where a will gave the executor full powers with regard to the payment of the testator's debts,—*Held*, that an administrator with the will annexed who was a Khoja Mahomedan succeeded to those powers, and in a suit brought against him as such administrator by an alleged creditor of the testator's estate represented all the persons interested in the estate. AHMEDBHOY HURIBHOY *v.* VULLEEBHOY CASSUMBHOY . . **I. L. R. 6 Bom. 703**

See In the matter of ISMAIL HAJI ABDULLA

I. L. R. 6 Bom. 452

42. ———— Joint letters of administration—*Applicant indebted to estate.* Where there were grounds for believing that one brother was indebted to the estate of a deceased brother, the lower Court, it was held, exercised a wise discretion in refusing to grant letters of administration to such brother jointly with the other brothers of the deceased *In the goods of* STEPHEN

1 B. L. R. S. N. 3 : 10 W. R. 90

43. ———— Grant of, to Administrator-General—*Administrator-General's Act II of 1874—Act XIII of 1875—Rules of High Court, 21st June 1875* Grants of letters of administration to the Administrator General are made to him by virtue of Act II of 1874 (the Administrator General's Act), and are not in any way affected by the provisions of Act XIII of 1875 (the Act to amend the Succession Act) The form of grant should be general and unlimited. *In the goods of* HEWSON

I. L. R. 4 Calc. 770 : 4 C. L. R. 42

44. ———— Suit by Hindu widow as administratrix of her husband leaving a minor son—*Parties—Manager.* A Hindu widow, who has obtained letters of administration from the High Court of the estate of her husband who has left a minor son, is not entitled in such character to

KAMINEE DOSSEE. . I. L. R. 2 Calc. [illegible]

45. ———— Attorney of executor in England—*Costs of entering caveat.* L, a British subject possessed of property both in India and

English executors, the Court, after directing a special citation to issue to the Administrator General, held that the English executors were intended by the testator to have power of adminis-

LETTERS OF ADMINISTRATION—*concld.*

tering his assets in India as well as in England, and therefore *D G L* as their attorney was entitled to letters of administration *In the goods of* LECKIE
15 B. L. R. Ap. 8

46. ——— **Revocation of**—*Probate and Administration Act (V of 1881), s 50—Revocation of Letters of Administration—Just cause—False inventory of properties, filing of—Sister's son, application by, in the lifetime of the widow of the last male owner—Locus standi—Presumptive heir—Maintainability of application.* A reversioner is entitled to apply for revocation of Letters of Administration under s. 50 of the Probate and Administration Act *In the matter of the petition of Hurro Lall Shaha Kamona Soondary Dasi* v *Hurro Lal Shaha, I. L R. 8 Calc 571, Khettramoni Dassi* v. *Shyama Churn Kundu, I. L R. 21 Calc 539,* relied on *Kishen Dai* v *Satyendra Nath Dutt, I L R. 28 Calc 441,* referred to BEPIN BEHARI SHAHA *v* MANODA DASI (1902)
6 C. W. N. 912

47. ——— *Act X of 1865 (Indian Succession Act), s 246—Administration—Practice—Letters of Administration granted by District Judge—Property left by the deceased outside the jurisdiction of the District Judge* Where, after Letters of Administration have been granted by a

Court, the proper course is for the grantee to apply to the District Judge to revoke the Letters of Administration granted by him, and, after obtaining their revocation, to apply to the High Court for a new grant. *In the goods of* ROSE ANNE D'SILVA (1903) . . . I. L. R. 25 All. 355

LETTERS PATENT APPEAL.

See LETTERS PATENT, HIGH COURT, 1865, cl. 15

——— *Remand, order of*—

HESHWAR PRADHAN (1908)
I. L. R. 35 Calc. 1096

LETTERS PATENT, HIGH COURT, 1865.

See LEAVE TO SUE.
I. L. R. 34 Calc. 619

See LETTERS OF ADMINISTRATION.
I. L R. 24 Mad. 120

See PROBATE—POWER OF HIGH COURT TO GRANT . I. L. R. 24 Mad. 120

LETTERS PATENT, HIGH COURT, 1865—*contd.*

See REFERENCE TO FULL BENCH
I. L. R. 26 Calc. 211

——— ***Creation and continuation of High Court.*** The High Court as now existing was continued, not created, by the Letters Patent of 1865 BARDOT *v.* "AUGUSTA" 10 Bom. 110
It was created by the Letters Patent of 1862

——— **cls 7, 8—**

See ADVOCATE . I. L. R. 29 All. 95

——— **cls. 9 and 10—**

See MANDAMUS I. L. R. 35 Calc. 915

——— **cl. 10—**

See MOOKTEAR.
I L. R. 29 Calc. 890

See NORTH-WESTERN PROVINCES TENANCY ACT (II OF 1901), ss. 175, 180.

Court, and can only be done by an attorney of the Court MORAN *v.* DEWAN ALI SIRANG
8 B. L. R. 418

2. ——— *Civil Procedure Code, 1859, s. 17—Recognized agent.* Under this clau
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3. ——— *Appeal—Revi-*

——— **cls. 10 and 27—**

See PRE-EMPTION I. L. R. 26 All. 10

——— **cls. 10, 39**—*High Court—Disciplinary jurisdiction—Suspension of Vakil—Leave to appeal—Privy Council.* The applicant, a Vakil of the Bombay High Court, was suspended from practice for a period of six months by the

nature of a final judgment decree, or order under cl. 39 of the Letters Patent. It was open to the

LETTERS PATENT, HIGH COURT, 1865 —*contd.*

———— cls. 10, 39—*concld.*

applicant to proceed by way of petition to His Majesty the King for leave to appeal. G. S. D. *v.* GOVERNMENT PLEADER (1907)
I. L. R. 32 Bom. 106

———— cl. 11—

See WARRANT OF ARREST—CIVIL CASES.
I. L. R. 26 Mad. 120

———— cl. 12—

See APPEAL—LETTERS PATENT, CL. 12.
13 B. L. R. 91
21 W. R. 204

See ARBITRATION—PRIVATE ARBITRATION.
I. L. R. 24 Mad. 31

See AWARD . . 8 C. W. N. 207

See CAUSE OF ACTION.
I. L. R. 29 Bom. 368

See HIGH COURT, JURISDICTION OF—CALCUTTA—CIVIL.
I. L. R. 30 Calc. 369

See HIGH COURT, JURISDICTION OF—BOMBAY—CIVIL.
I. L. R. 13 Bom. 302

See JURISDICTION.
I. L. R. 36 Calc. 59

See JURISDICTION—CAUSES OF JURISDICTION.

See JURISDICTION—SUITS FOR LAND.

See PARSIS . I. L. R. 13 Bom. 302

See PRACTICE—CIVIL CASES—LEAVE TO SUE OR DEFEND.
I. L. R. 3 Calc. 370
I. L. R. 13 Bom. 404

See RIGHT OF APPEAL.
I. L. R. 17 Bom. 466

See RIGHT OF SUIT—FRAUD.
7 C. W. N. 353

See STATUTES, CONSTRUCTION OF.
I. L. R. 12 Bom. 507

1. ———— Jurisdiction of High Court —*Cases under R100* The High Court, under Letters Patent, 1862, cl. 12, has jurisdiction in all cases where the amount claimed is over R100, whatever may be the amount received SIKUR CHUND *v* SOORINGMULL . . 1 Hyde 272

2. ———— *Jurisdiction of High Court—Stat. 15 & 16 Vict., c. 76, ss 18 and 19; and 9 & 10 Vict., c 95, s. 128—Decisions of English Courts* The decisions of the English Courts on ss. 18 and 19 of the Common Law Procedure Act (15 & 16 Vict., c 76), relating rather to matter of [illegible]

s. 128 of the English County Courts Act (9 & 10 Vict., c. 95), which are directed to the marking out and limiting of the jurisdiction of the Court. SUGANCHAND SHIVDAS *v.* MULCHAND JOHARIMAL
12 Bom. 113

LETTERS PATENT, HIGH COURT, 1865 —*contd.*

———— cl. 12—*contd.*

3. ———— *Whether an order granting leave to sue under this clause may form the subject of an issue for trial in the suit.* The legality of an order granting permission to institute a suit under cl. 12 of the Letters Patent may form the subject of an issue for trial in the suit so instituted. NAGAMONEY MUDALIAR *v.* JANAKIRAM MUDALIAR
I. L. R. 18 Mad. 142

4. ———— *Addition of a defendant residing out of jurisdiction in a suit in which leave to sue has been already obtained—Fresh leave to sue such new defendant.* Where a defendant is added who does not reside within the jurisdiction of the High Court, and against whom the cause of action has not arisen wholly within that jurisdiction, [illegible]

5. ———— *Application of restrictive words of cl. 12—Defendant.* The restrictive words of cl. 12 of the Letters Patent, 1865, apply to the case of a plaintiff; but there is no similar restraining provision applicable to a case where the person seeking the exercise of the Court's jurisdiction is the defendant. KISSORY MOHUN ROY *v.* KALI CHURN GHOSE
I. L. R. 24 Calc. 190
1 C. W. N. 156

6. ———— *Evidence as to jurisdiction at hearing—Plaint not showing that part of cause of action arose in the jurisdiction.* The plaintiff as receiver to the estate of *S* instituted a [illegible]

——— cl. 12—*contd.*

variance in the original cause of action It is sufficient to show that the cause of action or part of it arises in Calcutta when the suit comes on for hearing FINK *v.* BULDEO DASS

I. L. R. 26 Calc. 715

7. ——————— *Civil Procedure Code (Act XIV of 1882), ss 16, 16A, 17, 373—Suit instituted by leave and withdrawn with liberty to bring fresh suit on same cause of action—Subsequent refusal of leave to bring such fresh suit—Legality of order of refusal—Exhaustion of leave by filing suit* Leave was obtained for the institution of a suit under cl 12 of the Letters Patent, and a suit was instituted in pursuance hereof, but, at the settlement of issues, was withdrawn, leave being given to plaintiffs, under s 373 of the Code of Civil Procedure, to institute a fresh suit upon the same cause of action if so advised Plaintiffs again applied for leave, under cl 12 of the Letters Patent, to institute the fresh suit which was refused, and against that order of refusal plaintiff appealed *Held*, that the force of the original order granting leave to institute the suit was exhausted by its institution in pursuance thereof; and that, in consequence, when

Held, also, that the order which was passed by the Court in the due exercise of its discretion must be upheld SABHAPATHI GURUKKAL *v* LAKSHMU AMMAL (1900) **I. L. R. 24 Mad. 293**

of the will; for the administration of the testator's estate, and for other reliefs, alleging, *inter alia*, that the principal defendant was residing in Calcutta and that there was personal property of the testators within the jurisdiction of this Court at the time of the institution of the suit *Held*, that this was

I. L. R. 29 Calc. 315

——— cl. 12—*contd.*

9. ——————— "*Cause of action*" —*Promise made out of the jurisdiction of High Court to pay within the jurisdiction—Breach—Suit on Original Side—Jurisdiction.* Defendant, at Hyderabad, undertook (as was assumed for the purposes of the case) to pay plaintiff within the jurisdiction of the Madras High Court a sum of money alleged to be due for services, which had been rendered at Hyderabad or other places outside the jurisdiction The alleged promise had not been performed and plaintiff brought this suit on the

obtained, unless it is proved that the contract as well as the breach of it occurred within the local limits of its jurisdiction SESHAGIRI ROW *v* NAWAB ASKRU JUNG (1904)

I. L. R. 27 Mad. 494

10. ——————— *Jurisdiction of High Court—Immoveable property situated outside—Moveable property situated within the jurisdiction—Partial partition* The members of a Muhammadan family sued their deceased father's brothers to recover from them their share in the family property, which consisted of the capital and profits in a certain

no leave to institute the suit had been obtained under Art. 12 of the Letters Patent Plaintiffs asked that the first defendant might be ordered to account for the estate which had come to his hands as an executor *de son tort*, for an administration order, for the appointment of a Receiver, and that they may be put in possession of their shares. On objection being raised as to the jurisdiction of the Court to entertain the suit:—*Held*, that the

the jurisdiction The Court may decree a partition of the moveable property within its jurisdiction, while declining jurisdiction as to immoveable property situate outside the jurisdiction. ABDUL KARIM SAHIB *v* BUDRUDEEN SAHIB (1905)

I. L. R. 28 Mad. 216; 487

11. ——————— *Suit for land—Leave of Court—Cause of action—Title—Appeal from order discharging summons.* The plaintiffs asked for a declaration that they were entitled to exclusive possession and enjoyment of a *talao* situated outside the jurisdiction of the Court and

LETTERS PATENT, HIGH COURT, 1865 —*contd.*

——— cl. 12—*contd.*

[illegible]

the *talao* *Held*, that the suit was a suit for land and that under the circumstances the Court had no jurisdiction to entertain it. *Held*, also, that an appeal lies from an order dismissing a Judge's [illegible]

12 B. L. R. 91 applied. Under s. 12 of the Letters [illegible]

A Court of Equity in England only assumes jurisdiction in relation to land abroad, when as between the litigants or their predecessors some privity or relation is established on the ground of contract, trust or fraud, but in no case does a Court of Equity entertain a suit, even if the defendant is within the limits of its jurisdiction, where the purpose is to obtain a declaration of title to foreign land. Though it is a general principle that the title to land should ordinarily be determined by the Court within the limits of whose jurisdiction it lies, it is no doubt open to the Legislature to disregard that principle. But the Courts certainly would not lean towards a construction involving that result, where the words of the Legislature are fairly capable of a meaning in conformity with the general principle The phrase " suit for land " in s. 12 of the Letters Patent is by no means limited to a suit for the recovery of land: the expression is not to be read with a technical limitation, which had never been associated with it VAGHOJI KUVERJI *v.* CAMAJI BOMANJI (1905)

I. L. R. 29 Bom. 249

12. ——————— *Contract Act (IX of 1872), ss. 46-49, 94—Commission agent—Place of payment of debt—Cause of action—Jurisdiction.* The plaintiff, a commission agent and merchant carrying on business in Bombay, gave instructions to the defendants, also commission agents and merchants carrying on business at Phulgaon in the Birda Zilla, to enter into certain transactions on behalf of the plaintiff, and the defendants entered into those transactions as commission agents on behalf of the plaintiff. Accounts were sent and advices were transmitted from Phulgaon to the plaintiff in Bombay and from Bombay by the plaintiff to the defendants at Phulgaon Subsequently the plaintiffs having applied for leave under clause 12 of the Letters Patent brought a suit in the High Court at Bombay to recover the amount due from the defendants at the foot of the accounts between himself as principal and the defendants as commission agents at

LETTERS PATENT, HIGH COURT, 1865 —*contd.*

——— cl. 12—*contd.*

Phulgaon, the defendants pleaded want of [illegible]

in Bombay. *Per* CURIAM—The expression cause of action means the bundle of facts, which it is necessary for the plaintiff to prove, before he can succeed in his suit Not irrelevant, immaterial facts, but material facts without which the plaintiff must fail. If any of these material facts have taken place within the jurisdiction of the Court, then leave can be given under clause 12 of the Letters Patent But if no such material facts have taken place within the jurisdiction of the Court and leave is given, then it is open to the defendants to contend at the hearing that the court has no jurisdiction. Where no specific contract exists as to the place where the payment of the debt is to be made, it is clear it is the duty of the debtor to make the payment, where the creditor is. MOTILAL *v.* SURAJMAL (1904) . **I. L. R. 30 Bom. 167**

13. ——————— *Leave of the Court —Jurisdiction of the Court to entertain suit—Rules and Forms of the Bombay High Court, Rule 361 —Suit against a firm—Addition of the names of partners constituting the firm—Practice and Procedure.* The plaintiffs sued, on the 19th November 1904 on the Original Side of the Bombay High Court; " the firm of Shaw, Wallace & Co as it was constituted on the 13th September 1898 and the partners in the said firm on that date." The action was for [illegible]

service of summons and pursuant to a chamber order of 22nd December 1904, the plaint was on the 7th January 1905 amended by the addition of the names of Messrs Wallace, Ashton, Greenway, Hue and Meakin. The first four were at the date of plaint and even afterwards carrying on business: and Secherau, one of the partners, having died in the meanwhile, his executor Meakin was also added as a party defendant. Before the death of Secherau, the partnership took in a new partner: and this new partnership opened a branch office in Bombay. Prior, however, to the presentation of the plaint leave was granted under clause 12 of the Letters Patent. It was objected on behalf of the firm that leave under clause 12 should not have been granted: that the order allowing the amendment was wrong and that the Court had no jurisdiction to receive the suit:—*Held*, (i) that Messrs Wallace, Ashton, Greenway and Hue, according to the allegations in the plaint, were liable as co-partners to the plaintiffs and none the less because the estate of the deceased co-partner might also be liable together with them. It was also stated that they were

LETTERS PATENT, HIGH COURT, 1865
—contd.

——— cl. 12—*contd.*

carrying on business within the jurisdiction and this would be so though there might be associated with them a partner, which was not a member of the firm when Shaw, Wallace & Co entered into the agreement, on which the suit was based (ii) That the

defendants' contention that the Court had no

not then the amendment should not have been made except by an order of a Judge, seeing that leave had been obtained under clause 12 of the Letters Patent. Rule 361 of the Rules and Forms of the Bombay High Court does not extend the jurisdiction of the Court: it merely sanctions the use of the firm's name as a convenient description of its several members and exempts a plaintiff from the obligation of setting forth their names at length. SHAW, WALLACE & Co *v* GORDHANDAS (1905)
I. L. R. 30 Bom. 364

14. ——— *Jurisdiction over foreigners present or absent, when suit instituted—What amounts to dwelling within the jurisdiction—In administration suit undertaking to administer forms part of cause of action—Estoppel against*

the will of *A* against *A*'s son the fourth executor and trustee, praying for his removal and for the administration of the estate by the Court. The

estate of the deceased by survivorship Some months before the institution of this suit the defendant, who was domiciled in the Mysore State, had

30th of August 1901, when the plaint was filed, but left on the following day before the summons was served. MOORE, J., directed the defendant to be removed and passed a preliminary order for the general administration of the estate *Held*, on appeal, that the High Court had jurisdiction under cl. 12 of the Letters Patent to try the suit *Per* ARNOLD WHITE, C. J.—The jurisdiction conferred by cl 12 of the Letters Patent where the cause of action arises wholly, or in part, within Madras extends to suits against absent foreigners. Further,

LETTERS PATENT, HIGH COURT, 1865
—contd.

——— cl. 12—*contd.*

in this case, the presence of the defendant within the jurisdiction when the suit was instituted, that is, when the plaint was filed, would give jurisdiction. Observations as to the jurisdiction of the old Supreme Court now vested in the High Court. *Per* SUBRAHMANIA AYYAR, *J.*—The presence of the defendant in Madras when the suit was instituted by filing the plaint placed him in the position of an ordinary subject of His Majesty with regard to

Faridkote, L R 21 I. A. 171, and *Tadipalli Subba Rao* v *Nawab Syed Mir Gullam Alli Khan, I. L R. 29 Mad 69*, considered and explained. *Per* CURIAM—In the circumstances set out above, the defendant was dwelling in Madras within the meaning of cl 12 of the Letters Patent. *Goswami Shri Ghordharin* v *Shri Govardhanlalji, I L R 18 Bom 290*, considered. Further, the
the
was
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The
defendant having with full knowledge of its rights accepted the office of executor and taken probate of the will, and under its authority collected

tion with regard to any contract made or equities between persons here as it has where the lands or assets are locally situate within the jurisdiction. SRINIVASA MOORTHY *v* VENKATA VARADA AYYANGAR (1905) . . **I. L. R. 29 Mad. 239**

15 ——— **Leave to sue**—*Rule 515A of the High Court—Ultra vires.* Rule 515A of the Rules and Order of the High Court, in so far as it authorises the Registrar or Master to grant leave under cl. 12 of the Letters Patent, is *ultra vires.* LALITESHWAR SINGH *v.* RAMESHWAR SINGH (1907) . . **I. L. R. 34 Calc. 619**

LETTERS PATENT, HIGH COURT, 1865 —*contd.*

——— cl. 12—*concld.*

16. ——— *Considerations of convenience may be taken into account in granting or refusing leave when part of the cause of action arises within jurisdiction* The jurisdiction conferred by cl. 12 of the Letters Patent in respect of applications for leave to sue when part of the cause of action arises within jurisd...
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Courts in this country are not precluded from taking the question of convenience into consideration in dealing with applications under cl. 12 for leave to sue. Part of the cause of action cannot be held to arise at a place, where payment was not originally contracted for, merely because after performance of the contract and without any consideration a promise is made to pay at such place SESHAGIRI ROW *v.* NAWAB ASKUR JUNG AFTAL DOWLAH MUSHRAL MULK (1907) . . I. L. R. 30 Mad. 438

17. ——— *Rules and Orders of the High Court—Rules 515A and 515B—Grant of leave under cl. 12 of the Charter by Registrar or Master, if ultra vires.* Rule 515A so far as it authorises the granting of leave under cl. 12 of the Charter by
BRIJ COOM
11 C. W. N. 000

18. ——— *Jurisdiction, waiver of—High Court, Letters Patent, 1865, cl. 12—Leave under—Step in the action a waiver of plea in*

action in so doing is *ultra vires* *Lalitessur Sing* v. *Ramessur Singh Bahadur, 11 C. W. N. 649, s.c. I. L. R. 34 Calc. 619,* followed There is no distinction between a case where no leave has been granted and a case where leave has been granted by a person not entitled to grant the same The objection that the leave was granted by the Registrar or Master is one which can be waived by the defendant by taking any step in the proceedings before applying to have the action dismissed. *Moore* v. *Gamgee, 25 Q. B. D 244,* and *In re Jones* v. *James, 19 L J. (Q. B.) 257,* followed. KING *v.* SECRETARY OF STATE FOR INDIA (1908)
I. L. R. 35 Calc. 394
s.c. 12 C. W. N. 705

——— cl. 13—

See TRANSFER OF CIVIL CASE—LETTERS PATENT, HIGH COURTS, CL 13

See TRANSFER OF SUIT.
I. L. R. 30 Bom. 246

1. ——— **Power to remove cause from Court of Resident of Aden**—*High Court, Bombay—Power of superintendence—If dependent on Appellate Jurisdiction—Charter Act (24 & 25 Vict., c. 104), s. 15—Act II of 1864.* The Court of the

LETTERS PATENT, HIGH COURT, 1865 —*contd.*

——— cl. 13—*concld.*

Resident at Aden is subject to the superintendence of the High Court at Bombay within the meaning of cl. 13 of the Letters Patent for the Bombay High Court ...

exercise of such powers of superintendence, the Bombay High Court can remove a suit from the Court of the Resident ...

superintendence and not Appellate Jurisdiction the condition of the exercise of the power of removal. MUNICIPAL OFFICER, ADEN, *v.* HAJI ISMAIL HAJI (1906) . . . . 10 C. W. N. 185

2. ——— cls. 13, 40.—*Privy Council—Leave to appeal—Interlocutory orders—Jurisdiction, question of.* The High Court in the exercise of its Extraordinary Original Civil Jurisdiction remove to itself for trial a suit instituted in the Court of Resident at Aden ...

interlocutory, the High Court had discretion to grant the certificate under cl 40 of the Amended Letters Patent; (ii) that value of the subject-matter was R10,000; and (iii) the question raised was one of jurisdiction MUNICIPAL OFFICER, ADEN, *v.* ABDUL KARIM (1904)
I. L. R. 28 Bom. 292

——— cl. 15—

See APPEAL . I. L. R. 33 Calc. 1323

See APPEAL TO PRIVY COUNCIL—CASES IN WHICH APPEAL LIES OR NOT—APPEALABLE ORDERS . 7 B. L. R. 730

See CALCUTTA MUNICIPAL CONSOLIDATION ACT (BEN. ACT II OF 1888), s 135.
6 C. W. N. 480

See LETTERS PATENT APPEAL.

See NEGLIGENCE . I. L. R. 32 Mad. 95

——— meaning of "judgment"—

See ASSIGNMENT OF CHOSE IN ACTION.
I. L R. 24 Mad. 252

See HABEAS CORPUS, WRIT OF.
I. L. R. 29 Calc. 286

1. ——— **Right of appeal**—*Appeal after new Letters Patent.* Where two Judges decided a case of original civil jurisdiction under the original Letters Patent, but the decree was sealed, and appeal preferred after the amended Letters Patent had come into operation:—*Held,* that the right of appeal to the High Court, constituted so as to hear an appeal from two Judges, which existed in such a case under cl. 14 of the old Charter,

LETTERS PATENT, HIGH COURT, 1865
—contd.

——— cl. 15—*contd.*

was taken away by cl. 15 of the new Charter, as there was no reservation therein that parties should retain any right of appeal which existed before its publication in respect of suits then pending, of judgments given, or of decree made, but not executed. FRAMJI BOMANJI *v* HORMASJI BARJORJI
3 Bom. O. C. 49

2. ——— **"Judgment"**—"*Decree.*" *Per* PEACOCK, *J.*—A judgment under this section means a judgment in the nature of a decree on which action can be taken by the parties, and not [illegible]

[illegible]

3. ——— "*Appeal*"—"*Judgment*"—*Appealable order—Order granting mandamus* *Held* (*per* COUCH, C.J., and MARKBY, J. on appeal) the word "judgment" in cl. 15 of [illegible] The order [illegible]

v. ORIENTAL GAS COMPANY
8 B. L. R. 433: 17 W. R. 364

See HOWARD *v* WILSON.
I. L. R. 4 Calc. 231: 2 C. L. R 488

4. ——— **Appeal from decision of a Judge exercising Admiralty or Vice-Admiralty jurisdiction**—*Practice—Vice-Admiralty Regulations of 1832, Rule 35, application of—Mentioning of the apportionment of award for* [illegible]

I. L. R. 17 Calc. 66

5. ——— **Interlocutory order.** *Quære* Whether an interlocutory order can be made the subject of an appeal BAMASOONDERY *v* NILMONEY CHUNDER . . . . Cor. 5

6. ——— *Appeal from interlocutory order.* Under cl 15 of the Letters Patent and under the rules of the Bombay High Court, an appeal to the High Court from an interlocutory order made by one of its Judges only lies in those cases in which an appeal is allowed under the Code of Civil Procedure and its amending Acts. SONBAI *v.* AHMEDBHAI HABIBHAI 9 Bom 398

7. ——— *Appeal—Judgment—Decision on settlement of issues—Interlocutory order* *Held,* that no appeal lay from a decision upon the settlement of issues that a certain hibbanama relied upon by the appellants was invalid. *Per* GARTH, *C.J.*—The word "judgment" in cl. 15 of the Letters Patent, 1865, means a judgment or decree which decides the case one way or the other in its entirety, and does mean a decision or order of an interlocutory character which merely decides some isolated point not affecting the merits or result of the entire suit *Per* MARKBY, *J* —The matter is one more of convenience and procedure than strict law EBRAHIM *v.* FUCKHURNNISA BEGUM
I. L. R. 4 Calc. 531: 3 C. L. R. 311

8. ——— **Order fixing date of hearing**—*Civil Procedure Code, s* 156. An order made by a Judge of the High Court at settlement of issue fixing a distant date for the hearing of a suit is not an order under s. 156 of the Civil Procedure Code and is appealable under Letters Patent, s. 15. R. *v* R. . . . I. L. R. 14 Mad. 88

9. ——— **Remand order—Appeal.** At the hearing of an appeal before a single Judge of the High Court, the case was remanded to the lower Court for the trial of certain issues of fact, the case being in the meantime retained on the file of the Court. *Held,* that the order was not appealable under cl 15 of the Letters Patent KALIKRISTO PAUL *v* RAMCHUNDER NAG
I. L. R. 8 Calc. 147: 9 C. L. R. 461

10. ——— **Appeal from single Judge of High Court**—*Civil Procedure Code, ss 629, 632.* Cl 15 of the Letters Patent for the High Court of Judicature at Madras, which allows an appeal to the High Court from the judgment of one Judge of that Court, is controlled by s 629 of the Code of Civil Procedure, which provides that an order of a Civil Court rejecting an application for review of judgment shall be final ACHAYA *v.* RATNAVELU . . I L R 9 Mad. 253

11. ——— *Civil Procedure Code, ss. 588, 592—Order of a Judge of High Court* [illegible]

12. ——— *Appeal from an order of a single Judge of the High Court in the exercise of the Court's revisional or extraordinary jurisdiction* No appeal lies under cl 15 of the Letters Patent from an order of a single Judge-

LETTERS PATENT, HIGH COURT, 1865 —*contd.*

——— cl. 15—*contd.*

appeal only from a judgment in the original or appellate jurisdiction of the High Court. HIRALAL *v.* BAI ASI . . I. L. R. 22 Bom. 891

13. ——— *Appeal from*

amounts to a judgment. CHAPPAN *v* MOIDIN KUTTI . . . . I. L. R. 22 Mad. 68

14. ——— *Order of single Judge dismissing petition under Civil Procedure Code (Act XIV of 1882), s 622.* No appeal lies under Letters Patent, s. 15, against an order made by a single Judge dismissing an application under s 622. SRIRAMULU *v.* RAMASAM I. L. R. 22 Mad. 109

15. ——— *Orders transferring case from Agency to District Court—Jurisdiction of High Court to transfer suit pending in the Agent's Court to the District Court—Indian Councils Act (24 & 25 Vict., c 67), s. 25.* An order was made by a single Judge, by consent of the parties, transferring a case from the Court of an Agent to the Governor, Vizagapatam, to a District Court. A

I. L. R. 23 Mad. 329

16. ——— Appeal from decision of Division Bench in exercise of civil appel-

divided in opinion, and do not amount in number to a majority of the whole of the Judges. SURNOMOYEE *v.* LUCHMEEPUT DOOGUR

B. L. R Sup. Vol. 694: 7 W. R 52; 512

17. ——— Difference of opinion between Judges—*Appeal* In cases heard by the High Court in its appellate jurisdiction where the Judges are equally divided

14 W. R. 298

18. ——— *Difference of opinion between Judges—Appeal.* The difference of

LETTERS PATENT, HIGH COURT, 1865 —*contd.*

——— cl 15—*contd.*

opinion between Judges constituting a Division Bench of the High Court, which entitles parties to an appeal to the High Court under cl. 15 of the Letters Patent, must be a difference of opinion as to the final and complete decision of the appeal, and not a difference of opinion upon one or more of the points arising in the appeal. *In the matter of the petition of* OMRAO BEGUM . . 13 W. R. 310

19. ——— *Judgment—Appeal—Appealable order—Order rejecting review.* An order passed by the senior of two Judges of a Division Bench who differed in opinion, dismissing an application for the review of their judgment, is not appealable. Such an order is not a judgment within the meaning of cl. 15 of the Letters Patent. RAKU BIBI *v.* MAHOMED MUSA KHAN

4 B. L. R. A. C. 10

s c. RUGHOO BIBEE *v.* NOOR JEHAN BEGUM

12 W. R. 459

20. ——— *Appeal—Difference of opinion between Judges in review.* Where two judges of a Division Bench have concurred in a final decree, the fact that there is a difference of opinion as to one point, amongst others, raised in review on the judgment on which such final decree is based, is no ground for an appeal under cl. 15 of the Letters Patent *In the matter of the petition of* HURBUNS SAHAY. HURBUNS SAHAY *v* THAKOOR PERSAD I. L. R. 10 Calc. 108; 13 C. L. R. 285

21. ——— Order passed in suit re-

suit, referring it to the Commissioner to take the accounts between the parties, is a decree. An order passed on a certificate given (under Rule 371 of the Equity Rules of the Supreme Court) by the

22. ——— Order of Judge in original jurisdiction Under cl. 15 of the Letters Patent, an appeal lies from an order passed by a single Judge in the original civil jurisdiction of the High Court. KRISTO KISSOR NEOGHY *v.* KADERMOYE DOSSEE . . . . 2 C. L. R. 583

23. ——— Order allowing commission to Administrator-General. An order passed by a single Judge of the High Court under Act II of 1874, s 27, allowing to the Administrator-General commission at a certain rate, is subject to appeal to the High Court under the 15th clause of the Letters Patent. *Justices of the Peace of Calcutta*

LETTERS PATENT, HIGH COURT, 1865 —*contd.*

———— cl. 15—*contd.*

tionary, would not under ordinary circumstances be interfered with on appeal, yet, where it is not in accordance with the rule laid down in s. 54 of the

24. ———— Appeal from decision of Judge in original jurisdiction refusing leav to institute suit under cl. 12 of

25 ———— Order refusing to stay proceedings—*Fresh suit after withdrawal without payment of costs.* An order refusing to stay pro-

fresh suit, is an order of an interlocutory character, and is not appealable. CHITTO *v.* MUZZUR HOSSAIN

2 Hyde 212

26 ———— Order refusing to set aside award—*Letters Patent, High Court, 1865, cl. 15—Code of Civil Procedure (Act XIV of 1882), ss. 2, 588* An order made by a Judge of the High Court in the exercise of original civil jurisdiction

9 Calc 482 L. R. 10 I. A 4, referred to TOOLSEE MONEY DASSEE *v* SUDEVI DASSEE

I. L. R. 26 Calc. 361
3 C. W. N. 347

27 ———— Order refusing to confirm award—*Payment* In a suit referred to arbitration under Act VIII of 1859, the arbitrator informed the parties that he had determined to award the plaintiff R1,500 with costs, but a few days afterwards, in consequence of a communication made by the defendant, the arbitrator held another meeting, at which the defendant for the first time contended that, as before the matter was referred to arbitration he had offered the

LETTERS PATENT, HIGH COURT, 1865 —*contd.*

———— cl. 15—*contd.*

decided not to give the plaintiff costs An application to confirm the award was refused by the learned Judge of the Court of first instance, upon the ground that the defendant had acted improperly in using the letter. *Held*, on appeal by the defendant, that the refusal to confirm the award was a "judgment" upon the whole subject-matter of the suit, and that an appeal would lie from such a judgment. HOWARD *v.* WILSON

I. L. R. 4 Calc. 231 : 2 C. L. R. 488

28. ———— Order of committal for contempt of Court—*Procedure* Contempts are in the nature of offences, and therefore under cl 15 of the Letters Patent, 1865, an appeal lies from an order of committal for contempt In dealing with an appeal from such an order, the Appellate Court will not go behind the order, the disobedience to which constitutes the contempt. NAVITAHOO *v.* NAROTAMDAS CANDAS

I. L. R. 7 Bom. 5

29. ———— Order on hearing under s.

defendant preferred a petition to the High Court under Civil Procedure Code, s 622, which came on for hearing before one Judge. He held that the Small Cause Court had failed to give effect to a

of the petition of JAVERVAHU

I. L. R. 14 Bom. 555

31. ———— Order granting appeal to Privy Council—*Act VI of 1874.* Under cl 15 of the Letters Patent, no appeal lies to the High Court from an order of the Judge in the Privy Council Department granting a certificate that a

LETTERS PATENT, HIGH COURT, 1865 —*contd.*

——— cl. 15—*contd.*

case is a fit case for appeal to Her Majesty in Council. MOWLA BUKSH *v.* KISHEN PERTAB SAHI

I. L. R. 1 Calc. 102

s c. MOWLA BUKSH *v.* HODGKINSON

24 W. R. 150

32. ——— *Appeal from order of Judge granting certificate of appeal to Privy Council—Act VI of 1874.* When an appeal was

given to the High Court from any judgment of a single Judge an order or certificate of a Judge allowing an appeal to the Privy Council cannot properly be considered a judgment of the High Court Such an order has its origin in an Act of Parliament for the better administration of justice in the Privy Council, and belongs rather to Privy Council proceedings than to the legitimate province of the High Court. In this view it is immaterial whether an order and certificate are for admission or refusal of appeal to the Privy Council AMIRUNNISSA *v* BEHARY LALL KESHUB CHUNDER ACHARJEE *v* HURRO SOONDUREE DEBEA

25 W. R. 529

33. ——— *Appeal from order of Judge in Privy Council Department—"Judgment," meaning of.* No appeal will lie from an order of a Judge granting a certificate that a case is a fit and proper one for appeal to the Privy Council LUTF ALI KHAN *v.* ASGUR REZA

I. L. R. 17 Calc. 455

34. ——— *Appeal from order of Judge in Privy Council Department refusing certificate of appeal.* The Judge in the Privy Council Department refused an application for a certificate, but was stopped from giving his reasons by the petitioner's counsel, who had hopes of making a compromise ...

... ing cl. the was hat, High ... BUN MUSTOFEE . . . . . **24 W. R. 148**

35. ——— *Order by Judge of the High Court presiding over the Privy Council Department—"Judgment"—Certified copy of order of the Privy Council—Civil Procedure Code (Act X of 1877), s 610.* A decree obtained on appeal by certain defendants in the High Court was appealed to the Privy Council by one only of the two plaintiffs to the suit, and the decision of the High Court was reversed; the plaintiff who had appealed assigned her share in the order of the Privy Council to one of the defendants, and delivered him the certified copy of the decree made in the Privy Council. The plaintiff who had not appealed to the Privy Council applied to the High Court for leave to transmit the order to the Court of first instance for execution of the share decreed to him, but, on account of the

...

was excusable under the circumstances, but refused

...

appeal, *per* GARTH, *C.J.*—That the duties of a ...

...

... over the Privy Council Department in the

...

CHUNDER CHOWDHRY

I. L. R. 6 Calc. 594: 7 C. L. R. 543

In the same case on appeal to the Privy Council: —*Held*, that a decision by the Judge appointed to dispose of matters relating to appeals to Her Majesty in Council, refusing to transmit for execution Her order restoring a decree, is a judgment within the meaning of cl. 15 of the Letters Patent of 1865, and is appealable to the High Court *Held*, also, that a refusal to transmit such an order for execution was not a misapprehension on the part of the Judge of the extent of his jurisdiction, although, if it had been, this itself would have been a ground of appeal. HURRISH CHUNDER CHOWDHRY *v* KALISUNDERI DEBI . **I. L. R. 9 Calc. 482: 12 C. L. R. 511**

...

respect of some matters relating to the mode in which the relief to which the plaintiff was declared entitled should be granted. The defendant applied

LETTERS PATENT, HIGH COURT, 1865
—*contd.*

———— cl. 15—*contd.*

for leave to appeal to the Privy Council, but the application was refused, on the ground that the

Amirunnissa v. *Behary Lall*, 25 W. R. 529, followed. MANLY v. PATTERSON

I. L. R. 7 Calc. 339 : 9 C. L. R. 166

37. ———— **Appeal from order of Judge in Privy Council Department refusing to extend time for furnishing security for costs**—"*Judgment,*" *meaning of* No appeal will lie from an order of a Judge in the Privy Council Department refusing to extend the time prescribed by law within which an appellant is required to furnish security for the

review of the authorities, that where an order

I. L. R. 18 Calc. 182

38. ———————— *Order refusing*

39. ———— **Order granting review of judgment**—*Appeal*—"*Judgment*"—*Civil Pro-*

the two Judges from sitting together until the

LETTERS PATENT, HIGH COURT, 1865
—*contd.*

———— cl. 15—*contd.*

of Civil Procedure. *Bombay-Persia Steam Navigation Company* v. *Zuari*, *I. L. R. 12 Bom 171*, and *Achaya* v. *Ratnavelu*, *I. L. R. 9 Mad. 253*, approved. AUBHOY CHURN MOHUNT v SHAMANT LOCHUN MOHUNT . . I. L. R. 16 Calc. 788

40 ———— **Petition for revision under the Provincial Small Cause Courts Act**—*Appeal—Provincial Small Cause Courts Act (IX of 1887), ss. 25 and 27—Order of Judge of High Court acting under rules of Court under s. 13 of the Charter Act (24 & 25 Vict., c. 104)* A petition for revision preferred under the Provincial Small Cause Courts Act, s 25, was heard and dismissed by one of the Judges of the High Court acting under the rules of Court framed under s. 13 of the Charter Act The petitioner preferred an appeal under the Letters Patent, cl. 15. *Held*, that the appeal was not barred under Provincial Small Cause Courts Act, s. 27, and was maintainable. VENKATA REDDI v TAYLOR

I. L. R 17 Mad. 100

41. ———— **Order of Criminal Court**—*Order by one Judge granting sanction to prosecute—Criminal Procedure Code, 1882, s. 195.* Where one Judge exercising the revisional jurisdiction of the High Court, in reversal of an order of a first class Magistrate, had granted sanction under the Criminal Procedure Code, s. 195, for a prosecution under the Penal Code, 1882, an appeal was preferred from his judgment under the Letters Patent, cl 15 : *Held*, that no appeal lay, that clause of the Letters Patent being inapplicable in cases of criminal jurisdiction SRINIVASA AYYANGAR v. QUEEN-EMPRESS . . I. L. R. 17 Mad. 105

42. ———— **Order of Judge of High Court on application for re-admission of an appeal dismissed on failure to deposit costs of paper-book** *Semble* :—An appeal lies under cl. 15 of the Letters Patent from a judgment of a single Judge disposing of an application for re-admission of an appeal dismissed for failure to deposit the costs of the paper-book in an appeal from an original decree. RAMHARI SAHU v MADAN MOHAN MITTER . I. L. R. 23 Calc. 339

43. ———— **Order on application under Probate and Administration Act (V of 1851), s. 90.** An order on an application under s. 90 of the Probate and Administration Act, at the instance of a beneficiary, where there was no restriction on the power of the executor to sell, is without jurisdiction and appealable under cl. 15 of the Letters Patent. *Hurrish Chunder Chowdhry* v *Kali Sundari Debi*, *I. L. R 9 Calc. 482*, applied. *In the goods of* INDRA CHANDRA SINGH. SARASWATI DASI v ADMINISTRATOR GENERAL OF BENGAL

I. L. R. 23 Calc. 580

See FATEMUNNISSA v. DEOKI PERSHAD

I. L. R. 24 Calc. 350

IKBAL HOSSAIN v. DEOKI PERSHAD

1 C. W. N. 21

LETTERS PATENT, HIGH COURT, 1865 —*contd.*

——— cl. 15—*contd.*

44. ——— Order of remand—*Order of Judge of High Court on appeal against order of remand—Civil Procedure Code, 1882, s. 588, cl 28.* There is no appeal under the Letters Patent, cl. 15, against an order of a single Judge passed under the Civil Procedure Code, s. 588, cl 28 VENGANAYYAN *v.* RAMASAMI AYYAN I. L. R. 19 Mad. 422

45. ——— *Civil Procedure Code, 1882, s. 588—Powers of Judge of High Court —Order on appeal from erroneous order of remand*

KUTTI . . . I. L. R. 20 Mad. 152

46 ——— *Order of Judge*

gopal, I. L. R. 9 Mad 447, and *Sankaran v. Raman Kutti, I. L. R. 20 Mad. 152,* followed. VASUDEVA UPADYAYA *v.* VISVARAJA THIRTHASAMI I. L. R. 20 Mad. 407

47. ——— Order refusing application to commit for contempt—*Appeal—Judgment.* An appeal lies from an order refusing an application to commit for contempt of Court MOHENDRO LALL MITTER *v.* ANUNDO COOMAR MITTER I. L. R. 25 Calc. 236

48. ——— Order of refusal to send for records—*Dismissal on ground that no appeal lies* An order refusing to send for the record on a petition filed under s 25 of the Provincial Small Cause Courts Act, 1887, is not a judgment, and no appeal lies therefrom. VENKATARAMA AYYAR *v.* MADALAI AMMAL I. L. R 23 Mad. 169

GURAPPA *v.* VENKATANARASIMHA BHUPALA BHALLEROW . . I. L. R. 23 Mad. 170 note

49. Civil Procedure Code, 1882, s 575—*Right of appeal.* S 575 of Act XIV of 1882 does not take away the right of appeal which is given by cl. 15 of the Letters Patent. When the judgment of a lower Court has been confirmed under s 575 of the Code of Civil Procedure by reason of one of the Judges of the Appeal Court agreeing upon the facts with the Court below, an appeal will lie against such judgment, notwithstanding the terms of s. 575. GOSSAMI SRI 108. SRI GRIDHARIJI MAHARAJ TICKAIT *v.* PURUSHOTUM GOSSAMI . . . I. L. R. 10 Calc. 814

50. ——— Time for preferring appeal ... Letters Patent ... Bench of the ... thirty days ... good cause ... *matter of* HURRUCK SINGH . . . 11 W. R. 107

51. ——— *Filing petition of appeal—Practice Per* PEACOCK, *C.J.*, and KEMP and MACPHERSON, *JJ.*—A petition of appeal under cl. 15 of the Letters Patent, from a decision of an Appellate Division Bench, may be presented ... The ... appel... ...asted. ... R. 47

s c. HURUCK SINGH *v.* TOOLSEE RAM SAHOO 12 W. R. 458

52. ——— Arguments on appeal—*Practice* On appeal under cl. 15 of the Letters Patent, no other points may be argued than those which were argued before the Division Bench. HAJRA BEGUM *v.* KHAJA HOSSEIN ALI KHAN 4 B. L. R. A. C. 86

HIRANATH KOER *v.* RAM NARAYAN SINGH 9 B. L. R. 274 : 17 W. R. 316

53. ——— *Civil Procedure Code, s 257—Act XXIII of 1861, s 23—Arguments on appeal—Practice.* Cls. 15 and 36 of the Letters Patent of the High Court must be treated as qualifying s. 257 of Act VIII of 1859. Under the Letters Patent of 1865, in lieu of the former practice under Act XXIII of 1861, s 23,—namely, that when

question before one or more of the other Judges,—when the Judges of a Division Court are equally divided in opinion as to the decision to be given on any point, the opinion of the senior Judge is to

opinion. ROY NANDIPAT MAHATA *v.* URQUHART 4 B. L. R. A. C. 181 : 13 W. R. 209

54. ——— Issue of probate and discharge of Receiver.—*"Judgment"—Probate action—Receiver.* An order made by a Judge of the High Court, refusing to stay the issue of probate and the discharge of the Receiver

LETTERS PATENT, HIGH COURT, 1865
—*contd.*

——— cl. 15—*contd.*

appointed in a probate action, is a "judgment," within the meaning of cl. 15 of the Letters Patent, and is appealable. *The Justices of the Peace for Calcutta* v *The Oriental Gas Co*, *8 B. L. R 433, 452*, commented on and followed *Hurrish Chunder Choudhry* v *Kali Sundari Debi, I. L. R 6 Calc 594, on appeal, L. R 10 I A. 4*, referred to. *Durga Prasada* v. *Mallikarjuna, I. L. R 24 Mad 358*, dissented from BRIJ COOMAREE *v* RAMRICK DAS (1901) . . . . . 5 C. W N. 781

55. ——— **Order of a single Judge, refusing a stay of execution**—*Appeal* An order, made by a single Judge refusing a stay of

I. L. R. 24 Mad 500

56. ——— *Order directing Receiver in suit to advance money for defence by guardian ad litem—Appeal.* An order directing a Receiver in a suit to advance money to a guardian *ad litem*, to enable him to conduct the defence on behalf of a defendant, is not a "judgment," within the meaning of cl. 15 of the Letters Patent, and no appeal lies therefrom KUPPUSAMI CHETTI *v* RATHNAVELU CHETTI (1901)
I. L. R. 24 Mad. 511

57. ——— —*Appeal.* An ... judgment- ... in the ... by the ... is a "judgment," within the meaning of cl 15 of the Letters Patent, and an appeal lies therefrom. PUNINTHAVELU MUDALIAR *v* BHASHYAM AYYANGAR (1901) . . I. L. R. 25 Mad. 406

58. ——— *Civil Procedure*

the mortgagees of immoveable property which has been attached in execution of a decree, is sub-

59. ——— *Order dismissing petition praying Court to receive security for costs—Appeal* An order, dismissing a petition praying

LETTERS PATENT, HIGH COURT, 1865
—*contd.*

——— Cl. 15—*contd.*

60. ——— *Order refusing leave to appeal in formâ pauperis—Appeal* There is no appeal, under cl 15 of the Letters Patent, against an order, passed by a single Judge, under s 592 of the Code of Civil Procedure, refusing leave to appeal *in formâ pauperis*. By s 592 a dis-

ramulu v. *Ramasam, I. L R 22 Mad. 109*,

61. ——— *Order on a plaintiff to give security for defendant's costs—Appeal.*

I. L. R. 26 Mad. 502

62. ——— "*Judgment*"—*Dismissal of application under s 25 of the Small Cause Courts Act—Appeal.* Where an application

sarily imply a decision as regards any right PUTHUKUDI ABDU *v* PUVAKKA KUNHTIKUTTI (1904)
I. L. R. 27 Mad. 340

63. ——— *Appeal—Order by single Judge ordering commission to issue to examine a witness—Civil Procedure Code (Act XIV of 1882), ss 383, 386—Power of Courts to issue com-*

the Court, then applied to the Subordinate Judge

LETTERS PATENT, HIGH COURT, 1865 —contd.

———— cl. 15—*contd.*

Judge *refused to issue a commission.* On a revision petition being filed, a single Judge of the High Court set aside the order of the Subordinate Judge

examination of witnesses by the Courts of this

of competent jurisdiction to prevent abuse of its process. In the present case, the appellant's application was not *bonâ fide*, and the respondent's attendance in Court was required, not for the purpose of obtaining material evidence, but from other motives, and the order for the issue of a commission was therefore rightly made VEERABADRAN CHETTY *v* NATARAJA DESIKAR (1905)
I. L. R. 28 Mad. 28

64. ———— *Single Judge re-*

holding that no case had been made out for a re-

Dassee v *Sudevi Dassee, 3 C. W. N. 347* s. c *I. L. R. 26 Calc 361,* distinguished. MULJI VIRJI *v* BANGABASI SAHA (1905) . **9 C. W. N. 502**

65. ———— *"Judgment"—Filing appeal out of time—Application for exten-*

Justice of the Peace for Calcutta v. *The Oriental Gas Co, 8 B. L. R. 433; Kishen Pershad Panday* v. *Tiluckdhari Lal, I. L. R. 18 Calc. 182; Mohabir Pershad Sing* v. *Adhikari Kunwar, I. L R. 21 Calc. 473; Mulji Virji* v *Bangabashi Saha, 9 C. W. N. 502; Brij Coomaree* v *Ramrick Das, 5 C. W. N. 781,* referred to. GOVIND LAL DAS *v.* SHIB DAS CHATTERJEE (1906) **I. L. R. 33 Calc. 1323**
10 C. W. N. 986

66. ———— *"Judgment"*—

I. L. R. 30 Mad. 143

67. ———— *"Judgment," what is.* An order of a single Judge rejecting a revision petition presented under s. 622 of the Civil Procedure Code on the ground that the objection taken therein is unfounded is a 'judgment' within the meaning of cl 15 of Letters Patent, and appealable as such. RAMA AYYAR *v.* VENKATACHELLA PADAYACHI (1907) **I. L. R. 30 Mad. 311**

———— **cls. 15, 25 to 28—**

See HABEAS CORPUS . **I. L. R. 29 Calc. 286**

———— **cls. 15 and 36—**

———— **"Judgment"**—*Revision petition*

The defendant then preferred an appeal under c 15

the case was governed by s. 575 of the

———— **cl. 16—**

See SUPERINTENDENCE OF HIGH COURT—CHARTER ACT—CIVIL CASES. **7 W. R. 430**

LETTERS PATENT, HIGH COURT, 1865 —*contd.*

——— **cl. 16—*concld.***

——— *Power of High Court to hear appeals. Per* MARKBY, MITTER, and AINSLIE, *JJ.*—Cl. 16 of the Letters Patent of

——— **cl. 17—**

See GUARDIAN—APPOINTMENT.
I. L. R. 21 Calc. 206
I. L. R. 26 Calc. 133
3 C. W. N. 91

——— **cl. 18—**

See INSOLVENCY ACT, s. 5.

——— **cl. 19—**

See CONTRACT ACT, s. 27 **14 B. L. R. 76**

——— **cl. 20—**

See TRESPASS . **I. L. R. 36 Calc. 433**

——— **cls. 22, 23, 24—**

See BARRISTERS . **13 C. W. N. 605**

See SPECIAL TRIBUNAL **13 C. W. N. 605**

——— **cl. 24 (Bombay)—**

See HIGH COURT, JURISDICTION OF—BOMBAY—CRIMINAL
I. L. R. 9 Bom. 288

——— **cl. 25—**

See CONFESSION—CONFESSIONS TO POLICE OFFICERS . **I. L. R. 2 Bom. 61**

——— **cl. 26—**

See APPEAL IN CRIMINAL CASES—CRIMINAL PROCEDURE CODES.
2 Bom. 112 : 2nd Ed. 106

See CHARGE TO JURY—MISDIRECTION
I. L. R. 10 Calc. 1079
I. L. R. 17 Calc. 642

See MERCHANT SHIPPING ACT, s 267.
I. L. R. 16 Calc. 238

——— **case certified by Advocate-General, under—**

See CONFESSION—CONFESSIONS TO POLICE OFFICERS . **I. L. R. 1 Calc. 207**
I. L. R. 2 Bom. 61

1. ——— *Prisoner sentenced by Sessions Judge to rigorous, for an offence punishable only with simple, imprisonment.* Where

LETTERS PATENT, HIGH COURT, 1865 —*contd.*

——— **cl. 26—*contd.***

2. ——— *Charge under s. 467, Penal Code—Felony or misdemeanour—Separation of jury.* Where the Judge, on a charge under s 467 of the Penal Code, permitted the jury to separate on the first day of the trial and before verdict:—*Held,* that the exercise of his discretion

the Penal Code took effect. REG *v* DAYAL JAIRAJ **3 Bom. Cr. 20**

3. ——— *Power of High*

conviction on that head of charge, but should proceed to pass judgment and sentence on it. *Semble* S. 167 of the Evidence Act applies to criminal trials by jury in the High Court. REG. *v* NAVROJI DADABHAI . . **9 Bom. 358**

4. ——— *Evidence Act (I of 1872), s 167* S 167 of the Evidence Act applies to cases heard by the High Court when exercising its powers under cl 26 of the Letters Patent. QUEEN-EMPRESS *v.* MCGUIRE . **4 C. W. N. 433**

5. ——— *Reserving point of law for High Court—Refusal to reserve—Discretion of Judge—Review—Non-direction—Certificate of Advocate-General.* The statement of a Judge who

6. ——— *Criminal Procedure Code (Act V of 1898), s. 162—Bombay City Police Act (IV of 1902), s. 63—Evidence Act (I of*

LETTERS PATENT, HIGH COURT, 1865
—contd.

———— cl. 26—*concl'd.*

1872), ss. 24 and 167—Statement made by a witness to, and taken down in writing by, a Police Officer—Admissibility in evidence—Confession of accused, admissibility of One *P*, an entry clerk in the General Post Office, Bombay, was charged with having committed theft in respect of a registered letter. *S*, a friend of the accused, had made a statement to a Police officer, which the latter had taken down in writing At the trial *S* denied having made the statement, whereupon the presiding Judge admitted the statement in evidence both to discredit *S* and also as evidence against *P*

mitted. On a review of the Full Bench · *Held*, having regard to s. 162 of the Criminal Procedure Code (Act V of 1898), that the said document ought not to have been admitted or used in evidence against the accused The question was also raised by Counsel for the Crown whether under cl 26 of the Letters Patent the Court had power to review the case only *quâ* the wrongly admitted evidence or had power to review all the rest of the case. *Held*, by RUSSELL, *Ag C. J*, CHANDAVARKAR and BATTY, *JJ* (DAVAR and BEAMAN, *JJ.* dissenting), that the Court has power to review the whole case *Per* DAVAR, *J* —Under cl 26 the Court is at liberty to review the case or part of the case for the purpose of determining the point or points of law, which are either reserved for its opinion or certified by the Advocate-General to be wrongly decided It is not open to the Court in review to go behind the record of the case and enter into an elaborate investigation as to whether each particular piece of evidence recorded by the Judge was or was not rightly admitted. *Per* BEAMAN, *J* —If the party did not object, did not ask for a certificate in respect of evidence which is challenged for the first time after the trial at the hearing before the Court of Reference, the objection comes too late. EMPEROR *v.* NARAYAN RAGHUNATH PATKI (1907)

I. L. R. 32 Bom. 111

———— cl. 28—

See HIGH COURT, JURISDICTION OF—CALCUTTA—CRIMINAL.

I. L. R. 26 Calc. 746
3 C. W. N. 598

See HIGH COURT, JURISDICTION OF—MADRAS—CRIMINAL.

I. L. R. 14 Mad. 121

———— cl. 29—

See PRIVY COUNCIL.

8 C. W. N. 294 ; 96

LETTERS PATENT, HIGH COURT, 1865
—contd.

———— cl. 29—*concld.*

See TRANSFER OF CRIMINAL CASE—LETTERS PATENT, HIGH COURTS, 1865, CL 29 ;

GROUND FOR TRANSFER.

I. L. R. 28 Calc. 709

———— *Jurisdiction of the High Court to transfer a case to itself from the Cour of the Resident at Aden. Held*, that the High Court of Bombay can, under cl 29 of the amended Letters Patent, transfer to itself a case pending in the Court of Session at Aden EMPEROR *v.* ROBERT COMLEY (1905) . . **I. L. R. 29 Bom. 575**

———— cl. 36—

See ante, CLS. 15 AND 36.

See APPEAL IN CRIMINAL CASES—PROCEDURE

2 B. L. R. F. B. 25 : 10 W. R. Cr. 45

See COPYRIGHT . . **10 C. W. N. 571**

1. ———— *Division Bench*

2. ———— *Civil Procedure Code, 1877, ss. 575 and 647.* The provision of the Letters Patent of 1865, s 36, that when the Judges of a Division Bench are equally divided in opinion, the opinion of the senior Judge shall prevail, has

KHUBCHAND . . . **I. L. R. 3 Bom.**

3. ———— *Criminal Procedure Code, 1882, s. 429—Difference of opinion be-*

LETTERS PATENT, HIGH COURT, 1865
—contd.

———— cl 36—*concld.*

Letters Patent, 1865. QUEEN-EMPRESS *v.* DADA ANA . . . . . I. L. R. 15 Bom. 452

4. ———— *Probate and Administration Act (V of 1881), s. 45—Grant of effects unadministered—Long lapse of time—Presumption*

"he who may remain as my heir, as *shebait*, shall

Judge held that as the last-mentioned direction in the Will contemplated some administration after the death of the widow, the petitioner was entitled to take out letters of administration. *Held*, that the order of the District Judge was erroneous The Court may properly presume in the absence of

HARY MANDAL (1906) . 10 C. W. N. 432

an uncontrolled discretion as to costs in civil suits SUBAPATI MUDALIYAR *v* NARAYANSVAMI MUDALIYAR . . . . . . 1 Mad. 115

———— cl 39—

See APPEAL TO PRIVY COUNCIL—CASES IN WHICH APPEAL LIES OR NOT—APPEALABLE ORDERS . 1 B. L R. F. B. 1
7 B L. R 730
13 B L R 105
I. L R 1 Calc. 431
1 W. R. Mis 13
1 W. R Mis 13
I L. R. 22 Calc 928
I. L. R. 30 Calc. 679

See APPEAL TO PRIVY COUNCIL—CASES IN WHICH APPEAL LIES OR NOT—VALUATION OF APPEAL . . 19 W. R 191

———— *Division Court—Civil Procedure Code (Act XIV of 1882), ss 595 and 596.* Where on an appeal to His Majesty in Council the case was sent back to the High Court with a direction that certain accounts might be taken on a certain footing and a Division Bench of the High Court took those accounts and made a final decree. *Held*, that an appeal would lie to His Majesty in Council from such decree under cl. 39 of the Letters Patent, the amount in dispute being over R10,000 The expression "Division Court" in that section is not restricted to a Division Court

LETTERS PATENT, HIGH COURT, 1865
—concld.

———— cl. 39—*concld.*

———— cl. 40—

See APPEAL TO PRIVY COUNCIL—CASES IN WHICH APPEAL LIES OR NOT—APPEALABLE ORDERS . . 9 Bom 398
I. L R 22 Calc. 928

———— cl. 41—

See APPEAL TO PRIVY COUNCIL—CRIMINAL CASES . . . 7 Bom. Cr. 77

———— cl. 42—

See APPEAL TO PRIVY COUNCIL—CASES IN WHICH APPEAL LIES OR NOT—APPEALABLE ORDERS . 1 B L. R. F. B. 1

LETTERS PATENT, HIGH COURT, N.-W. P.

———— cl. 2—

See HIGH COURT, CONSTITUTION OF
I. L R. 9 All. 675

———— cls. 7 and 8—

See ADVOCATE . I. L. R. 9 All. 617

———— cl. 8—

See PAUPER SUIT—APPEALS.
I. L. R. 24 All. 172

See PLEADER—REMOVAL, SUSPENSION AND DISMISSAL . I. L R 17 All 498
L. R. 22 I. A. 193

———— *Appeal—Presentation of*

———— cl. 10—

See COURT FEES ACT, 1870, SCH I, ART. 5.
I. L. R. 11 All. 176

See LIMITATION ACT, 1877, s. 12.
I. L. R. 2 All. 192

See REMAND—PROCEDURE ON REMAND
I. L. R. 16 All. 306

See REVIEW—GROUND FOR REVIEW.
I. L. R. 11 All. 176

See RULES OF HIGH COURT, N.-W. P.
I. L. R. 9 All. 115

LETTERS PATENT, HIGH COURT, N.-W. P.—*contd.*

———— cl. 10—*contd.*

1. ———————— *Appeal from judgment of Division Court.* To allow of an appeal [illegible]

it. GHASI RAM *v.* NURAJ BEGAM **I. L. R. 1 All. 31**

2. ———————— *Appeal from single Judge—"Judgment"—Interlocutory order—Order refusing leave to appeal in formâ pauperis—Civil Procedure Code, ss. 588, 591, 632* Under ss 588 and 591 read with s. 632 of the Civil Procedure Code, no appeal lies, under s. 10 of the Letters Patent, for the High Court for the N.-W. P., from an order of a single Judge refusing an application for leave to appeal *in formâ pauperis* *Achaya* v. *Ratnavelu, I. L. R. 9 Mad. 253,* and *In re Rajagopal, I. L. R. 9 Mad. 447,* followed. *Hurrish Chunder Chowdhry* v. *Kali Sunderi Debi, I. L. R. 9 Calc. 482,* distinguished BANNO BIBI *v.* MEHDI HUSSAIN . . . **I. L. R. 11 All. 375**

3. ———————— *Order of a single Judge of the High Court amending an appellate decree—Appeal from such order—Civil Procedure Code, ss 206, 582, 632.* Whether an order made by a single Judge of the High Court, directing the amendment of a decree passed in appeal by a Division Bench of which he had been a member, is an order made under s. 206 read with ss 582 and 632 of the Code of Civil Procedure, or, by virtue of the inherent power which the High Court had in the [illegible]

Chowdhry v. *Kali Sunderi Debia, I. L. R. 9 Calc. 482 . L. R. 10 I. A. 4,* discussed MUHAMMAD NAIMULLAH KHAN *v.* IHSAN-ULLAH KHAN **I. L. R. 14 All. 226**

4. ———————— *Civil Procedure Code, ss. 556, 558, and 588, cl. 27—Dismissal of* [illegible]

I. L. R. 14 All. 361

5. ———————— *Civil Procedure Code, ss 2, 556, 558, 587, 588, 632—Appeal—Dis-* [illegible]

LETTERS PATENT, HIGH COURT, N.-W. P.—*contd.*

———— cl. 10—*contd.*

Fakir, I. L. R. 3 All 382 ; Dhan Singh v. *Basant Singh, I. L. R. 8 All. 519 ; Chand Kour* v. *Partab Singh, I L. R. 16 Calc 98 ; Muhammad Naim-ullah Khan* v. *Ihsan-ullah Khan, I. L. R. 14 All. 226,* cited. *Ram Chandra Pandurang Naik* v. *Madhav Purushottam Naik, I. L R. 16 Bom. 23,* not followed MANSAB ALI *v.* NIHAL CHAND **I. L. R. 15 All. 359**

6. ———————— *Order of Judge on revision—Provisional Small Cause Court Act (IX of 1887), s. 25.* No appeal will lie under s. 10 of the Letters Patent from an order of a single Judge of the High Court in revision under s. 25 of Act IX of 1887. *Muhammad Naim-ullah Khan* v. *Ihsan-ullah Khan, I. L. R. 14 All. 226,* referred to. GAURI DATT *v.* PARSOTAM DAS . **I. L. R. 15 All. 373**

7. ———————— *Difference of opinion between Judges of Division Bench. Held,* (SPANKIE, *J.*, dissenting), that the appeal given to the Full Court under cl 10, Letters Patent, is not confined to the point on which the judges of the Division Court differ. RAM DIAL *v* RAM DAS **I. L R. 1 All. 181**

8. ———————— *Difference of opinion in Division Bench—"Judgment."* Where [illegible]

MOZAFFARNAGAR . . **I L. R 9 All. 655**

9. ———————— *Order under Civil* [illegible]

decree—Objection by widow after sale allowed—Appeal from order allowing objection. Certain villages were assigned for her maintenance to a [illegible]

LETTERS PATENT, HIGH COURT, N.-W. P.—*contd.*

——— cl. 10—*contd.*

order asked for by the widow's application was practically an order under s. 312 of the Code of Civil Procedure, an appeal under cl. 10 of the Letters Patent would not lie. BANSIDHAR *v.* GULAB KUAR I. L. R. 16 All. 443

10 ——— *Order refusing extension of time for serving notice of appeal—Application under Companies Act (VI of 1882), s 169—Discretion of Court—Judgment.* No appeal will lie under s 10 of the Letters Patent of the High Court of Judicature for the N.-W P. from an order of a single Judge of the Court refusing an application under s. 169 of Act VI of 1882 (Indian Com-

Pershad Panday v. *Tiluckdhari Lal, I L. R. 18 Calc. 183; Lutf Ali Khan* v *Asgur Reza, I. L R 17 Calc. 455; Hurrish Chunder Chowdry* v. *Kali Sunderi Debia, I. L R 9 Calc 482 L R 10 I. A. 4; Mohabir Prosad Singh* v. *Adhikari Kunwar, I. L. R 21 Calc. 473, Lane* v *Esdaile, [1891] A C. 10; Kay* v. *Briggs, L. R. 22 Q B D 343, The Amestil, L. R 2 P D N. S 186;* and *Ex parte Stevenson, [1892] 1 Q B. 294,* referred to. WALL *v.* HOWARD I. L. R. 17 All. 438

11. ——— *Order granting*

single Judge of the Court in appeal from an order of a District Judge granting probate of a will under Ch. V of Act V of 1881; and the Bench hearing ... tters Patent ... findings of ... der appeal

I. L. R. 17 All. 475

12. ——— *Arguments in*

I L R 20 All. 2[illegible]

13. ——— *Plaint disclosing no cause of action—Discovery at the stage of an*

cause of action against the defendant named therein,

LETTERS PATENT, HIGH COURT, N.-W. P.—*contd.*

——— cl. 10—*concld*

the Court entertained the plea and dismissed the suit SECRETARY OF STATE FOR INDIA *v.* SUKHDEO I. L R. 21 All 341

——— cl. 12—*Lunatic—Native of India—Act XXXV of 1858, s. 23—Original jurisdiction of High Court in respect of the persons and estates of lunatics who are natives of India* The High Court has not, under cl 12 of its Charter, any original jurisdiction in respect of the persons and estates of lunatics who are natives of India. *In the matter of the petition of* JAUNDHA KUAR I. L. R. 4 All. 159

——— cls. 18 and 19—

See REVIEW—CRIMINAL CASES. I. L. R. 7 All. 672

——— cl. 27—

See REFERENCE FROM SUDDER COURT, AGRA . . . 6 B. L. R. 283
13 Moo. I. A. 585

1. ——— *24 & 25 Vict, c.*

ing), that when a case is heard by a Division Bench, and a difference of opinion arises, the opinion of the senior Judge must prevail, and the order must issue in accordance with his judgment, a reference to a third Judge being beyond the competency of such Division Bench, and an order in accordance with the views of such third Judge and the junior Judge was not valid QUEEN *v.* NYN SINGH 2 N. W. 117
s.c. Agra F. B. Ed. 1874, 196

2. ——— *Practice—Difference of opinion on Division Bench regarding pre-*

appeal, but precedes the hearing, or determines that there is no appeal which the Court can hear or decide. Where such a preliminary objection is

LETTERS PATENT, HIGH COURT, N.-W. P.—*concld.*

———— cl. 27—*concld.*

the decree of the Court below. In the case of such a preliminary objection and such a difference of opinion (the Bench being equally divided), the

10 Calc. 814, distinguished. HUSAINI BEGAM *v.* COLLECTOR OF MOZAFFARNAGAR
I. L. R. 11 All. 176

———— cl. 31—

See APPEAL TO PRIVY COUNCIL—CASES IN WHICH APPEAL LIES OR NOT—APPEALABLE ORDERS . I. L. R. 1 All. 726

LEX FORI.

See LIMITATION—LAW OF LIMITATION
5 Moo. I. A. 234

See RIGHT OF SUIT—CONTRACTS AND AGREEMENTS.
I. L. R. 17 Mad. 262

LIABILITY OF PURCHASER FROM MORTGAGOR.

See TRANSFER OF PROPERTY ACT, 1882, s. 90 . . I. L. R. 31 All. 352

LIBEL.

See DEFAMATION.
See PRIVILEGED COMMUNICATION
I. L. R. 12 Mad. 374

See LIMITATION ACT, 1877 SCH II, ARTS 24 AND 25 . I. L. R. 24 All. 368

———— by servant—

See LIBEL . I. L. R. 36 Calc. 907

———— on Firm—

See LIBEL . I. L. R. 36 Calc. 907

———— on the Judges—

See ADVOCATE . I. L. R. 29 All. 95
L. R. 34 I. A. 41

———— restraining publication of—

See INJUNCTION—SPECIAL CASES—PUBLIC OFFICERS WITH STATUTORY POWERS . *I. L. R. 1 Bom.* 132

1. ———— **Comments on acts of public men**—*Newspapers—Privilege.* Every subject has a right to comment on those acts of public men which concern him as a subject of the realm if he does not make his comments a cloak for malice and slander. A writer in a public paper has the same right, and it is his privilege to comment on the acts of public men which concern not himself only, but which concern the public. Where a writer makes

LIBEL—*contd.*

the public conduct of a public man the subject of comment, and it is for the public good, the writer is not liable to an action if the comments are made honestly, and he honestly believes the facts to be as he states them. HOWARD *v.* NICOLL
1 Bom. Ap. 85

2. ———— **Defamatory communications by Consul to his Government**—*Privileged*

Limitations, which confined the bringing of such suit within the year *Held*, that such communications were not privileged, and the Court assessed damages subject to the opinion of the Appellate Court on the point of limitation. ROBERT *v* LAMBARD . . . . . 1 Ind. Jur. N. S. 192

3. —— *Maliciou* *cause.* visiting

"privileged communication : that when an overseer has reasonable and probable cause for supposing that a workman has committed a breach of trust, and prosecutes him for it, the employers having declined to, no enquiry is to be made into the motives that prompted him to do so. MILLS *v.* MITCHELL . . . . Bourke O. C. 18

4. ———— *Statements made by defendants to protect their own interest.* Plaint-

the plaintiffs had prejudiced the petitioners by suing the said *B* for sums greatly in excess of their just claims against him. The Judge found that there was no malice in fact, but that the statements were untrue and calculated to damage, and he accordingly gave a decree to the plaintiffs with damages.

LIBEL—*contd.*

Held, on appeal, reversing the decision of the lower Court, that as the defendants were creditors of an absconded debtor and deeply interested in seeing

to the qualified privilege of persons acting in good faith and making communications with a fair and reasonable purpose of protecting their own interest. HINDE *v* BAUDRY . **I. L. R. 3 All. 13**

5. ———— **Publication**—*Privilege—Bom Act I of 1873—Practice—Costs.* The Trustees of the Port of Bombay, who are, under the provisions of their Act of Incorporation (Bombay Act I of 1873), bound to keep minutes of their proceedings and resolutions, and to forward copies of such minutes to the

passed, in rel.

plaintiff of o

resolution : "

of R520 in full of all claims should be accepted, but any further transactions with him should be avoided if possible." Copies of this resolution, made by clerks in the employ of the Trustees, were recorded in two books kept in the office of the Trustees, and other copies, also made by such clerks were forwarded to the Secretary to the Local Government and to the plaintiff himself *Held, first,* that the words of the resolution amounted in law to a libel ; *secondly*, that the act of the Trustees, in transmitting a copy to the Secretary to the Local

leged. *Semble* · That had the defendants succeeded

justification, on which plea also they were successful, the plaintiff must pay the costs of the suit SHEPHERD *v* TRUSTEES OF THE PORT OF BOMBAY

I. L. R. 1 Bom. 477

6. ———————— *Letter given by manager of firm to clerk to copy—Reflections on professional man* Defamatory matter is privileged only when written *bonâ fide* and shown to a third party to give information which the third party ought to have A letter was written by order of the manager of a firm reflecting upon the character of a professional man, and signed by the manager and handed over in the ordinary way to a clerk in the office to copy in the office copy letter book, which was open to all the members of the firm *Held*, that such instructions to copy amounted to publication HECKFORD *v* GALSTIN . **Cor. 134 : 2 Hyde 274**

7. ———————— A brought an action against *B* for damages for defamation of

LIBEL—*contd.*

character. The alleged libel was contained in a

MAHOMED ISMIL KHAN *v*. MAHOMED JAHIR *alias* MOTEE MEAN . . . . **6 N. W. 38**

8. ———— **Libel in judicial proceedings** —*Privilege of parties and witnesses in suit—Right of suit—Liability to damages by civil action for such defamation* No action for slander lies for any statement in the pleadings or during the conduct of a suit against a party or witness in t The plaintiff claimed to recover damages from the defendants for publishing defamatory matter in an application they had filed in a suit brought against them by one *M*, in which the plaintiff was described b the defendants as a person "whose occupation it was

persons made parties to that suit *Held*, that the defendants were privileged against a civil action for damages for what they may have said of the plaintiff in the application they had presented in that suit. *Seaman* v. *Netherclift, L. R 1 C P D. 45,* and *Gunnesh Dutt Singh* v *Mugneeram Choudhry, 11 B L R 321,* followed NATHJI MULESHVAR *v* LALBHAI RAVIDAT LALBHAI RAVIDAT *v* NATHJI MULESHVAR . **I. L. R. 14 Bom. 97**

9. ——— **Defamatory statement in judicial proceeding**—*Privilege—Liability for damages in a civil action* A defamatory statement made in the pleadings in an action is not absolutely privileged *Nathji Muleshvar* v *Lalbhai Ravidat, I L. R 14 Bom 97,* dissented from AUGADA RAM SHAHA *v*. NEMAI CHAND SHAHA

I. L. R. 23 Calc. 867

10. ———— **Defamatory statement made by one newspaper copied into another and commented upon as untrue**—*Retention of libel—Malice* A certain newspaper called

repeating it The article, however, declared that the said statement was "evidently false." It pointed out that the defendants were the first to raise an outcry against it, that they had expected the plaintiff to take notice of it, but that, as he had not done so, they published that intimation to the public The plaintiff sued the defendants for libel. He alleged that he had not taken any notice of the

LIBEL—*contd.*

in their paper for the purpose of giving it a wide circulation, and that their assertion of its untruth was made merely in order to protect themselves. The defendants pleaded that the article in their paper was not defamatory and denied malice.

KABRAJI *v.* JEHANGIR BYRAMJI MURZBAN I. L. R. 14 Bom. 532

11. ——— **Proof of injury to plaintiff** —*Loss of caste—Malice.* Suit for libel in describing the plaintiff, who was a Jounpore bunniah, as a Telee

knowingly misdescribed the plaintiff. FUTTICK CHUND SAHOO *v.* MAKUND JHA Marsh. 224 : 1 Hay 539

12. ——— **Rejection of plaint**—*Ironical publication.* On the presentation of a plaint for libel, the Court must see whether the alleged libellous matter set out in the plaint is really libellous : if it is not, there is no ground of action, ...ted. If the not a libel, they were printed and published by the defendant with the

and had been actuated by sinister and fraudulent motives, make them a libel ; nor can the plaintiff, by alleging that words are spoken ironically make them libellous, if they do not appear to the Court to do so. WYMAN *v* BANKS 10 B. L. R. 71 : 18 W. R. 516

13 ——— **Privilege**—*Subordinate Government officer making a report to his superior—Imputations contained in the report—Protection.* The defendant, a Chief Constable of Police, in reply to a request from his superior for a report as to whether the plaintiff should be granted an additional license for arms, made, in the course of his report, certain imputations defa-

he owed to his superior officer. The mere fact that the defendant made the communication for the purpose of getting the plaintiff's license cancelled

LIBEL—*contd.*

though his superior officer had never asked his opi-

DESHPANDE *v.* BALWANT LAKSHMAN (1903) I. L. R. 27 Bom. 585

14. ——— **Privileged occasion**—*Malice, test of—Express malice—Bonâ fide statement.* In an action to recover damages for libel, if it is proved that what the defendant wrote was written *bonâ fide*

ledge of the defendant, or if a portion of the statements is irrelevant and unconnected with the mat-

4 C. & P. 257, referred to. The proper test in enquiring whether the nature of the words by themselves afford evidence of malice, is to take the

employed ; and the particular expressions used ought not to be too closely scrutinised, provided the intention of the defendant was good and he acted *bonâ fide. Spill* v. *Maule, L. R. 4 Exch. 232, Woodward* v *Lander, 6 C. & P. 548,* and *Laughton* v. *Bishop of Sodor and Man, L. R. 4 P. C. 495,* referred to. AMRITA NATH MITTER *v.* ABHOY CHARAN GHOSH (1904) . I. L. R. 32 Calc. 318 8 C. W. N. 731

15 ——— *Privilege—Trade protective society—Information as to position of business men supplied to subscribers for consideration—Volunteering of information—Welfare of society not served by such business—American authorities, value of.* The defendants carried on the business of a trade protective society, their business consisting in obtaining information with reference to the commercial standing and position of persons in the State of New South Wales and elsewhere and in communicating such information confidentially to subscribers to the agency in response to specific and

carrying on such a business it is not for the welfare of society that the protection, which the law throws around communications made in legitimate self-defence or from a *bonâ fide* sense of duty, should be extended to communications made from

LIBEL—*contd.*

motives of self-interest by persons who trade for profit in the character of other people. In cases, which are near the line, and in cases which may give rise to a difference of opinion the circumstance that the information is volunteered is an important element for consideration. *Held*, in an action for libel brought against the defendants by a firm in respect of whom the defendants had made com-

[illegible]

12 C. W. N. 1053

16. ———— **Misjoinder of parties and causes of action**—*Suit for libel by several persons jointly—Plaint, amendment of—Election of plaintiff—Civil Procedure Code (Act XIV of 1882), ss 26 and 53.* Where six members of the Calcutta Police Force jointly sued the editor and proprietor of a

[illegible]

of the defendant, but that each plaintiff had a separate cause of action in respect of his own reputation; and that having regard to s. 26, Civil Procedure Code, there had been a misjoinder of plaintiffs and causes of action, and that the suit as framed could not proceed *Held*, further, that there was

[illegible]

tinguished. *Smurthwaite* v. *Hannay*, [1894] *A C 494*; *P & O Co* v. *Tsune Kijima*, [1895] *A C 661*, *Ali Serang* v *Beadon*, *I L R 11 Calc. 524*, *Varajlal Bhaishanker* v. *Ramdat Harikrishna*, *I L R 26 Bom 259*, and *Sandes* v *Wildsmith*, [1893] *1 Q B. 771*, followed ALDRIDGE v BARROW (1907) . . . I. L. R. 34 Calc. 662

17. ———— *Suit for libel—Misjoinder of causes of action—Misjoinder of parties—Election—Limitation—"Cause of a like nature"—Limitation Act (XV of 1877), s 14* Six persons, on the 26th January 1906, instituted a suit jointly against an editor and proprietor of a newspaper for libels published on the 17th and 20th July 1905 and

[illegible]

number should continue the suit, and the other co-plaintiff's names were struck out Subsequently, on the 1st May 1907, one of the former plaintiffs filed a suit for libel and damages, and it was con-

LIBEL—*contd.*

tended that his suit was barred by limitation. *Held*, that s 14 of the Limitation Act was not intended to apply to a case, in which a first suit failed entirely through the negligence and laches of the plaintiff himself, and that an improper joinder of parties or of causes of action would not be "a cause of like nature" within the meaning of s. 14 of the Limitation Act, and therefore the plaintiff's suit was barred by limitation *Chunder Madhub Chuckerbutty* v. *Bissessuree Debea*, *6 W. R C. R 184*, *Deo Prosad Singh* v *Pertab Kairee*, *I L R 10 Calc. 86*, *Mullick Kefait Hossein* v.

[illegible]

[illegible] Calc. [illegible]
s.c. 12 C. W. N. 473

18. ———— **Allegations of fact, fair and bonâ fide comment**—*Newspaper article—Privilege—Proof of truth essential when criminal offence imputed—Cause of action—Misjoinder of parties—Amendment—Limitation* Writers in public papers must be careful as to the language they use while commenting on the proceedings of Courts of Justice, and on matters of public interest; they should also be careful that they do not wantonly assail the character of others or impute criminality to them. *Woodgate* v *Ridout*, *4 F & F 202*, *R.* v. *Tanfield*, *42 J. J. 424*, referred to It is absolutely essential to differentiate between fair and *bonâ fide*

[illegible]

... be either true ... *A C. 187*, ... Where a ... ly, and five of them were held to be not entitled to proceed in

[illegible]

19 ———— *Plea of justification—Proceedings in Parliament—Privilege—Fair Comment—Mis-statement of Facts—Hansard's Parliamentary Report—Imputation of Criminal Offence—Damages, assessment of—Deportation under Regulation III of 1818.* In an action for libel if the defendant withdraws the plea of justification, the statements of facts so far as they relate to the plaintiff are presumed in law to be

[illegible]

comments, it at once negatives the possibility of the

LIBEL—*concld.*

comment being fair. In order to give room for the plea of fair comment, the facts must be truly stated. Such a plea does not extend to cover mis-statements of fact, however *bonâ fide. Davis & Sons* v. *Shepstone, 11 App Cas. 187, Popham* v. *Pickburn, 7 H. & N. 891, Peter Walker & Son, Ld.* v. *Hodson* [1909] 1 K. B. 239, *Digby* v. *The Finan-*

whole conduct of the defendants from the time of the libel down to the time of the judgment should be looked at. *Prœd.* v. *Graham, 24 Q. B. D. 53,* referred to In an action for libel, the fact that the plaintiff was deported under the provisions of Regulation III of 1818 should not be taken into consideration as a ground for mitigation of damages LAJPAT RAI *v* "THE ENGLISHMAN," LTD. (1909)
I. L. R. 36 Calc. 883

20. ———— Master and Servant—*Libel by Servant—Publication—Scope of Employment—Trade Libel—Libel on Firm—Parties—Privilege—Privileged Occasion—Malice—Evidence of Malice.* A master is liable for a libel written and published by his servant within the scope of his employment *Citizens' Life Assurance Co.* v. *Brown,* [1904] *A C. 423,* followed. In a suit for libel defamatory of a firm all the partners should join as plaintiffs *Le Fanu* v *Malcolmson, 1 H L. C 637,* and *Robinson* v. *Marchant, 7 Q B 918,* referred to Where there co-exists an interest in the subject-matter of a communication, both in the party making it and in the party to whom it is made, the occasion is a privileged one. *Hunt* v. *Great Northern Railway Co. 1891, 2 Q B 189,* followed Where the occasion is privileged, the burden of proving actual malice lies on the plaintiff *Hebditch* v. *MacIlwaine,* [*1894*] *2 Q. B. 54,* referred to. To prove malice, extrinsic evidence of malice is not necessary The words of the libel and the circumstances attending its publication may themselves afford evidence of malice. *Clark* v. *Molyneux, L R. 3 Q B D. 437, Laughton* v *The Bishop of Sodor and Man, L R. 4 P. C 295; Nevill* v. *Fine Arts and General Insurance Co*, [*1895*] *2 Q B 156,* and *Gilpin* v. *Fowler, 9 Ex. 615,* referred to. MATI LAL RAHA *v* INDRA NATH BANERJEE (1909) . . **I. L. R. 36 Calc. 907**

LIBERTY TO APPLY.

See DECREE—ALTERATION OR AMENDMENT OF DECREE . **I. L. R. 15 Calc. 211**

LICENSE.

See EASEMENTS ACT, s. 60 (*b*).
I. L. R. 28 All. 741

See EXCISE ACTS (III OF 1856) AND II (B C) OF 1903
I. L. R. 31 Calc. 768

LICENSE—*contd.*

See LEGAL PRACTITIONERS ACT (XVIII OF 1879), ss 13, 14 **12 C. W. N. 919**

See SALT ACT (BOM. II OF 1890), ss 11, 47.
I. L. R. 33 Bom. 636

———— **breach of conditions of—**

See BENGAL EXCISE ACT (VII OF 1878), s. 59 . . **I. L. R. 29 Calc. 606**

See CONTRACT ACT, s. 23—ILLEGAL CONTRACTS—GENERALLY.
I. L. R. 10 All. 577
I. L. R. 12 Bom. 422

———— **date of taking out—**

See CALCUTTA MUNICIPAL CONSOLIDATION ACT, s. 335 . **I. L. R. 24 Calc. 360**

———— **discretion to refuse—**

See HACKNEY-CARRIAGE ACT (BOM. ACT VI OF 1863), s. 6.
I. L. R 27 Bom. 307

———— **false statement in application for—**

See BENGAL MUNICIPAL ACT, 1884, s. 133.
I. L. R 22 Calc. 131

———— **for building—**

See MADRAS DISTRICT MUNICIPALITIES ACT, 1884, s. 180
I. L. R. 16 Mad 230

———— **necessity for—**

See POLICE ACT (XLVIII OF 1860), s. 11.
I. L. R. 15 Bom. 530

See SWORD-STICK.
I. L. R. 34 Calc. 749

———— **obligation to grant—**

See BENGAL MUNICIPAL ACT, 1884, s. 339
I. L. R. 17 Calc. 329

See HIGH COURT, JURISDICTION OF—CALCUTTA—CIVIL.
I. L R. 17 Calc. 329
I. L. R. 21 All. 348

See POLICE ACT (XLVIII OF 1860), ss 11, 12 . **I. L. R 26 Bom. 396**

———— **power to grant or refuse—**

See BENGAL MUNICIPAL ACT, 1884, s. 337
I. L. R. 20 Calc. 654

———— **to accommodate pilgrims.**

See N.-W. P. AND OUDH LODGING HOUSE ACT, s 5 (2) . **I. L. R. 20 All. 534**

———— **to cut grass—**

See AGRA TENANCY ACT, 1901, s. 4.
I. L. R. 31 All. 342

LICENSE—*contd.*

——— to keep animals—

See Bengal Municipal Act (III of 1884), ss. 263, 273 . . 5 C. W. N. 331

See Calcutta Municipal Consolidation Act, s. 307 . I. L. R. 25 Calc. 625

——— to practise as a pleader, withdrawal of—

See Recorder's Act, s. 17. 6 B. L. R. 180

——— to quarry—

See Contract—Construction of Contracts . I. L. R. 13 Bom. 630

——— to sell liquor—

See Bengal Excise Act XXI of 1856
8 W R. Cr. 4
16 W. R. Cr. 69
19 W. R. Cr. 34
25 W. R. Cr. 42

See Excise Act
I. L. R. 1 All. 630, 635, 638

See Mandamus . 11 B. L. R. 250

——— to sell opium—

See Opium Act . 13 C. L. R. 336
I. L. R. 13 Mad. 191
I. L. R. 26 Calc. 571

——— to use land of another—

See User, right of.
I. L. R. 16 Calc. 640

1. ——— Document giving permission to capture elephants—*Easements Act (V of 1882), ss. 56, 56*—*Easement.* The owner of a

1883 was expressed to be in force for six years, that of 1884 for four years. The latter instrument

entitled to a decree Ramakrishna v Unni Check . . . I L. R. 16 Mad. 280

2. ———Right of growing rice plants in another's land to be afterwards transplanted to his own—*Easements Act (V of 1882), ss. 4 and 52* A "license" as defined by s. 52 of the Indian Easements Act (V of 1882) is not, as in the case of an "easement," connected

LICENSE—*concld.*

nature of profits *a prendre* Sundrabai v. Jayawant . . . . I. L. R. 23 Bom. 397

3. ——— City of Bombay Municipal Act (III of 1888), s 394—*Specific Relief Act*

wer of the
to grant a
Municipal
o refuse it
stitute its

judgment for that of the Municipal Commissioner. Unless it is clear beyond doubt that the Municipal Commissioner is using his authority with some indirect motive and for a collateral purpose, not for the purpose for which the Legislature has armed him with the power, the Court cannot interfere with his discretion. Haji Ismail v. The Municipal Commissioner of Bombay Ahmed Moosa v The Municipal Commissioner of Bombay (1904)
I. L. R. 28 Bom. 253

4. ——— Separate license—*Calcutta Municipal Act (Beng III of 1899), ss 198, 466 and Sch. II, Rules (1), (2) and (7)*—*Liability of lime-trader*—*Licensee to take out separate license to store lime.* A lime-trader, who has obtained a license under s 198 and Rules (1) and (2) of Sch II of the Calcutta

Corporation of Calcutta (1907)
I. L. R. 34 Calc. 913

LICENSEE.

See Companies Act, s 4
13 C. W. N. 638

See Partnership . 13 C. W. N. 638

See Patent . I. L. R. 15 Calc. 244

LIEN.

See Bailment . I. L R. 6 All. 139

See Charter-party.
I. L R 28 Bom 573

See Co-sharers—General Rights in Joint Property . 14 B L. R 155
I L. R. 9 Calc 377
I. L R. 14 Calc 809
I L. R. 11 Bom 313
I. L R 16 Calc 326
I L R 22 Calc 800
I L R 14 All. 273

LIEN—*contd.*

See DEPOSIT OF TITLE-DEEDS.

See LEGAL PRACTITIONERS ACT, s. 28.
I. L. R. 27 Mad. 512

See MORTGAGE—MONEY-DECREES ON MORTGAGES.

See VENDOR AND PURCHASER—LIEN.

——— by custom for price of seed—

See INDIGO FACTORY.
I. L. R. 3 Calc. 231

——— enforcing or removing—

See DECLARATORY DECREE, SUIT FOR—ENFORCING OR REMOVING LIEN OR ATTACHMENT.

——— for disbursements—

See BOTTOMRY BOND . 6 B. L. R. 323

——— for master's wages—

See BOTTOMRY BOND . 5 B. L. R. 258

——— for unpaid purchase-money—

See CONTRACT—BREACH OF CONTRACT.
7 C. W. N. 562

See VENDOR AND PURCHASER—VENDOR, RIGHTS AND LIABILITIES OF.
6 C. W. N 150

——— maritime—

See ADMIRALTY OR VICE-ADMIRALTY JURISDICTION I. L. R. 29 Calc. 402

——— of attorney for costs—

See ATTORNEY AND CLIENT.
10 B. L. R. 444
15 B. L. R. Ap. 15
I. L. R. 6 Calc. 1
I. L. R. 4 Bom. 353
I. L. R 16 Calc. 374
I. L R 29 Calc. 63

See COSTS—SPECIAL CASES—ATTORNEY AND CLIENT.

——— of banker—

See BANKERS . I. L. R. 19 Mad. 234

——— of mortgagee—

See SALE FOR ARREARS OF REVENUE—DEPOSIT TO STAY SALE.
I. L. R. 30 Calc. 794

——— of purchaser of land paying off mortgage—

See LIEN . I. L. R. 31 Mad. 439

——— of vendor—

See TRANSFER OF PROPERTY ACT, s. 55, CLS. 4, 6 . I. L. R. 33 Bom. 53
I. L. R. 30 Mad. 524

——— on compensation money—

See MORTGAGE . 13 C. W. N. 350; 357

LIEN—*contd.*

——— on mortgaged property—

See MORTGAGE.
I. L. R. 31 Calc. 370; 975

——— on property—

See RECEIVER . I. L. R. 36 Calc. 713

1. ——— Creation of lien—*Agreement for*

[illegible]

claim of DADIA BIBEE. DEBNARAIN BOSE *v.* LEISK . . . . 2 Hyde 267

2. ——— *Contract between Hindus—Deposit of title-deeds* A lien created by verbal contract and deposit of title-deeds of immoveable property in the Island of Bombay by a Hindu in favour of a Hindu upheld. JIVANDAS KESHAVJI *v.* FRAMJI NANABHAI . . 7 Bom. O. C. 45

3. ——— Existence of lien—*Deposit of shares with power of sale—Unjustifiable revocation of power—Effect of, on right of lien.* The defendant, being largely indebted to the plaintiff company, had, from time to time prior to the 22nd November 1865, deposited with them certain shares

[illegible]

continued to exist; that the first promissory note and the shares were given as a security for that loan, that the second promissory note was also given as a security for the loan, no new debt being created; that the plaintiffs had a right to exercise the power

LIEN—*contd.*

given to them of selling the securities, notwithstanding the revocation of the power-of-attorney, the

asked for STEWART *v* DELHI AND LONDON BANK 17 W. R. 201

4. ——————— *Deposit of shares for special purpose* Where certain shares were deposited with a bank as security for the depositor

DOSTAN, CHINA, AND JAPAN 1 Ind. Jur. N. S. 245

5. ——————— *Lien of letter of boats on goods placed in the boat.* The mere letter

the same. GOBIND PERSHAD *v* RUDDELL 5 N. W. 160

lien on all goods dealt with under that contract. *Chase* v. *Westmore, 5 M. & S 180,* followed. The

7. ———— Charge created by tenant, duration of A charge on premises created by

7 N. W. 181

8. ———— Tainzas or revenue certificates, endorsement of—*Sale of timber—Vendor and purchaser.* Where tainzas or revenue certificates have been granted by the Conservator of Forests to the owners of timber, such timber

9. ———— Lien on exchanged property. Where *A* mortgaged to *B* certain property by deed of conditional sale, and afterwards at a partition received other land in lieu of what was conditionally sold:—*Held*, in a suit by *B* against *C*

LIEN—*contd.*

the purchaser of the property in execution of a decree against *A*, that *B* had no lien on such property. PURSOO RAM *v.* BYJNATH LAL 10 W. R. 475

10. ———— Agreement not to alienate—*Suit to set aside patni lease.* *R*, as mortgagee, sued the *Ds* for possession after foreclosure A razinamah and safinamah were put in and a decree passed thereon under which the *Ds* and

DHUNKRISHTO SEIN *v.* ERSKINE & CO. 16 W. R. 54

11. ———— Lien on land—*Payment by mortgagee on account of revenue assessed on land mortgaged as lakhiraj* An usufructuary mortgagee, to whom was pledged as lakhiraj land which was not valid lakhiraj and which was subsequently assessed with revenue, is entitled to a lien against the mortgagor for sums of money paid by the former in discharge of the revenue. NURJOON SAHOO *v.* MOOJEEROODDEEN . . 3 W. R. 6

12. ———— Money-decree—*Lien on property of judgment-debtor.* The holder of a simple money-decree does not acquire a lien on the property of his judgment-debtor. MONOHUR DASS *v* KALLY DHUN DOBEY . 8 W. R. 116

Upholding on review MOONA *v.* CHAND MONEE GOSSAIN . . . . . . 7 W. R. 20

See LUCHMAN SUHAE CHOWDRY *v.* GUJRAJ JHA 4 W. R. 45

13. ——————— *Mortgage—Covenant that mortgagee be entitled to enter—Entry, right of—Mortgage-deed in English form.* *B* executed mortgage-deed in the English form in favour of the *L* Bank, containing amongst other covenants one providing that, upon default, the mortgagee would be entitled to enter into possession of the

LIEN—*contd.*

the properties purchased at the sale by the Bank

Held, also, that, under the covenant in the mortgage-deed above referred to, the Bank were entitled to remain in possession as mortgagees until the proportion of the debt, which might legitimately be imposed upon the six-annas share of the properties in their hands, was paid. LUTCHMIPUT SINGH BAHADUR *v.* LAND MORTGAGE BANK OF INDIA . I. L. R. 14 Calc. 464

14. ———— Lien on company's property—*Joint Stock Company—"Secretaries and treasurers"—Advances and disbursements to, and on behalf of, the company—Contract Act (IX of 1872), ss. 171, 217, 221—Principal and agent.* *E L & Co* were the secretaries and treasurers of the *B S M Company,* which went into liquidation. *E L & Co.* claimed to be creditors of the company for R1,12,000 in respect of advances made to, and expenses incurred and disbursements made on behalf of the company from time to time and in the conduct of its business. Rupees one lakh of this amount was in respect of sums lent to the company and guaranteed by the claimants. The remainder consisted of money expended in the working of the company's business *E L & Co.* claimed to be in possession generally of all the property of the company, and to be entitled to a lien on such property in respect of the above claim of R1,12,000 Other creditors disputed the possession and their right to the lien claimed *Held,* that,

general lien is limited by s. 171 of the Contract Act. Nor had they any particular lien: nor under s. 217 of the Contract Act because that section was inapplicable, having to do only with a lien on a sum of money of the principal in the hands of the agent: nor under s. 221 of the Contract Act, because the sums advanced and expended were not, as required by that section, "disbursements and services in respect of" the property on which the lien was claimed, but were loans made on behalf of the company generally and for the purposes of the whole

LIEN—*contd.*

concern. *In re* BOMBAY SAW MILLS COMPANY. EWART LATHAM & CO.'S CLAIM I. L. R. 13 Bom. 314

15. ———— Receipt of money in execution of decree—*Repayment to judgment-debtor on reversal of decree by High Court—Subsequent reversal by Privy Council.* A decision of the Principal Sudder Ameen, which declared the decree-holders entitled to satisfy their decree by the sale of certain hypothecated properties, having been

conduct in receiving a portion of the decretal money by the sale of part of the mortgaged premises, which money was subsequently returned by them to the judgment-debtor, on the decision of the Principal Suddar Ameen having been reversed by the High Court. LALLA ROODER PERSHAD *v* HUR PERSHAD DOSS . . 23 W. R. 194

but the purchaser will be bound by that lien. MONOHUR PAL *v.* WISE . . 15 W. R. 248

17. ———— Right of lien—*Pleading—Set-*

18. ———— Lien on indigo factory—*Act X of 1859, ss. 110, 111—Sale in execution of de-*

mortgaged the factory to *L.* who subsequently obtained a decree entitling him to satisfy his mortgage by the sale of the factory. Plaintiff sued *C* and

LIEN—*contd.*

[illegible]

11 W. R. 104

[illegible]

payment of a large sum of money, consisting partly of the balance of previous loans from the husband of *A* and *B* and partly of a new loan to the extent

[illegible]

munication between *M* and *A* and *B*, that further advances would be necessary According to *M*'s account, *C* told him that *A* and *B* were unable to make further advances, and that he could, if they were needed, obtain them on the usual terms from the plaintiffs, who were indigo brokers In previous

[illegible]

knowledge, been supplemented by loans obtained from the plaintiffs on the security of a first charge

[illegible]

were wholly expended by April, when *M*, without

[illegible]

indigo to be manufactured in the season, and they

LIEN—*contd.*

enclosed a form of assignment for *M*'s signature which he duly signed, and returned to the plaintiffs on the 3rd May. This document bore a R2 stamp. In September and October, *M* obtained further advances from the plaintiff in respect of other indigo, giving them similar letters of assignment which also bore R2 stamps Of the moneys thus advanced by the plaintiffs, R5,000 was paid to *C* for *A* and *B*, by a bill drawn upon the plaintiffs About

[illegible]

factured any indigo whatever that season. The

[illegible]

interest in the property, or some right or duty towards the owners who are to be affected by the claim, impelling him to make the expenditure A mere volunteer can in general claim on such lien *Held*, on the facts, *per* GARTH, *C J*, PHEAR and MACPHERSON, *JJ*, that there was not evidence of [illegible] part of *A* [illegible] y and the [illegible] stop them [illegible] MORAN *v.* MITTU BIBEE . I. L. R. 2 Calc. 58

20. —— **Lien on tea garden**—*Priority of lien—Agreement by purchaser of moiety to pay working expenses to be charge on estate—Valuation to purchaser of moiety for whole estate* Where

[illegible]

effected on it after the conveyance of the first moiety to the purchasing firm. On a question arising as to the price at which the firm should secure the whole property:—*Held*, that the original

LIEN—*contd.*

owner's moiety should be purchased as the price which the bank's surveyor had valued it, and not at the market value at the time of the purchase, because the original owner having died in the interval, and the firm having been allowed to recover no portion of the advances which it had made for the working of the estate after his decease, it could not be required to pay again for the improvement in value of the estate which had resulted from its own advances. BROUGHTON *v.* SPINK . . . . 25 W. R. 243

21. ———— Subrogation—*Purchaser in possession paying off mortgage subrogated to the right of the original mortgagee, when purchase found invalid.* A purchaser of land, who, while in possession of the land purchased, pays off an encumbrance on it, is entitled, when his purchase is found invalid, to stand in the shoes of the mortgagee, whom he has paid off. *Syamalarayudu v. Subbarrayudu, I. L. R. 21 Mad. 143,* followed. The American Courts, when equity requires it, allow persons paying off mortgages on properties not [illegible]

Dakhina Mohan Roy v. Sarada Mohan Roy, I. L. R. 21 Calc. 142, referred to. CHAMA SWAMI *v.* PADALA ANANDU (1908) . . I. L. R. 31 Mad. 439

22. ———— Charge—Assignment—*Transfer of Property Act (IV of 1882), s. 107.* The mere fact that parties have described a transaction as a "lien" or "charge" cannot deprive it of its real nature, if in substance the [illegible]

debt from the debtor. ARDESIR BEJONJI *v.* SYED SIRDAR ALI KHAN (1908). I. L. R. 33 Bom. 610

23. ———— Banian of firm, lien of—*Consignment and sale of goods—Right of consignor as against banian to goods consigned to Calcutta firm—Consignor and consignee—Banian's claim to lien on account with the firm—Custom of trade—Contract Act (IX of 1872), s. 178—Principal and agent* [illegible]

LIEN—*concld.*

with the sub-agent except on the ground of bad faith. A banian not setting up a written agreement, nor asserting that he had advanced to the firm on the security of specific quantities, claimed a lien as against the consignor on merchandise consigned to the firm, whether arrived or in transit. The lien alleged was for the general balance of account, in virtue of an agreement extending to the whole [illegible]

to be made by sales. There was no pledge nor any agreement, express or implied, giving the banian a lien on the goods consigned. It was therefore unnecessary to determine whether the banian had notice of the terms of the consignments, nor was it necessary to consider the effect of s. 178 of the Contract Act (IX of 1872), there having been no [illegible]

I. L. R. 18 Calc. 573
L. R. 18 I. A. 78

24. ———————— *Lien of banian—Damages.* On termination of a banianship agreement, a banian's lien is indivisible, and extends over every portion of the goods come into his possession as security for advances made by him, [illegible]

25. ———— Lien of vendor—*Transfer of Property Act (IV of 1882), s. 55—Vendor, lien of unpaid—Lien is not possessory but only a charge—Adverse possession.* The lien of the unpaid vendor of land under s. 55 of the Transfer of Property Act is non-possessory. He has only a right to retain the title-deeds and to a charge for the unpaid purchase money, but he cannot retain possession of the property sold against the vendee. VELAYUTHA CHETTY *v.* GOVINDASAWMI NAIKEN (1907)
I. L. R. 30 Mad. 524

LIFE ESTATE.

See CONTRACT—CONSTRUCTION OF CONTRACTS . . L. R. 28 I. A. 198

See HINDU LAW—GIFT.
I. L. R. 33 Calc. 23

See HINDU LAW—WILL—CONSTRUCTION OF WILLS—ESTATES ABSOLUTE OR LIMITED.

See LEASE—CONSTRUCTION.
I. L. R. 28 Calc. 720

See LIFE INTEREST.

See LIMITATION ACT, 1877, SCH. II, ART. 141 . I. L. R. 20 Mad. 459

LIFE ESTATE—*concld.*

See Will—Construction.
I. L. R. 21 Calc. 488
I. L. R. 23 Bom. 1; 80
I. L. R. 19 Bom. 221; 770

1. ——— *Life interest—Perpetual gift—"Always and for ever," meaning of* The words "always and for ever," in a will, award order of Court or other document, do not *per se* extend the interest given beyond the life of the person who is named They are not inconsistent with limiting the interest given; but the circumstances under which the instrument is made, or the subsequent conduct of the parties, may show the intention with sufficient certainty to enable the Courts to presume that the grant was perpetual *Moulvi Muhammad Abdul Majid* v. *Mussumat Fatima Bibi, L R 12 I. A 159, 163,* and *Toolshi Pershad Singh* v. *Rajah Ram Narain Singh, L. R. 12 I. A 205, 214,* referred to Aziz-un-Nissa v Tassaduq Husain Khan (1901)
I. L. R. 23 All. 324: s.c. 5 C. W. N. 569
L. R. 28 I. A. 65

2. ——— *Life-tenant—Partition, right to, of—Construction of grant—Grant*

in law. The fact that the co-owner who asks for partition is a life-tenant and not an absolute owner is not a ground for refusing partition. Co-owners having such grants of life-estates have a right to

...ssion and
...e nature,
...sion and
duration
mode of

that the right to take mica or any other underground right was not granted. F F Christien v. Tekaitni Narbada Kunwari (1908)
13 C. W. N. 611

LIFE INTEREST.

See Life Estate

——— with remainder over—

See Mahomedan Law.
I. L. R. 36 Calc. 431

LIFE-TENANT.

See Life Estate 13 C. W. N 611

LIGHT AND AIR.

See Prescription—Easements—Light and Air.

See Easements Act
I. L. R. 30 Bom 319

LIGHT AND AIR—*concld.*

——— enforcement of injunction—

See Execution of Decree—Execution by and against representatives
I. L. R. 26 Bom 283

——— obstruction to—

See Injunction—Special Cases—Obstruction or Injury to Rights of Property

——— *Obstruction—Occupation uncomfortable—Rule of 45°—Injunction —De-*

error and that the case must be remanded for

I. L. R. [illegible] Bom. [illegible]

LIGHTS.

——— obligation of vessels to carry—

See Shipping Law—Collision.
6 Bom. O. C. 98

LIMITATION.

LIMITATION—*contd.*

See Acknowledgment of Liability. I. L. R. 31 Calc 195

See Adverse Possession. I. L. R. 28 Bom. 87; I. L. R. 27 All. 436

See Agra Tenancy Act, ss 79, 81. I. L. R. 27 All. 732

See Appeal—Omission to appeal in time against Preliminary Order or Decree . I. L. R. 29 Calc. 758

See Attorney and Client. I. L. R. 35 Calc. 171; I. L. R. 36 Calc. 609

See Bengal Municipal Act (Ben Act III of 1884), ss. 270, 271, 353. 6 C. W. N. 167

See Bengal Rent Act, 1869, ss 27, 29, 30, and 58.

See Bengal Tenancy Act, s 13. 6 C. W. N. 190

s. 184 and Sch III. I. L. R. 28 Calc. 86

See Bengal Tenancy Act, Sch II, Art 3. 9 C. W. N. 54; 13 C. W. N. 108

See Bengal Tenancy Act, Sch III, Art 2 . 8 C. W. N. 1

See Bond

See Calcutta Municipal Act (Bengal III of 1899). I. L. R. 34 Calc. 341

See Calcutta Municipal Act, s 634. 9 C. W. N. 217

See Calcutta Municipal Consolidation Act (Ben. Act II of 1888), ss 247, 250, 427 . . I. L. R. 30 Calc. 317

See Central Provinces Tenancy Act (XI of 1898) I. L R. 35 Calc. 470

See Calcutta Police Act (Ben. Act IV of 1866), s 99 (1) . 7 C. W. N. 883

See Certificate. I L R 32 Calc 691

See Civil Procedure Code, 1882, s 37. I. L. R. 26 All. 19

See Civil Procedure Code, 1882, ss 43, 373

See Civil Procedure Code, 1882, s 54. 9 C. W. N. 844

See Civil Procedure Code, 1882, ss. 206, 244, 278 and 283. I. L. R. 27 All. 464; 485; 575

See Civil Procedure Code, 1882, ss. 230, 295 . I. L. R. 28 Mad. 224

See Civil Procedure Code, 1882, s 258. I. L. R. 26 All. 36

See Civil Procedure Code, 1882, s. 331. 13 C. W. N. 724

See Civil Procedure Code, 1882, ss. 368, 582, 587 . I. L. R. 29 All. 535

See Civil Procedure Code, 1882, s 560. 5 C. W. N. 816

See Contribution . 12 C. W. N. 60

See Court-fee . I. L. R. 31 Calc. 75

See Court-fees, insufficiency of. I. L. R. 29 All. 749

See Decree . I. L. R. 31 Calc. 792; I. L. R. 32 Calc. 908

See Document—Alteration of. I. L. R. 25 Bom. 616

See Ejectment, suit for. L. R. 28 I. A. 169; 11 C. W. N. 661

[illegible]

I. L. R. [illegible] Bom. [illegible]

I. L. R. 21 Calc. 818

I. L. R. 17 Mad. 67; 76

I. L. R. 16 All. 390

I. L. R. 17 All. 106

L. R. 22 I. A. 44

I. L. R. 23 Calc. 39

I. L R. 25 All. 541

I. L. R. 31 Calc. 1011

I. L. R. 26 All. 346

I. L. R. 27 All. 334; 378

I. L. R. 30 Mad. 537

I L. R. 35 Calc. 1047; 1060

I. L. R. 30 All. 499

12 C. W. N. 3

13 C. W. N 521

See Execution of Decree—Decree to [illegible]

See Execution of Decree—Transfer of Decree for Execution, etc. L. R. Sup. Vol. 970; B. L. R. Ap. 27; 30; I. L. R. 1 Mad. 53; 5 W. R. Mis. 14; 7 N. W. 115; 7 W. R. 19; I. L. R. 15 Bom. 28; I. L. R. 12 All. 571

See Ex-parte Decree. I. L. R. 29 All. 623

See Guardian and Ward. I. L. R. 35 Calc. 320

LIMITATION—*contd.*

See HINDU LAW—ALIENATION BY FATHER.
I. L. R. 34 Calc. 184

See HINDU LAW—ALIENATION BY WIDOW.
I. L. R. 33 Calc. 257

See HINDU LAW—JOINT FAMILY.
I. L. R. 29 All. 544

See HINDU LAW GIFT—POWER TO MAKE AND ACCEPT GIFTS
I. L. R. 27 Bom. 31

See HINDU LAW—WIDOW.
I. L. R. 27 All. 494

See HINDU LAW—WILL.
9 C W. N. 25; 1033

See INSOLVENCY ACT (11 & 12 VICT., c. 21), s. 40 . I. L. R. 26 Bom. 623

See JURISDICTION I. L. R. 26 All. 522
I. L. R. 35 Calc. 924

See LANDLORD AND TENANT—NATURE OF TENANCY . I. L. R. 26 Mad. 488
9 C W. N. 96

See LIBEL I. L. R. 35 Calc. 495; 728

See LIMITATION ACT, XV OF 1877

See LIMITATION ACT, 1877, ss. 8, 20; SCH II, ARTS 59, 120, 139

See LIMITATION ACT, IX OF 1908.

See LIS PENDENS
I. L. R. 31 Calc. 745

See MADRAS CITY MUNICIPAL ACT, 1884, ss. 392, 433 AND 458
I. L. R. 25 Mad 118

See MADRAS RENT RECOVERY ACT—
s 69 . I. L. R. 24 Mad. 558
s 78 . I. L. R. 24 Mad. 339

See MAHOMEDAN LAW—DIVORCE
I. L. R. 36 Calc. 184

See MAHOMEDAN LAW—WAKF
I. L. R. 27 All. 820
9 C. W. N. 625

See MORTGAGE . I L. R. 33 Calc 68
I. L. R. 30 All. 225
12 C W. N 107; 911

See MORTGAGE—REDEMPTION—RIGHT TO REDEEM . I. L. R 24 Mad. 449

See MORTGAGE BY CONDITIONAL SALE
I L R. 31 All 300

See MUNICIPALTY I. L. R. 29 Bom. 35

See ONUS OF PROOF—LIMITATION AND ADVERSE POSSESSION.

See PARTIES . I L. R. 33 Calc. 582
11 C. W. N. 350
. L. R. 35 Calc. 519

See PARTITION I. L. R. 35 Calc. 961

See POSSESSION—ADVERSE POSSESSION

See POSSESSION—NATURE OF POSSESSION.
I. L. R. 4 Calc. 216; 870
2 B. L. R. Ap. 29
7 B. L. R. Ap. 20
I. L R. 5 Calc. 584
6 C. L. R. 539
4 C. W. N. 297
11 C. L. R. 395
24 W. R. 33; 418

See PRESCRIPTION . 9 C. W. N. 292

See PRINCIPAL AND AGENT.
I. L. R. 35 Calc. 298

See PROSECUTION.
I. L. R. 34 Calc. 909

See PUBLIC DEMANDS RECOVERY ACT.
I. L. R. 33 Calc. 1178

See PUBLIC NUISANCE
I. L. R. 35 Calc. 283

See RECORD OF RIGHTS, OBJECTION TO.
11 C. W. N. 48

See REGISTRATION ACT (III OF 1877), s. 28 . . I. L. R. 29 Calc. 654

See RESTORATION OF SUIT.
I. L. R. 31 Calc. 150

See RIPARIAN OWNER
I. L. R. 35 Calc. 851

See SALE FOR ARREARS OF RENT—INCUMBRANCES . I L R. 28 Calc. 180

See SALE IN EXECUTION.
I. L R. 36 Calc. 336; 654

See SALE IN EXECUTION OF DECREE—INVALID SALES—DECREES BARRED BY LIMITATION

See SECOND APPEAL.
I L R 30 Mad 1

See SPECIFIC PERFORMANCE.
I L. R. 33 Calc. 633

See TITLE—EVIDENCE AND PROOF OF TITLE—LONG POSSESSION.

See TRANSFER OF PROPERTY ACT (IV OF 1882), s 90 . I. L. R. 33 Calc. 867

See TRUST . I L. R. 27 All. 513

See WAGING WAR AGAINST THE QUEEN.
7 B. L. R. 63

See WAJIB-UL-ARZ I. L. R. 26 All. 33

See WASTE . . 4 B. L. R. O. C. 1
7 B. L. R. 131

——— father's liability—antecedent debt—

See HINDU LAW . 13 C. W. N. 9

——— minority—

See LIMITATION ACT, s. 7, SCH. II, ARTS. 178 AND 179 . I. L. R. 29 All. 279

LIMITATION—*contd.*

——— question of—

See RES JUDICATA—ORDERS IN EXECUTION OF DECREE.
I. L. R. 28 Calc. 122

——— under Act XII of 1881, s. 148—

See PARTIES—PARTIES TO SUITS—RENT SUITS FOR, AND INTERVENORS IN SUCH SUITS . . I. L. R. 25 All. 83

——— under contract—

See MARINE INSURANCE.
13 C. W. N. 425

——— under Land Acquisition Act, I of 1894, s. 18 (2)—

See LAND ACQUISITION ACT (I OF 1894), ss. 11, 18, 31 AND 33.
7 C. W. N. 538

——— under Madras Act VIII of 1865, s. 78—

See SMALL CAUSE COURT, MOFUSSIL—JURISDICTION—WRONGFUL DISTRAINT.
I. L. R. 25 Mad. 540

1 LAW OF LIMITATION.

1. ——— Nature of law—*Prescription—Lex fori.* The law of prescription or limitation is a law relating to procedure, having reference only to

tion. RUCKMABOYE *v.* LALLOBHOY MOTTICHUND
5 Moo. I. A. 234

2. ——— Operation of law—*Cause of action.* The Statute of Limitations never begins to run until there has been a cause of action KHURUCKDHAREE SINGH *v.* REWUT LALL SINGH
12 W. R. 168

3. ——— *Application to enter up judgment on warrant of attorney.* The Statute of Limitations is no answer to a rule *nisi* to enter up judgment on a warrant of attorney. SOOJAN MULL *v.* HYDER SINGH
1 Ind. Jur. O. S. 58

4. ——— *Agreement of parties.* *Held*, that the operation of the Law of Limitation cannot be prevented by any act of the parties or arbitrators unless as provided by law, and a suit beyond time cannot be entertained by the Courts merely because the person entitled to assert the right was by some arrangement or negotiation prevented from asserting it within the statutable period JEHANDAR KHAN *v.* MUNNOO
1 Agra 248

DAVIS *v.* ABDOOL HAMED . . 8 W. R. 55

5. ——— *Rule of Court.* Nor can its operation be prevented by a rule of

LIMITATION—*contd.*

1. LAW OF LIMITATION—*contd.*

Court. KAMBINAYANI JAVAJI SUBBA RAJALU NAYANI VARU *v.* UDDIGHIRI VENKATARAYA CHETTY . . . . . 2 Mad. 268

6. ——— Right of Government to defence of—*Suits against Government by credit-*

DELHI . . . 10 W. R. P. C. ..

S. C. LALLA NARAIN DOSS *v.* ESTATE OF EX-KING OF DELHI . . . . 11 Moo. I. A. 277

7. ——— Exemption. *Quære*: Whether, having regard to the terms of s. 50 of the Code of Civil Procedure, a plaintiff can be allowed to take advantage of any ground of exemption from the ordinary law of limitation which has not been pleaded in the plaint. BENODE BEHARI MOOKERJEE *v.* RAJ NARAIN MITTER (1903)
I. L. R. 30 Calc. 699: s.c. 7 C. W. N. 651

8. ——— Time—*Civil Procedure Code, s. 54.* When a Court fixes a time under cl (*a*) or (*b*) of s. 54 of the Code of Civil Procedure, it must be a

Bachu Singh, I. L. R. ... *Sahu v Chhatri Das, I. L R. 19 Calc. 780*, referred to. DURGA SINGH *v.* BISHESHAR DAYAL (1898)
I. L. R. 24 All. 218

9. ——— Civil Procedure, Code (*Act XIV of 1882*), *ss. 373, 374—Limitation Act* (*XV of 1877*), *s 14—Cause of like nature.*— ... with permission to bring another.

November 1901, the ... effect to this plea of the defendants, but under s. 373 of the Civil Procedure Code gave leave to one of the plaintiffs, whose name was struck out, to file, if so advised, a fresh suit in respect of his own

Procedure Code, with permission ...
suit,
is to
Held,
apply

LIMITATION—*contd.*

1. LAW OF LIMITATION—*contd.*

Vithal Rayi, I. L. R. 12 Bom. 625, followed. VARAJLAL *v.* SHOMESHWAR (1905)
I. L. R. 29 Bom. 219

10 ———— Suit to set aside putni lease —*Putni lease, granted by person having no interest or only a limited interest in estate—Limitation—Cause of action—Reg II of 1803 as amended by Reg. II of 1805—Act XIV of 1859—Hindu widow's estate—Alienation—Legal necessity—Novation.* In a suit to set aside a *putni* granted in 1837 by a person, who either had no interest in the property or

widow and time began to run from the date when the adopted son attained his majority in 1856 Under either Regulation II of 1803 or Act XIV of 1859, time ran from the date on which the cause of action arose BANOMALI ROY BAHADUR *v* JAGAT CHANDRA BHOWMICK (1905)
I. L. R. 32 Calc. 669 : 9 C. W. N. 673 s.c. L. R. 32 I. A. 80

11. ———— Trespass—*Possession—Chur lands—Jungle lands.* The nature of *chur* and *jungle* lands is peculiar and the mere cessation of possession cannot amount to discontinuance of possession, unless it is followed by the possession of another person, in whose favour time would run A mere trespass without claim of right, as in the case of a squatter, does not amount to an ouster of the true owner *Watson v Government, 3 W. R 75, 81,* referred to During the period when a piece of land is submerged under water the true owners must be held to be in constructive possession, and when it re-appears and does not become fit for actual enjoyment in the usual modes, it may be presumed that the previous possession continues

GANENDRA NATH TAGORE (1905)
9 C. W. N. 111

12. ———— Application for execution—*Chota Nagpur Landlord and Tenant Procedure Act (Bengal Act I of 1879), ss. 135, 136, 137, 144 —Appeal—Revision—Order in execution—Order passed without jurisdiction effect* Under Bengal Act I of 1879, as it stood before its amendment by Act V of 1903, an order made by a Deputy Collector relating to the execution of a decree for rent was open neither to appeal nor revision. An agreement of parties cannot authorise a superior Court to revise a judgment of an inferior Court in any other mode of proceeding than that which the law prescribes *Kelsey v. Forsyth, 21 Howard 85;* and *United States of Emholt, 15 Otto. 414,* referred to A judgment of a

obtained a decree for rent under Bengal Act I of 1879; on the 5th February 1902 the appellant applied for execution of his decree and the application was struck off on the 15th March 1902, no steps having been taken A second application for execution made on the 10th March 1903 was dismissed, by the Deputy Collector on the ground of

barred —*Held,* that the order of the Divisional Commissioner was without jurisdiction and must be treated as a nullity and that it was not necessary for the judgment-debtor to have the order set aside, but it was open to him to shew in the present proceedings that it had never any lawful existence. That the application was therefore barred by limitation GOLAB SAO *v.* CHOWDRY MADHO LAL (1905) . . . . **9 C. W. N. 957**

13. ———— Suit by minor adopted son —*Negotiable Instruments Act (XXVI of 1881), ss 8, 32, 78—Promissory note taken in name of adoptive mother—Benami transaction—Maintainability* A minor sued by his next friend in August 1903 to recover the amount due on a promissory note, executed in September 1897 in favour of his mother and alleged to have been made and delivered on account of his estate .—*Held,* that the suit was barred by limitation A benamidar or trustee, who takes a note in his own name is the person entitled in his own name to the possession thereof and not the *cestui que trust* or person for whom he holds the note He is therefore the proper

I. L. R. 28 Mad. 205

14. ———— Suit for damages—*Suit for rent—Whether a suit for rent payable by tenant under lease to superior landlord is one for rent or damages—Bengal Tenancy Act (VIII of 1885), s. 3 (5)—Lease, construction of* A took a lease of certain mouzahs from *B* in dar-putni and se-putni, and covenanted to pay annually R3,191 *to the superior landlords of B direct,* and R1,800 to *B* *A* was to take receipts from the superior landlords,

LIMITATION—*contd.*

1. LAW OF LIMITATION—*contd.*

make them over to *B* and take receipts from the latter. The whole amount of R4,991 was described in the lease as *annual rent fixed*, and in certain eventualities arising out of non-payment by *A* to the superior landlords, *B* was authorized to realise the amount from *A*, by bringing a suit for *arrears of rent* —*Held*, upon a construction of the lease, that a suit brought by *B* for realisation from *A* of the amount, which the latter failed to pay to the superior landlords under the terms of the lease, was, for the purpose of the limitation, one not for rent, but for damages for breach of covenant. *Rutnessur Biswas* v. *Hurish Chunder Bose, I. L. R. 11 Calc. 221* followed. *Basanta Kumari Debya* v. *Ashutosh Chuckerbutti, I. L. R 27 Calc 67*, distinguished. HEMENDRA NATH MUKERJEE v KUMAR NATH ROY (1905) . . I. L. R. 32 Calc. 16

15. ———— Mesne profits, determination of—*Appeal—Decree—Final order—Period of limitation—Copy of decree, time for—Civil Procedure Code (Act XIV of 1882), ss 212, 244, 312.* When a decree for possession of a property directs an enquiry into the amount of mesne profits under s 212 of the Civil Procedure Code, and an order is finally made determining the amount, a formal decree is necessary to be drawn up to give effect to the final order, which terminates the suit; and when the final order or decree is appealed against the

283, distinguished. GOPAL CHANDRA CHAKRAVARTI v. PREONATH DUTT (1905) . I. L. R. 32 Calc. 75

16. ———— "Accrual of the right to sue"—*Calcutta Municipal Act (Bengal Act III of 1899), s. 634—Rate-payers, interests of.* As a plaintiff is debarred by cl (1) of s. 634 of the Calcutta Municipal Act (Bengal Act III of 1899) from commencing a suit, until the expiration of one month after delivery of notice, the expression "accrual of the right to sue" in cl. (2) must apply to the date when the month's notice expired, from which date he has three months within which to commence his action. The words "accrual of the right to sue" in s 634 of the Act do not mean accrual of the cause of action CORPORATION OF CALCUTTA v. SHYAMA CHARAN PAL (1905) . I. L. R. 32 Calc. 277

17. ———— Foreclosure decree—*Possession, formal and actual* Where formal possession has been given under a final foreclosure decree, but the mortgagor has continued in actual possession, the remedy is by suit and not under s. 244 of the Code of Civil Procedure. Consequently the law of limitation applicable is that governing suits, not execution proceedings. *Shama Charan Chatterji* v. *Madhub Chandra Mookerji, I. L. R. 11 Calc. 93, Hari Mohan Shaha* v. *Baburali, I. L. R. 24 Calc. 715*, and *Mangli Parsad* v. *Debi Din, I. L. R. 19 All. 499*, referred to JAGAN NATH v. MILAP CHAND (1906) . I. L. R. 28 All. 723

LIMITATION—*contd.*

1. LAW OF LIMITATION—*contd.*

18. ———— Fraud—*Defence. Held*, that a defendant is entitled to resist a claim made against him by pleading fraud, and he is entitled

lapse of time *Ranganath* v. *Govind, I. L. R. 28 Bom. 639*, followed. *Mahomed* v. *Ezekil, 7 Bom. L. R. 772*, not followed MINALAL SHADIRAM v. KHARSETJI (1906) . . I. L. R. 30 Bom. 395

19. ———— Neglect to execute decree in suit for possession—*Suit—Decree—Suit on decree barred by limitation—Effect of barred decree —Former suit relating to land.* The plaintiffs instituted a suit against the defendants for recovery of possession of certain immoveable property and obtained a decree, but they neither executed the decree, nor obtained possession amicably, and allowed the decree to become barred by limitation. *Held*, that the plaintiffs were not entitled to institute a fresh suit upon the same cause of action on which the former suit had been founded and to rely upon the decree and to seek to recover possession of the same property upon the footing thereof. OMAN SHEIKH v. HALAKURI SHEIKH (1905)

I. L. R. 33 Calc. 679

20. ———— Money secured by a pledge —*Suit for money lent—Three years from the time of the loan* A suit for the recovery of money

I. L. R. 30 Bom. 21

21. ———— Money in deposit in Court —*Old and unclaimed deposits in High Court and Intestates' Estates Act (XXV of 1866)—Limitation Act (XV of 1877), Arts. 178 and 179 (4)—Application by judgment-creditor for payment of fund in Court—Limitation—Money, if realised in execution of decree—"Step in aid of*

their application for drawing out the same, although made 15 years after the order for payment. *Hem Chunder Chowdry* v. *Brojo Soondury Dabee, I. L. R. 8 Calc. 89*; and *Fazal Imam* v. *Metta Sing, I. L. R.*

LIMITATION—*contd.*

1. LAW OF LIMITATION—*contd.*

10 Calc 549, referred to APURBA KRISHNA RAY *v.* CHUNDERMONEY DEBI (1905) **10 C. W. N. 354**

22. ——— Application under s. 335, Civil Procedure Code, 1882—*Limitation—Resistance to execution—Investigation into the matters of resistance—Dismissal for default—Limitation Act (XV of 1877), Sch. II, Art 11* An application under s. 335 of the Code of Civil Procedure was dismissed for default on the petitioner applying to withdraw his petition for want of evidence, the opposite party being present In a suit by the petitioner for possession of the property, the subject of the above application, the defendants pleaded limitation under Art 11 of Sch II to the Limitation Act .—*Held*, that there was no enquiry within the meaning of s 335 and that consequently the order made was not conclusive, and the suit was not barred by the special limitation of one year. It is a condition precedent to passing an order under s 335, so as to make it conclusive unless a suit is brought within one year, that the Court shall enquire into the matters of resistance, etc SARAT CHANDRA BISU *v* TARINI PRASAD PAL CHOWDHRY (1907) . **I. L. R. 34 Calc. 491**

23. ——— Part-payment mortgagor after transfer—*Limitation Act (XV of 1877), s. 20—Part-payment—Mortgage-debt—Equity of redemption, transfer of—Extension of period as against transferee.* Payment of a part of the mortgage-debt by the mortgagor, and appearing in his handwriting, will give a fresh start of limitation to the mortgagee even as against a person who had purchased a portion of the mortgaged property prior to such payment. *Krishna Chandra Saha* v. ... *I L R. 32* ... *nath, 33 Ch* ... *v* ROSHAN ... **W. N. 107**

24. ——— Application for execution by minor— ...

favour of one *S. L.* In June 1888, *S L.* died leaving him surviving three sons, all minors On the 30th of April 1889, these three sons, still minors, made an application for an order absolute under s 89 of the Act. ...

... property. *Held*, that the application on the 1st ... ion. *Zamir* ... *9*, followed. ... *27 All. 704* ... *27 All. 625*, ... *v.* HET RAM (1907) . . . . **I. L. R. 29 All. 279**

LIMITATION—*contd.*

1. LAW OF LIMITATION—*contd.*

25. ——— Suit by reversioner to set aside alienation—*Limitation—Hindu Law—Widow—Alienation—Limitation Act (XV of 1877), Sch II, Art 91* The plaintiff sued in 1904, as a reversioner, to recover possession of ...

was not open to the defendant to rely on Art. 91 of the Limitation Act (XV of 1877) as a bar to the suit *Harihar Ojha v Dasarathi Misra, I L. R 33 Calc. 257*, followed RAKHMABAI *v* KESHAV RAGHUNATH (1906) . . **I. L. R 31 Bom. 1**

26. ——— Decree on appeal, modifying the first decree—*Execution of decree —Civil Procedure Code (Act XIV of 1882), s 230.* A decree for payment of money was modified on appeal *Held*, that the decree to be executed being the decree made on appeal the twelve years mentioned in s 230 of the Code of Civil Procedure would run from the date of the appellate decree. MAHOMED MEHDI BELLA *v* MOHINI KANTA SHAHA CHOWDHRY (1907) . . **I. L. R. 34 Calc. 874**

27. ——— Application for leave to appeal to the Privy Council—*High Court's refusal to admit appeal after period of limitation—Civil Procedure Code (Act XIV of 1882), s. 595—"Decree"—"Final decree passed on appeal," meaning of.* An order of the High Court refusing ...

... of the Civil Procedure Code and there is therefore no jurisdiction to grant leave to appeal therefrom to the Privy Council under clause (*a*) or (*b*) of that section *Sunder Koer v Chandishwar Prasad Singh, I L R. 30 Calc. 679*, followed. KARSONDAS *v.* GANGABAI (1907) **I. L. R. 32 Bom. 108**

28. ——— Suit for compensation for illegal distraint—*Illegal distress—Limitation Act (XV of 1877), Sch II, Arts 36, 39, 49—Tort—"Malfeasance"—"Trespass upon immoveable property."* Per RAMPINI, *A. C. J*—A suit for compensation for illegal distress, and cutting and carry... Sch ... const ... that ... *9 C.* ... *Golab* ... distinguished. *Per* DOSS, *J*—Wrongfully cutting and carrying away crops amount to "trespass upon immoveable property" and to "wrongfully taking specific moveable property" within the meaning of Arts. 39 and 49, Sch. II of the Limitation Act; and a suit for compensation for such acts is governed partly by Art. 39 and partly by Art. 49 *of the Act*.

LIMITATION—*contd.*

1. LAW OF LIMITATION—*concld.*

Mangun Jha v. *Dolhin Golab Koer, I. L. R. 25 Calc. 692,* referred to. JADU NATH DANDPUT *v.* HARI KAR (1908) . . . I. L. R. 36 Calc. 141

2. QUESTION OF LIMITATION

[illegible]

3. ——— **Extension of period of limitation**—*Beng. Reg II of 1805, s 3, cl 2—Question of limitation—Plaint.* Cl 2, s 3, Bengal Regu- [illegible]

in the Court below. KISHEN CHUNDER ROY *v* RAMKANAYE DOSS . . . 1 Ind. Jur. O. S 23

RAMKANAYE DOSS *v.* KISHEN CHUNDER ROY
Marsh. 22 : 1 Hay 55

4. ——— **Question not raised by parties**—*Pleading—Small Cause Court Rule 19 Per* PEACOCK, *C J*, and NORMAN, *J*—It is competent for a Judge of the Court of Small Causes, of his own motion, to notice the point of limitation, and to decide a case upon that issue, such issue not having been raised by the defendant *Per* MARKBY, *J.*—It is not competent for such Judge to raise the point, and decide the case thereon, after the case of both parties is closed. Lapse of time does not oust the jurisdiction of the Court PAYNE *v* CONSTABLE
1 B. L. R. O. C. 49

5. ——— **Plea struck out irregularly by first Court for prolixity of written statement.** Where a plea of limitation was set up in the defendant's written statement, and the first Court, considering the written statement to be prolix, directed the pen to be run through a large part of it, the defendant, dissatisfied with his proceeding on the part of the first Court, appealed to the Judge complaining that no adjudication had been given on the plea of limitation *Held*, that the power of a Court to deal with written statements [illegible]

LIMITATION—*contd.*

2. QUESTION OF LIMITATION—*contd.*

before the Judge, he was bound to adjudicate upon it BOOLEE SINGH *v.* HUROBUNS NARAIN SINGH
7 W. R. 212

6. ——— **Question raised on appeal**—*Remand—Power of Appellate Court.* Where in the lower Court an issue was raised whether the plaintiff's claim was barred by limitation, and the Judge decided it was not, and decreed the case on the merits; and the decree was appealed against by the plaintiff; and the Appellate Court did not deal with the question of limitation, but remanded the case for a new trial on the merits:—*Held*, that, on appeal from the new decree, the Appellate Court could entertain the question of limitation; and that the lower Court might have re-tried that issue on the facts found on the new trial PHOOL COOMAREE BEBEE *v* OONKUR PERSHAD BOISTOBEE
2 Ind. Jur. N. S. 50

S C. PHOOL KOOMAREE BEBEE *v.* WOONKAR PERSHAD BUSTOBY . . . 7 W. R. 67

NILJAREE *v.* MUJEEBOOLLAH . 19 W. R. 209

7. ——— *Question not raised in lower Appellate Court* A plea of limitation overruled in the Court of first instance, and not [illegible]

8. ——— *Limitation depending on facts* Where a plea of limitation can only be properly decided with reference to facts found in connection with the question of possession and dispossession, and where appellants have omitted to press evidence on the point, though they had every opportunity before the lower Appellate Court, it cannot be admitted to be taken in special appeal. RAMDHONE DASS *v* RAM RUTTUN DUTT
10 W. R. 425

9. ——— *Point for which* [illegible]

Nor in review. SARASVATI *v* PACHANNA SETTI
3 Mad. 258

See, however RAMANATHA MUDALI *v.* VAITHALINGA MUDALI . . . . . 2 Mad. 238

where it was held that the principle of the decision in *Narasu Reddi* v. *Krishna Padayache, 1 Mad. 358,* should not be extended

It is now expressly laid down by s 4 of the Limitation Act, 1877, that the question of limitation must be taken into consideration whether raised as a defence or not.

LIMITATION—*contd.*

2 QUESTION OF LIMITATION—*contd.*

10. ———— *Question not taken in pleadings or grounds of appeal—Consideration of question on appeal* A question of limitation, when it arises upon the facts before a Court, must be heard and determined, whether or not it is directly

meaning of s 5 of the Limitation Act, for the appellant in that Court not presenting the appeal within the period of limitation prescribed, does not preclude the High Court from considering that decision in appeal BECHI *v* AHSANULLAH KHAN
I L R. 12 All. 461

11. ———— *Waiver of plea of limitation—Raising plea again on appeal to High Court after abandonment throughout case—Madras Boundary Marks Act (XXVIII of 1860), s 25—Madras Boundary Marks Amendment Act (Mad Act II of 1884), s 9—Suit to set aside decision of the Survey Officer* A suit filed on the 21st April 1891 to set aside the decision of the Settlement officer under the Madras Boundary Acts, passed on the 15th September 1890, was dismissed by the Munsif as being time-barred, not having been brought within six months as provided by s 25 of Act XXVIII of 1860 This decision was reserved by the District Judge, who remanded the suit for disposal on the merits, holding that the production by the plaintiff of a copy of the judgment, dated the 25th October 1890, raised a presumption that the suit was in time, and shifted the burden of proof to the defendant to show that an earlier copy was granted to plaintiff, or that the decision was pronounced in the plaintiff's presence Against this remand order there was no appeal At the re-hearing, the question of limitation was not again raised, and the Munsif gave a decree on the merits. An appeal was preferred to the District Court, but no mention was made of the question of limitation On appeal to the High Court:—*Held*, that the question of limitation had been put aside by the consent of the parties who desired to have the case decided on the merits, and that the appellant could not be allowed to fall back on this plea of limitation which he had abandoned in the lower Courts RANGAYYA APPA RAU *v* NARASIMHA APPA RAU . **I. L. R. 19 Mad. 416**

12. ———— *Power of Appellate Court—Appeal on portion of case—Limitation Act, 1877, s 4* Where a suit, which ought to have been dismissed under s 4 of the Limitation Act, although limitation was not set up as a defence, is not dismissed, the defendant, in order that the question of limitation may be dealt with by the Appellate Court, must appeal on the whole case. ALIMUNNISSA KHATOON *v.* HOSSEINALI
6 C. L. R. 267

13. ———— *Cross-appeal—Jurisdiction of Appellate Court—Question of limitation not raised in cross-appeal—Limitation Act, 1877, s. 4.* On an application for execution of decree the application was granted, but the interest claimed by the decree-holder on the amount of the decree was disallowed The decree-holder appealed from

Held, that, under the circumstances of the case, the Appellate Court was not competent to take the question of limitation into consideration *Alimunnissa Khatoon v. Hossein Ali, 6 C L R. 267*, followed. RUGHU NATH SINGH MANKU *v* PARESHRAM MAHATA . **I. L. R. 9 Calc. 635 : 13 C. L. R. 89**

14. ———— *Omission to decide question* The Judge in appeal is bound to decree according to the Law of Limitation applicable to the case as stated by the plaintiff himself, although the objection may not be raised in the grounds of appeal; and his omitting to do so is an error or defect in the decision of the case on the merits and a ground of special appeal SAHIJI KESSAJI *v* RAJSANGJI JALMSANGJI
2 Bom. 169 : 2nd. Ed. 162

15. ———— **Question in reference for accounts to be taken**—*Waiver* In a suit for an account, where the defendant, while alleging the balance to be in her favour, contended that the plaintiff's claim was barred by the Limitation Act and the accounts were afterwards referred by consent to the commissioner, who refused without special direction to notice the defence of limitation,

16. ———— **Question raised after re-**

Sreenath Bose 6 W. R 178, followed. *Kuria v. Gururav, 9, Bom. 282*, distinguished *Parker v. Elding, 1 East 352*, and *Lila v. Vasudev, 11 Bom. 283*, distinguished. *Semble: Per* WESTROPP, C.J.

C.,
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PAL
BIN SATU **I. L. R. 2 Bom. 120**

17. ———— **Point of limitation taken for the first time in second appeal**—*Omission*

LIMITATION—*contd.*

2. QUESTION OF LIMITATION—*contd.*

of Court of first instance to reject a plaint for limitation effect of. The plaintiff's suit to recover certain lands was dismissed by the Court of first instance and by the lower Appellate Court, but on second

to the High Court, and then for the first time raised the point of limitation. *Held*, that the objection was taken too late. The defendant had the opportunity of raising the objection under the Limitation Act, and, if necessary, of getting any question, on which it depended, tried by the Courts below, and as he took no steps to this end, he should be taken to have waived his right to raise the objection. The omission of the Court of first instance to reject

it is barred by limitation, is not expressly laid on each successive Court whenever the objection comes to view, and ought not to be assumed by inference. DATTU *v.* KASAI . I. L. R. 8 Bom. 535

18. ———— Question in execution of decree—*Jurisdiction of Court where decree was passed—Transfer of decree for execution—Code of Civil Procedure, ss 223, 239, 248* On the 4th of March 1884 a decree-holder applied to the Court of the Subordinate Judge of Moorshedabad (where the decree was passed) for transfer of the decree to the District Court of Beerbhoom for execution. The

order under s. 239 of the Code of Civil Procedure staying the execution proceedings The judgment-debtor

ordinate Jud

execution of

barred by lim

the plea of limitation. *Held*, also, that the fact of the judgment-debtor's not raising the plea of limitation in the Beerbhoom Court did not, under the circumstances, preclude him from relying on it in his subsequent application to the Court at Moorshedabad. SRIHARY MUNDUL *v.* MURARI CHOWDHRY I. L. R. 13 Calc. 257

19. ———— Special and general question of limitation—*Minority* Where the issue of limitation raised in the first Court was a special issue as to the particular provision on the subject of minority found in s. 11, Act XIV of 1859, plaintiffs were entitled to be heard on the issue of general limitation under cl. 12, s. 1, and to give evidence to show that the suit was not barred. BAHUR ALI *v.* SOOKEA BIBEE . 13 W. R. 63

VITHAL VISHVANATH PRABHU *v.* RAMCHANDRA SADASHIV KIRKIRE . . 7 Bom. A. C. 149

But *see* BEEKUN KOER *v* MAHARAJAH BAHADOOR Marsh. 66 : 1 Hay 134

21. ———— Decision on plea by implication. It is not necessary that the Court below should expressly overrule a plea of limitation; it is sufficient if the Court disposes of the question of limitation by implication. WISE *v.* ROMANATH SEN LUSKHUR . . . 2 Ind. Jur. O S. 5

22. ———— Right to raise plea—*Landlord and tenant—Suit for possession—Trespasser.* In a suit to recover possession, the defendant, by admitting the right of the plaintiff as the owner of the land in dispute, and acknowledging himself to be the plaintiff's tenant, precludes himself from pleading adverse possession or limitation, in whatever form it may be that the plaintiff asserts his right to the land,—*i e.*, whether he sues the defendant as a tenant or trespasser WATSON & Co. *v.* SHURUT SOONDEREE DEBIA . 7 W. R. 395

23. ———— *Landlord and tenant—False plea of tenancy—Trespasser.* The plea of limitation can be raised and determined in a suit brought by a landlord against a person who is really a trespasser, but who has set up a false case of tenancy. DINOMONEY DABEA *v.* DOORGAPERSAD MOZOOMDAR 12 B. L. R. F. B. 274 : 21 W. R. 70

24. ———— *Landlord and tenant—Adverse possession.* Where the plaintiff sued for khas possession of land, it was held the

DABEE *v* KOMOLAKANTH MOOKERJEE 12 B. L. R. 283 note : 12 W. R. 364

25. ———— *Landlord and tenant—Knowledge of adverse title.* Limitation can be pleaded in a suit by a landlord against a

v. BENGAL COAL COMPANY 12 B. L. R. 282 note : 13 W. R. 129

Affirmed by Privy Council .. 19 W. R. 253

LIMITATION—*contd.*

2. QUESTION OF LIMITATION—*contd.*

26. ——— *Landlord and tenant—Failure to prove talukhdari right.* Raiyats

27. ——— *Landlord and tenant—Defendant pleading tenancy and adverse*

28. ——— *Landlord and tenant Semble*: A sub lessee without title cannot plead limitation against his landlord either by himself or through his lessor MAHARAM SHEIKH *v* NAKOWRI DAS MAHALDAR. **7 B. L. R. Ap. 17**

s c. MOHURUM SHAIKH *v* NOWKURREE DASS MOHULDAR . . . **14 W. R. 357**

But *see* NAZIMUDDIN HOSSEIN *v* LLOYD **6 B. L. R. Ap. 130: 15 W. R. 232**

29. ——— **Alternative plea**—*Alternative plea of limitation and tenancy* It is open to a party

took a plea that plaintiff's suit was barred by limitation, the lower Appellate Court found plaintiff's title proved and that defendant's alleged tenancy was not proved, and refused to go into the question of limitation raised by the defendant. *Held*, that the question of limitation must be decided. KEAMUDDI *v* HARA MOHAN MONDUL (1903) . . . . . **7 C. W. N. 294**

30. ——— *Limitation, plea of—Ground of limitation not taken in memorandum of appeal—Second appeal—Plea of limitation raised for the first time in second appeal—Limitation Act (XV of 1877), s 4—Civil Procedure Code (Act XIV of 1882) s 542—Practice* Held by the Special Bench

of the Limitation Act. *Held*, by WOODROFFE, J., that under the circumstances of the case it was a fair and proper exercise of discretion to disallow, under s. 542 of the Civil Procedure Code, the objection which had not been set out in the grounds of appeal BALARAM *v* MANOTA DASS (1907) **I. L. R. 34 Calc. 941**

LIMITATION—*contd.*

2. QUESTION OF LIMITATION—*concld.*

31. ——— **Issue**—*Practice.* Where an issue of limitation is not raised, either by the

NAIDU (1902) . . **I. L. R. 25 Mad. 367**
L. R. 29 I. A. 76
6 C. W. N. 641

32. ——— **Minority**—*Suit by guardian.* A suit was brought upon a mortgage bond. The original mortgagee was a guardian acting for a minor, and the suit was also brought by him in the same capacity. The lower Appellate Court held that the suit was barred, and that the guardian could not claim any special benefit as regards limitation *Held*, that the lower Appellate Court was wrong *Phoolbas Koonwar* v. *Lala Jogeshwar Sahoy, I L R 1 Calc. 226*, and *Narendra Nath Pahari* v *Bhupendra Narain Roy, I. L R 23 Calc. 374*, relied upon SHAMA CHURN HUI *v.* KANANGAI CHAITAN PROSAD (1903) . **7 C. W. N. 594**

33. ——— **Report as to date of death**—*Report of patwari—Indian and English dates not corresponding* In the report of a *patwari* as to the date of a death, the Indian date was given, and, after it, what purported to be the corresponding English date The dates being found not to correspond *Held*, on a question of limitation, that the substantive statement was that given in the vernacular and that the rest was a miscalculation. JAGATPAL SINGH V. JAGESHAR BAKHSH SINGH (1902)
I. L. R. 25 All. 143: s c. L R. 30 I. A. 27
7 C. W. N. 209

3. ADVERSE POSSESSION.

1. ——— **Adverse Possession**—*Hindu Law—Widow—Mitakshara Law—Possession of widows in undivided Hindu family—Suit by reversionary heirs to set aside assignment by widows, and for possession—Evidence of arrangement between*

assignee, to set aside the *hibanama*, and for possession. *Held*, that the widows being entitled only to maintenance out of the estate, their possession

LIMITATION—*contd.*

3. ADVERSE POSSESSION—*contd.*

[illegible]

I. L. R. 2[illegible] Calc. [illegible]
s.c. 6 C. W. N. 657 ; L. R. 29 I. A. 132

2. ———————— *Adverse possession—Co-sharer—Joint property.* Possession or occupation of joint property by one co-sharer does not constitute adverse possession against any other co-sharer, until there has been disclaimer of the latter's title by the open assertion of hostile title on the part of the former. *Baroda Sundari Deby* v. *Annoda Sundari Deby, 3 C W N. 774,* and *Ittappan* v *Manavikrama, I. L R 21 Mad. 153,* followed UJALBI BIBI *v* UMAKANTA KARMAKAR (1904) . . . **I. L. R. 31 Calc. 970**

3. ———————— *Adverse possession—Suit to recover profits of sir land in an undivided mahal.* In a suit to recover his share of the profits of certain sir land appertaining to an undivided mahal the plaintiff had not been in receipt of profits in respect of the sir land in suit for more than twelve years, but he and his predecessor in title had been in receipt of their shares of the rents and *profits of the undivided mahal, other than of the* particular sir land in question, continuously:—*Held*, that the mahal being undivided, the defendant's possession of the sir lands, the profits of which were claimed, had never really been in possession hostile to the plaintiff, and the suit was therefore not barred by limitation RAJ BAHADUR *v* BHARAT SINGH (1905) . . **I. L. R. 27 All. 348**

4. ———————— *Civil Procedure Code (Act XIV of 1882), Chap. XIX, div. H—Decree for possession—Execution of decree—Obstruction—Application for removal of obstruction numbered and registered as suit—Adverse possession.* On the 1st June 1889 defendant's husband Vishnu sold certain land to Vithal and passed to him a rent-note the period of which expired on the 20th March 1890 Subsequent to the expiry of the period, Vishnu, and after his death his widow, the defendant, continued in possession Afterwards the plaintiffs, to whom the land had been sold, having obtained a decree for possession against the sons of Vishnu, Vishnu's widow, Kashibai, caused obstruction to delivery of possession in exe- [illegible]

the 26th of July 1902, when the application was numbered as a suit, as the period of his adverse [illegible] e 20th [illegible] under [illegible] of Civil [illegible] y 1902.

I. L. R. 30 Bom. 115

5. ———————— *Adverse possession, elements of—Party wall.* Where two adjoining houses belonging to a single owner are sold to two different persons *A* and *B*, and the partition wall between the two houses, which is included in the sale to *A* is, at the time of sale, used as a support for the rafters of the house sold to *B*, the wall passes to *A* subject to such easement right. The plastering and repairing by *B* of his side of the wall do not amount to adverse possession and can be referred to the easement right. To constitute dispossession there must, in very case, be certain positive acts which can be referred only to the intention of acquiring exclusive control Where the acts do not amount to dispossession of the true owner, possession follows the title SUNDARASASTRIAL *v* GOVINDO MANDARAYAN (1908)

I. L. R. 31 Mad 528

6. ———————— *Bhagdari Act (Bom. Act V of 1862), s. 3—Bhag—Unrecognised sub-division of a bhag—Alienation—Suit to set aside the alienation.* Possession acquired under an alienation made in contravention of s. 3 of the Bhagdari Act (Bombay Act V of 1862) can become adverse so as to bar a suit for recovery by the individual alienor or his representatives in interest. The Bhagdari Act (Bombay Act V of 1862) contains nothing which by express provision or necessary implication abrogates the law of limitation in favour of a private person. *Dala* v. *Parag, 4 Bom. L R 797,* and *Jethabhai* v. *Nathabhai, I. L. R. 28 Bom. 399,* distinguished ADAM UMAR *v.* BAPU BAWAJI (1908)

I. L. R. 33 Bom. 116

4 INSTALMENT CASES.

1. ———— **Default in payment of instalments**—*Instalment bond—Waiver.* In an instalment-bond it was stipulated that on default being made in payment of any one instalment, the creditor would be at liberty to realise the amount covered by all the instalments *Held*, that in such a case limitation would run from the date of the first default, unless there was a waiver by the creditor of the right to demand the whole on a default, by a subsequent acceptance of an overdue instalment *Hurri Pershad Chowdhry* v. *Nasib Singh, I. L R 21 Calc. 542,* followed. *Mon Mohon Roy* v. *Doorga Churn Gooe, I. L R. 15 Calc. 502,* referred to. *Chunder Komal Das* v. *Bisassuree Dessia, 13 C. L. R 243,* dissented from. JADAB CHUNDRA BAKSHI *v* BHAIRAB CHANDRA CHUCKERBUTTY (1904) **I. L. R. 31 Calc. 297**

LIMITATION—*contd.*

4. INSTALMENT CASES—*concld.*

2. ———— **Execution of decree**—*Instalment decree—Fraud on the part of decree-holder—Objection by minor on attaining majority* Where a decree is for money payable by instalments, in which the provision is that upon default in the payment of one instalment the whole decretal amount should become payable, limitation runs [illegible]

application on the ground of limitation, he is guilty of fraud practised on the Court Where such fraud [illegible]

JHA v PADMANUND SINGH (1901)
6 C. W. N. 348

5 STATUTES OF LIMITATION.

(a) GENERALLY.

1. ———— **Construction of Limitation Act.** Statutes of Limitation are, in their nature, strict and inflexible enactments, and ought to receive such a construction as the language in its plain meaning imports LUCHMEE BUKSH ROY v. RUNJEET RAM PANDAY
13 B. L. R. P. C. 177 : 20 W. R. 375

s c in lower Court . . **12 W. R. 443**

2. ———— An Act of Limit- [illegible]

3. ———— The applicability of the particular sections of Act XIV of 1859 must be determined by the nature of the thing sued for, and not by the status, race, character, or [illegible] TEHSANGJI [illegible] HAKOOM- [illegible] W. R. 178 [illegible] I. A. 34

4. ———— *Limits to enforcing rights* A Limitation Act is not intended to define or create causes of action, but simply to prescribe the periods within which existing rights may be enforced. JIVI v RAMJI
I. L. R. 3 Bom. 207

5. ———— *Retrospective effect* The general rule as laid down in *Reg* v. *Dorabji*, *11 Bom. 117*, that "an Act of limitation, [illegible]

LIMITATION—*contd.*

5. STATUTES OF LIMITATION—*contd.*

(a) GENERALLY—*contd.*

of the qualification that, when the retrospective application of a Statute of Limitation [illegible]

strued retrospectively. KHUSALBHAI v KABHAI
I. L. R. 6 Bom. 26

(b) STATUTE 21 JAC. I, c. 16

6. ———— **Action of contract**—*Cause of action—Breach of contract and refusal to perform* [illegible]

A purchased at a Government sale at Calcutta a quantity of salt, part of a larger portion then lying in the warehouse of the vendors (the Government) where the salt was to be delivered. By the condition of sale it was declared that, on payment of [illegible]

sale, otherwise the purchaser was to pay warehouse rent for the quantity then afterwards to be delivered The purchaser paid the purchase-money, and received permits for the delivery of the salt, which was delivered to him in various quantities down to the year 1831, in which year an inundation took place which destroyed the salt in the warehouse and there remained no salt to satisfy the contract. The purchaser petitioned the vendors for a return of the purchase-money, which was refused, on the ground that the loss happened through his negligence in not sooner clearing the salt from the warehouse. An enquiry, however, took place at the instance of the Government who referred the matter to the Salt Collector. The Collector did not make his report till the year 1838, and upon that report the Government refused to return the purchase-money claimed in respect of the deficient salt. The purchaser then brought an action of assumpsit for recovery of the purchase-money of such part of the salt as had not been delivered, alleging, as a breach, the non-delivery thereof. To this the [illegible]

time of such breach, and that the subsequent enquiries by the Government did not suspend the

LIMITATION—*contd.*

5. STATUTES OF LIMITATION—*contd.*

(*b*) STATUTE 21 JAC. I, c. 16—*concld*

operation of the Statute of Limitations till 1838, the time of the final refusal, and that the remedy was barred by the statute. *Semble*: There may be an agreement that, in consideration of an enquiry into the merits of a disputed claim, no advantage should be taken of the statute in respect of the

3 Moo. I. A. 13

(*c*) OUDH, RULES FOR

7. ———— ss. 9 and 14—*Suits on money bonds—Bond executed before annexation of Oudh.* By s 9 of the Limitation Rules for the guidance of Civil Courts in Oudh, as explained by the Circular Order of the Judicial Commissioner, 104 of 1860, the limitation of suits was fixed for three years in "suits for money lent for a fixed period, or for interest payable on a specified date or dates, or for breach of contract, unless there is a written engagement or contract; and where registry offices existed at the time, such engagement was registered within six months of its date." That section held not to apply in the case of a bond executed in 1855 before the annexation of Oudh, when there was no

expressly provided by these rules:" and a decree of the Judicial Commissioner of Oudh holding that a suit on the bond was barred by the three years' limitation provided by s. 9 of the rules, reversed on appeal. SALIGRAM *v.* AZIM ALI BEG . . . 10 Moo. I. A. 114

(*d*) BENGAL REGULATION III OF 1793, s. 14

8. ———— s. 14—Exemption from limitation ... The Govern- ... com- ... ment ... ress, ... tion ... the exemption of their suit from limitation. GOVERNMENT OF BENGAL *v.* SHURRUFFUTOONISSA

3 W. R. P. C. 31: 8 Moo. I. A. 225

9. ———— *Exemption from limitation—Distant residence—Good cause for delay—Beng. Reg II of 1805, s 3.* Where a party in

LIMITATION—*contd.*

5. STATUTES OF LIMITATION—*contd.*

(*d*) BENGAL REGULATION III OF 1793, s. 14—*contd.*

residence was held not to be a sufficient cause to

IMAD ALI *v* KOOTHY BEGUM

6 W. R. P. C. 24: 3 Moo. I. A. 1

10. ———— Deduction of time—*Non-suit—Computation of limitation* According to the former procedure, when a suit before a competent tribunal ended in a non-suit, the period of limitation was computed from the accruing of the original cause of action, the time while the first suit was pending being reduced. PURBHOO NARAIN SINGH *v.* LELANUND SINGH . 2 W. R. 256

11. ———— *Deduction of time—Suit by minor after attaining majority—Non-allowance of pendency of suit by guardian.* In a suit by a minor after attaining majority, no allowance can be made, under Regulation III of 1793, for the period of pendency of a suit brought by his guardian and eventually non-suited. LUCHMUN PERSHAD *v.* JUGGERNATH DOSS

W. R. 1864, 2.

12. ———— *Deduction of time—Suit in Collector's Court—Reference to civil suit.*

the plaintiff was not entitled to any deduction of the time during which the rent suit was proceeding, and that the date of accrual of plaintiff's right, and not that of the Collector's order of reference, was the cause of action in this case, and that the plaintiff's suit was barred by limitation, under s. 14, Regulation III of 1793. HOSSAIN KHAN *v* DINNOBUNDHOO PUNDAH

1 W. R. 35

OKHETOONISSA *v.* KOOCHIL SIRDAR

2 W. R. 45

13. ———— *Deduction of time—Suit for excess of jama—Suit first brought in summary department.* The time occupied in the

Court. HUROMONEE GOOPTIA *v.* GOBIND COOMAR CHOWDHRY . . . 5 W. R. 51

14. ———— *Deduction of time—Disputed title—Sufficient cause—Substitution of parties.* The plaintiffs as heirs of *R*, the husband of one *B*, more than twelve years after her death sued to recover lands alienated by her. As an answer to the plea of limitation, they alleged that, in a suit for other property brought against

LIMITATION—*contd.*

5. STATUTES OF LIMITATION—*contd.*

(*d*) BENGAL REGULATION III OF 1793, s. 14—*contd.*

ing to be an adopted son of *A*; that in March 1841, and within twelve years before suit, the Principal Sudder Ameen ordered the plaintiff's names to be substituted for that of *B* as defendants in that suit *Held*, by the majority of the Court (*dissentiente* GLOVER, *J*), that these proceedings did not bar the operation of the old Law of Limitation (s 14, Regulation III of 1793) RAMGOPAL ROY *v.* CHUNDER COOMAR MUNDUL . 2 W. R. 65

15. ——————— *Deduction of*

DHRY *v.* TARAPERSAUD ROY CHOWDHRY
4 W. R. P. C. 63 : 8 Moo. I. A. 308

16. ——————— *Deduction of time—Beng. Reg II of 1805, s 3—Adverse possession—Suit by heir for share of inheritance* *A* died in 1813 At *A*'s death one of his heirs entitled to a

course of which questions were raised as to who

decreed that the heirs of *A*, according to the Shiah law of inheritance, were entitled, and directed the mesne profits to be brought into Court and divided among such heirs A suit was in consequence instituted in 1852 by one of the heirs of *A* to carry into

in 1842, the suit must be considered as supple-

until the final decree in 1842, it was not such a quiet and undisturbed possession, under the circumstances, as to operate by Regulation II of 1805, s 3, as a bar to the suit ENAYET HOSSEIN *v* AHMED REZA . . 7 Moo. I. A. 238

(*e*) BENGAL REGULATION VII OF 1799, s. 18.

17 ——— **Ineffectual execution proceedings in summary suit**—*Beng Reg. VIII of 1819, s 18—Cause of action.* In a summary suit under Regulation VII of 1799, the plaintiff obtained a decree against his gomastah for certain moneys due from the latter, but failed in execution to recover the amount He accordingly brought a regular suit under cl 4, s. 18, Regulation VIII of 1819, in order to make the immoveable property of his gomastah available in satisfaction of the debt. *Held*, that his cause of action in the regular suit was the same as his cause of action in the summary suit, and that the period of limitation must be reckoned from the time when that cause of action accrued and not from the date of the summary decree, or from the time when the plaintiff discovered that he could not obtain satisfaction of such decree. SREENATH GHOSAL *v.* BISSONATH GHOSE
B. L. R. Sup. Vol. Ap 10 : 5 W. R. 100

(*f*) BOMBAY REGULATIONS I OF 1800, s. 13.

18. ——— s. 13—*Offer to compromise suit—Admission—Residence of defendant out of jurisdiction* The offer of a specific sum of money by way of compromise in no way involving an admission of the justice of the plaintiff's demand further than what may be inferred from the offer of any compromise (an inference which is never permitted), could not bring the plaintiffs within the exception, in s. 13, Regulation I of 1800, of the Bombay Code, under which a suit was barred by

meaning of the same exception, to excuse the plaintiff's delay in suing beyond the twelve years. BHAEE CHUND *v* PURTAB CHAND
5 W. R. P. C. 31 : 1 Moo. I. A. 154

19. ——————— *Suit for land—Land attached to hereditary office.* The Bombay Regulation I of 1800, s. 13, limiting the right of

LIMITATION—*contd.*

5. STATUTES OF LIMITATION—*contd.*

(*g*) MADRAS REGULATION II OF 1802.

20. ———— **s. 18, cl. 4**—*Irregular proceedings of Court.* A suit was not barred by limitation under cl. 4, s. 18, Regulation II, 1802, of the Madras Code, if the plaintiff preferred his claim within the prescribed period to a Court of competent jurisdic-

VENGAMA NAIDOO
1 W. R. P. C. 309 : 9 Moo. I. A 66

21. ———— *Deduction of time bond was under attachment—Good and sufficient cause.* Where a bond was seized under legal process of attachment after it had become due, but before the lapse of twelve years from its date, and remained under attachment for several years :—*Held*, that there was "good and sufficient cause" for the lapse of time within the meaning of Regulation II of 1802, s 18, cl 4, and that a suit on the bond was therefore not barred. KADARBACHA SAHIB *v.* RANGASAMI NAYAK . . . . . 1 Mad. 150

(*h*) MADRAS REGULATION XXV OF 1802.

22. ———— *Exercise by Government of its prerogative of imposing assessment on land liable to be assessed—No period of limitation—Regulation XXV of 1802, s 4—Land exempted from payment of public revenue at permanent settlement—Resumption of inam* Certain land was exempted

abolishing" the exemption of such lands from liability to pay assessment to Government, and the

limitation prescribed by any law within which alone the Government should exercise its

FOR INDIA (1904) I. L. R. 27 Mad. 16

(*i*) BENGAL REGULATION II OF 1805

23. ———— **Suit for rent**—*Adverse possession—Suit for ejectment.* A suit instituted by a zamindar in 1857, for the recovery of rent, for six

LIMITATION—*contd.*

5. STATUTES OF LIMITATION—*contd.*

(*i*) BENGAL REGULATION II OF 1805—*contd.*

peaceable and uninterrupted possession of the grantee and his representatives according to the provisions of Regulation II of 1805 *Held*, also, that a suit to eject would be similarly barred. CHUNDER BULLEE DEBIA *v* LUCKHEE DEBIA CHOWDHRAIN
1 Ind. Jur. N. S. 25, 141 : 5 W. R. P. C. 1
10 Moo. I. A. 214

24. ———— **Suit for possession.**

to prove possession in excess of sixty years, the onus was held to lie on the Government to prove possession within sixty years. BROMANUND GOSSAIN *v.* GOVERNMENT . . 5 W. R. 136

25. ———— **s. 2, cl. 2**—*Suit for resumption and assessment by Government.* The right of Government to institute proceedings by or before the Revenue Collector under Regualtion II of 1819 for the resumption of lands for the purpose of assessment to the public revenue was barred by Regulation II of 1805, s. 2, cl. 2, after the lapse of sixty years from the cause of action. So held by the Judicial Committee of the Privy Council on appeal from a decree made by the Special Commissioner, on a claim by Government where mahatern lands were held as lakhiraj by the Raja of Burdwan before the Company's accession to the Dewany in 1765, and no claim had been made by Government to resume the lands for assessment till the year 1836. DHEERAJ RAJA MAHATAB CHUND BAHADOOR *v.* GOVERNMENT OF BENGAL. . 4 Moo. I. A. 466

26. ———— **s. 3**—*Beng Reg. XIX of 1793*

KOOWAR *v.* BANKUBEHARI CHOWDHRY
3 B. L. R. A. C. 446

S C. KASHEENATH KOONWAR *v.* BUNKOBEHAREE CHOWDHRY . . . 12 W. R. 440

27. ———— *Beng. Reg. II of 1803, s. 18—Violent and forcible possession.* This

defendants, who could not be allowed to

LIMITATION—*contd.*

5. STATUTES OF LIMITATION—*contd.*

(i) BENGAL REGULATION II OF 1805—*concd.*

wrong in support of the plea of limitation. LALL DOKUL SINGH *v* LALL ROODER PURTAB SINGH
5 W R. P. C 95

28. ——— ——— *Fraudulent or forcible acquisition.* Regulation II of 1805, s. 3, which provides that the limitation of twelve years shall not be considered applicable to any private claims of right to immoveable property, if the party in possession shall have acquired possession by violence, fraud, or other unjust, dishonest means, must be considered with some strictness (otherwise the door would be opened widely to a large class of claims which ought properly to be barred), and the alleged fraudulent or forcible dispossession must be clearly established RAJENDER KISHORE SINGH *v* PERLHAD SEIN . . . . 22 W R 165

29. ——— ——— *Maintenance, liability to pay* The *nullum tempus* clause of s 3, Regulation II, 1805, does not apply to a case where the occupant was not a mortgagor or depositary, otherwise than as he was subject to pay a portion of the proceeds of the property to another during his life-time. GORDON *v* ABOO MAHOMED KHAN . . . . . 5 W. R P C 68

(j) BOMBAY REGULATION V OF 1827.

30. ——— s. 1—*Miras land* The law of limitation contained in s. 1, Regulation V of 1827, applies to miras land as well as to all other descriptions of immoveable property. Special Appeals, No 2520 of 1850, *Morris, Sel. Dec.*, 51 ; and No. 3064, *Morris, S. D. A. Rep*, *Vol II*, overruled. SALU KOM RAGHUJI *v*. RAVAJI BIN RAMJEE
1 Bom. 41

31. ——— ss 3 and 4—*Claim for account by representative of deceased partner against surviving partners.* A right to an account claimed by the representatives of a deceased partner in a firm against his surviving partners fell under s. 4 of Regulation V of 1827, and was not a debt within the meaning of s 3 of that Regulation BHAICHAND BIN KHEMCHAND *v.* FULCHAND HARICHAND
8 Bom A C. 150

32. ——— s. 7, cl. 2—*Claim without binding decree having been made.* A case was within

in the State, although a satisfactory and binding decree was not obtained JEWAJEE *v*. TRIMBUKJEE
6 W. R P. C. 38 : 3 Moo. I A. 138

33. ——— S. 7. cl. 3—*Age of majority*

LIMITATION—*contd.*

5. STATUTES OF LIMITATION—*contd.*

(k) ACT XXV OF 1857, s 9

34. ——— s. 9—*Act IX of 1871, s. 1—Minority, disability arising from—Forfeiture of property of rebel—Repeal, effect of.* B S, the father of the plaintiff who was in possession of an

feited to Government On the 16th April 1858, *B S* having been arrested was tried and convicted on a charge of rebellion, and sentenced to death The sentence was carried out on the 21st April 1858 and an order was made on the same day by the Deputy Commissioner for the confiscation of his property On the 1st April 1872, a suit was instituted by the plaintiff, then a minor, to recover possession of the estate of his father *B S. Held*, that the suit not having been instituted within one year from the seizure of the property, was barred by s. 9, Act XXV of 1857, notwithstanding its repeal by Act IX of 1871. There being no exception in Act XXV of 1857 in favour of infants, the plaintiff was not entitled to deduct the time during which he was under the disability of minority. KAPILNAUTH SAHAI DEO *v.* GOVERNMENT
13 B L. R. 445 : 22 W. R. 17

35. ——— ——— *Omission to adjudicate forfeiture of property—Seizure of pro-*

(l) ACT IX OF 1859.

36. ——— ss. 18 and 20—Involuntary absence—*Refusal to surrender.* Although s 18,

LIMITATION—*contd.*

5 STATUTES OF LIMITATION—*contd.*

(*l*) Act IX of 1859—*contd.*

that plaintiff's suit, if he succeeds in establishing that his absence within the limited period was involuntary, would be removed from the operation of that section. The plaintiff's suit was not barred by s 20, Act IX of 1859, which deals with the rights of persons who are not accused and suspected of the act of rebellion, and its operation according to ordinary rules of construction cannot be extended to cases not within the preceding portion of the section Mahomed Yusuf Ali Khan v. Government . . . 1 Agra 191

37. ——— s 20—**Forfeiture of rebel's property.** Where the property of a rebel has been *sold, any party claiming an interest in the thing sold* is bound, under s 20, Act IX of 1859, to bring his suit within one year from the date of the order of confiscation Prosonno Pandey v Gunga Ram W. R. 1864, 2

Nepal Singh v Ram Sarun Singh W. R. 1864, 5

Nundun Singh v Koolsoom W. R. 1864, 377

Ameeroonnissa v Shib Suhai . 1 Agra 271

38 ——— *Attachment of rebel's property* The property of certain rebels was confiscated, and a list made of such property which list did not specify the land in suit *Held*, nevertheless, that, if the land in suit was actually

39. ——— *Disability of minority—Forfeiture of rebel's property* Certain property, in the actual possession of a rebel was confiscated by the Government in 1858 In a suit

of the confiscation, the plaintiffs were minors, and that they came of age in 1861 and February 1864, respectively. *Held*, that the suit not having been

and such saving cannot be held to be implied upon any principle of equitable construction; nor can the saving clauses contained in the general Limitation Act XIV of 1859, be imported into a special enactment Act IX of 1859 is plainly retrospec-

to for-

before

v. Col-

13 B L. R. 292 : 21 W. R. 318

L R 1 I. A. 167

LIMITATION—*contd.*

5. STATUTES OF LIMITATION—*contd.*

(*l*) Act IX of 1859—*contd.*

40. ——— *Forfeiture of rebel's property.* A Hindu widow in possession of a six-annas zamindari share of her husband's sold the share in 1855 to persons who in 1858 were convicted of rebellion, and their estates, including the share, were confiscated by Government. The share was granted to other persons as a reward for loyalty, and remained in their possession until 1886, when a suit for possession and mesne profits was brought, just before the expiry of twelve years from the widow's death, by a reversioner to her husband's estate on the ground that the sale of 1855 could not affect more than the widow's life-interest, and that nothing more had been confiscated by the Government in 1858 and granted to the defendants. The plaintiff had taken no steps in 1855 to question the sale, or in 1858 to assert his claims as reversioner. *Held*, that the suit was barred by s 20 of Act IX of 1859 *Ramdhun* v. *Bhawanee Singh, 3 Agra 139, Bhugwan Das* v. *Banee Dalal, 2 S D. A. N.-W. P. (1864), 220*; and *Mahomed Bahadur Khan* v. *Collector of Bareilly, 13 B. L. R 292: L. R 1 I A. 167*, referred to. Ramphul Tiwari v. Badri Nath I. L. R. 13 All. 108

41. ——— *Forfeiture of property—Cause of action.* In cases of confiscation, limitation runs not from the date on which confiscation is sanctioned by the Government, but rather from the date on which the property is actually attached on the part of the Government. Deo Karun v Mohamed Ali Shah 3 N. W. 328

42. ——— **Foreclosure proceedings.** Proceedings to foreclose are not the "suit" contemplated by s. 20, Act IX of 1859. Nundun Singh v. Koolsoom W. R. 1864, 377

43 ——— **Suit to redeem after confiscation of mortgagee's interest** Where the

are confis-

by a mort-

859 Ram-

Agra 139

year from the date of seizure or sale. Nothing in s. 20 of the Act allows a concurrent period of twelve years to sue in the ordinary Civil Courts for confirmation of civil rights. Gobind Pandey v. Heemut Bahadoor . . 6 W. R. 42

45. ——— *Suit by mortgagee of confiscated property to enforce his lien against grantees* The plaintiff was the mortgagee of property confiscated in the Mutiny. He asserted his lien in May 1859, and when the property was afterwards granted to the defendants, it was

LIMITATION—*contd.*

5. STATUTES OF LIMITATION—*contd.*

(*l*) ACT IX OF 1859—*concld.*

granted subject to any claims that might be made in respect of it, and they in June 1859 executed an agreement, which had reference to the plaintiff's claim, binding themselves to take the risk of any liens subsisting on the property. In July 1861 they were informed by the Collector that they were answerable for the plaintiff's lien. The plaintiff sued the defendants to enforce his lien against the property *Held*, that the suit was not barred by limitation under Act IX of 1859. SIRDAR KHAN *v* BULDEO SINGH . . . **6 N. W. 89**

(*m*) ACT XIV OF 1859

See LIMITATION ACT (XV OF 1877)

46. — —— - **Application of Act** The provisions of the Limitation Act (XIV of 1859), did not apply to suits for arrears of rent under Act X of 1859, nor were the provisions of Act X of 1859 in any way affected by the provisions of Act XIV of 1859 POULSON *v* MADHUSUDAN PAL CHOWDHRY . . . **B. L. R. Sup Vol. 101**
2 W. R., Act X, 21

See UNNODA PERSAUD MOOKERJEE *v* KRISTO COOMAR MOITRO
15 B. L. R. P C. 60 note: 19 W. R. 5

ASMEDH KOONWUR *v* JOYKURM LALL
1 W. R 349

STEPHEN *v* GASPER . **1 W. R. 265**

DABEE *v* NUKEEMUNISSA . .
W. R. 1864, Act X, 116

SURNOMOYEE *v*. SINGHROOP BEBEE
W. R. 1864, Act X, 134

RAM SUNKUR SANAPATTY *v* GOPAL KISHEN DEO
1 W. R. 68

MAYER *v*. SOWLATOONISSA .
2 W. R., Act X, 96

MAHOMED KALEE SHIKDAR *v* ALI HOSSEIN CHOWDHRY . . **3 W. R., Act X, 5**

In the matter of HOSSEIN ALI
13 W. R. 295

47. — **Operation of Act**—The Act for Limitation of Suits (Act XIV of 1859) came into operation on the 1st January 1862 KAMBINAYANI JAVAJI SUBBA RAJALU NAYANI VARU *v* UDDIGHIPI VENKATAPAYA CHETTY **3 Mad. 268**

48. - - ——— — *Act XI of 1861.* The periods of limitation specified in ss 19 to 23 of Act XIV of 1859 ran (under s 2, Act XI of 1861) from the 1st of January 1862 HUKUM CHAND TAKARAM *v*. BHUGVANTRA . . **1 Bom. 94**

(*Contra*) *Ex-parte* KALIDAS DAMODHAR. *Ex-parte* BAPUJI PITAMBHAR **3 Bom. A. C. 175**

BAI UDEKUVAR *v* MULJI NAPAN
3 Bom. A. C. 177

LIMITATION—*contd.*

5. STATUTES OF LIMITATION—*contd.*

(*m*) ACT XIV OF 1859—*contd.*

49. —————— *Act XI of 1861—Cases since January 1862.* Notwithstanding Act XI of 1861, suits instituted after January 1st, 1862, were held to be governed by the provisions of Act XIV of 1859. MOHIDIN SAHIB *v* KHADER SAHIB
2 Mad. 42

50. ——————— *Act XI of 1861—Decree not in force at time of passing of Act XIV* [illegible]

51. — - ——————— *Former charac-* [illegible]

SHURUTSOONDERY DEBEE *v*. GOVERNMENT
7 W. R. 42

52. ——————— *Act IX of 1871.—Applications in suits* Act XIV of 1859, and not Act IX of 1871, applied to application in suits instituted before 1st April 1873. BHIKAMBHAT *v* FERNANDEZ . . **I. L. R. 5 Bom. 673**

MONGOOL PERSHAD DICHIT *v* GRIJA KANT LAHURI . . . **I. L. R. 8 Calc. 51**
L. R. 8 I. A. 123

BEHARY LALL *v* GOBERDHUN LALL
I. L. R. 9 Calc. 446

GURUPADAPA BASAPA *v* VIRBHADRAPA IRSANGAPA . . . **I. L. R 7 Bom. 459**

LUCHMEE PERSHAD NARAIN SINGH *v* TILUCKDHAREE SINGH . . . **24 W. R. 295**

JOYRAM LOOT *v*. PANI RAM DHOBA
8 C. L. R. 54

53.———— **ss. 20 and 21**—*Execution of decree, application for* It was not necessary, under ss. 20 and 21, that process of attachment should have been taken out within three years; but in order to determine whether execution was barred [illegible]

v. RAM KANAIE DASS [illegible]

54. ———————— *Decree payable* [illegible]

LIMITATION—*contd.*

5. STATUTES OF LIMITATION—*contd.*

(*m*) ACT XIV OF 1859—*contd.*

55. ———— *Execution of decree.* In the case of a decree which was passed in 1831, and part payment made on the 2nd of

provided for by s. 21. *Held*, that the right construction of the Act was to keep these sections distinct by applying s 20 to decrees or orders made after the passing of the Act, and s 21 to decrees of

on the principle that affirmative words sometimes imply the negative of what was not affirm-

power to prevent an unjust prejudice to the suitor by the delay unavoidably arising from its own act,

Ex-parte KALIDAS DAMODHAR. *Ex-parte* BAPUJI PITAMBHAR . 3 Bom. A. C. 175

MAKUNDA VALAD BALACHARYA *v.* SITARAM. 5 Bom. A. C. 102

56. ———— *Execution of decree, application for.* A decree was obtained in the Court of the Deputy Commissioner of Delhi on the 5th October, 1866, prior to the date when Act XIV of 1859 was extended to the Punjab,—*viz*, the 1st of January, 1867. On the 22nd of October, 1869, an application, admittedly *bonâ fide*, was made for execution, but the application was refused on the ground that it was barred by lapse of time, and no appeal was brought against that order A subsequent application for execution was made on the 4th of May, 1871, which was also refused on a

tion may be issued," etc., mean that notwithstanding anything in the preceding section, execution might issue either within the time limited by the law in force when the Act was passed or within three years next after the passing of the Act, whichever should first expire. DELHI AND LONDON BANK *v.* ORCHARD . . . I. L. R. 3 Calc. 47 L. R. 4 I. A. 127

57. ———— s. 21—*From what period it*

MAHOMED BUSEEROODDEEN *v.* MAHOMED KHAN KUZULBASH . . . 4 W. R. Mis. 13

58. ———— *Application for execution of decree.* According to s. 21, process of execution could not be issued in respect of a decree in force at the passing of that Act, except where an effectual application had been made, either within the time previously limited by law or within three years next after the passing of the Act, whichever should first expire. Abortive, because unauthorized proceedings, cannot give the decree-holder any fresh start for computing limitations BARODA DEBIA *v.* SREERAM CHOWDHRY 5 W. R. Mis. 21

59. ———— *Application of*

tained in s 20 was to be followed. GREGORY *v* JUGGAT CHUNDER BANNERJEE 5 W. R. Mis. 17

DOORGA CHURN ROY *v.* DINO MOYEE DEBIA 6 W. R. Mis. 14

60. ———— *Issue of process of execution.* The attachement of property in execution of a decree, although attachment was afterwards set aside, was a sufficient issuing of process of execution within the meaning of s 21, Act XIV of 1859 KALEE PERSHAD SINGH *v.* JANKEE DEO NARAIN . . 7 W. R. 9

61. ———— *Application for execution of decree.* Where the holder of a decree

limitation. MAKUNDA VALAD BALACHARYA *v* SITARAM . . . 5 Bom. A. C. 102

62. ———— *Malikana, right to recover—Limitation Acts (XIV of 1859 and XV of 1877), Sch. II, Art. 132—Recurring cause of action under the present law, but not under the old law.* Under the former law of limitation the right

LIMITATION—*contd.*

5. STATUTES OF LIMITATION—*contd.*

(*m*) Act XIV of 1859—*concld.*

to receive *malikana* was treated as an interest in land and the claim would be barred, if not made within 12 years after the last receipt by the proprietor. A plaintiff, who had never been in the habit of receiving any *malikana* from the year 1845 up to the date of the suit (1902) was barred, as under Act XIV of 1859 the *malikana* was treated as an interest in land and the right to sue accrued from the time of the accrual of the cause of action A suit for *malikana* when governed by the present Limitation Act would not be barred, because under Art 132 of Sch II the right to receive *malikana* is a recurring right and the right to sue accrues when the money sued for falls due Payment of *malikana* to other *maliks* had not the effect of saving the plaintiffs' right to recover *malikana* JAGARNATH PERSHAD SINGH v. KHARACH LAL (1905) **10 C. W. N. 151**

(*n*) Act IX of 1871.

See LIMITATION ACT (XV of 1877)

63. ———— s. 1—*Operation of Act* Cl (*a*), s. 1 of Act IX of 1871, has reference only to suits actually instituted before that date JOYRAM LOOT *v* PANI RAM DHOBA **8 C. L. R. 54**

MONGOL PERSHAD DICHIT *v* GRIJA KANT LAHIRI . . **I. L. R. 8 Calc. 51**
L. R. 8 I. A. 123

BEHARY LALL *v* GOBERDHUN LALL
I. L. R. 9 Calc. 446

GURUPADAPA BASAPA *v*. VIRBHADRAPA IRSANGAPA . . . **I. L. R. 7 Bom. 459**

64. ———— *Operation of Act.* The law of limitation applicable to suits brought after 1st April 1873 upon causes of action which had accrued previously to that day, and which had not been barred under previous enactments, as well as to suits upon causes of action which accrue afterwards, was Act IX of 1871 RAMCHANDRA *v* SOMA . **I. L. R. 1 Bom. 305 note**

And *see* NOCOOR CHUNDER BOSE *v*. KALLY COOMAR GHOSE . **I. L. R. 1 Calc. 328**

65. ———— *Operation of Act —Appeals and applications—General Clauses Act, 1868* The Limitation Act, 1871, came into operation from 1st July 1871 with respect to appeals and applications, and was not controlled by the General Clauses Consolidation Act, 1868, s 6 GOVIND LAKSHMAN *v*. NARAYAN MORESHVAR
11 Bom. 111

BALKRISHNA *v*. GANESH **11 Bom. 116 note**

RUGHOO NATH DOSS *v*. SHIROMONEE PAT MOHADEBEA . . . . **24 W. R. 2**

66. ———— *Operation of Act —Suit barred when Act came into force Quære:* Whether suits barred under Act XIV of 1859 before Act IX of 1871 came into force could, by reason of the alteration of the periods of limitation in the latter enactment, be sustained ABDUL KARIM *v*. MANJI HANSRAJ
I. L. R. 1 Bom. 295

67. ———— *Operation of Act—Revival of claim—Repeal of Act* A claim barred by limitation when Act IX of 1871 came into force was not revived by the passing of that Act. VINAYAK GOVIND *v*. BABAJI
I. L. R. 4 Bom. 230

68. ———— *Operation of Act —Suit for maintenance.* A claim once barred cannot be revived by a change in the law of limitation. This principle applies as well to a claim for arrears of maintenance, or any other claims, as to one for possession of land. KRISHNA MOHUN BOSE *v*. OKHILMONI DOSSEE . **I. L. R. 3 Calc. 331**

69. ———— *Operation of Act —Suit on bond barred by Act XIV of 1859.* The Limitation Act, 1871, did not give a new period of limitation to a suit on a bond which was barred by the Limitation Act of 1859 before the Act of 1871 came into force. VENKATTACHELLA MUDALI *v*. SASHAGHERRY RAU . . **7 Mad. 283**

MOLAKATALLA NAGANNA *v*. PEDDA NARAPPA
7 Mad. 288

70. ———— *Suit on bond payable on demand—Cause of action* In a suit brought in August 1873 on a bond, payable on demand, dated July 1868, on which payment had been demanded on three occasions—May 1871, September 1872, and May 1873: *Held*, that, by the law in force at the time of execution of the document, the action was born in July 1868, and by the new as well
1871.
the tim
stoppea
effect, for it was neither by the old nor the new law a mode of giving a new point of departure VENCATARAMANIER *v*. MANCHE REDDY
7 Mad. 298

71. ———— s. 2—*Bom Reg. V of 1827, s 1, cl 1—Prescriptive right—Repeal of statute, effect of.* In 1873 the plaintiff sued for his share in certain ancestral property in the possession of the defendant, and alleged that the latter had been

LIMITATION—*contd.*

5. STATUTES OF LIMITATION—*contd.*

(*n*) ACT IX OF 1871—*concld.*

———— s. 2—*concld.*

Court, in special appeal, that the defendant had acquired under Regulation V of 1827, s. 1, cl. 1, a prescriptive title in the immoveable estate sued for by his uninterrupted possession as proprietor for more than thirty years before Act IX of 1871 came into force, and that therefore the plaintiff's claim was barred, the effect of that Regulation being not only to bar the plaintiff's remedy, but to take away his right. The repeal of a statute or other legis-

accordingly, although Act IX of 1871, s. 2, sch. 1, expressly repealed Regulation V of 1827, it did not affect any prescriptive right or title which had, under s 1 of that Regulation, been acquired before Act IX of 1871 was passed. SITARAM VASUDEB *v* KHANDERAV BALKRISHNA

I. L. R. 1 Bom. 287

72. ———— Sch. II—*Suits before Act came into force.* Act IX of 1871 did not apply to suits instituted before the 1st April 1873. LUCHMEE PERSHAD NARAIN SINGH *v.* TILUCKDHAREE SINGH . 24 W. R. 295

73. ————Art. 168—*Registration Act, 1871—Registration of memorandum of decree under Act XX of 1866.* The "Indian Registration Act" mentioned in the new Limitation Act (IX of 1871), Sch. II, Art. 168, is the Registration Act of 1871, and that article cannot apply to a decree of which only a memorandum was registered under Act XX of 1866 RUGHOO NUNDUN SINGH *v.* COCHRANE. . . 24 W. R. 372

(*o*) MADRAS ACT I OF 1876, s. 7.

74. ———————— *Assessment of Land-revenue Act (Madras Act I of 1876), s. 7—*

portionment of assessment after the apportionment proposed by him to the Board of Revenue has been sanctioned It does not commence to run, under the Act of 1876, from the date when the Collector

LIMITATION—*concld.*

5 STATUTES OF LIMITATION—*concld.*

(*o*) MADRAS ACT I OF 1876, s. 7—*concld.*

who was directed to appeal if he objected to the assessment. Under that Regulation, the appeal was against the proposal for apportionment, and time ran from the date of the proposal. But the effect of Madras Act I of 1876 has been to supersede the procedure prescribed under s 18 of Madras Regulation II of 1803, and the right of appeal given by the later Act is against the apportionment made under s 2 after it has acquired validity by being sanctioned by the Board of Revenue. SECRETARY OF STATE FOR INDIA *v* FISCHER (1902) . I. L. R. 26 Mad. 389

LIMITATION ACT (XIV OF 1859).

See LIMITATION—STATUTES OF LIMITATION.

See LIMITATION ACT (XV OF 1877).

I. L. R. 10 Calc. 748
I L R 11 Calc. 55
I. L. R. 28 All. 4
I. L. R. 28 All. 333

LIMITATION ACT (XV of 1877)

1. ———— Applications. Under the Limitation Act, 1877, an application cannot be made merely for the purpose of signifying the decree-holder's intention to keep the decree in force. RUNGIAH GOUNDEN AND CO *v.* NANJAPPA ROW (1903) . . I. L. R. 26 Mad. 780

2. ———— Cause of action. The Limitation Act is intended, not to define or create causes of action, but only to prescribe the period within which existing rights may be enforced SURJYAMONI DASI *v* KALI KANTA DAS (1900)

I. L. R. 28 Calc. 37: s.c. 5 C. W. N. 195

3. ———— Liberal interpretation—The

should be done. JOGESHUR BHAGAT *v* GHANASHAM DASS (1901) . . . 5 C. W. N. 356

4. ———— Operation of Act—*Matters*

Act came into force, had already become barred by the operation of the prior Limitation Act. SHUMBHONATH SHAHA *v.* GURUCHURN LAHIRI

I. L. R. 5 Calc. 894: 6 C. L. R. 437

MOHIMA CHUNDER ROY CHOWDHRY *v.* GOURINATH DEY CHOWDHURI . 2 C. W. N. 162

5. ———————— *Limitation Act, 1871, s 1—Suits before 1st April 1873. Quære:*

LIMITATION ACT (XV OF 1877)—*contd.*

been repealed in respect of suits instituted before the 1st of April 1873 RADHA PROSAD SINGH v. SUNDER LALL **I. L. R. 9 Calc. 644**

6. ———— ———— *Limitation Act, 1871, s 1—Application for execution of decree—General Clauses Consolidation Act, 1868, s. 6* *Held*, following *Mungul Pershad Dichit v. Grija Kant Lahiri I L R 8 Calc 51*, that although there is no corresponding provision in Act XV of 1877 to that contained in s 1 of Act IX of 1871, all applications for execution of a decree are applications in the suit which resulted in that decree *Held* further that under s 6 of Act I of 1868 the repeal of Act IX of 1871 by Act XV of 1877 does not affect any proceedings commenced before the repealing Act came into force *Re Ratanji Kalianji I L R 2 Bom 148*, followed BEHARY LALL v. GOBERDHUN LALL

I. L. R. 9 Calc 446 : 12 C. L. R. 431

7 ———— *Application for execution by what limitation governed. Act XIV of 1859, s 20* Act XV of 1877 operates from the date on which it came into force as regards all applications made under it. *Behary Lall v Goberdhun Lall, I L R 9 Calc 446*, dissented from BECHARAM DUTTA v ABDUL WAHED

I L R. 11 Calc. 55

8. ———— *Limitation applicable to execution of decree passed when Act XIV of 1859 was in force—Execution of decree—Disability of decree-holder—Minority —Limitation Act (XIV of 1859, ss 11, 14, and 20, and XV of 1877, s 7)* In execution of a decree, dated the 29th April 1862, certain proceedings were taken which terminated on the 5th September 1866, when the execution case was struck off the file Between that date and the 25th September, 1882, no further proceedings were taken On the latter date an application was made for execution. The decree-holder was a minor when the decree was passed, and did not attain his majority till the 25th September, 1879. *Held*, that the words "to bring an action," as used in s 11, Act XIV of 1859, must be taken to be synonymous with the words "to bring a suit," and that the word "suit" must be construed in the same way as the word "suit" used in s 14, and, following the decision of the majority of the Full Bench in *Huro Chunder Roy Chowdhry v. Shoorodhonee Debia, B L R Sup. Vol 985 : 9 W. R 402,*

minor deducted from the period during which limitation was running against him, his right to execution was not barred when Act XV of 1877 came into force and that being so, and the present application being made within three years of the date on which he attained his majority, execution of the decree was not barred. *Gurupadapa Basapa v. Virbhadrapa Irsangapa, I L R. 7 Bom 459*, discussed *Behary Lall v. Goberdhun Lall, I. L. R. 9 Calc 446 ; 12 C. L R. 431*, dissented from *Nursing Doyal v. Hurryhur Saha, I L R 5 Calc. 897 ; 6 C L. R. 489 ; Shambhu Nath Shaha Chowdhry v. Guru Churn Lahiri, I L R 5 Calc. 894 ; 6 C L R 437*, approved JUG MOHUN MAHTO v LUCHMESHUR SINGH . . . **I. L. R. 10 Calc 748**

9 ———— *Debt, suit for.* The law of limitation governing a suit for a debt is that law which is in force at the date of its institution MOHESH LALL v BUSUNT KUMAREE

I L. R. 6 Calc. 340 : 7 C. L. R. 121

BANSIDHAR v HARSAHAI **I. L. R. 3 All. 340**

10. ———— Title under—*Limitation—Adverse possession—Landlord and tenant—Alluvial land, suit for—Land diluviated and afterwards reformed—Effect of acquiescence in title of Government—Discontinuance of possession by submersion of land by river.* The possession of the tenant is the possession of the landlord, and it can make no difference whether or not the tenant be one who might claim adversely to his landlord. In a suit for alluvial land, at one time part of the plaintiff's permanently-settled estate, but subsequently, in 1854, after diluvion and reformation, adjudged to be an accretion to Government land, where the plaintiffs had taken from the Government *ijaras* of such land and accretion, the possession of the Government was held to be adverse to the plaintiffs during the period they were, as *ijaradars*, estopped from denying their landlord's title ; and, the Government being found to have held part of the land continuously for more than 12 years, the suit as to that was barred by limitation The facts that the land had been permanently settled with the plaintiffs by the Government, and that the plaintiffs had always paid to the Government the full amount of revenue assessed upon it, could make no difference The plaintiffs had acquiesced in the decision of 1859, by which the land was adjudged to the Government ; and no ground had been shown for relieving them from the consequences of their acquiescence. Another portion of the land, whilst in possession of the Government by

constructive possession of the Government through the plaintiffs as their tenants, whilst the lands were submerged, so as to enable the Government, as wrong doers, to obtain a title by adverse possession In order to sustain such a title under the Limitation Act, there must be actual possession of a person claiming as of right by him-

LIMITATION ACT (XV OF 1877)—*contd.*

self or by persons deriving title from him. *Held,* also, that the Government were dispossessed by the *vis major* of the submersion, which had the same effect as a voluntary abandonment of the land. *Trustees, Executors and Agency Company* v. *Short, L. R. 13 A. C. 793.* The land, after submersion, became derelict; and, so long as it remained submerged, no title could be made against the true owner. *Kally Churn Sahoo* v. *Secretary of State for India, I. L. R. 6 Calc. 725,* overruled SECRETARY OF STATE FOR INDIA *v.* KRISHNAMONI GUPTA (1902)

I. L. R. 29 Calc. 518

s.c. 6 C. W. N. 617 : L. R. 29 I. A. 104

11. ——— Applicability of the Limitation Acts—*Mamlatdars' Courts Act (Bombay*

s. 17 of the Mamlatdars' Courts Act (Bombay Act

perative duty is imposed upon a Court, then the Limitation Act (XV of 1877) has no application. *Kylasa Goundan* v *Ramasami Ayyan, I L. R. 4 Mad. 172, Vithal Janardan* v. *Vithojirow Putlajirow, I. L R. 6 Bom 586, Ishwardas Jagjiwandas* v. *Dosibai, I. L R 7 Bom 316,* and *Devidas Jagjivan* v. *Pirjada Begam, I. L R 8 Bom. 377,* followed. BALAJI *v.* KUSHA (1906)

I. L. R. 30 Bom. 415

12. ——— *Limitation Act (XIV of 1859), s 1 (12)—Act IX of 1871, Sch II, Arts 135 and 144—Limitation—Mortgage—Novation of contract—Adverse possession.* A mortgage, which purported to be a usufructuary mortgage, was executed on the 14th of May 1861, the ostensible consideration being a sum of R4,800, but, in fact, only R2,270 out of the nominal consideration were paid. The mortgagees, on the other hand, did not get possession of the whole of the property

surrendered to the mortgagor a portion of the mortgaged property At the same time the mortgagor entered into a covenant, the effect of which was to alter the transaction into a mortgage by conditional sale In 1882 the mortgagees

Held, that the suit was barred by limitation whether it was Art. 135 or Art. 144 of Act IX, 1871, or s 1 (12) of Act XIV of 1859, which prescribed the rule of limitation applicable *Murlidar* v *Kanchan Singh, I. L. R 11 All 144; Denonath Gangooly* v. *Nursing Prosad Dass, 14 B. L R. 87; Ram Chunder Ghosaul* v. *Juggutmonmohiney Dabee, I. L. R. 4 Calc 284,* referred to. *Buldeen* v *Gulab Koonwar, All. H. C. (1867) F. B. 132,* distinguished. KARIMDAD KHAN *v.* MUSTAQIM KHAN

I. L. R. 26 All. 4

13. ——— *Limitation Act, XIV of 1859, ss. 1 (15), 18—Mortgage—Suit for redemption—Limitation.* The plaintiff instituted, on the 7th of June 1899, a suit for redemption of an alleged usufructuary mortgage executed on the 14th of August 1781 for a term of 70 years. *Held,* that the suit was barred by limitation under s 1 (15) and s 18 of Act XIV of 1859. *Luchmee Buksh Roy* v. *Runjeet Ram Panday, 13 B. L R. 177,* and *Fatimat-ul-nissa Begum* v. *Soondar Das, L. R. 27 I. A. 103,* referred to. AKBAR HUSAIN KHAN *v.* IZZAT-UN-NISSA (1906)

I. L. R. 28 All. 333

——— s. 2—

1. ——— *Suit on promissory note payable on demand—Limitation Act, 1871, Sch. II, Art. 72* Under Act IX of 1871, the limitation on a promissory note payable on demand was three years from the date of making the demand. Under Act XV of 1877, the limitation is three years from the date of making the note *Held,* that the period of limitation so prescribed by Act XV of 1871 is shorter than that prescribed by Act IX of 1871 within the meaning of s. 2 of Act XV of 1877. OMIRTO LALL DEY *v* HOWELL . 2 C. L. R. 426

2. ——— *Suit on pro-*

completion of two years from the 1st October 1877. *Omirto Lall Dey* v. *Howell, 2 C. L R. 426,* cited and distinguished. ADMINISTRATOR GENERAL OF BENGAL *v.* KEDAR NATH MOITRY

4 C. L. R. 102

3. ——— *Suit on promissory note on demand executed prior to October 1877—Shortening period of limitation* As the Limitation Act (XV of 1877) shortens the period

4. ——— s. 2 and Art. 73—*Shorter period of limitation.* The period of limitation prescribed by art. 73 of the second schedule to Act XV of 1877 is a "shorter period of limitation" within the meaning of the last clause of s 2 of that Act than the period prescribed by art. 72 of the second schedule to Act IX of 1871. The language of Acts IX of 1871 and XV of 1877 leads to the con-

LIMITATION ACT (XV OF 1877)—*contd.*

——— s. 2—*contd.*

clusion that by each of these enactments the starting point and period given in its schedule were to take the place of those given by the Act which preceded it in the case of all suits instituted after the date of the Act coming into force, and that the expiration of the period, calculated with reference to the Act in force at the date at which the note was executed, does not necessarily affect the remedy. APPASAMI *v.* AGHILANDA

I. L. R. 2 Mad. 113

5. ——— *Bond of 1869 payable on demand—Curtailment of period of limitation.* Where a suit was brought upon a registered bond, dated 1869, payable on demand, and demand was made in September 1876 :—*Held*, that the period of limitation was in effect curtailed by Act XV of 1877 and that the plaintiff was entitled to two years from 1st October 1877 under the provisions of s. 2 although under Act XIV of 1859 (in force when the bond was executed) the limitation period was six years from the date of the bond. SABAPATI CHETTI *v.* CHIDUMBARA CHETTI

I. L. R. 2 Mad. 397

6. ——— *Registered bond payable on demand—Limitation Act (XIV of 1859)—Limitation Act (IX of 1871).* The cause of action in a suit on a registered bond bearing date the 2nd March 1870 was alleged to have arisen on the 5th January 1879, the date of demand. Under Act XIV of 1859, the limitation for such a suit was six years computed from the date of the bond. Before that period expired, Act IX of 1871 came into force, which provided a limitation for such a suit of three years computed from the date of demand. *Held*, that, as the cause of action and the institution of such suit occurred after the repeal of Act IX of 1871, the provisions of that Act were not applicable, and accordingly, whether Act XIV of 1859 or Act XV of 1877 governed such suit, it was barred, as in either case limitation began to run from the date of such bond. BANSI DHAR *v.* HAR SAHAI . I. L. R. 3 All. 340

7. ——— *Bond payable on demand—Limitation Act (Act IX of 1871).* Act XV of 1877, by making the period of limitation for a suit on a bond payable on demand computable from the date of its execution, has shortened the period of limitation prescribed for such a suit by Act IX of 1871, under which the period was computable from the date of demand. *Held*, therefore, that under the provisions of s. 2 of Act

8. ——— *Bond—Change in Limitation Acts.* The defendant executed, on the 20th April 1875, a bond to the plaintiff, who without making a demand for his money, filed a suit upon it on the 21st of June 1878. *Held*, that under s. 2 of the Limitation Act, XV of 1877, the suit was not barred, although more than three years had elapsed since the date of the bond. ICHHASHANKAR *v.* KILLA . I. L. R. 4 Bom. 87

9. ——— and Art. 64—*Suit on account stated—Act IX of 1871 (Limitation Act),*

dition to the suit, *viz.*, that the accounts must be signed by the defendant or his agent duly authorized in that behalf; and that the suit was in consequence barred by limitation. JULFIKAR HUSAIN *v.* MUNNA LAL . . I. L. R. 3 All. 148

10. ——— *Suit by person excluded from joint family property—Limitation Acts, 1871, Art. 127; and 1877, Art. 127.* Under Act IX of 1871, Sch. II, cl. 127, the limitation for a suit by a person excluded from joint family

the period of limitation prescribed by the latter

11. ——— and Art. 134—*Mortgage—Redemption—Suit against purchaser from mortgagee—Purchase in good faith—Limitation Act (IX of 1871), Sch. II, Arts. 131 And 148.* Under the Limitation Act, IX of 1871, the period of limitation for suits to recover possession of pro-

years from the date of the purchase, under Art. 134

LIMITATION ACT (XV OF 1877)—*contd*

———— s. 2—*contd*

by the omission of the words "in good faith" makes twelve years from the date of the purchase the period of limitation for all such suits, without reference to the question of good faith on the part *of the purchaser. The result is that, in cases of* a purchase not in good faith from a mortgagee, the period of limitation allowed by Act XV of 1877 for a suit to recover the property is shorter than the period allowed by Act IX of 1871; and consequently, under the provisions of art 2 of the Limitation Act (XV of 1877), the plaintiff in such a suit has two years from the 1st October 1877. BAIVA KHAN DAUD KHAN *v* BHIKU SAZBA

I. L. R. 9 Bom. 475

12. ———————— *Suit filed after repeal of Act IX of 1871* A claim to attached property having been disallowed under s 246 of Act VIII of 1859, a suit was filed on the 17th February

IMAMBANDI BEGUM . 11 C. L. R. 443

13. ———— and Art. 11—*Claim to mortgaged property—Execution of decree* In execution of a decree upon a mortgage, a claim to the

1877 On the 29th March 1879, the mortgagee instituted a suit to establish his right to the property The period of limitation for such a suit under Act XV of 1877 is one year from the date of the order, but under Act IX of 1871 a longer period was prescribed Act XV of 1877 did not come into force until the 1st of October 1877 *Held*, that the provisions of the last paragraph of s 2 of Act XV of 1877 applied, and that the suit was not barred RAJ CHUNDER CHATTERJEE *v.* MODHOOSOODUN MOOKERJEE

I. L. R. 8 Calc. 395 : 10 C. L. R. 435

14. ———————— *Application to*

purpose of satisfying a demand Where therefore a

for execution, was barred by Art. 167 of Sch II of

HURRIHUR SAHA

I. L. R. 5 Calc. 897 : 6 C. L. R. 489

LIMITATION ACT (XV OF 1877)—*contd.*

———— s. 2—*contd.*

SHUMBHOONATH SHAHA *v.* GURUCHURN LAHIRI

I. L. R. 5 Calc. 894 : 6 C. L. R. 437

15. ———— and Sch. II, Art. 118—*Act IX of 1871, Sch II, Art 129—Acquisition of title by apparent adoption not set aside within 12 years under Act IX of 1871—Suit for possession after Act XV of 1877 in force—Res judicata —Decision in former suit Civil Procedure Code, s 13* Under the ruling in the case of *Jagadamba Chowdhrani v. Dakhina Mohun Roy Chowdhry, L R 13 I. A. 84 I L R 13 Calc. 308*, and the other cases which followed it, the immunity gained by the lapse of 12 years after the date of an apparent adoption does not amount to an acquisition of title within

a Hindu widow, a taluqdar in her own right, to *whom a sanad had been granted and whose name* had been entered in lists 1 and 2 under Act I of 1869 In 1873 he brought a suit against her for possession of the taluq in which the question of the validity of the adoption, which was denied by the widow, was the main issue and was decided in 1878 against the present defendant, who preferred an appeal to the Privy Council, which was dismissed on his failure to deposit security for costs The widow died on 13th November 1893. On 27th May, 1899, the plaintiff, who had attained his majority in June, 1896, brought a suit for possession of the taluq claiming to succeed as next heir of his grandfather, who was the eldest brother of the widow The defendant, who was in possession, set up his title under the adoption. *Held*,

1882) TIRBHUWAN BAHADUR SINGH *v.* RAMESHAR BAKHSH SINGH (1906)

I. L. R. 28 All. 727
s.c. L. R. 33 I. A. 156
10 C. W. N. 1065

———— ss. 2, 10, 28—*Debutter property, transfer of—Adverse possession—Implied trust —Act IX, 1871, ss 10, 29—Act XIV of 1859— Regulation III of 1893—Revival of right to sue barred under old law* A debutter property was endowed in 1771 A D by a Hindu Raja for the

one in whom property has become vested in trust

LIMITATION ACT (XV OF 1877)—*contd.*

——— s. 2—*concld.*

for any specific purpose, within the meaning of s 10 of the Limitation Act of 1877. *Sethu v. Subramanya, I. L R. 11 Mad. 274*, followed. *Kherodemoney Dossee v. Doorgamoney Dossee, I. L R 4 Calc. 455*, referred to *Held*, further, that notwithstanding s. 10 of the present Limitation Act XV of 1877, which is similar to s. 10 of Act IX of 1871, the suit was barred by limitation, the right to sue having been barred under the old law, which contained no provision similar to s. 10, long before Act IX of 1871 came into operation. *Gunga Gobind Mundul v Collector of 24-Pergunnahs, 11 Moo I. A 345, Luchmee Bulsh Roy v Runjeet Ram Panday, 13 B L R. (P C.) 177 20 W R 375*, and *Fatimatulnissa Begum v Sundar Das, I L R 27 Calc. 1001 L R. 27 I. A 103*, followed. JAGAMBA GOSWAMI *v* RAM CHANDRA GOSWAMI (1904)
I. L. R. 31 Calc. 314

——— s 3—

See EASEMENT . I. L. R. 23 Calc. 55

1. ——— *Defendant—Person through whom a defendant derives his liability to be sued—Purchaser at auction-sale—Suit by a true owner to recover possession—Adverse possession.* The purchaser at an auction-sale acquires the right, title, and interest of the judgment-debtor, and in virtue of that is put in possession, by reason of which he becomes liable to be sued by the true owner. He therefore derives such liability within the contemplation of s. 3 of the Limitation Act (XV of 1877) from or through the judgment-debtor *R*, the owner of sixty-two thikans, had mortgaged fourteen of them to *M* On the 7th December 1877, that is, subsequent to

chased at the auction-sale by *A*, who redeemed the fourteen thikans from the mortgagee On the 7th December 1883, the present suit was filed by the plaintiff to recover possession against the heirs of *R* and *M* On the 17th January 1884, *A* was joined as a co-defendant to the suit *Held*, that the plaintiff's claim against *A* was time-barred with respect to the forty-eight thikans which were not mortgaged, *A* being entitled, to add to the period of his possession that of *R*, who remained in possession after the sale to the plaintiff ALI SAHEB *v* KAJI AHMAD
I. L. R. 16 Bom. 197

2. ——— s. 3 and Sch. II, Art. 118—"*Plaintiff*"—*Suit to set aside an adoption—Effect of bar on immediate reversioner* *S* died, leaving a widow and two daughters surviving him. He

pursuance of authority alleged to have been given by her late husband. From that date *A* claimed, as adopted son, to be entitled to the estate of

LIMITATION ACT (XV OF 1877)—*contd.*

——— s. 3—*concld.*

S; and both the daughters of *S* were aware of that claim, from 1886. In 1893 a son born to one of the daughters; and, within six years of his birth, namely in 1898, the present suit was instituted on his behalf to set aside *A*'s adoption. *A* in defence contended that the suit was barred by Art. 118 of Sch II to the Limitation Act. For the plaintiff it was claimed that limitation could only run as against him from the date of his birth *Held*, that the suit was barred. The daughters, as immediate reversioners, represented the inheritance, and plaintiff, as a remote reversioner, was a person claiming through or from the daughters, within the meaning of s 3 of the Limitation Act. AYYADORAI PILLAI *v.* SOLAI AMMAL (1901) . I. L. R. 24 Mad. 405

——— s 4—

See BENGAL TENANCY ACT, s 184 AND SCH III . I L. R. 28 Calc. 86

See COURT-FEES, INSUFFICIENCY OF
I. L. R. 29 All. 749

See LIMITATION, PLEA OF
I. L. R. 34 Calc. 941

See PAUPER I. L. R. 33 Calc. 1163

1. ——— "Applications"—"Appeals" —*Pauper appeal—Pauper application for review* In the Limitation Act it was intended to draw a clear distinction between what are styled "applications" and what are styled "appeals" LAKSHMI *v* ANANTA SHANBAGA
I L. R 2 Mad. 230

2. ——— *Distinction between suits, appeals, and applications—Jurisdiction* The distinction made for the purposes of limitation between suits, appeals, and applications by the Limitation Acts has no bearing upon a question of jurisdiction *In re* BALAJI RANCHHODDAS I L. R. 5 Bom 680

3. ——— Presentation of plaint—*Transfer of case* A suit was instituted in Pubna, and on application to the High Court for authority to proceed with it in Pubna, the High Court ordered its transfer to Dacca Instead of merely transferring the suit to Dacca, the Pubna Court returned the plaint, in order to its being presented anew in the Dacca Court For the purpose of computing limitation, the suit was held to have been instituted on the day when it was admitted by the Pubna Court. TAKHUROODEEN MAHOMED ESHAN CHOWDHRY *v.* KURIMBUX CHOWDHRY . . . . 3 W. R 20

KHELLAT CHUNDER GHOSE *v.* NUSSEEBUNISSA BIBEE . . . . 16 W R 47

4 ——— *Presentation of plaint—Placing petition on table.* It must be pre-

LIMITATION ACT (XV OF 1877)—*contd.*

———— **s. 2—*contd.***

by the omission of the words "in good faith" makes twelve years from the date of the purchase the period of limitation for all such suits, without reference to the question of good faith on the part of the purchaser. The result is that, in cases of a purchase not in good faith from a mortgagee, the period of limitation allowed by Act XV of 1877 for a suit to recover the property is shorter than the period allowed by Act IX of 1871; and consequently, under the provisions of art. 2 of the Limitation Act (XV of 1877), the plaintiff in such a suit has two years from the 1st October 1877. BAIVA KHAN DAUD KHAN *v* BHIKU SAZBA

I. L. R. 9 Bom. 475

12. ———— — *Suit filed after repeal of Act IX of 1871* A claim to attached property having been disallowed under s 246 of Act VIII of 1859, a suit was filed on the 17th February 1879 *Held*, that by s 2 of the Limitation Act, XV of 1877, the suit was governed by the former Limitation Act, IX of 1871, by which the plaintiff was entitled to bring his suit within twelve years from the claim being disallowed AMIR HOSSEIN *v* IMAMBANDI BEGUM . **11 C. L. R. 443**

13. ———— **and Art. 11**—*Claim to mortgaged property—Execution of decree.* In execution of a decree upon a mortgage ...

1877. On the 29th March 1879, the mortgagee instituted a suit to establish his right to the property. The period of limitation for such a suit under Act XV of 1877 is one year from the date of the order, but under Act IX of 1871 a longer period was prescribed Act XV of 1877 did not come into force until the 1st of October 1877 *Held*, that the provisions of the last paragraph of s 2 of Act XV of 1877 applied, and that the suit was not barred. RAJ CHUNDER CHATTERJEE *v.* MODHOOSOODUN MOOKERJEE

I. L. R. 8 Calc. 395 : 10 C. L. R. 435

14. ———— *Application to* ...

1874 (which decree, at the time of the application ...

that, under the wording of s 2 of the latter Act, he was not entitled to do so NURSING DOYAL *v.* HURRYHUR SAHA

I. L. R. 5 Calc. 897 : 6 C. L. R. 489

LIMITATION ACT (XV OF 1877)—*contd.*

———— **s. 2—*contd.***

SHUMBHOONATH SHAHA *v* GURUCHURN LAHIRI

I. L. R. 5 Calc. 894 : 6 C. L. R. 437

15. ———— **and Sch. II, Art. 118**—*Act IX of 1871, Sch. II, Art 129—Acquisition of title by apparent adoption not set aside within 12 years under Act IX of 1871—Suit for possession after Act XV of 1877 in force—Res judicata—Decision in former suit Civil Procedure Code, s. 13.* Under the ruling in the case of *Jagadamba Chowdhrani* v *Dakhina Mohun Roy Chowdhry, L R 13 I. A. 84 I. L. R. 13 Calc. 308*, and the other cases which followed it, the immunity gained by the lapse of 12 years after the date of an apparent adoption does not amount to an acquisition of title within ...

a Hindu widow, a taluqdar in her own right, to whom a *sanad* had been granted and whose name ... of ... for ... tion

of the validity of the adoption, which was denied by the widow, was the main issue and was decided in 1878 against the present defendant, who preferred an appeal to the Privy Council, which was dismissed on his failure to deposit security for costs The widow died on 13th November 1893. On 27th May, 1899, the plaintiff, who had attained his majority in June, 1896, brought a suit for possession of the taluq claiming to succeed as next heir of his grandfather, who was the eldest brother of the widow The defendant, who was in possession, set up his title under the adoption. *Held*, by the Judicial Committee, that the suit was not barred by limitation. *Quære:* Whether the decision ... that the adoption was in... der ... of ...

I. L. R. 28 All. 727
s.c. L. R. 33 I. A. 156
10 C. W. N. 1065

———— **ss. 2, 10, 28**—*Debutter property, transfer of—Adverse possession—Implied trust—Act IX, 1871, ss. 10, 29—Act XIV of 1859—Regulation III of 1893—Revival of right to sue barred under old law.* A debutter property was endowed in 1771 A D by a Hindu Raja for the ... and other religious purposes A ...

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LIMITATION ACT (XV OF 1877)—*contd.*

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for any specific purpose, within the meaning of s 10 of the Limitation Act of 1877 *Sethu v. Subramanya, I L R. 11 Mad 274*, followed *Kherodemoney Dossee v Doorgamoney Dossee, I L R 4 Calc. 455*, referred to *Held*, further, that notwithstanding s. 10 of the present Limitation Act XV of 1877, which is similar to s 10 of Act IX of 1871, the suit was barred by limitation, the right to sue having been barred under the old law, which contained no provision similar to s. 10, long before Act IX of 1871 came into operation *Gunga Gobind Mundal v. Collector of 24 Pergunnahs, 11 Moo. I A 345, Luchmee Buksh Roy v. Runjeet Ram Pandey, 13 B L R (P C) 177 20 W R 375*, and *Fatimatulnissa Begum v. Sundar Das, I L R 27 Calc. 1901 L R 27 I A 103*, followed JAGADBA GOSWAMI v. RAM CHANDRA GOSWAMI (1904) I. L. R. 31 Calc. 314

——— s. 3—

See EASEMENT I. L. R. 23 Calc. 55

1. ——— *Defendant—Person through whom a defendant derives his liability to be sued—Purchaser at auction-sale—Suit by a true owner to recover possession—Adverse possession* The purchaser at an auction sale acquires the right, title, and interest of the judgment-debtor, and in virtue of that is put in possession, by reason of which he becomes liable to be sued by the true owner He therefore derives such liability within the contemplation of s 3 of the Limitation Act (XV of 1877) from or through the judgment-debtor *R*, the owner of sixty-two thikans, had mortgaged fourteen of them to *M* On the 7th December 1877, that is, subsequent to the mortgage to *M*, *R* sold the sixty-two thikans to the plaintiff, but did not give up possession On the 18th June 1872, the sixty-two thikans were sold in execution of a decree against *R*, and were purchased at the auction-sale by *A*, who redeemed the fourteen thikans from the mortgagee On the 7th December 1883, the present suit was filed by t[illegible]

respect to the forty-eight thikans which were not mortgaged, *A* being entitled to add to the period of his possession that of *R*, who remained in possession after the sale to the plaintiff. ALI SAHEB v KAJI AHMAD I. L. R. 16 Bom 197

2 ——— s. 3 and Sch. II, Art. 118—"*Plaintiff*"—*Suit to set aside an adoption—Effect of bar on immediate reversioner* *S* died, leaving a widow and two daughters surviving him He also left immoveable property, of which the widow took possession. About eight years after, namely, in March, 1886, the widow took *A* in adoption, in pursuance of authority alleged to have been given by her late husband From that date *A* claimed, as adopted son, to be entitled to the estate of *S*; and both the daughters of *S* were aware of that claim, from 1886 In 1893 a son born to one of the daughters; and, within six years of his birth, namely in 1898, the present suit was instituted on his behalf to set aside *A*'s adoption. *A* in defence contended that the suit was barred by Art 118 of Sch II to the Limitation Act. For the plaintiff it was claimed that limitation could only run as against him from the date of his birth *Held*, that the suit was barred. The daughters, as immediate reversioners, represented the inheritance, and plaintiff, as a remote reversioner, was a person claiming through or from the daughters, within the meaning of s. 3 of the Limitation Act. AYYADORAI PILLAI v SOLAI AMMAL (1901) . I. L. R. 24 Mad. 405

——— s 4—

See BENGAL TENANCY ACT, s 184 AND SCH III I. L. R. 28 Calc. 86

See COURT-FEES, INSUFFICIENCY OF I. L. R. 29 All. 749

See LIMITATION, PLEA OF I. L. R 34 Calc. 941

See PAUPER I. L. R. 33 Calc. 1163

1. "Applications"—"Appeals"—*Pauper appeal—Pauper application for review.* In the Limitation Act it was intended to draw a clear distinction between what are styled "applications" and what are styled "appeals" LAKSHMI v ANANTA SHANBAGA I L. R. 2 Mad. 230

2 ——— *Distinction between suits, appeals, and applications—Jurisdiction* The distinction made for the purposes of limitation between suits, appeals, and applications by the Limitation Acts has no bearing upon a question of jurisdiction *In re* BALAJI RANCHHODDAS . . I L. R. 5 Bom 680

3 ——— Presentation of plaint—*Transfer of case* A suit was instituted in Pubna, and on application to the High Court for authority to proceed with it in Pubna, the High Court ordered its transfer to Dacca Instead of merely transferring the suit to Dacca, the Pubna Court returned the plaint, in order to its being presented anew in the Dacca Court. For the purpose of computing limitation, the suit was held to have been instituted on the day when it was admitted by the Pubna Court TAKHUROODEEN MAHOMED ESHAN CHOWDHRY v KURIMBUX CHOWDHRY . . . 3 W. R 20

KHELLAT CHUNDER GHOSE v. NUSSEEBUNISSA BIBEE . . . . . . 16 W. R 47

4 ——— *Presentation of plaint—Placing petition on table.* It must be presented to the proper Court. The placing a petition on the table when the officer is not present is not a presentation to him. TAJ ULDEEN KHAN v. GHAFOOR-UL-NISSA . . 3 N. W. 341

LIMITATION ACT (XV OF 1877)—*contd.*

——— s. 4—*contd.*

The presentation of a plaint at the private residence of the Munsif was held not a sufficient institution of the suit. JAI KUAR *v.* HEERALAL 7 N. W. 5

5. ——— *Presentation of plaint when proper Court was closed.* Where a plaintiff presented a plaint to the District Court, the Munsif's Court, in which he ought to have presented it, being then temporarily closed :—*Held,* that the date on which the plaint was presented to the District Judge should be considered as the date of presentation to the proper Court *In the matter of the petition of* GANESH SADASHIV 5 Bom A C. 117

6 ——— *Plaint presented during vacation to wrong officer.* Where a plaint was presented to a karkun left in charge of a Court during vacation, and the cause of act on on which the suit was brought became barred before the vacation ended: *Held,* that, as the Judge was the proper person to receive plaints, the presentation to the karkun was invalid, and did not prevent the period of limitation from running. NANDVALLABH *v.* ALLIBHAI ISYAGANI . 6 Bom. A. C. 254

7 ——— *Presentation of plaint when Court was closed.* Where a plaintiff

Court of first instance competent to receive the plaint. *In re Sadashiv, 5 Bom. A. C. 117,* overruled *Motilal Ramdas* v. *Jamnadas,* 2 *Bom 42,* followed. RAMAYA ELAPA *v* MUHAMADBHAI 10 Bom. 495

8. ——— *Presentation of plaint—Computation of time.* The plaintiff's suit was barred by the Limitation Act on the 11th of May 1870 His plaint was presented in the Court of the District Munsif's Court of Cuddapah on the 21st of May. He had presented his plaint on the 5th May in the Court of another District Munsif who had no jurisdiction, and it was returned by the latter District Munsif on the 7th May, in order that it might be presented to the Court having jurisdiction to determine the suit within one month from the date on which it was returned *Held,* that the plaintiff's suit was barred by the provisions of the Limitation Act (XIV of 1859) CHEIGU NANGIAH GAURI NANGIAH *v.* PIDATALA VENCATUPPAH . . . 5 Mad. 407

9. ——— *Presentation of plaint—Suit against minor—Appointment of guardian ad litem—Suit when instituted* A suit to enforce a right of pre-empt...

suit for the minor purchaser. *Held,* having regard

1st June 1880, when the plaint was first presented, and not on the 14th June 1880, when the order appointing a guardian for such suit for him was made, and such suit was therefore within time. KHEM KARAN *v.* HAR DAYAL I. L. R. 4 All. 37

10 ——— *Presentation of plaint—Plaint not accepted on day it is presented.* A plaintiff was held to be technically right in stating that the fact of his plaint not having been accepted on the day on which it was actually presented, ought not to deprive him of his right of suit. YOUNG *v.* MACCORKINDALE . 19 W. R. 159

11. ——— Presentation of plaint im-

presentation of a document purporting to be a plaint, if that document, while not undervaluing the claim, is written on paper that does not bear the proper Court-fee VENKATRAMAYYA *v.* KRISHNAYYA . . . I. L. R. 20 Mad. 319

12. ——— *Presentation of plaint insufficiently stamped—Order for registration of plaint made after expiration of time* Where a plaint, insufficiently stamped, was duly presented to a Court before the expiration of the time allowed by the Limitation Act, and was retained by the Court, the plaintiff being ordered within a limited time to supply the requisite additional stamped paper, which was done, *held,* to be in time,

IRTAZA HOSSEIN *v.* HURRY PERSHAD SINGH 7 W. R. 241

13. ——— *Plaint insufficiently stamped—Date of institution of suit—*

CHHATRI DASS . . I. L. R. 10 Calc.

14 ——— *Civil Procedure Code, s. 54—Court Fees Act (VII of 1870), s 28—Plaint insufficiently stamped—Power of Court to*

LIMITATION ACT (XV OF 1877)—*contd.*

—— —— **s. 4**—*contd.*

tion for suits. Where therefore a plaint was presented on the last day to save its being barred by limitation insufficiently stamped, and at an hour when the office being closed it was impossible to obtain the necessary stamps, and the Munsif made

Mohun Roy, I. L. R. 19 Calc. 747, discussed. JAINTI PRASAD *v.* BACHU SINGH. **I. L. R. 15 All. 65**

15. —————— *Plaint insufficiently stamped, when deemed to have been presented—Suit, Institution of—Civil Procedure Code (Act XIV of 1882), s. 54 (b).* A plaint having been filed upon the last day allowed by the law of limitation written upon paper insufficiently stamped, the

as instituted on the day when the plaint was first presented to the proper officer, and that the suit was not barred. *Balkaran Rai v. Gobind Nath Tiwari, I. L. R. 12 All. 129*, distinguished and doubted. HURI MOHUN CHUCKERBUTTI *v.* NAIMUDDIN MAHOMED . **I. L. R. 20 Calc. 41**

16. —————— *Suit instituted within time—Plaint insufficiently stamped—Order to supply the deficiency not complied with within the time allowed—Registration of plaint—Civil Procedure Code (Act XIV of 1882), s. 54—Limitation Act (XV of 1877), s. 4.* A plaint was filed one day before the expiry of the period of limitation, but

was registered. *Held*, that the suit was barred by limitation, as the deficient Court fees were not supplied within the appointed time, and that the fact of the plaint being registered does not prevent its rejection under s. 54 of the Civil Procedure Code, the terms of which are imperative and mandatory. *Moti Sahu v. Chhatri Das, I. L. R. 19 Calc. 780*, and *Hari Mohun Chuckerbutti v. Naimuddin Mahomed, I. L. R. 20 Calc. 41*, distinguished. *Hubibul Hossein v. Mahomed Reza, I. L. R. 8 Calc. 192*, dissented from. *Kishore Singh v. Sabdal Singh, I. L. R. 12 All. 583*, and *Karman Singh v. Cockell, 1 C. W. N. 670*, approved. BRAHMOMOYI DASI *v.* ANDI SI . . . . **I. L. R. 27 Calc. 376**

17. —————— *Presentation of a plaint insufficiently stamped—Plaint not rejected, but the Court ordered to put in the deficit court-fee within a certain time—Effect of such an order—Court Fees Act (VII of 1870), s. 28—Civil Procedure Code (Act XIV of 1882), s. 54.* *Held*, that where a plaint was presented in the proper Court with insufficient stamp, and the Court, without rejecting it (the plaint), allowed a certain time to put in the deficit Court-fee, which was done within the time allowed, for the purposes of limitation the suit should be considered to have been instituted on the date when the plaint was first presented. *Hury Mohun Chuckerbutty v. Naimuddin Mahomed, I. L. R. 20 Calc. 41*, and *Moti Sahu v. Chhatri Das, I. L. R. 19 Calc. 780*, followed. *Yakutunnissa Bibee v. Kishoree Mohun Roy, I. L. R. 19 Calc. 747*, and *Venkatramayya v. Krishnayya, I. L. R. 20 Mad. 319*, distinguished. *Held*, also, that on a suit for money lent without any written instrument, where it was found that there was no express contract to pay interest, but it was not found that any demand of payment was made in writing, and that there was any demand giving notice to the debtor that interest would be claimed from the date of the demand, in such a case the creditor was not entitled to any interest before suit. SURENDRA KUMAR BASU *v.* KUNJA BEHARY SINGH

I. L. R. 27 Calc. 14
4 C. W. N. 818

18. —————— *"Plaint"—Suit filed before period of limitation expired, but stamp duty not paid till afterwards—Court Fees Act, 1870, s. 28—Exclusion of time of proceeding bonâ fide in Court without jurisdiction.* Two suits were brought for partition of the property of a deceased by his heirs under the Mahomedan Law—the first, by his widow and six children in the Court of the Subordinate Judge, the second by two other children by his first wife, in the Court of the District Munsif, from which Court it was transferred to the Court of the said Subordinate Judge. The Subordinate Judge having ruled that the plaintiffs in each suit were not entitled to sue jointly, the

were unstamped. Six of them, presented by the widow's children, stated explicitly that the duty payable thereon was included in that already paid on the widow's plaint, which sum correctly re-

at first treated at the Munsif's Court as being duly stamped, though payment of fresh Court-fees was subsequently ordered after the expiration of the period of limitation. The deceased had died in 1882; the two original suits had been filed in 1893 and 1894, respectively—within

LIMITATION ACT (XV OF 1877)—*contd.*

——— s. 4—*contd.*

twelve years of his death; and the two amended suits and the seven fresh plaints had been filed in December 1894, more than twelve years from his death *Held* (on the question of limitation), that the suits by the two children of the first wife were not barred, as they should be treated as a continuation of their original joint claim, which had been instituted in the same Court before the period of limitation had expired. That where there has been a misjoinder which has precluded a

entertain a suit combining causes of action which could not be combined, being covered by the words "from other cause of a like nature,"—in s. 14 of the Limitatiom Act That with reference to the widow's amended suit, inasmuch as her original suit (on behalf of herself and her six children) had been filed before the period of limitation had expired and had been prosecuted diligently and in good faith, the time during which that original suit had been pending must be deducted, and her amended suit held to be not barred. That for similar reasons a like deduction should be made in favour of the six fresh suits of her children (unless a contrary decision were necessitated by the fact that their plaints had remained unstamped until after the expiration of the extended period of limitation). *Per* SUBRAMANIA AYYAR, J., that although an amount equal to the fees properly payable in respect of the widow's amended suit, and of the six fresh suits filed by her children had in fact been paid on the joint suit originally filed, credit could not be claimed out of that original payment for the Court-fees due on the six fresh suits subsequently instituted. These plaints must therefore be considered to have been not duly stamped, if not entirely un-

tion had expired, did not render them time-barred, since the plaints must be regarded as having been presented on the day upon which they were filed It cannot be inferred from the Limitation Act, 1877, that the word "plaint" as used in s 4, explanation, means "plaint duly stamped" A "plaint" in law means merely "a private memorial tendered to a Court, in which the person sets forth his cause of action: the exhibition of an action in writing" Whether any Court-fee is payable in an action commenced by the plaint, and if so when and how it should be paid, are matters that are foreign to the question whether the document is a plaint or not The Court Fees Act and the Limitation Act are entirely different in their purpose and scope, and neither can be taken to control or qualify the other. *Per* DAVIES, J., that, inasmuch as the order of the Subordinate Judge requiring separate plaints was erroneous, it could not operate to enhance the Court-fees truly

LIMITATION ACT (XV OF 1877)—*contd.*

——— s. 4—*contd.*

payable. The true plaints in the case, in so far as stamp duty was concerned, were the two joint plaints originally presented. These were filed in time, and were sufficiently stamped. The fees

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I. L. R. 22 Mad. 494

19. ——— *Date of commencement of suit—Presentation of plaint—Amendment of plaint* For the purposes of limitation a suit must be considered to have commenced from the date on which the plaint was originally presented, and not from the date of its amendment. PATEL MAFATLAL NARANDAS *v* BAI PARSON

I. L. R 19 Bom 320

20. ——— *Presentation of plaint—Return of plaint for amendment.* A plaint was presented to the Court on the day previous to the expiration of the time limited for suing, but it was returned to the plaintiff for the purpose of being amended by the insertion of the particulars required by Act VIII of 1859, s. 26; and on the second day after (the intermediate day being Sunday), it was again presented, amended as required, and received *Held*, that the suit was commenced for the purpose of saving the Statute of Limitations, when the plaint was first presented to the Court, and that it was therefore within time, notwithstanding the day when it was presented after amendment was beyond the period of limitation SHAM CHAND KOONDOO *v.* KALLY KANTH ROY

Marsh. 336: 2 Hay 314

21. ——— *Presentation of plaint—Computation of time from which it runs* Where the plaintiff within three years from the

GREESH CHUNDER SINGH *v* PRAN KISHEN BHUTTACHARJEE . . . 7 W. R. 157

MENGUR MUNDUR *v.* HUREE MOHUN THAKOOR 23 W. R. 447

RAM COOMAR SHAHA *v.* DWARKANATH HAZRA 5 W. R. 207

HUSRUTOOLAH *v.* ABOO MAHOMED ABDOOL KADER . . . . 6 W. R. 39

22. ——— *Presentation of plaint—Institution of suit—Return for amendment.* Under the provisions of Act IX of 1871, a suit is instituted when a plaint is presented to a proper officer. The plaintiff, the limitation of whose suit

LIMITATION ACT (XV OF 1877)—*contd.*

——— s. 4—*contd*

expired on 5th October, presented his plaint to the Subordinate Judge on 20th September, improperly stamped, and it was returned to him with an order to make the deficiency good, without any time being specified within which the order was to be carried out. A vacation supervened. The deficiency was supplied, and the plaint accepted on 4th November, or eleven days after the Court opened. The defendant pleaded limitation *Held*, that the date of presentation being taken as the date of institution for the purpose of calculating limitation, the suit was instituted within time BEGEE BEGUM *v* YUSUF ALI . . . . 6 N. W. 139

23. ——— **Presentation of Appeal**—*Gazetted holiday—Computation of time for presentation of appeal* In calculating the time allowed by law for the presentation of an appeal to a District Court, an appellant is entitled to deduct the last day, being a gazetted holiday, although the District Judge held his Court on that day. BOYAMMA *v* BALAJI P RAO I. L. R. 20 Mad 469

24. — *Date from which*

I. L. R. 1 All. 260

25. *Civil Procedure Code, 1877, s. 54 (b)—Appeal when presented—Memorandum of appeal insufficiently stamped—Limitation* For the purposes of limitation, an appeal is preferred when the memorandum of appeal is presented to the proper officer, and not when, where the memorandum of appeal is insufficiently stamped and is returned in order that the

SINGH . . I. L. R 2 All 875

26. " *Appeal presented*"—*Civil Procedure Code (Act XIV of 1882), s. 541—Execution of decree* The words "appeal

11 of the Limitation Act, 1877, mean where a memorandum of appeal has been presented in Court In execution of a decree against which an appeal has been presented, but rejected on the ground that it was after time, limitation begins to run from the the date of the final decree or order of the Appellate Court. AKSHOY KUMAR NUNDI *v.* CHUNDER MOHUN CHATHATI I. L. R. 16 Calc. 250

27. ——— **Memorandum of appeal insufficiently stamped**—*Deficiency in stamp on memorandum of appeal made good after period of limitation—Court Fees Act (VII of 1870), s. 28*

another fortnight being allowed On the 13th June the full stamp duty was paid by the applicant. *Held*, that the facts of the case did not bring it within either the spirit of the letter of s. 28 of the Court Fees Act, and that these proceedings were not such as were contemplated by that section, nor such as to put the appeal in order when the stamp duty was received on the 13th June, and that the appeal had been properly dismissed as being out of time *Balkaran Rai* v *Gobind Nath Tiwari, I L R 12 All 129*, referred to YAKUTUNNISSA BIBEE *v* KISHOREE MOHUN ROY I. L. R. 19 Calc. 747

28. ——— *Unstamped memorandum of appeal—Stamp affixed after expiry of time of limitation* Where a petition of appeal was presented unstamped within the period of limitation, and the stamp was ultimately affixed after the appeal, would have been barred by limitation —*Held*, following *Skinner* v *Orde, L R 6 I A 126*, that the appeal was in time BATCHA SAHEB *v.* SUB-COLLECTOR OF NORTH ARCOT I. L. R 15 Mad. 78

29 ——— *Memorandum of appeal insufficiently stamped—Conditional order admitting appeal—Deficiency made good after period of limitation—Court Fees Act, ss 4, 5, 25, 28, 30—Memorandum of appeal from decree granting two distinct declarations—Civil Procedure Code, 1882, s 541* An appeal under the Code of Civil Procedure is not presented within the meaning of s 4 of the Limitation Act (XV of 1877) unless it is accompanied by the copies required by the Code A memorandum of appeal is a document included in the first and second schedules to the Court Fees Act

and until it is properly stamped Consequently if it is not, when tendered, properly stamped, it is not at that time a memorandum of appeal within the meaning of s 541 of the Code, and the appeal cannot be regarded as having been at that time pre-

LIMITATION ACT (XV OF 1877)—*contd.*

———— s. 4—*contd.*

so as to validate the original presentation, unless it has been done by order made under the second paragraph of s 28 of the Court Fees Act. In the case of a High Court, such an order can be made only by a Judge, and by him only in cases "of mistake or inadvertence" These words mean mistake or inadvertence on the part of the Court or its officers, and not on the part of the appellant or its advisers. The expression "head of the office" in s. 28 does not refer to the head of the office of a Court, or at all events to the head of the office of a High Court, acting not as such, but as a taxing officer; but it refers to the head of a public office such as the Board of Revenue The officer mentioned in s 5 of the Court Fees Act is not bound to advise parties as to the stamp required under the Act, or to give them notice that they have not sufficiently stamped documents which the Act requires to be stamped before presentation A plaint contained a prayer for a declaration (i) that certain property was the joint property of the plaintiff, and (ii) that it was not liable to attachment and sale in execution of a decree held by one of the defendants against another ; and, as foundation for the latter relief, alleged collusion, fictitious transactions, and want of title.

November 1887 it was tendered to a Judge for admission, and it then bore a report dated the 7th November by the officer appointed under s. 5 of the Court Fees Act, "report will be made on receipt of record" The Judge made an order "admit, subject to stamp report," and the memorandum was then received by the office, and the appeal was entered on the register. On the 27th September

good At the hearing of the appeal a preliminary objection was taken that the appeal had never been validly presented within time, or admitted, and that it could not be heard *Held*, that there was before the Court no valid appeal as to the merits of which the Court could give a decision. BALKARAN RAI *v* GOBIND NATH TIWARI

I. L. R. 12 All. 129

30. ———— **Amendment of decree, application for**—*Civil Procedure Code, s 206.* Under a proper interpretation of the preamble and s. 4 of the Limitation Act (XV of 1877), the rule

LIMITATION ACT (XV OF 1877)—*contd.*

———— s. 4—*contd.*

of limitation is confined to the litigants, and is inapplicable to acts which the Court may or has to perform *suo motu*. S. 206 of the Civil Procedure Code empowers a Court of its own motion to amend its decree, and the mere fact that one of the parties has made an application asking the Court to exercise that power will not render the action of the Court subject to the rule of limitation. *Roberts* v. *Harrison, I L. R. 7 Calc. 333 ; Vithal Janardun* v. *Rakmi, I. L. R. 6 Bom. 586 ;* and *Kylasa Goundan* v. *Ramasami Ayyar, I. L. R. 4 Mad. 172,* referred to. DHAN SINGH *v.* BASANT SINGH

I. L. R. 8 All. 519

31. ———— **Amendment of plaint**—

jurisdiction of the Court," was presented on the 21st November 1878 within the period of limitation prescribed for such a suit by Act XV of 1877 It was subsequently returned for amendment, and

amendment of the plaint did not affect the question of limitation for the institution of the suit, and the return of the plaint for amendment and its subsequent presentation and acceptance by the Court did not constitute a fresh institution of the suit. RAM LAL *v.* HARRISON . . **I. L. R. 2 All. 832**

32. ———— **Application, return of, for amendment.** Where an application is returned for amendment, the period of limitation counts from the first presentation CHOWDHRY PURLADH MAHAPATTUR *v.* CHOWDHRY JONARDUN MOHAPATTUR . . . . **6 W. R. Mis. 15**

(*Contra*) GOUR MOHUN SURMAH *v.* JUGGERNATH ACHARJEE . . . . . **14 W. R. 446**

33. ———— **Pauper suit**—*Civil Procedure Code, s. 308—Calculation of period of limitation.* Under s 308 of Act VIII of 1859, and the Limitation Act, 1859, in computing the period of limitation in a pauper suit, the commencement of the suit must be reckoned from the day when

SEETARAM GOWER *v.* GOLUCKNATH DUTT

Marsh. 174 : 1 Hay 378

which enable him to pay the Court-fees and his petition is allowed upon such payment to be num-

LIMITATION ACT (XV OF 1877)—*contd.*

——— s. 4—*contd.*

bered and registered as a plaint, his suit shall be

L. R. 6 I. A. 126

Reversing the decision of the High Court
I. L. R. 1 All. 230

35. ——— *Explanation—Petition in suit in formâ pauperis—Civil Procedure Code, 1859, s. 308.* *A* put in a petition to sue *in formâ pauperis* for possession of certain foreclosed

A, the case, however, was again re-opened, and a date fixed for her appearance. Two days prior to this date, but at a time beyond the limit fixed by the Limitation Act, *A* put in a petition asking that the petition which she then made to have her suit proceed as an ordinary suit might be joined with her application to sue *in formâ pauperis*, and the suit be duly tried in the ordinary way. She also paid in the

numbered and registered as a suit. CHUNDER MOHUN ROY *v.* BHUBON MOHINI DABEA
I. L. R. 2 Calc. 389

36. ——— *Application to sue in formâ pauperis—Renewal of application.* An application to sue as a pauper having been refused on the ground that the suit was barred by limitation,

37. ——— *Application for leave to appeal in formâ pauperis—Subsequent appeal in regular form—Payment of Court-fee—Time of presentation of appeal—Retrospective effect.* Where

LIMITATION ACT (XV OF 1877)—*contd.*

——— s. 4—*contd.*

of limitation had expired:—*Held*, that the payment of the Court-fee on the regular appeal could not be held to relate back to the memorandum of appeal which accompanied the application for
convert that
within time.
there was
could treat,
even provisionally, as a memorandum of appeal. BISHNATH PRASAD *v.* JAGARNATH PRASAD
I. L. R. 13 All. 305

38. ——— *Institution of*

for the purposes of limitation, from the time of

KHAN LAL

39. ——— *Institution of suit after refusal of application for leave to sue as pauper—Extension of time granted for payment of Court-fees—Payment of fees after period of limitation for suit has expired—Presentation of plaint—Civil Procedure Code, 1882, ss. 409 and 413.* On the 2nd February 1890, the plaintiffs applied for leave to sue *in formâ pauperis*. After investigation, the Court, on the 15th July 1890, refused leave but, on the plaintiff's application, granted him time to pay the Court-fees. He paid the fees on the 12th August 1890. At this date the suit was barred, and the defendant pleaded limitation. The plaintiff contended that the suit should be taken as instituted at the date of his application for leave to sue as a pauper.

The plaintiff could not then be regarded as a pauper, and s. 4 of the Limitation Act (XV of 1877) would have no application. KESHAV RAMCHANDRA *v.* KRISHNARAO VENKATESH I. L. R. 20 Bom. 508

40. ——— *Application for*

LIMITATION ACT (XV OF 1877)—*contd.*

——— s. 4—*contd.*

by the persons proposed by her in her application for leave to sue as a pauper as defendants to the suit, *A B* paid into Court the Court-fee necessary for a regular suit to recover the amount claimed, and prayed that her original application might be treated as the plaint in the suit, and the suit proceeded with in the ordinary manner. In the meantime, however, the period of limitation prescribed by Art. 104 of Sch. II of Act XV of 1877 for a suit to recover deferred dower had expired *Held*, that limitation ran from the time of presentation of the plaint, and not from the date of application for

17th October 1896, she petitioned for leave to appeal *in formâ pauperis* against the order of the 21st September, and annexed to her petition an unstamped memorandum of appeal On the 4th December 1896 her petition for leave to appeal *in formâ pauperis* was rejected, and she was directed by the Court to appeal in the ordinary way if she desired to appeal On the 11th December 1896, she applied for further time to pay the stamp fee on the memorandum of appeal, and to deposit the usual security. The Court made no order as to the stamp fee, but gave her time to furnish security until the opening of the Court after the Christmas vacation On the 21st December, she tendered to

as if the stamp had been affixed to the memorandum of appeal on the 21st December, *i e*, the day

of limitation JUMNABAI *v* VISSONDAS RUTTONCHUND . . . I. L. R. 21 Bom. 576

42. ——— *Application to sue in formâ pauperis—Refusal of application—Extension of time granted for payment of Court-fee—Payment of Court-fee after period of limitation—Civil Procedure Code, 1882, ss. 409, 410, and 413.* Where an application for permission to sue *in formâ pauperis* is rejected, and a full Court-fee is paid for a suit for the same relief, the suit must be considered, for the purposes of limitation, to have been instituted only after the payment of the

property. His application was rejected in May 1891, and time was given him to pay the full Court-fee, and his petition was then treated as the plaint in the suit. The period of limitation for the suit had then, however, expired, the cause of action being found to have arisen on the 28th November 1878. *Held*, that the suit was instituted not when the petition to sue as a pauper was presented, but only on the payment of the full Court-fee, and it was therefore barred by lapse of time *Keshav Ramchandra* v. *Krisnarao Venkatesh, I. L. R. 20 Bom. 508*; *Naraini Kuar* v. *Makhan Lal, I. L. R. 17 All. 526*; and *Abbasi Begam* v. *Nanhi Begam, I. L. R. 18 All. 206*, followed. *Skinner* v. *Orde, I. L. R. 2 All. 241*, distinguished. AUBHOYA CHURN DEY ROY *v.* BISSESSWARI . I. L. R. 24 Calc. 889

Begam, I. L. R. 18 All. 206, dissented from JANAKDHARY SUKUL *v* JANKI KOER (1900) I. L. R. 28 Calc. 437

44. ——— Pauper appeal—*Application* ... *Limi-* ... *t. 152* ... *Proce-* ... *413,* ... been

dismissed, presented an unstamped memorandum of appeal and with it a petition for leave to appeal as a pauper. Inquiry as to pauperism was directed, and in the result the leave to appeal as a pauper was refused, but the Judge gave leave to amend the memorandum of appeal by stating the claim at a lower valuation, thus reducing the amount of stamp fee required, and a week's time was granted

LIMITATION ACT (XV OF 1877)—*contd.*

——— s. 4—*contd.*

to the appellant to pay the fee. The fee was duly paid, and the appeal was accepted, but when it

to be presented—a memorandum of appeal and an application for leave to appeal as a pauper. When the Judge disposes of the pauper application, he does not thereby necessarily dispose of the appeal. He may still treat it as a existing appeal if the appellant desires to continue it. The rule in s. 413 of the Civil Procedure Code cannot apply to appeals; for, in view of the fact that the Limitation Act (arts. 152 and 170) prescribed the same time for filing an appeal and for applying for leave to appeal as a pauper the practical result would be that in every case where

be excused under s 5 of the Limitation Act. Bai Ful v. Desai Manorbhai Bhavassidas I. L. R. 22 Bom. 849

45. ——— *Application for*

of 1877), s. 5—Civil Procedure Code (Act XIV of 1882), s. 582A A suit was brought *in forma*

LIMITATION ACT (XV OF 1877)—*contd.*

——— s. 4.—*contd.*

pondent that the minor had become entitled to certain immoveable property, those representing the minor offered to pay proper Court-fees on the memorandum of appeal within a month. The Court allowed that to be done in the presence of both

the case came either under s 5 of the Limitation Act or under s 582A of the Civil Procedure Code and therefore the appeal was not out of time. Durga Charan Naskar v Dookhiram Naskar I. L. R. 26 Calc. 925

46. ——— **and Art 178—Summons to tax bill of costs**—*Summons to attend in*

was held to have been made within the meaning of the Limitation Act, not when the summons was signed by the Registrar, but when the matter came before the Judge, which was more than three years from the time when the right to apply accrued Khetter Mohun Sing v Kassy Nath Sett I. L. R. 20 Calc. 899

47. ——— **Claim against company being wound up**—*Act XIV of 1859, s 1—Com-*

48. ——— **Appeal by prisoner in jail**—*Presentation of petition to officer in charge of jail* In the case of appeals by prisoners in jail presentation of the petition of appeal to the officer in charge of the jail is, for the purpose of the Limitation Act, equivalent to presentation to the Court Queen-Empress v. Lingaya . . . I. L. R. 9 Mad. 258

49. ——— **Applications of urgent nature** *Applications—Rules of Court* The rules of the Court, prescribing certain hours for the receipt of petitions and hearing of motions, cannot operate to alter the period of limitation prescribed by law, so as to exclude urgent applications made

LIMITATION ACT (XV OF 1877)—*contd.*

——— s. 4—*contd.*

at any time in the day. *In the matter of* Desputty Singh *v.* Doolar Roy . 1 C. L. R. 291

50. ——— **Filing appeal after prescribed time**—*Removal from file* When a petition of appeal has been registered after lapse of the time allowed by law, the Judge has power, on discovery thereof, to reject or to remove it from his file. Jafer Hossein *v.* Mahomed Amir
4 B. L. R. Ap. 103 : 13 W. R. 351

51. ——— **Deficient stamp-duty**—*Limitation—Suit is instituted when plaint presented—Plaint presented insufficiently stamped—Deficiency subsequently paid.—Civil Procedure Code (Act XIV of 1882), ss. 48 and 54.* Where a plaint was presented on the 14th September 1900, with an insufficient stamp, but the deficient stamp duty was paid on the 18th September 1900.—*Held,* that, for the purpose of limitation, the suit was instituted on the day on which the plaint was presented, *viz*, the 14th September 1900, and not on the day on which the deficient stamp duty was paid, *viz.*, the 18th September 1900 Dhondiram bin Laxmon *v* Tara Savadan (1902)
I. L. R. 27 Bom. 330

52. ——— **Rules of limitation**—*Re-* [illegible]

appears on the face of the record and does not stand in need of being developed Nadhu Mondul *v.* Kartick Mondul (1905) . 9 C. W. N. 56

53. ——— **Dismissal of suit**—*Duty of Court to dismiss suit if barred—Applicable, where Court can dismiss entire claim—Position, where portion of claim admitted* The obligation cast upon a Court by s 4 of the Limitation Act to dismiss a suit, although limitation has not been set up as a defence, is only in cases where the [illegible] hole claim [illegible] *d Hossein* [illegible] *Nath Singh* [illegible] *Calc 635,* followed. Kandasamy Chetty *v.* Annamali Chetty (1905) . I. L. R. 28 Mad. 61

54. ——— **"Plaint"**—*Civil Procedure Code, Act XIV of 1882, s 54 (b)—Plaint, though not sufficiently stamped is 'plaint' within the meaning of s 4 of the Limitation Act—Suit not barred when plaint insufficiently stamped is presented within period o limitation, though stamp deficiency made good after such period* When a plaint is presented on a paper insufficiently stamped within the prescribed period of limitation, and time is given by the Court under s 54 (b) of the Code of Civil Procedure to make good the deficiency and the deficiency is supplied within the time fixed by the Court, but after the period of limitation expired, the suit is not barred by limitation The validity of a plaint for the purposes of s. 4 of

LIMITATION ACT (XV OF 1877)—*contd.*

——— s. 4—*contd.*

the Limitation Act is not dependent on its validity for the purposes of the Court Fees Act. *Venkataramayya* v. *Krishnayya, I. L R. 20 Mad. 319,* dissented from. *Jainti Prasad* v. *Bachu Singh, I. L. R. 15 All. 65,* dissented from. *Dictum of* Sir Subrahmania Ayyar in *Assan v. Pathumma, I. L. R 22 Mad. 494,* approved and followed. Gavaranga Sahu *v.* Botokrishna Patro (1909) . I. L. R. 32 Mad. 305

——— **ss. 4, 7—Suit by minor for declaration of invalidity of widow's alienation** —*Omission by father of minor to sue—Father's right to sue barred—Hindu law—Plaintiff not nearest reversioner—Maintainability—Specific Relief Act (I of 1877), s 42—Discretion of Court to make declaratory decree* Plaintiff, a minor, sued for a declaration that an alienation by a Hindu widow was invalid as against him after the death of the widow. Plaintiff was not the nearest reversioner, there being certainly one and [illegible]

[illegible] red from doing so by limitation.

such reversioners can be held to claim through or derive his title from another reversioner, even if that other happens to be his father, but each derives his [illegible] plaintiff was therefore

omission by one reversioner cannot bind another reversioner, who does not claim through him. *Bhagwanta* v. *Sukhi, I. L. R 22 All. 33,* approved. [illegible] *v. Bai Motigavri, I. L. R.* [illegible] ntiff [illegible] ant [illegible] er- [illegible] the

LIMITATION ACT (XV OF 1877)—*contd.*

——— s. 4—*concld.*

when the widow should die, the plaintiff would be the presumptive reversioner, and the declaration now made would save him from having to prove the impropriety of the alienation again *Per* DAVIES, J—The declaration made in the present [illegible]

I. L. R. 28 Mad. [illegible]

——— s. 5—

See post, ss. 12 and 5.

See APPEAL, DELAY IN FILING.

See APPEAL IN CRIMINAL CASES—ACQUITTALS, APPEALS FROM. I. L. R. 2 Calc. 436

See APPEAL TO PRIVY COUNCIL—PRACTICE AND PROCEDURE—MISCELLANEOUS CASES . . L. R. 30 I. A. 20

See APPEAL TO PRIVY COUNCIL—PRACTICE AND PROCEDURE—TIME FOR APPEALING. I. L. R. 2 Calc. 128

See COURT FEES ACT, 1870, SCH I, ARTS 4 AND 5 . I. L. R. 9 Mad. 134

See DECREE—ALTERATION OR AMENDMENT OF DECREE . I. L. R 24 Mad. 646

See LETTERS PATENT, HIGH COURT, N.-W P, CL. 27 . I. L. R. 11 All 176

See SMALL CAUSE COURT—PRESIDENCY TOWNS—PRACTICE AND PROCEDURE—RE-HEARING . I. L. R. 12 Bom. 408

See SPECIAL OR SECOND APPEAL—ORDERS SUBJECT OR NOT TO APPEAL. I L. R. 25 All. 71

1. ——— Exception to section—*Special law*. The exceptions contained in s 5 of Act IX of 1871 apply only to cases dealt with under the general Act of Limitation. THIR SING v. VENKATA RAMIER . . . . I. L. R. 3 Mad. 92

2 ——— Madras Forest Act (Mad Act V of 1882), ss 14, 39—*Period of limitation—Power to excuse delay* Delay in preferring an appeal under the Madras Forest Act beyond the period prescribed by s 14 of that Act may be excused under s 5 of the Limitation Act, 1877. REFERENCE UNDER MADRAS FOREST ACT (V OF 1882) . . . I. L. R. 10 Mad. 210

3. ——— Suit for profits—*General Clauses Act (I of 1887), s 7. Held*, that a suit for profits under s 93 (h) of the N.-W P Rent Act (XII of 1881), the period of limitation for the [illegible]

not applying to the N.-W P Rent Act MOHAMMAD HUSEN v. MUZAFFAR HUSEN I. L. R. 21 All. 22

LIMITATION ACT (XV OF 1877)—*contd.*

——— s. 5—*contd.*

4. ——— Time during which Court is closed. The time that the Courts are closed must be deducted in computing the period of limitation. MANEERUN v. LUTEEFUN . . 3 W. R. 46

(Contra) RAMASAMY CHETTY v. VENKATACHETTAPATY CHETTY . . . . 2 Mad. 468

5. ——— *Time expiring when Court is closed* When the time for doing an act expires whilst the Court is closed, the act, if done on the day on which the Court is next open, will be held to be done within time MUCHUL KOOER v. LALJEE . . . 2 N. W. 112

AJMUDDIN v. MATHURADAS GORADHAN DAS 11 Bom. 206

NARAYAN MANDAL v BENI MADHAB SIRCAR 4 B. L. R. F. B 32 : 12 W. R. F. B. 21

DABEE RAWOOT v. HERAMUN MAHATOON 8 W. R. 223

6. ——— *Order to pay* [illegible]

date, a payment made on the following day would be a good payment for the purposes of the order. ARAVAMUDU AYYANGAR v. SAMIYAPPA NADAN I. L. R. 21 Mad. 385

See SHOSHEE BHUSAN RUDRO v. GOBIND CHANDER ROY . . . I. L. R 18 Calc. 231

and PEARY MOHUN AICH v. ANUNDA CHARAN BISWAS . I. L. R. 18 Calc 631

7. ——— Sunday or holiday—*Appeal—Holiday, time expiring on* When the last day for presenting an appeal falls upon a Sunday or close holiday, an additional day is to be allowed for the presentation of the memorandum of appeal. *Ex parte* KRISHNA PADHE . 6 Bom. A. C. 50

MOSUROF ALI CHOWDHRY v JANOKENATH ODHICAREE . . W R. 1864 Mis 40

BISHEN PERKASH NARAIN SINGH v BABOOA MISSER . . . . . 8 W. R. 73

This section overrules the following cases, decided under the Limitation Act of 1859 —

KHODIE LAL v BISWASU KUNWAR 4 B. L. R. A C 131 . 13 W. R. 122

RAJKRISTO ROY v DINOBUNDOO SURMA B. L. R. Sup. Vol. 360 3 W. R. S C. C. Ref. 5

DEWAN ALI v MUNSOOR ALI . 11 W. R. 259

KUDOMESSUREE DOSSEE v EMAM ALI 20 W. R. 167

COLLIS v TARINEE CHURN SINGH 3 W. R. 210

HOLEE RAM DOSS v MIHEE RAM GOGOOEE 6 W. R. 39

8. ——— *Suit on promissory note on demand—Closing of Court* A suit on a promissory note payable on demand, dated the 14th

LIMITATION ACT (XV OF 1877)—*contd.*

—— s. 5—*contd.*

November 1867 was filed on 14th November 1870.

ABDUL ALI *v.* TARACHAND GHOSE
6 B. L. R. 292

s c on appeal. TARACHAND GHOSE *v.* ABDUL ALI . . 8 B. L. R. 24 : 16 W. R. O. C. 1

MUHTAB *v.* RAM DYAL . . 3 Agra 319

9. —— cl. (a)—*Time expiring when court is closed.* Where a suit was filed in the Munsif's Court on the day on which the Court re-opened after the vacation, but the Munsif found he had no jurisdiction, and on the same day the suit was filed in the Small Cause Court :—*Held*, that

re-opened. ABHOYA CHURN CHUCKERBUTTY *v.* GOUR MOHUN DUTT . . . 24 W. R. 26

10. —— *Holiday—Act XI of 1865, s. 21* By s. 21, Act XI of 1865, notice of application for a new trial must be filed within seven days from the date of the decision. When the decree was made on 6th November, and the Court was closed on 12th, 13th, 14th, and 15th :—*Held*, an application filed on the 16th was in time GIRIJA BHUSAN HOLDAR *v* AKHAY NIKARI
5 B. L. R. Ap. 57 note : 13 W. R. 105

11. —— *Time for institution of suit expiring when court is closed. Held*, that, where the period of limitation prescribed for a suit expired when the Court was closed for a vacation, and the Court, instead of re-opening after the vacation on the day that it should have re-opened, re-opened on a later day, and the suit was instituted when it did re-open, it was instituted within time. BISHAN CHAND *v* AHMAD KHAN
I. L. R. 1 All. 263

12. —— *Adjournment of Court with office opened during adjournment for reception of plaints, etc.* Where a District Court was adjourned for two months, but the notification stated that the Court would be open twice a week for one hour for the reception of plaints, petitions, and other papers :—*Held*, *per* CURIAM (INNES, J, dissenting), that the Court was not closed till the last day of the adjournment within the meaning of s 5 of the Limitation Act, 1877, so as to allow an appellant to present his appeal on the day the Court re-opened after the adjournment, the appeal time having expired during the adjournment. NACHIYAPPA MUDALI *v.* AYYASAMI AYYAR
I. L. R. 5. Mad. 189

13. —— *Time for presenting appeal expiring during the vacation.* Where the period of limitation for the filing of an appeal has expired during vacation, a party to a suit has a right, under the provisions of the Limitation Act (XV of 1877), to have his appeal admitted on the day the Court re-opens, and the Prothonotary of the High Court has power to receive and file a memorandum of appeal on that day. KING *v.* KING
I. L. R. 6 Bom. 487

14 —— *Computation of period of limitation—Holiday.* On the 13th April 1883 (corresponding with the 1st Bysack 1290), the plaintiff instituted a suit to recover money due on a simple unregistered bond, dated 8th Bysack 1286, and re-payable on the 30th Cheyt 1286 (corresponding with the 11th April 1880) The 12th April 1883 (30th Cheyt 1290) was a holiday. *Held*, that limitation began to run on the 12th April 1880, and that the suit was therefore barred. DEB NARAIN SINGH *v.* ISHAN CHUNDER MALO . 13 C. L. R. 153

15. —— *Suit for an account from agent—Courts being closed.* Although a suit to recover moneys or obtain papers or accounts from an agent must, under s 30 of Bengal Act VIII of 1869, be instituted within one year from the determination of the agency, yet, if on the last day of such year the Courts be closed, the suit will, under s. 5 of Act XV of 1877, not be barred if filed on the first day of the re opening of the Court. GOLAP CHAND NOWLUCKHA *v.* KRISHTO CHUNDER DASS BISWAS
I. L. R. 5 Calc. 314

16. —— *Time for presenting plaint—Beng Act VIII of 1869, s 31.* The provisions of s. 5 of the Limitation Act (XV of 1877)

17. —— Suit to compel registration—*Registration Act III of 1877, s 77.* The provisions of s. 5 of Act XV of 1877 apply to suits instituted under the provisions of s. 77 of the Registration Act (III of 1877). NIJABUTOOLLA *v.* WAZIR ALI
I. L. R. 8 Calc. 910 : 10 C. L. R. 333

18. —— *Suit under s. 77 of Registration Act (III of 1877)—Filing of suit on re-opening of Court where limitation expires on a day when it is closed.* When the period of limitation, prescribed by s. 77 of the Indian Registration

LIMITATION ACT (XV OF 1877)—*contd.*

——— s. 5—*contd.*

Act, 1877, for suits brought under that section expires, on a day when the court is closed, s. 5 of the Indian Limitation Act, 1877, does not apply, and the suit, if instituted on the day that the Court re-opens, is barred. APPA RAU SANAYI ASWA RAU *v.* KRISHNAMURTHI . I. L. R. 20 Mad. 249

See VEERAMA *v.* ABBIAH

I. L. R. 18 Mad. 99

19. ——— Objections to decree—*Civil*

were filed on the day the Court re-opened:—*Held*, that such objections were filed within time. BAGHELIN *v.* MATHURA PRASAD. I. L. R. 4 All. 430

20. ——— *Civil Procedure Code, s 561, objection under* S. 5 of Act XV of 1877 does not apply to an objection under s. 561 of the Procedure Code KALLY PROSUNNO BISWAS *v.* MUNGALA DASSEE . I. L. R. 9 Calc. 631

21. ——— *Objections to decree—Civil Procedure Code, 1877, s. 561—Extension of time* The seven days within which a notice of objections to a decree by a respondent under s. 561 of the Code must be given, is not a period to which the provisions of para 2 of s. 5 of the Limitation Act can be extended, and the Court has no discretion to extend the period DEGAMBER MOZUMDAR *v* KALLYNATH ROY

I. L. R. 7 Calc. 654 : 9 C. L. R. 265

22. ——— *Objections taken under s. 348, Civil Procedure Code, 1859—Withdrawal of appeal—Ground for admitting appeal after time.* The circumstance that a respondent who has taken or intended to take objections, under s 348 of the Code of Civil Procedure, to the decree of the Court of first instance at the hearing of an appeal already preferred by his opponent, has been prevented by the withdrawal of the appeal from having his objections heard, does not constitute a sufficient cause for admitting a cross appeal by such responded after the prescribed period, Act IX of 1871, s 5 The High Court may consider and determine upon the sufficiency of the

23. ——— Execution of decree—*Time expiring when Court is closed—Transfer of decree for execution* Where parties are prevented from doing a thing in Court on a particular day not by any act of their own, but by the act or the Court itself, they are entitled to do it at the first subsequent opportunity Where, therefore, after previous attempts to execute a decree, dated 7th September 1877, an application for transfer of the decree under s. 223 of the Civil Procedure Code

LIMITATION ACT (XV OF 1877)—*contd.*

——— s. 5—*contd.*

was made and granted on the 2nd September 1889, and on the 9th of September (the Court having been closed from the 3rd to the 8th inclusive on account of the Mohurrum) the decree-holder applied for execution under s. 230 of the Code:—*Held*, that he was entitled to the benefit of the rule laid down in s. 5 of the Limitation Act upon the broad principle above stated *Shooshee Bhusan Rudra v Govind Chunder Roy, I. L. R. 18 Calc 231*, applied in principle. PEARY MOHUN AICH *v* ANUNDA CHARAN BISWAS

I. L. R. 18 Calc. 631

24. ——— Delay in filing appeal—*Admission of after limited period—Grounds for admission after time—Sufficient cause for delay—Act VIII of 1859, s. 333.* As to what will be considered sufficient cause for delay in filing appeal and be ground for admitting a petition of appeal after the time limited by Act VIII of 1859, s. 333 SECRETARY OF STATE *v* MUTU SAWMY

4 B. L. R. Ap. 84 : 13 W. R. 245

25 ——— *Calculation of period allowed for—Reasonable ground for enlarging time—Review* The plaintiff against whom a decree had been given, did not appeal within the twenty days allowed for that purpose; but, after the expiration of more than a month, he made an application for a review of judgment, which was refused after nine months. Ninteen days later he applied to have the time for filing his appeal enlarged. *Held*, that the application was not made in time Suffi-

application for review presented during the time limited for appealing must not be reckoned. NOBO KISSEN SINGH *v* KAMINEE DASSEE

B. L. R. Sup. Vol. 349

2 W. R. Mis. 85 : Bourke A. O. C. 38

26. ——— *Appeal pre-*

review as he might have done, was at liberty to treat the appeal as one filed after time on sufficient reasons assigned for the delay. TROYLUCKHNATH CHUCKERBUTTY *v* JHABBOO SHAIKH

10 W. R. 334

LIMITATION ACT (XV OF 1877)—*contd.*

—— s. 5—*contd.*

27. —— *Delay in appealing—Application for review.* An application for review, if made within reasonable time and with due

28. —— *Appeal admitted out of time—Review pending—Time excluded—*

I. L. R. 7 Mad. 584

29. —— *Time for preferring—Pendency of application for review.* In computing the period within which an appeal may be

Poresh Nath Roy *v* Gopal Kristo Deb
15 W. R. 61

30. —— *Date from which time for appeal runs when an application for review is admitted* Whether a review order is rightly made upon legal grounds or not, when once made it has

should put aside the review matter. Roop Kalee Kooer *v.* Doolar Pandey . 20 W. R. 101

31. —— *Delay in filing—Grounds for delay* Delay in preferring an appeal should be explained. Inasmuch as a new statement of the law by the High Court is not a sufficient excuse for delay in applying for a review of judgment, it is still less an excuse for delay in appealing against a judgment. Mowri Bewa *v.* Soorendra Nath Roy
2 B. L. R. A. C. 184 : 10 W. R. 178

Amra Nashya *v* Gajan Shutar
2 B. L. R. Ap. 35 : 11 W. R. 130

32. —— *Time for appealing—Alteration in law* An appeal will not be allowed after the time for appealing has expired, merely because a judgment altering the view of the law which prevailed at the time of the decision of the original suit has subsequently been given by the

High Court. Makhun Naikin *v* Manchand Ladhabhai . . . 5 Bom. A. C. 107

33. —— *Sufficient cause for admission of appeal after time—Appellate Court.*

such ... ded ... the ... tances, no sufficient cause for the delay. An Appellate Court should not admit an appeal after the period of limitation prescribed therefor without

34. —— *Suit under Act X*

allow an appeal to be presented after time, on the ground that its pendency in a Court that had no jurisdiction "was sufficient cause for delay." Modhoosoodun Mojoomdar *v.* Brojonath Koond Chowdhry . . . 5 W. R., Act X, 44

But *see* Kalee Kishore Paul *v* Monee Ram Singh . . . . 5 W. R., Act X, 46

35. —— *Admission of ap-*

preferred in the first instance, and the High Court has no authority to interfere with such exercise of discretion by the Judge. Rajcoomar Roy *v.* Mahomed Wais . . . 7 W. R. 337

36. —— *Power of Division*

was liable to be impugned and set aside at the hearing by the Division Court before which it was brought for hearing, on the ground that the reasons assigned for admitting it were erroneous or inadequate. Dubey Sahai *v.* Ganeshi Lal
I. L. R. 1 All. 34

LIMITATION ACT (XV OF 1877)—*contd.*

———— s. 5—*contd.*

37. ———————— *Appeal filed after*

the Court which made it; but such an order made by a District Judge cannot be afterwards cancelled by a Subordinate Judge upon the appeal coming on for hearing before him JHOTEE SAHOO v. OMESH CHUNDER SIRCAR . . **I. L. R. 5 Calc. 1**

38. ———————— *Appeal admitted after time by District Court—Power of subordinate*

posal to the subordinate Court, in which objection was taken that the appeal was time-barred. The Subordinate Judge held that he could not entertain the objection; he heard the appeal and remanded the suit. *Held*, that the subordinate Court had jurisdiction to entertain and dispose of the objection, and that the objection was sound, and that the order of remand should be set aside. *Jhotee Sahoo v Omesh Chunder Sircar, I. L R 5 Calc. 1*, dissented from KRISHNA BHATTA v SUBRAYA

I. L. R. 21 Mad. 228

39. ———————— *Admission of, when out of time, by District Judge—Transfer of same to Subordinate Judge for hearing—Power of Subordinate Judge to dismiss such appeal.* Where an

power to dismiss the appeal on the ground of its presentation after time *Jhotee Sahoo v Omesh Chunder Sircar, I L R. 5 Calc. 1*, distinguished *Mulna Ahmed v Krishnaji Ganesh Godbole, I L R 14 Bom 594*, and *Chunder Dass v. Boshoon Lall Sookul, I L R 8 Calc 252*, referred to MANICK DUKANDAR v NAIBULLA SIRCAR

2 C. W. N. 461

40. ———————— *Admission of appeal out of time—Ex parte order set aside at hearing* An order made *ex parte*, under s 5 of the Limitation Act, 1877, admitting an appeal after the period prescribed therefor, may be set aside on proper cause being shown by the court which made it. VENKATRAYUDU v NAGADU

I. L. R. 9 Mad. 450

See MOSHAULLAH v AHMEDULLAH

I. L. R. 13 Calc. 78

41. ———————— *Appeal filed beyond time—Order for admission of such appeal without notice to respondent* The order for admission of an appeal under s 5 of the Limitation Act (XV of 1877), made before issue of notice to the respondent, is an *ex parte* order, and cannot bind him. MULNA AHAD v KRISHNAJI GANESH GODBOLE

I. L. R. 14 Bom. 594

42. ———————— *Appeal—Admission after time—"Sufficient cause"—Poverty—Purdahnashin* On the 14th February 1884, the High Court dismissed an application of the 22nd March 1883, by a purdahnashin lady, for leave to appeal *in formâ pauperis* from a decree, dated the

necessary institution fees, presented her appeal, which was admitted provisionally by a single Judge. *Held*, by TYRRELL, J (MAHMOOD, J, dissenting), that the appellant had made out a sufficient case for the exercise of the Court's discretion under s 5 of the Limitation Act, and that the Court should proceed to the trial of her appeal. *Held* by MAHMOOD, J., that the *ex parte* order of the 18th June 1885 was one which the Civil Procedure Code nowhere had allowed and was *ultra vires*, and that the Bench,

Held, also, by MAHMOOD, J (TYRRELL, J, dissenting) that the circumstances were such as to require the Court to set aside the order admitting the appeal and to dismiss the appeal as barred by limitation inasmuch as it was presented more than two years beyond time, and neither the facts that the main reason why it was presented so late was that the appellant was awaiting the result of the connected case, and that the appellant was a

8 All 475, referred to HUSAINI BEGUM v COLLECTOR OF MUZAFFARNAGAR . **I. L. R. 9 All. 11**

for an extension of the limitation period within the meaning of s. 5 of the Limitation Act, and that such extension ought not to be granted. *Moshaullah v.*

——— s. 5—*contd.*

Ahmedullah, I. L. R. 13 Calc. 78, and *Collins* v. *Vestry of Paddington, L. R. 5 Q. B. D. 368,* referred to. Husaini Begum *v.* Collector of Muzaffarnagar . **I. L. R. 9 All. 655**

43. ——— *"Sufficient cause" for not presenting appeal within time—Admission of appeal—Discretion of Court.* In a suit for ejectment instituted in the Revenue Court under s. 93 (*b*) of the N.-W. P. Rent Act (XII of 1881), the Court gave judgment decreeing the claim on the 15th September 1884. The value of the subject-matter

The proceedings before the Board lasted until the 24th April when the defendant for the first time

appeal to the District Judge, who, under s 5 of the Limitation Act, admitted the appeal, and, reversing the first Court's decision, dismissed the claim. *Held,* on appeal by the plaintiff, that, under the circumstances, the High Court ought not to interfere with the discretion exercised by the District Judge in admitting the appeal under s 5 of the Limitation Act after the period of limitation prescribed therefor *Per* Edge, *C J*, that under the

44. ——— *Guardian and minor—Decree against minor—Neglect of guardian to appeal—Leave to appeal granted to minor after attaining majority—Sufficient cause—Limitation Act, s 14.* One *J* died in 1886, and by his will directed

testator's residuary estate as the price of giving and receiving the boy in adoption These negotiations continued until 1890, when *L* died, and the adop-

——— s. 5—*contd.*

tions directed by the will thus became impossible. In December 1894, *K*, alleging that he had only attained majority on the 14th of that month, applied for a review of judgment, but his application was rejected. In March 1895, he obtained a rule *nisi* for

that leave to appeal should be granted. The guardian was desirous that the adoption ordered by the decree should take place, hoping that he would obtain a large sum of money for giving the minor in adoption. His interest were therefore

I. L. R. 20 Bom. 104

45. ——— *Sufficient cause—Civil Procedure Code, 1882, s. 108—Ex parte decree —Limitation Act, s. 14.* In a suit for possession of certain lands, after the defendants had filed their written statements, a commissioner was appointed

some of the defendants having informed the Court that they had no instruction from their clients and the rest of the defendants having accepted the

application under s 108 of the Code of Civil Procedure to have the decree set aside The Subor-

LIMITATION ACT (XV OF 1877)—*contd.*

——— s. 5—*contd.*

back upon the remedy, by way of an appeal, which was open to him at the time when the original decree was passed and of which he did not choose to avail himself, and that this was not a sufficient cause for not presenting the appeal within time. Ba' ... anc ... I. I ... Ra

I. L. R. 23 Calc. 325

46. ——— and s. 14—*Ground for admission of appeal after time.* The circumstances contemplated in s. 14 of the Limitation Act, 1877, will ordinarily constitute a sufficient cause in the sense of s. 5 for not presenting an appeal within the period of limitation. BALVANT SINGH *v* GUMANI RAM . . . I. L. R. 5 All. 591

47. ——— *Review—Application for review—Sufficient cause for delay—Pendency of second appeal—Ignorance of effect of judgment.* *G* obtained a decree against *M* in the Court of the Subordinate Judge of Ahmedabad for the refund of certain sum of money alleged to have been illegally levied by *B* as inamdar for local fund cess due for a certain year. In appeal the District Court on the 21st March 1882 varied the decree and reduced the amount. On second appeal the High Court on 23rd June 1882 dismissed the appeal on the ground that the lower Court had no jurisdiction, the suit being a Small Cause Court suit The decree of the District ...

passed on 21st March 1881 estopped *M* from disputing *G*'s claim, and that the matter was *res judicata* *M* then procured the proceedings in the Small Cause Court to be stayed, and, on the 18th November 1882, applied to the District Court for a review of its decree of 21st March 1881 The District Judge granted the review on the ground that the time lost by *M* in the prosecution of the second appeal should be excluded from computation, and that the subsequent delay was justified by the fact ...

plication for review after the expiration of the ninety days allowed by the Limitation Act The pendency of an appeal is not a "sufficient cause" for not presenting the application earlier within the meaning of s 5 of the Limitation Act (XV of 1877). GULAM HUSEN MAHAMED *v* MUSA MIYA HAMAD ALI . . . I. L. R. 8 Bom. 260

48. ——— *Review exclusion of time taken up with—Practice* The mere presentation of an application for review where it is not shown that the grounds therefore are reasonable and proper, is not a sufficient reason for admitting an appeal after the period of limitation prescribed for such appeal has passed. ASHANULLA *v* COLLECTOR OF DACCA . . I. L. R. 15 Calc. 242

49. ——— *Time occupied in seeking review of judgment—Computation of time for appeal—Discretion of Court.* An appellant is not entitled as of right to the exclusion of the time occupied by him in seel ...

the time so occupied GOVINDA *v* BHANDARI I. L. R. 14 Mad. 81

50. ——— *Application insufficiently stamped—Sufficient cause for admitting* ...

1889, the deficiency pointed out by the Munsarim was made good. On the 26th May, the Judge ad- ...

meaning of the second para. of s 28; that the Judge had no power under the circumstances to admit the application as one presented after ninety days from the date of the decree: that there was no pre- ...

... ninety days, and that the application was consequently barred by limitation, and ought to have been rejected MUNRO *v* CAWNPORE MUNICIPAL BOARD . . . I. L. R. 12 All. 57

51. ——— *Application for review—Sufficient cause for delay in filing an appeal.* Though under certain circumstances the presentation of an application for review may be considered as sufficient cause for delay in filing an appeal, the appellant is bound to satisfy the Court that such circumstances did exist in his case, and that he had sufficient cause for not presenting the appeal within the prescribed period. The plaintiff obtained a decree for possession of certain land in the Court

LIMITATION ACT (XV OF 1877)—*contd.*

——— **s. 5—*contd.***

of first instance. This decree was reversed by the Appellate Court on the 28th October 1890. The plaintiff applied for a review of judgment of the Appellate Court on the 27th January 1891. The petition of review was rejected on the 18th March 1891. Thereupon the plaintiff preferred a second appeal to the High Court on the 13th April 1891. *Held*, that the second appeal was time barred. The time taken in prosecuting the application for review could not be deducted in calculating the period of limitation, as the plaintiff had not shown that he had reasonable grounds for asking for a review. PUNDLIK *v.* ACHUT . **I. L. R. 18 Bom. 84**

52. ——— *Ground of non-*

pondent in the appeal, coupled with the fact that the application made by the plaintiff to make such defendant a party respondent after the period of limitation had expired was not made at the earliest opportunity possible, is not a sufficient ground under s 5 of the Limitation Act for non-prosecution of the appeal within the period allowed. CORPORATION OF THE TOWN OF CALCUTTA *v* ANDERSON **I. L. R. 10 Calc. 445**

53. ——— *Mistake of counsel —Delay—" Sufficient cause "* In a suit between *A* and *B* heard on the 29th January 1883, a certain

up to the

ected from

had a copy

B's written

statement was being drawn, and a copy briefed to him at the hearing. At the hearing *A*'s counsel stated that the effect of the conveyance was to vest the entirety of a certain property in *A*, this view was accepted by *B*'s counsel, who did not read the conveyance The only issue in the case was " who was in possession of the property," and the Court decided this issue on the 5th February in favour of the plaintiff. On the 26th February *B* brought a suit against *A* to set aside this conveyance on the ground of fraud. And in certain proceedings in this case taken on the 31st March, *B*'s counsel discovered, as he alleged for the first time, that under the conveyance, a moiety of a seven twenty-fourth share remained in *B*. On that day instructions were given to *B*'s counsel to draw up a petition of review of the judgment of the 5th February This petition, owing to the Easter vacation, was not, and could not have been, presented till the 9th April In deciding whether *B* had shown " sufficient cause " within the meaning of s. 5 of the Limitation Act, for not making the application

LIMITATION ACT (XV OF 1877)—*contd.*

——— **s. 5—*contd.***

the Town of Calcutta, I. L. R. 10 Calc. 445, distinguished. *In the matter of the petition of* SOLOMON. GOPAL CHUNDER LAHIRY *v* SOLOMON **I. L. R. 11 Calc. 767**

54. ——— *Discretion of Court to admit appeal after time* Exercise by Court

I. L. R. 9 Calc. 355: 11 C. L. R. 430

55. ——— *Appeal in pauper suit—Application for review.* The language of the Limitation Act precludes any other construction

review of

o delay in

is not a

leave to

d to him.

I. L. R. 2 Mad. 230

56. ——— *Sufficient cause —Poverty—Admission of appeal after time* Poverty is not " sufficient cause " within the meaning of s 5 of the Limitation Act (XV of 1877), for admitting an appeal after the ordinary period of limitation prescribed therefore has expired. MOSHAULLAH *v.* AHMEDULLAH . . **I. L. R. 13 Calc. 78**

57. ——— *Application for leave to appeal to Privy Council.* The provisions of the second para. of s 5 of the Limitation Act (XV

to ap

Anan

Gang

(1881) 139, referred to *In the matter of the petition of* SITA RAM KESHO . **I. L. R. 15 All. 14**

58. ——— *Discretion of*

S 5 of the

a Court to

valued his

less than

R5,000 by the Court of first instance at Rajshahye. A decree, dated the 20th December 1883, was given

despatched by his Calcutta agent informing him that he was mistaken, and that the appeal lay to the District Judge This letter reached Rajshahye on the 17th, and the appeal was filed on the 23rd March. *Held*, that, under the circumstances, the Court might admit the appeal in the exercise of its

LIMITATION ACT (XV OF 1877)—*contd.*

———— s. 5—*contd.*

discretion under s. 5 of the Limitation Act. HURO CHUNDER ROY v. SURNOMOYI

I. L. R. 13 Calc. 266

59. ———— and s. 14—*Delay—Sufficient cause—Deduction of time spent in another litigation in respect of the same subject-matter—Mistake of law.* Mere ignorance of the law cannot be recognized as a sufficient reason for delay under s 5 of the Limitation Act (XV of 1877). *A* obtained a decree against *B* as the heir and legal representative of his deceased uncle *C*. The decree directed that the amount adjudged should be recovered from *C's* assets in the hands of *B* In execution of this decree, certain property was attached *B* claimed this property as his own, and sought to remove the attachment, but the Court passed an order confirming the attachment on the 20th November 1880. In 1881 *B* filed a regular suit to set aside this order The suit was dismissed in 1885, as barred by s 244 of the Civil Procedure Code (Act XIV of 1882) Thereupon *B* filed an appeal from the order in execution made on 20th November 1880 This appeal was rejected as time-barred under Art 152 of Sch. II of the Limitation Act (XV of 1877) *Held*, that the time spent in the actual proceedings

vened between the date of the order appealed against and the date of filing the suit. SITARAM PARAJI v. NIMBA VALAD HAPISHET

I. L. R 12 Bom. 320

60. ———————— *Admission of appeal beyond time—"Sufficient cause"—Appeal filed in wrong Court—Bonâ fide proceedings* Presentation of an appeal within the period of limitation prescribed therefor to a wrong Court in ignorance of the provision of law is not a sufficient cause within the meaning of s 5 of the Limitation Act, for admitting the same appeal in the proper Court after the period of limitation prescribed therefor had expired To enable the Court to admit an appeal after the period of limitation prescribed therefor had expired, on the ground that the same had in the first instance been preferred within the period of limitation provided therefor, but to a wrong Court, the appellant must satisfy the Court that he made his appeal to the wrong Court *bonâ fide*, that is, under an honest, though mistaken, belief formed with due care and attention, that he was appealing to the right Court JAG LAL v HAR NARAIN SING

I. L. R. 10 All. 524

61. ———————— *Sufficient cause—Appeal, presentation of, to wrong Court* The presentation of an appeal to a wrong Court under a *bonâ fide* mistake may be "sufficient cause" within the meaning of s 5 of the Limitation Act *Sitaram Paraji v. Nimba, I L. R 12 Bom 320,* explained. DADABHAI JAMSETJI v MANEKSHA SORABJI

I. L. R. 21 Bom. 552

LIMITATION ACT (XV OF 1877)—*contd.*

———— s 5—*contd.*

62. ———————— *Appeal preferred to wrong Court through mistake of law—Exclusion of time* S. 14 of the Limitation Act (XV of 1877) does not contemplate cases where questions of want of jurisdiction arise from simple ignorance of the law, the facts being fully apparent, but is limited to cases where from *bonâ fide* mistake of fact the suitor has been misled into litigating in a wrong Court The phrase "other cause of a like nature"

The plaintiff then, on the 20th December 1886, presented the memorandum of appeal to the High Court, and it was admitted, subject to the consideration by the Bench determining the appeal of any

being shown for the delay in the presentation of the appeal, the appeal must be dismissed *Balwant Singh v. Gumani Ram, I L R 5 All 591,* explained RAMJIWAN MAL v CHAND MAL

I. L. R 10 All. 587

63. ———————— *Sufficient cause*

a sufficient cause within the meaning of s 5 of the Limitation Act *Balwant Sing v Gumani, I L R 5 All 591,* followed BALARAM BHRAMABATAR RAY v SHAM SUNDER NARENDRA

I. L R. 23 Calc. 526

64. ———————— *"Sufficient cause" to excuse delay—Mistake in law* Land was sold in

... The plaintiff, who desired to appeal against the decree dismissing his suit, was advised that the appeal lay to the High Court in which a memorandum of appeal was accordingly filed On its appearing that the value of the property sold was less than R5,000, the High Court returned the memorandum of appeal for presentation to the District Court The District Judge

LIMITATION ACT (XV OF 1877)—*contd.*

——— s. 5—*contd.*

Act, and enable the Judge to admit the appeal under s 5. A mistake in law may be under some circumstances a "sufficient cause" within the meaning of s. 5 of the Limitation Act for admitting an appeal presented out of time. KRISHNA *v* CHATHAPPAN . . I. L. R. 13 Mad. 269

AHSAN-ULLAH KHAN . I. L. R. 12 All. 461

66. ——— *Leave to appeal after time expired—Sufficient cause—Two suits brought at same time by executors raising same questions of construction in respect of the same will—Similar decision in both—Appeal by a defendant in one suit and decree of Court of first instance reversed—Consequent application by plaintiffs for leave to appeal in second suit.* The plaintiffs filed two suits (A and B) at the same time as executors of the will of one *D M.* In suit A they sued the two sons (*G*

mortgagees, and that they refused to give it up. The plaintiffs submitted that, under the mortgage, no charge was created, save upon *G*'s individual interest in the estate, and they prayed for a declaration as to the extent of the mortgage, for an order for possession, for an account, etc., etc. Suit A was heard and decided on the 15th August 1889, and after argument, the Court of first instance, construing the will held that the fourth defendant, *G*, was entitled absolutely to certain property situate at the Girgaum Back Road in Bombay Immediately after the said decree was made, suit B was called on for hearing before the same Judge. As the questions raised in both suits were the same, a decree in this suit was passed at once, without argument, in accordance with the construction put upon the will

to an absolute estate in the abovementioned property, but was entitled only to be paid the income thereof for his life. The plaintiffs in the present suit, being executors and not personally interested, had taken no steps to appeal from the decree of the 15th August. As soon, however, as the decree in suit A was reversed they proposed to have the decree in suit B amended, so as to be in accordance with the construction put upon their testator's will by the Appeal Court. The defendants refused to consent, and the plaintiff moved for leave to file an appeal, although the time limited for appealing had expired. It was contended that the fact that they were executors and trustees and as such could not appeal, save at their own risk, was "sufficient cause" under s 5 of the Limitation Act (XV of 1887), for their delay until the other suit had been decided *Held,* refusing the application, that no sufficient cause was shown for the plaintiffs' delay. The two suits were quite independent of each other. The plaintiffs thought proper to bring this second suit against the mortgagees, and they got a decision. If they were not satisfied, they should

67. ——— *"Sufficient cause" —Decree in suit for redemption —Appeal by mortgagee—Cross-objections filed by the mortgagors—Withdrawal of the appeal by the mortgagee—Application by mortgagors for extension of time to appeal.* On the 1st March 1886, the plaintiffs (the mortgagors) obtained a redemption decree against the defendant (mortgagee), whereby it was ordered that, upon payment by the plaintiffs of R649-11-0 to the defendant, the mortgaged property should be

against the decree of the 1st March 1886 *Held,* that the withdrawal of the appeal by which the plaintiffs lost their opportunity of having their cross-objection heard afforded no sufficient reason for enlarging the time, for the cross-appeal which he might have presented. CHUDASAMA MANABHAI MADARSANG *v.* ISHWARGAR BUDHAGAR I. L. R. 16 Bom. 249

68. ——— *Appeal by defendant under —Subsequent plaintiff for leave to appeal—sufficient cause for delay in filing appeal* The appellants (defendants) filed an appeal against the decree passed in this case on the 30th

LIMITATION ACT (XV OF 1877)—*contd.*

———— s. 5—*contd.*

August 1898, and on the same day gave notice thereof to the respondents (plaintiffs), who, on the 28th September 1898, filed cross-objections to the decree under s. 561 of the Civil Procedure Code (Act XIV of 1882). On the 2nd March 1899, the appellants gave notice to the respondents that they would not

Under these circumstances, the applicants showed "sufficient cause" for not filing their appeal within s. 5 of the Limitation Act (XV of 1877). HURGOVINDAS PRANJIVANDAS *v.* JADAVAHOO

I. L. R. 23 Bom. 692

69. ———— and s. 12—*Appeal, filing of, out of time—Period required for obtaining copy—"Sufficient cause" for delay.* Where a decree was passed on the 3rd December and signed on the following day and application for a copy was not made until the 10th and then with insufficient folios, and on the 11th the officer in charge made a report that the folios put in were insufficient, and 9 more were required, and the pleader for the appellant got the information the next day when he supplied the necessary folios, and the copy was ready for delivery on the 16th, and the appeal filed on the 9th January next, that is, 37 days after decree:—*Held*, that the Judge in the Court below was in error in throwing out the appeal on the ground that it was out of time, and that under the circumstances he might have exercised his dis-

70. ———— *Act XII of 1881 (N.-W. Provinces Rent Act), s. 93 (a)—Suit for rent—Limitation.* S. 5 of the Indian Limitation Act, 1877, applies to a suit under s. 93 (a) of the N.-W. Provinces Rent Act, 1881. *Muhammad Husen v. Muzaffar Husen, I. L. R. 21 All. 22*, dissented from. BENI PRASAD KUARI *v.* DHARAKA RAI (1901) . . . I. L. R. 23 All. 277

71. ———— *"Sufficient cause" for not presenting appeal within prescribed period—Interference with exercise of discretion by Appellate Court.* Plaintiff, who had in 1893 been dismissed by the first defendant from his office of *karnam*, endeavoured to establish his right to the office, in

LIMITATION ACT (XV OF 1877)—*contd.*

———— s. 5—*contd.*

plaintiff filed the present suit in the Court of the District Munsif, who on 29th January, 1898, dismissed it, on the ground that his jurisdiction was ousted by the Madras Proprietary Estates' Village

rejected his petition. A copy of the latter order was delivered to plaintiff on 14th July 1898, and he preferred an appeal to the Collector on 25th July 1898, which was dismissed on 25th November, 1898. A copy of that order was delivered to plaintiff on 7th December 1898, and the records were returned to him on 28th December 1898. On 4th January 1899 plaintiff preferred an appeal to the Subordinate Court against the Munsif's order of 29th January 1898. The Subordinate Judge admitted the appeal,

sif as the proper one. On its being contended, on second appeal, that the Subordinate Judge ought

ground of interference by the High Court. *Per* SIR ARNOLD WHITE, *C. J.*, (MOORE, *J.*, concurring) — The test is,—Has the discretion been exercised after appreciation and consideration of all the facts

and a certain conclusion is arrived at, that conclu-

during the period of delay,—not whether he had been misled by the Munsif, or whether his proceedings before the Collector were *bonâ fide*. *Per* BENSON, *J.*—There is a wide distinction between the law of limitation in respect of suits and in respect of appeals. The "sufficient cause" referred to in s. 5 of the Limitation Act apparently means not only those circumstances

LIMITATION ACT (XV OF 1877)—*contd.*

———— s. 5—*contd.*

which are expressly recognized as extending time, but also such circumstances as are not expressly recognized, but which may appear to the Court to be reasonable. KICHILAPPA NAICKAR *v.* RAMANUJAM PILLAI (1901) . I. L. R. 25 Mad. 166

72. ———— *Appeal—Joint appellants—Presentation of appeal beyond time—*

matter of the suit were not identical. Part of the property in suit consisted of a *kulkarni vatan*, one-third share of which (*inter alia*) was given by the decree to the plaintiffs. Eleven of the defendants appealed against the decree, of whom only six (defendants 1 to 6) had an interest in the *kulkarni vatan*. The decree was passed on the 11th April 1898, and the appeal was not presented until the 7th June 1898, *i.e.*, beyond the period (thirty days) allowed by the Limitation Act (XV of 1877). The only affidavit excusing the delay was made by defendant 14, who was not interested in the *kulkarni vatan*, and it stated reasons for the delay which were personal to himself,

given to the plaintiffs to a one-sixth share. The plaintiffs thereupon appealed to the High Court. *Held* (reversing the decree of the lower Appellate Court, and restoring that of the first Court), that the Appellate Court erred in altering the share of the *kulkarni vatan*. Defendant 14 had no interest in the variation of the decree, having no interest in the *kulkarni vatan*, and s. 544 of the Civil Procedure Code (XIV of 1882) did not apply. The variation was only in favour of defendants 1 to 6, who alone were interestd in the *vatans*. They,

73. ———— *Limitation—Appeal not presented within time—"Sufficient cause"—Appellant misled by his legal adviser as to course to be followed.* *Held*, that when a client *bonâ fide*

74. ———— *Admission of appeal after prescribed time—Application for excuse of delay—Practice.* To entitle a person to succeed

LIMITATION ACT (XV OF 1877)—*contd.*

———— s. 5—*contd.*

75. ———— *Appeal—Present-* ... *period—Delay* ... *Court in not* ... *the exercise of* ... proceedings

was passed on the 25th February 1899. An appeal

s. 5 of the Limitation Act, in a capricious or arbitrary manner. BHIMRAO *v.* AYYAPPA (1906) I. L. R. 31 Bom. 33

76. ———— *Sufficient cause—Appeal to the District Judge, which was dismissed on the ground of jurisdiction—Subsequent appeal to the High Court out of time.* An appeal against an

was barred by limitation under Art. 156, II of the Limitation Act: *Held*, that, inasmuch as

appellant was not entitled to an extension of by virtue of s. 5 of the Limitation Act, and that it was so barred. SARAT CHANDRA BOSE *v.* SARSWATI DEBI (1907) . . I. L. R. 34 Calc. 216

LIMITATION ACT (XV OF 1877)—*contd.*

——— s. 5—*contd.*

77. ——— Appeal in formâ pauperis—*Limitation—Leave to appeal refused—Time granted to file a regular appeal—Discretion of Court.* When a District Judge, after refusing an applicant leave to appeal *in formâ pauperis*, granted time beyond the expiry of the period of limitation for

taken to have exercised the powers conferred by that section, although the section was not referred to by the Court. *Bai Ful v. Desai Manorbhai Bhavanidas, I L. R. 22 Bom. 849*, approved. GIRWAR LALL v. LAKSHMI NARAYAN (1901) . I. L. R. 26 All. 329

78.——— *Limitation—Limitation Act (XV of 1877), ss 4, 5, 12, and Sch. II, Art. 170—"Appeal"—Leave to appeal in formâ pauperis.* The word "appeal," in s 5 of the Limitation Act (XV of 1877), does not include an application for leave to appeal *in formâ pauperis. Lakshmi v. Anant Shanbaga, I L. R. 2 Mad 230*, and *Parbati v Bhola, I. L R. 12 All 79*, referred to. SARAT CHANDRA DEY v. BROJESWARI DASSI (1903) . . I. L. R. 30 Calc. 790

79. ——— ss 5, 7, 8, Sch. II, Art. 21—*Representatives under Act XIII of 1855 not persons entitled to sue within the meaning of s 7 nor 'joint creditors' or joint claimants within the meaning of s. 8 of the Limitation Act—Construction of statute—Fatal Accidents Act (Indian) XIII of 1855—'Representative of the deceased,' who are—The right under the Act is distinct in each and is several, not joint right* The word 'representative' in Act XIII of 1855 does not mean only executors or administrators, but includes all or any one of the persons for whose benefit a suit may be brought under the Act and it makes no difference whether the deceased was a European or Eurasian. Under Art 21, Sch. II of the Limitation Act, the suit

Periasami v Krishna Ayyan, I. L. R 25 Mad. 431, followed. They are also not joint creditors nor joint claimants under s. 8 of the Limitation Act. Joint claimants are persons whose substantive rights are identical and not those who are

LIMITATION ACT (XV OF 1877)—*contd.*

——— s. 5—*contd.*

I. L. R. 26 Mad. 419

——— ss. 5, 12—

See CIVIL PROCEDURE CODE, 1882, s. 596 I. L. R. 28 All. 391

1. ——— *Appeal, if includes an application for leave to appeal in formâ pauperis—Practice* The word "appeal" in s 5 of the Limitation Act does not include an application for leave to appeal *in formâ pauperis Lakshmi v Ananta, I. L R 2 Mad 230*, and *Parbati v Bhola, I L R 12 All. 79*, referred to. SARAT CHANDRA DEY CHOWDHURY v. BROJESHWARI DASSI (1904) 8 C. W. N 906

2 ——— *Appeal filed out of time—Bonâ fide mistake of pleader in calculation—Application for admission—Order ex parte by a Division Court—Application for discharge of order by respondent—Delay—Costs incurred by appellant* Where an application for the admission of an appeal which was filed out of time by two days, was heard *ex parte* before a Division Bench and admitted,—*Held*, that, though the order was not conclusive on the respondents and they are entitled to object to the admission of the appeal at a later stage, the order of the Division Bench admitting the appeal should not be discharged when no facts which were not before that Bench are urged on behalf of the respondents *Held*, further, that on the facts of the present case the order admitting the appeal should not be discharged *inter alia* because the respondents' application was made after the records had been printed and costs incurred by the

12 C. W. N. 25

——— ss. 5, 14—

See APPEAL, DELAY IN FILING. I. L. R. 29 All 638

——— *Appeal—Delay—Time taken up in prosecuting an appeal in a wrong Court—Sufficient cause.* In a suit for partition the High

LIMITATION ACT (XV OF 1877)—*contd.*

——— s. 5—*contd.*

that Court on the 28th January 1903 upheld the order passed by the Subordinate Judge. Against this decision *D* preferred a second appeal to the High Court on the 17th April 1903, on the ground

who filed it in the High Court on the 17th July 1903 At the hearing a preliminary objection was raised that the appeal was pre-ented beyond time and that the delay could not be excused *Held*, that the appeal was presented beyond time; and that no sufficient cause for not filing the appeal before April 1903 having been shown, the delay in presenting it could not be excused under s 5 of the Limitation Act (XV of 1877) DAUDBHAI MUSABHAI *v* EMNABAI (1904)

I. L. R. 28 Bom. 235

——— ss. 5 and 19—*Acknowledgment given beyond time, but in vacation while right of suit still exists, as provided by s. 5 of Limitation Act.* The plaintiff brought this suit in 1900 to recover money due under a bond dated 16th October, 1894. He relied upon an acknowledgment given to him by the defendant, dated 28th October, 1897, as saving limitation, and contended that, although it was given after the period of three years from the date of the

(XV of 1877) BAI HEMKORE *v* MASAMALLI (1902)

I. L. R. 26 Bom. 782

——— s. 5, and Sch II, Art. 152—*Amendment of decree—Appeal—Limitation—Sufficient cause for non-presentation of appeal, within time.* Where the original decree was signed on the 6th July 1901, and the plaintiffs applied, on the 22nd instant, to have the same amended in respect of the name of a party, which had been incorrectly

LIMITATION ACT (XV OF 1877)—*contd.*

——— s. 5—*concld.*

recorded, and of the amount of the claim allowed, which had been entered as R606 instead of R1,600 and the amendment was made on the 22nd August. *Held*, that the period of limitation should be reckoned from the 22nd August as the date when the correct decree was prepared, and that an appeal filed on the 2nd September was within time.

——— s. 5 and Sch. II, Art. 173—*Civil*

1900.

On the 7th January, 1901, a second application for review of the judgment was filed. *Held*, that the second application was barred, having been presented beyond the period of ninety days prescribed by Art 173 of Sch II to the Limitation Act (XV of 1877), and that the time during which the previous application was under disposal could not be deducted. VAMAN SAKHARAM JOSHI *v.* MALHARI BIN MAHADU (1902)

I. L. R. 26 Bom. 485

——— s. 5A—*Delay in presenting appeal—Discretionary power of Court to excuse delay—Limitation Act, s 5A and s 14.* S 5A of the Limitation Act (XV of 1877) is, like s. 14, a man-

KHANDERAV *v* SMITH

——— s. 6—

See REGISTRATION ACT (III OF 1877), s. 77.

I. L. R. 30 Calc. 532

1. ——— *Act IX of 1871, s.*

computing the period of limitation are applicable to such suit, appeal, or application. S. 6 of Act IX of 1871 contrasted with s 6 of Act XV of 1877. BEHARI LALL MOOKERJEE *v.* MUNGOLANATH MOOKERJEE

I. L. R. 5 Calc. 110 : 4 C. L. R. 371

2. ——— *Act IX of 1871, s.* 6. S. 6 of Act IX of 1871 and s. 6 of Act XV of 1877 compared. GOLAP CHAND NOWLUCKHA *v.* KRISHTO CHUNDER DASS BISWAS

I. L. R. 5 Calc. 314

3. ——— *Special law of limitation.* In the absence of a special provision

LIMITATION ACT (XV OF 1877)—*contd.*

——— s. 6—*contd.*

applicable to special laws, the general rule that when limitation once begins to run it continues to

[illegible]

KAMIER . . . I. L. R. 5 Mad. [illegible]

4. ——— *Construction of s 6—Period of limitation.* The true construction of s. 6 of the Limitation Act, 1877, is that, save as to the period of limitation, the other provisions of the Act are applicable to cases governed by special and local laws of limitation. SESHAMA v SANKARA I. L. R. 12 Mad. 1

5. ——— *Special law of limitation—Mad Reg IV of 1816, s 5—Village Munsif—Civil jurisdiction—Limitation of suits.* S. 5 of Regulation IV of 1816, which prohibits Village Munsifs from trying any suit cognizable by them unless *inter alia* the cause of action had arisen within twelve years previous to the institution of such suit, does not exclude such suits from the operation of the Limitation Act, 1877 FRAJARI v MAYAN , I. L. R 9 Mad. 118

——— s. 7 (1871, s. 7; 1859, ss. 11, 12)—

See post, s. 8 . 6 C. W. N. 348

See BIRTH, PROOF OF I. L. R 29 All. 29

See DEBUTTER . 13 C. W. N. 805

See LUNATIC . I. L. R 19 Bom. 135

See REVENUE SALE LAW, s 33 13 C W. N. 518

See SALE IN EXECUTION OF DECREE—SETTING ASIDE SALE—GENERAL CASES. I. L. R 9 All. 411

1. ——— *Disqualification to sue.* No other cause of disqualification than those mentioned in the Limitation Act is admissible to save limitation RAM KISHORE ACHARJI CHOWDHARY v LUKHEE DEBEE CHOWDHRAIN W. R. 1864, 290

2. ——— *Voluntary absence after attaining majority* The plaintiff's voluntary absence abroad after attaining majority does not bar the operation of Act XIV of 1859 VENKATA SUBBA PATTAR v GIRI AMMAL 2 Mad. 113

3. ——— *Ignorance of accrual of cause of action by absence from country* [illegible]

4 ——— *Absence by reason* [illegible]

than twelve years In a suit by the plaintiff on his return to turn the defendant out of possession, in which the landlord was made a defendant:—*Held*, [illegible]

1 B. L. R. S. N. 25: 10 W R. 253

5. ——— *Adopted son—Dis-* [illegible]

KISHORE DOSS . . . . 5 W. R. 285

6. ——— He must bring his suit to set aside illegal acts of his adopting mother within three years of his attaining majority KISHEN MOHUN KHOOND v MUDDUN MOHAN TEWAREE 5 W. R. 32

7. ——— *Minors—Law of the party* The term "minors" used in s 12 of Act XIV of 1859 must be construed according to the law of the party in the case HARI MAHADAJI JOSHI v VASUDEV MORESHVAR JOSHI 2 Bom. 344, 2nd Ed. 325

8. ——— *Age of majority—Minor* For the purposes of the Limitation Act (IX of 1871), no person, whatever his domicile may be, is protected from the operation of the Act beyond the age of 18 and the three years of grace given by that Act RAINEY v NOBO COOMAR MOOKERJEE 5 C. L. R 543

9. ——— *Object of section* The object of the section of the Limitation Act relating to disabilities is not to place minors under a special disability as compared with majors, but to make a special concession in their favour BISSUMBHUR SIRCAR v SOORODHUNY DOSSEE 3 W. R. 21

KALEE DOSS CHATTERJEE v BEHAREE LOLL MOOKERJEE . . 2 W. R. 305

HURRIS CHUNDER NAG v ABBAS ALI 5 W. R. 204

10. ——— *Construction of section* The section merely means that no limita- [illegible]

11. ——— *Minority—Effect* [illegible]

4 Mad 54

LIMITATION ACT (XV OF 1877)—*contd.*

——— s. 7—*contd.*

12. ——— *Disability of minority* In computing the period of limitation under s. 11, the period of the plaintiff's legal disability by reason of minority cannot be deducted VIRA PILLAI *v.* MURUGA MUTTAYAN . 2 Mad. 340

13. ——— *Suit by mother and guardian of minor* A mother and guardian of a minor is entitled to a deduction from the computation of limitation of the period of the minor's legal disability. RAM CHUNDRA ROY *v.* UMBICA DOSSIA 7 W. R. 161

14. ——— *Suit by minor through guardian* In a suit by minor through her guardian for the recovery of property sold more than three years before the plaint was filed, plaintiff was held to be entitled to rely on the provisions of s. 11 of Act XIV of 1859, and to be therefore not barred by limitation. RAM GHOSE *v.* GREEDHAR GHOSE . . . . . . 14 W. R. 429

15. ——— *Effect of guardianship on minor's disability* The fact that a minor is for a time represented by a guardian does not remove the disability of the minor ANANTHARAMA AYYAN *v.* KARUPPANAN KALINGARAYEN I. L. R. 4 Mad. 119

16. ——— *Minor's right to sue—Disability* A suit by a guardian on behalf of a minor is that of the minor, and is governed by the law of limitation applicable to the minor KHODABUX *v* BUDREE NARAIN SINGH I. L. R. 7 Calc. 137 . 8 C. L. R. 306

SUFFUROONISA BIBEE *v* NOORUL HOSSEIN 17 W. R. 419

17. ——— *Minor's right to sue—Application by guardian for minor* Where a minor had been dispossessed of his share in certain property, which had been sold in execution of a decree and where an application under s 268 of Act VIII of 1859 to obtain possession of the share was [illegible]

of the infant who had been duly appointed:—*Held*, that such suit was not barred by limitation, the right to sue being that of the minor, and that it might be exercised by any one duly appointed on his behalf during his minority, or by the infant himself, within the time limited by s 7 of Act XV of 1877, after attaining his majority KHODABUX *v* BUDREE NARAIN SINGH I. L. R. 7 Calc. 137: 8 C. L. R. 306

18. ——— *Registration Act (III of 1877) s 77—Suit by infant to enforce registration—Special rule of limitation* The Registration [illegible]

conveyance having been instituted more than thirty days after refusal on the part of a Registrar to register, it is barred by limitation. VEERAMMA *v* ABBIAH I. L. R. 18 Mad. 99

See APPA RAU SANAYI ASWAR RAU *v.* KRISHNAMURTHI . . . I. L. R 20 Mad. 349

19. ——— *Suits under the Rent Act.* The provisions of the section were formerly held to be not applicable to suits under the Rent Act DINONATH PANDAY *v* ROHOONATH PANDAY . . . 5 W. R., Act X, 41

LUCHMUN SINGH *v.* MIRIAM. LUCHMUN SINGH *v.* KAZIM ALI KHAN . . . 5 W. R. 219

POORUN SINGH *v.* KASHEENATH SINGH 6 W. R. 20

SREE PERSHAD *v.* RAJGOOROO TREEUMBUKHNATH DEO . . . . 10 W. R. 44

But there is now no distinction in that respect between rent suits and other suits.

20. ——— and s 6—*Beng Act VIII of 1869—Suit for arrears of rent—Disability of minority.* In a suit under Bengal Act VIII of 1869 for arrears of rent, which accrued during minority, the plaintiff is not entitled to a fresh period of limitation under ss 6 and 7 of the Limitation Act, 1877. *Dinonath Panday v. Rojhoonath Panday, 5 W. R, Act X, 41*; *Behari Lall Mookerjee v. Mongolanath Mookerjee, I. L. R. 5 Calc 110*; *Golap Chand Nowluckha v Krishto Chunder Das Biswas, I. L. R 5 Calc. 314*; *Khoshelal Mahton v. Gonesh Dutt, I L. R 7 Calc. 690*; and *Phoolbas Koonwur v Lalla Jogeshur Sahoy, L R. 3 I. A 7 I L R. 1 Calc. 226*, explained. *Khetter Mohun Chakerbutty v. Dinabashy Shaha, I. L. R. 10 Calc. 265*, distinguished. GIRIJA NATH ROY *v.* PATANI BIBEE . . I. L. R. 17 Calc. 263

21. ——— *Act XIV of 1859, ss 11 and 12—Civil Procedure Code, 1859, s 246—Disability of minority. Held*, that the limitation of one year, provided by s. 246 of Act VIII of 1859, was subject, in the case of a minor, to be modified by ss. 11 and 12 of Act XIV of 1859. *Mahomed Bahadur Khan v. Collector of Bareilly, 13 B L. R 292*, distinguished, on the ground that it was decided on an Act of a very special nature. PHOOLBAS KOONWUR *v.* LALLA JOGESHUR SAHOY I. L R. 1 Calc. 226: 25 W. R. 285 L. R. 3 I. A. 7

HURO SOONDUREE CHOWDHRAIN *v.* ANUNDNATH ROY CHOWDHRY . . . . 3 W. R. 8

And the Act of 1877 now expressly applies to such cases, as also to cases of execution of decrees to which it was held the provisions of the Act of 1859 did not apply.

See ROTTY RUMAN OOPADHYA *v.* CHUNDEE BINODE OOPADHYA . . 5 W. R. Mis 10

CHUNDER COOMAR ROY *v.* SHURUT SOONDUREE DEBIA . . . . . 6 W. R. Mis. 37

LIMITATION ACT (XV OF 1877)—*contd.*

——— s. 7—*contd.*

TARUCKNATH MOOKERJEE *v.* POORNOCHUNDER CHATTERJEE . . . . 8 W. R. 137

MUTHOORA DOSS *v* SHUMBHOO DUTT 20 W. R. 53

22. ——— *Minority—Minor inheriting decree.* Where a decree-holder is under no legal disability to execute his decree, his son only succeeds to his right and is bound to execute his decree within the time which remained to the original decree-holder. ANNUNDIKOOMAR *v* THAKOOR PANDAY. . 1 Ind. Jur N. S. 31 4 W. R. Mis. 21

23 ——— *Suit by guardian of minor—Application by minor for execution of decree.* The guardian and administratrix of her minor sons obtained a money-decree against the defendants in August 1874, and on the 22nd February 1875 applied for its execution The application was struck off on the 30th July 1875, as no property belonging to the defendants could be found On the 16th of June 1881 the guardian died, and one of the sons, on the 20th of October 1882, soon after attaining his majority, made a fresh application for execution of the decree. *Held*, that the fresh application was not time-barred, the time from which the period of limi-

[illegible]

24. ——— *Execution of decree —Minor plaintiff—Application for execution by*

[illegible]

DERY DABEE

I. L R 9 Calc. 181 · 11 C. L. R. 34

25. ——— *Minor plaintiff—*

[illegible]

but on the 1st of April 1892, the minors through their mother again applied for execution *Held*, that the application for execution was not barred by s. 4 of the Limitation Act, read with art 179 of the second schedule, but that the operation of the Act was arrested by s. 7. Art. 179 provides several

[illegible]

is under disability at the time when any one of such

[illegible]

I. L. R. 20 Calc 114

26. ——— *Minor, applica-*

[illegible]

tion Act applies to applications in pending suits. GUNESHWAR SINGH *v* JAGADHATRI PERSAD NARAIN SINGH . . . . . 3 C. W N 24

27 ——— *Person under disability—Minor—Application by guardian on minor's behalf* Where the person entitled to make an application for execution of a decree is a minor at the time from which limitation is to be reckoned, s 7 of the Limitation Act saves the execution of the decree

[illegible]

Koonwur v Lalla Jogeshur Sahoy, I L R 1 Calc 226, referred to NORENDRA NATH PAHARI *v.* BHUPENDRA NARAIN ROY

I. L. R 23 Calc 374

28. ——— *Civil Procedure Code, 1882, ss 196, 598, and 599—Limitation Act (XV of 1877), Sch II, Art 177—Application to*

[illegible]

barred by limitation. THURAI RAJAH *v.* JAINILABDEEN ROWTHAN . I. L. R. 18 Mad 484

29 ——— *Joint decree-holders —Minor, right of, to execute whole decree when remedy of major joint decree-holder is barred* In execution of a decree for possession of certain lands and for mesne profits, dated the 15th August 1878, possession having been obtained in August

LIMITATION ACT (XV OF 1877)—*contd.*

——— s. 7—*contd.*

for the recovery of the amount when so ascertained. The judgment-debtors pleaded limitation *Held*, that under s. 7 of the Limitation Act, the remedy of the minor decree-holder was not barred, as the other decree-holder could not give a valid discharge without his concurrence. *Ahamudeen* v. *Grish Chunder*

his right was not extinguished ANANDO KISHORE DAS BAKSHI v. ANANDO KISHORE BOSE

I. L. R. 14 Calc. 50

30. ——— and s. 8—*Disability of minority—Execution of decree—Joint decree-holders.* A member of an undivided Hindu family and his two minor brothers (who sued by him as their next friend) brought a suit for partition of family property against their father and joined as defendants certain persons who were in possession of part of the property under alienations made by the father, but alleged in the plaint to be invalid as against the family In 1875 a decree was passed in favour of the plaintiffs in the above suit No application for the execution of the decree was made by either the first or second

joint decree-holders are minors, or labour under some other disability It does not seem to be intended to apply to cases in which the minor's interest can be protected by joint decree-holders, who are also interested in the subject-matter of the decree SESHAN v RAJAGOPALA. RAJAGOPALA v. RAMANADA **I. L. R. 13 Mad. 236**

31. ——— *Joint decree—Execution of—Civil Procedure Code, 1882, s 231—Minority of joint decree-holder—Application for execution after attaining majority—Limitation Act, s. 8 and Art 179.* G and his two minor nephews, S and D, obtained a decree on the 1st December 1885. G applied for execution on the 24th November 1886, and died in May 1887. S attained majority on the 15th December 1891, and, on the 24th July 1894,

could apply for execution within three years of attaining majority. S. 8 of the Limitation Act applies only to those cases in which the act of the

32. ——— *Minority.* S 8 of the Limitation Act, 1877, applies only to those cases in which the act of the adult joint creditor is *per se* a valid discharge. *Seshan* v *Rajagopala, I. L. R. 13 Mad. 236,* and *Govindram* v. *Tatia, I. L R. 20 Bom. 383,* followed. *Hargobind* v. *Srikishen, All Weekly Notes (1884) 58,* overruled A decree was passed in 1881 in favour of two decree-holders. Subsequently one of the decree-holders died, and the names of his widow and his two minor sons and one minor daughter were entered as his representatives In 1888 an application was made for execution by the widow on behalf of the minor sons, which was dismissed. In February 1884 the two sons of the deceased ...made another

one Aijaz

Act applied,

ime-barred.

I L R. 20

Bhupendra

followed.

22 All. 199

33. ——— *Period of successive minorities* In a suit instituted before Act XIV of 1859 came into operation, the periods of successive minorities might be deducted in reckoning the term of limitation. AMIRTOLAL BOSE v. RAJONEEKANT MITTER

15 B. L. R. 10: 23 W. R. 214
L. R. 2 I. A. 113

34. ——— *Act XIV of 1859, ss 11 and 12—Right of minor to sue by guardian.* The benefit of ss. 11 and 12 of Act XIV of 1859 is not limited to the period when the disability of minority has ceased, but applies also to the period during which the disability continues; and ... open to the

L. R. ... I. A.

LIMITATION ACT (XV OF 1877)—*contd.*

——— s. 7—*contd.*

s.c in lower Court, SADABURT PERSHAD SAHOO v LATF ALI KHAN. PHOOLBAS KOOER v LALL JUGESSUR SAHAI BIKRAMJIT LALL v. PHOOLBAS KOOER. RAM DHYAN KOONWAR v. PHOOLBAS KOOER . . . . . **14 W. R. 339**

See RAM AUTAR v. DHUNEE RAM **1 N. W. Ed. 1873, 122**

and BABOO MULL v. CHUJJOO MULL **4 N. W. 125**

35. ——— *"Representative"* —*Purchaser from minor. Quære:* Can the term "representative" in s. 11, Act XIV of 1859, be extended so as to include any purchaser from the minor suing in his lifetime? Whatever may have been the effect of s 11 of Act XIV of 1859 as to extending the privilege given to a minor to his representatives, s 7, the corresponding section of Act IX of 1871, limits the privileges to the minor himself and his representative after his death; and therefore a purchaser from a minor cannot claim the benefit of that section MAHOMED ARSAD CHOWDHRY v YAKOOB ALLY **15 B. L. R. 357: 24 W. R. 181**

36. ——— *Suit by minor on attaining majority* Suit to recover money advanced on a bond granted by the plaintiffs' father on the allegation that the money advanced was the plaintiffs', who were minors at the time In the absence of proof of knowledge on the part of the defendant of the benami character of the father's position, it was held that, whether the money of the loan really belonged to the plaintiffs or not, [illegible]

[illegible] BHOOSHUN ROY . [illegible]

MUKOOTNATH v JUGWUNT LALL **3 Agra 389**

TAPUK CHUNDER SEN v. DOORGA CHURN SEN **20 W. R. 2**

37. ——— *Minority—Disability—Guardian* Where the father of a minor lent on account a sum of money to the defendant, and died without having received back the money, and the account was continued with the defendant by the mother and guardian of the minor, and the balance was struck during the minority of the infant, it was held that the cause of action arose at the time such balance was struck; and that, as the cause of action accrued to the minor during his disability, his representatives could sue to recover the balance at any time during the time of disability and that a claim by the [illegible]

legal disability is not affected by the fact that during his minority he is represented by a guardian.

LIMITATION ACT (XV OF 1877)—*contd.*

——— s. 7—*contd*

MAHIPATRAV CHANDRARAV v. NENSUK ANANDRAV SHET MARVADI . . . **4 Bom. A. C. 199**

38. ——— *Suspension of right of suit for disability.* Limitation begins to run against a mother on her succeeding to a family estate as the heir of her son and under no disability, and cannot be stopped by any subsequent disability under s 11. A dispossession by a stranger to a family of a portion of the family estate is only one cause of action to the family arising on the date of dispossession; and though, in consequence of the minority of a cer- [illegible]

him to postpone again the period of limitation which has begun to run against the family GOBIND COOMAR CHOWDRY v HURO CHUNDER CHOWDHRY . . . . **7 W. R. 134**

39. ——— *Disability of heir —Cause of action.* Under s. 11, Act XIV of [illegible]

MOHABAT ALI v ALI MAHOMED KULAL **3 B. L. R. Ap. 80: 12 W. R. 1**

40. ——— *Minority—Omission to sue within three years after* The mere fact of a plaintiff not suing [illegible]

time when the cause of action accrued RADHAMOHUN GOWEE v MOHESH CHUNDER KOTWAL **7 W. R. 3**

41. ——— *Disability of heir* [illegible]

H in 1851, and had ever since been in possession. The lower Court found that the suit was barred as regards some of the plaintiffs, but that the other two plaintiffs, *R* and *N*, had not, at the time the suit was brought, exceeded their majority by three years, the time allowed them by s 11, Act XIV of 1859 *Held,* that, whether limitation would bar *R* [illegible]

LIMITATION ACT (XV OF 1877)—*contd.*

———— s. 7—*contd.*

be allowed to *R* and *N* after they came of age. NUR MOHAMMED *v.* THAKOOR BIBI
1 B. L. R. S. N. 18

42. ———— *Disability of heir—Cause of action.* *A* sued to set aside a deed of sale of certain immoveable property, which she claimed as the property of her husband. The deed of sale had been executed by her husband's mother during her husband's minority. Her husband attained his majority more than twelve years after the deed of sale, and died about a year afterwards, leaving her, *A*, a minor *A* alleged that she had ttained her majority within three years of this suit. *Held*, the suit was barred under s 11, Act XIV of 1859. The husband could have sued after attaining his majority, and the subsequent disqualification of the plaintiff *A* could not extend the time. ABHAYA DURGA *v.* HARI KRISHNA GOPE
1 B. L. R. S. N. 21 : 10 W. R. 285

43. ———— *Suit to set aside alienation of ancestral property.* A suit to set aside alienation of ancestral property, where a period twelve years from the date of such alienation had elapsed during plaintiff's minority, may be brought within three years (not twelve) from the time of his attaining majority. CHOWDHRY ZUHOORUL HUQ *v.* BAGOO JAN . . . **11 W. R. 532**

Affirmed on review, BAGOO JAN *v.* CHOWDHRY ZUHOORUL HUQ . . . **13 W. R. 69**

44. ———— *Suit to recover immoveable family property unlawfully alienated* [illegible]

during the plaintiff's minority, it must be instituted within one year of the plaintiff's attaining his majority under Sch. II, Art. 12 of the Limitation Act S. 7 of that Act must be read together with each article in Sch II, and when the period prescribed by the latter extends to three years or more and expire within three years from the date of attainment of majority, the intention is that the late minor should have the full three years. But when the period of limitation prescribed is less than three years, as in Art 12, and the minor has that period from the date of his majority, the prescribed period is not to be enlarged to three years SUBRAMANYA PANDYA CHOKKA TALAVAR *v.* SIVA SUBRAMANYA PILLAI
I. L. R. 17 Mad. 316

45. ———— and Art. 129—*Cause of action—Minority* In a suit by the reversionary heirs of one *S* to set aside an adoption alleged to have been made with the permission of *S*, the plaintiffs alleged that *S* died in 1844; that the adoption took place in 1845, and that they attained their majority respectively on the 26th September 1871 and the 20th December 1872. The suit was instituted on 16th June 1873. *Held*, that, the adoption having taken place after the death of *S*, the [illegible]

them to sue within three years of attaining their majority. SIDDHESSUR DUTT *v.* SHAM CHAND NUNDUN . **15 B. L. R. 9 note : 23 W. R. 285**

See MRINMOYEE DABEA *v.* BHOOBUNMOYEE DABEA
15 B. L. R. 1 : 23 W. R. 42

46. ———— and Art. 120—*Suit for declaration that alienation by Hindu widow is void—Former suit by a former reversioner barred by lapse of time, effect of, or subsequent suit by, minor.* A minor plaintiff instituting a suit which falls within Art 120 of the second schedule of the Limitation Act, 1877, is not excluded from the benefit of s. 7, merely because the right of some other person through whom he does not claim to sue for similar relief has become time-barred. The "right to sue" mentioned in the third column of Art. 120 means the right to sue of the plaintiff or of some one through whom he claims The "period of limitation" mentioned in s. 7 means the period of limitation for the suit which the plaintiff or some one through whom he claims is entitled to institute. *Siddhessur Dutt* v. *Sham Chand Nundun, 15 B. L. R. 9 note. 23 W. R. 285; Mrino Moyee Debia* v *Bhoobun Moyee Debia, 15 B. L. R. 1 23 W. R. 42; Gobind Coomar Chowdhry* v. *Huro Chunder Chowdhry, 7 W. R 134;* and *Gobind Chandra Sarma Mazoomdar* v *Anand Mohan Sarma Mazoomdar, 2 B. L R A C. 313,* referred to. BHAGWANTA *v.* SUKHI . . . . **I. L. R. 22 All. 33**

47. ———— and Art. 44—*Minority, disability of—Alienation by guardian of property of minor—Cause of action.* *K R* died in 1844, leaving a widow, *O T*, and a minor son, *G D* In 1847 *O T* executed in favour of the defendant a mirasipara of certain property, but it did not appear whether she so acted as guardian or mother of *G D*. *G D* died in 1855 before attaining majority, and, [illegible]

that, if the alienation was made by *O T* as guardian of *G D*, the suit was not barred, it having been brought within three years after the plaintiff attained his majority; if made by her as a Hindu widow, the suit was still not barred, the cause of action not arising until her death, when the plaintiff was a minor PROSONNA NATH ROY CHOWDRY *v.* AFZOLONNESSA BEGUM
I. L. R. 4 Calc. 523 : 3 C. L. R 391

48. ———— *General principle of law as to the disability of minors—Provisions of the Civil Procedure Code (Act XIV of 1882)—Minor represented by a guardian.* S. 7 of the Limitation Act, strictly speaking, only applies to cases dealt

LIMITATION ACT (XV OF 1877)—*contd.*

—— s. 7—*contd.*

circumstance that a minor has been represented by a guardian does not affect the question. MORO SADASHIV v. VISAJI RAGHUNATH
I. L. R. 16 Bom. 536

49. —— *Minority—Right to sue—Personal exemption—Assignment by minor* Under s. 7 of the Limitation Act, a minor has, in respect of a cause of action accruing during his

ed to the minor by s. 7 of the Limitation Act, but is subject to the ordinary law of limitation governing suits in which relief of the same nature is claimed RUDRA KANT SURMA SIRCAR v NOBOKISHORE SURMA BISWAS. SAMOD ALI v MAHOMED KASSIM
I. L. R. 9 Calc 663: 12 C. L. R. 269

50. —— *Disability of*

ability continues up to his death, which occurs within those twelve years, leaving some (say eight)

self a minor does not give him any more time, as he can sue through his guardian or next friend. SOOKH MOYEE CHOWDHRAIN v RAGHUBENDRO NARAIN CHOWDHRY . . . **24 W. R. 7**

51. —— *Malabar law—Compromise of doubtful claims by adult members of a tarwad—Suit by junior members to rescind the compromise* In 1878, the senior members of a Malabar tarwad, in *bona fide* compromise of certain doubtful claims, executed an instrument conveying away certain land of the tarwad In 1891, certain junior members of that tarwad, including several minors, sued to recover possession of the land in question, Others of the junior members of the tar-

majority in 1878 *Held*, that the suit was barred by limitation MOIDIN KUTTI v BEEVI KUTTI UMMAH . . . **I. L R 18 Mad 38**

52. —— **and Sch. II, Art 165**—*Dispossession in execution—Application of restoration to possession on behalf of a minor* Limitation Act, 1877, Sch. II, Art 165, is applicable to a case

LIMITATION ACT (XV OF 1877)—*contd.*

—— s. 7—*contd.*

Limitation Act, 1877, s 7. RATNAM AYYAR v KRISHNA DOSS VITAL DOSS
I. L. R. 21 Mad. 494

53. —— **and ss. 9, 19**—*Minority of plaintiff—General Clauses Act (I of 1868), s. 3, cl 2—Acknowledgment.* Suit to recover principal

iff's father died in 1875, the defendants made

I L R. 13 Mad. 135

and the cases of JUNGOO LALL v LALA ALUM CHAND . . . . **7 W. R 279**
and RAJA RAM v BANSI **I L. R. 1 All. 207**
the former under the Act of 1859, and the latter under the Act of 1871, decided that the sections relating to the disability of minority in those Acts did apply to such suits

54. —— **ss. 7, 18 and 28, and Sch. II, Arts 142, 144**—*Joint family—Separate estate—Possession discontinuance of—Property, extinguishment of right to* Under s 7 of the Limitation Act, a person under disability cannot bring his suit after 3 years after the disability ceases

GARU v MAGUNI DEVAN BAKSHI MAHAPATRULU GARU (1901) **I. L. R. 24 Mad. 387**
s c 5 C. W. N. 545; L R. 28 I. A. 81

55. —— *Shebait of an idol, if a minor—Right of suit—Hindu Law—Endowment—Complete and partial dedication—Difference* The possession and management of a property dedicated to an idol belongs to the shebait, and this carries with it the right to bring whatever suits are necessary for the protection of the property. Every such right of suit is vested in the shebait and not in the idol.

LIMITATION ACT (XV OF 1877)—*contd.*

——— s. 7—*contd.*

sue after he attains his majority. JAGADINDRA NATH ROY *v.* HEMANTA KUMARI DEBI (1904) **8 C. W. N. 809**

56. ——— *Minor—Decree-holder—Civil Procedure Code (Act XIV of 1882), s. 231.* When one only of several joint decree-holders is a minor s. 7 of the Limitation Act saves an application for execution by the minor decree-holder from being barred by limitation. *Seshan v. Rajagopala, I L R. 13 Mad. 236 ; Narayanan Nambudri v. Damodaran Nambudri, I. L. R. 17 Mad. 189,* dissented from. *Govindram v. Tatia, I. L R 20 Bom. 383 ; Zamir Hassan v. Sundar, I L R. 22 All. 199,* followed. SURJA KUMAR DUTT *v.* ARUN CHUNDER ROY (1901) **I. L. R 28 Calc 465 s.c 5 C W. N. 767**

57. ——— *Where limitation is determined by the provisions of the Bengal Tenancy Act, whether a minor is entitled to a further period of limitation under the Limitation Act?* S 7 of the Limitation Act allows a minor a further period of limitation in the case of a suit or application for which the period of limitation is provided in the third column of the second Schedule to that Act. But in a case where the limitation is determined by the provisions of s 167 of the Bengal Tenancy Act, s 7 of the Limitation Act cannot have any application, and the minor is not entitled to any fresh period of limitation *Girija Nath Roy Bahadur v. Patani Bibee, I. L. R 17 Calc 263,* referred to. AKHOY KUMAR SOOR *v* BEJOY CHAND MOHATAP (1902) **I. L R. 29 Calc. 813**

58. ——— *Civil Procedure Code (Act XIV of 1882), s. 368—Appeal by guardian, abatement of—Laches of guardian, effect of—Application on behalf of minors to restore appeal —Right to apply joint and not several.* Where two

the application of another guardian have the appeal restored and proceeded with. *Per* DAVIES, J —The order of abatement under s 368 of the Code of Civil Procedure is absolute The minors being bound by

Procedure contemplates an appeal pending. Even

LIMITATION ACT (XV OF 1877)—*contd.*

——— s. 7—*contd.*

if it could be so considered, the application would be barred as the minors were interested jointly with others, who laboured under no disability. *Periasami v. Krishna Ayyan, I. L. R. 25 Mad. 431,* followed. *Per* SUBRAHMANIA AYYAR, J.—On the death of respondent the right to have his representatives added as parties vested *jointly* and not *seve-*

MENON (1905) . . **I. L. R. 28 Mad. 555**

59. ——— *Limitation Act (XV of 1877), s. 7—Execution proceedings—Death of decree-holder pending stay of execution—Right of minor to revive proceedings—Limitation* Where a mortgagee decree-holder applied for sale of the mortgaged properties, but on objection the proceedings were stayed and before the stay order was removed the decree-holder died leaving a minor son and shortly afterwards the stay order was removed and the application for sale also was struck off. *Held,* that the minor heir of the decree-holder was entitled to the protection of s. 7 of the Limitation Act and an application for sale made on his behalf more than 3 years after was not barred by limitation ABDUL LATIF *v.* RAJANI MOHUN ROY (1907) . . . . **11 C. W. N. 831**

60. ——— *Evidence—Proof*

difficult to prove such a fact as to date of birth after a lapse of many years, and it would ... class of evi- ... l in a similar ... yet be such as ... the mind. In this case on the proof of the date of the plaintiff's birth depended the question of whether or not the

I. L. R. 23 All. ...

——— **s. 7, and Sch. II, Art. 11—**

——— *Minor—Representative —Assignee from minor—Civil Procedure Code (Act XIV of 1882), s 335—Order—Suit to set aside order—Limitation.* In execution of a decree, one Rudraji purchased the lands in dispute in September, 1887. Rudraji then died, and the lands were delivered, through the Court, into the possession of Rudraji's heirs, in December, 1888. The defendant applied to the Court, under s. 335 of the Civil Procedure Code (Act XIV of 1882), with the result that on the 23rd February, 1889, the Court ordered that the lands

LIMITATION ACT (XV OF 1877)—*contd*

——— s. 7—*contd*

should be given to him On the 21st April, 1892, Rudraji's heirs, who were still minors at the date of this suit, assigned their rights to the plaintiff On the 21st January 1899, plaintiff filed this suit to recover possession of the property *Held*, that the plaintiff's claim was barred under Art 11 of Sch II to the Limitation Act (XV of 1877), as no suit had been brought to set aside the order passed under s. 335 of the Civil Procedure Code (Act XIV of 1882) within one year either from the date of the order itself or from the date of the assignment to the plaintiff The provisions of s 7 of the Limitation Act (XV of 1877) extend only to a minor and to his representatives after his death, but not to an assignee from the minor. *Rudrakant v Nolo Kishore, I L R 9 Calc 663*, and *Haral Chand v Deonath Sahay, I. L R 25 Calc 409*, followed MAHADEV RAM MESTA SUTAR *v.* BABI CHIMNAJI SUTAR (1902) . . **I. L. R. 26 Bom 730**

——— **s. 7, Sch II, Art 149**—

See LIMITATION **I. L. R. 32 Calc. 129**

See MESNE PROFITS.
I. L. R. 32 Calc. 118

——— **s. 7, Sch II, Art 149**—*Endowment—Cause of action—Minor sebait—Suit on attaining majority—Idol, position of—Complete and incomplete dedications—Right of sebait to sue with respect to endowed property—Succession of management of endowed property—Suit by guardian during minority, right of—Suit by lessee under Government.* In a suit to recover possession of land it was found by both the Courts below

property, or to its management and control, followed the line of inheritance from the founder

LIMITATION ACT (XV OF 1877)—*contd.*

——— s. 7—*contd*

Gossami Sri Gridhariji v. Romanlalji Gossami, I L. R. 17 Calc 3 : L. R. 16 I A. 137, followed

tion Act is not applicable to a suit brought by a person, claiming a title under a settlement pottah from Government. JAGADINDRA NATH ROY *v.* HEMANTA KUMARI DEBI (1905)
I. L. R. 31 Calc. 129
s c. L. R. 31 I. A. 203

——— **ss. 7 and 8, and Sch. II, Art. 106**
—*Suit by joint claimants, one being a minor—Bar of limitations saved as against all* In 1885, five persons commenced to carry on business in partnership. In 1890 *P* (one of them) died. No accounts were taken, nor were the heirs of *P* introduced as partners into the partnership The four surviving partners continued to carry on the business In 1891, *C* (one of them) died. No accounts were taken, nor were the heirs of *C* introduced as partners into the partnership The three surviving partners continued to carry on the

The third plaintiff was a minor at the date of *C*'s death, and was still in her minority at the date of suit On its being contended that the suit was

account and a share of the profits of the original partnership When a partnership is determined by

tinued a minor The effect of s 8 was to save the bar in the case of all the plaintiffs, as they were

LIMITATION ACT (XV OF 1877)—*contd.*

——— s 7—*contd.*

cussed. The decision in that case held inapplicable to a case of co-heirs. *Seshan* v. *Rajagopala, I. L. R. 13 Mad 236;* and *Kandhiya Lal* v. *Chandar, I. L. R 7 All. 313,* approved as to the construction of s. 7 of the Limitation Act. AHINSA BIBI *v.* ABDUL KADER SAHEB (1901)

I. L. R. 25 Mad. 26

——— **ss. 7 and 8, and Sch. II, Art 179** —*Application for execution of decree—Joint decree in favour of three persons—Previous application, more than three years before, while one decree-holder was a minor—Attainment of majority by that decree-holder within three years of present application—Limitation — "Joint execution-creditors"—"Joint creditors"— "Person entitled"—Civil Procedure Code (Act XIV of 1882), s 231* On 30th June, 1892, a joint decree was passed in favour of three brothers, who, at the date of the decree, were all minors On 8th January, 1896, the last application for execution, previous to the present one, was made. At this date two of the brothers had attained majority and one was a minor. On 25th February, 1899, the present ap-

have been made in accordance with law *Held,* that the decree was not capable of execution, either as a joint decree, or to the extent of the interest of the youngest decree-holder. S 7 of the Limitation Act, 1877, only applies where all the joint execution-creditors were under disability at the time when the period of limitation began to run Joint execution-creditors are not "joint creditors," within the meaning of s 8 of the Limitation Act, 1877 The words "a person entitled to institute a suit or make an application," in s 7 of the Limitation Act, refer to one who, in his own right, is so entitled, and not to a person who, by a rule of procedure, such as that contained in s 231 of the Code of Civil Procedure, is authorised, with the permission of the Court, to make an application for execution for the benefit of himself and others interested jointly with him in the decree to be executed. *Surja Kumar Dutt* v *Arun Chunder Roy, I L. R. 25 Calc 405,* dissented from. *Seshan* v. *Rajagopala, I. L. R 13 Mad. 236,* and *Vigneswara* v *Bapayya, I L R 16 Mad. 436,* approved PERIASAMI *v.* KRISHNA AYYAN (1902) . . . **I. L. R. 25 Mad 431**

——— ss. 7, 9 and Sch. II, Arts. 142, 144

son (an infant) in bringing a suit, when no suit had been brought by the widow, was entitled to the benefit of s 7 of the Limitation Act. HAREK CHAND BABU *v* BEJOY CHAND MAHATAB (1905)

9 C. W. N. 795

LIMITATION ACT (XV OF 1877)—*contd.*

——— s. 7—*concld.*

——— **ss. 7, 9, 13, Sch. II, Art. 179, cl. (4)**—*Execution of decree—Application by minor after previous application presented in time by deceased decree-holder—Minor's application beyond time—Disability—Inability.* A decree-holder, after making various applications for execution of a decree, each of which was within time, died. His

application for execution was time-barred, it not being a case of initial disability, but of subsequent disability *Per* JENKINS, *C.J.*—Inability to sue is distinct from disability, which means want of legal capacity and for the purposes of the Limitation Act (XV of 1877) is the state of being (as s. 7 indicates) a minor, insane or an idiot. A subsequent disability does not stop time that has once begun to run. *Lolit Mohun* v. *Janoky Nath, I. L. R. 20 Calc. 714,* distinguished. JIVRAJ *v* BABAJI (1905) . . . . **I L. R. 29 Bom. 68**

——— **ss. 7, 17, Sch. II, Art. 106**—*Limitation Act—Suit for partnership account and share of partnership assets—Good-will and trade-marks, if assets—Minority of plaintiff—Right to sue, accrual of to administrator pending minority —Effect* A suit by the heir of a deceased partner against

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tion Act. The fact that there were unrealised assets

s 17 and the operation of the earlier section must be regarded as qualified by and subject to the exception prescribed by the later section. *Rivett-Carnac* v. *Gokuldas, I. L R. 20 Bom 15,* followed. *Bhugwandas* v. *Rivett-Carnac, 3 C. W. N. 186 : s c. I. L. R 23 Bom. 549;* and *Jogadindra Nath Roy* v. *Hemanta Kumari Debi, 8 C. W. N. 809 : s c. L. R 31 I. A. 203,* referred to. *A,* a partner of

brothers for an account and share of the profits of the dissolved partnership: *Held,* that the suit was barred by limitation. MOHIT LALL DUTT *v.* RAJ NARAIN DUTT (1905) . **9 C. W. N 537**

——— s. 8—

See ante, SS. 7 AND 8 AND SCH II, ART 106.

See ante, SS. 7 AND 8 AND SCH. II, ART. 179.

LIMITATION ACT (XV OF 1877)—*contd.*

——— s. 8—*contd.*

See Hindu Law—Alienation 13 C. W. N. 815

See Limitation I. L. R. 31 All. 156

See Madras Revenue Recovery Act, s. 59 I. L. R. 17 Mad. 189

1. ——— *Joint Hindu family—Debt due to family—Joint creditors.* The manager of a joint Hindu family of which *S* was a minor member lent money on behalf of the family to *K*. The time limited by law for a suit for such money was three years from the date of the loan. During that period there were several members of the family who were *sui juris*. After attaining his age of majority, *S* sued *K* for such money, and, as the period limited by law for such suit has expired, relied on the saving provisions of s. 8 of the Limitation Act, 1877. *Held*, that, although during such period *S* was one of several joint creditors,

suit was therefore barred by limitation. Surju Prasad Singh *v.* Khwaish Ali
I. L. R. 4 All. 512

2. ——— *Cause of action, accrual of, during minority—Minor's right to sue after attaining majority.* The plaintiff, having attained majority on the 11th March 1882, sued the defendant, within three years from that date, upon a bond obtained in 1872 by his mother and guardian *in the plaintiff's name alone.* The defendant contended that the plaintiff's brother, who was capable of giving a valid discharge to his debtors, having failed to sue within proper time, the suit was barred. On reference to the High Court:—*Held*, that the suit was not barred. The plaintiff's

3. ——— *Joint decree-holders—Disability of minority—Civil Procedure Code, 1882, ss. 231, 258—Execution of decree.* S. 8 of the Limitation Act does not appear to include

joint decree-holder, but the act of the Court executing the decree that is intended to operate as a valid discharge. S. 8 of the Limitation Act applies only to those cases in which the act of the adult joint owner is *per se* a valid discharge. Seshan *v.* Rajagopala. Rajagopala *v.* Ramanada . . . I. L. R. 13 Mad. 236

4. ——— *Joint Hindu*

come of age several years earlier and had taken no steps to repudiate the transaction. *Held*, that the suit was not barred by limitation. *Periasami v. Krishna Ayyan, I. L. R. 25 Mad. 431,* and *Vigneswara v. Bapayya, I. L. R. 16 Mad. 436,* referred to. Ganga Dayal *v.* Mani Ram (1908)
I. L. R. 31 All. 156

5 ——— and 7——*Disability of one of two joint claimants—Transfer of Property Act (IV of 1882), s. 99—Usufructuary mortgage—Suit to set aside sale in "execution" of decree.* In

Held, that the sale in execution sought to be set aside was illegal under Transfer of Property Act, s. 99, but that the suit to set it aside was barred by limitation. Vigneswara *v.* Bapayya
I. L. R. 16 Mad. 436

6. ——— *Limitation Act (XV of 1877), ss. 7, 8—Decree obtained by an adult jointly with minors.* Where a rent decree was obtained by an adult plaintiff and three minors who were described in the plaint as suing through the adult plaintiff as their guardian: *Held*, that, the adult plaintiff being entitled to obtain the decretal amount and give a valid discharge, the

7. ——— *Suit for contribution by debtor who has paid money due under a bond against heir of co-obligor of bond—Limitation—Minority—Nature of the rights of co-obligees discussed.* In the case of co-obligees of a money bond, in the absence of anything to the contrary, the presumption of law is that they are entitled to the debt in equal shares as tenants in common. *Steeds v. Steeds, 22 Q. B. D. 537,* referred to. Hence, where one of two co-obligees is a minor, limitation will run as against the other co-obligee who is not a minor, in respect of that portion of the debt to which he is entitled, and s. 8 of the

LIMITATION ACT (XV OF 1877)—*contd.*

——— s. 8—*concld.*

Indian Limitation Act, 1877, will not apply. MANZUR ALI *v* MAHMUD-UN-NISSA (1902)
I. L. R. 25 All. 155

——— s. 9—

See ante, s 7 . . 9 C. W. N. 795
See post, s. 13 . I. L. R. 6 Bom. 103
I. L. R. 4 All 530
I. L. R. 8 Bom. 561

——— *Dispossession—Action in ejectment, previous—Issue between defendants—Original and appellate judgments, period intervening—Right of action in suspense—Limitation Act (XV of 1877), ss. 9 and 14, Sch. II, Arts 142 and 144.* C's heirs brought a suit for possession against the respective heirs of *B* and *M* claiming a certain share in a certain property in the possession of the heirs of *B*. In the judgment in the action pronounced on the 20th April 1903 upon an issue raised by the defendants, the heirs of *B* as between themselves and their co-defendants the heirs of *M*, it was declared that the latter were entitled to a share in the property. The Appellate Court set aside on the 22nd February 1904 the judgment of the lower Court, so far as it affected *M*'s heirs on the ground that in a suit in ejectment no decree could be made against a co-defendant. *M*'s heirs, then, on the 14th November 1904, instituted this suit for a declaration of their share in the property, for possessi[illegible] they ha[illegible] 1892. [illegible] it to be [illegible] that the plaintiffs were entitled to deduction of [illegible]

[illegible] SEN *v* MODHU SUDAN SEN (1907)
I. L. R. 35 Calc. 209
s.c. 12 C. W. N. 326

——— ss. 9, 18—

See SALE IN EXECUTION.
I. L. R. 36 Calc. 654

——— ss. 9, 22—

See LEASE . I. L. R. 36 Calc. 675

——— ss. 9, 25—

See MARINE INSURANCE.
I. L. R. 36 Calc. 516

LIMITATION ACT (XV OF 1877)—*contd.*

——— s. 9—*contd.*

——— s. 9, Sch. II, Art. 14—

See PARTITION . I. L. R. 36 Calc. 726

——— s. 9, Sch. II, Arts. 36, 39, 49—

See LIMITATION . I. L. R. 36 Calc. 141

——— s. 9, Sch. II, Art. 75—

See WAIVER . I. L. R. 36 Calc. 394

——— s. 9, Sch. II, Arts. 134, 144—

See HINDU LAW—ENDOWMENT.
I. L. R. 36 Calc. 1003

——— s. 9, Sch. II, Art. 180—

——— *"Revivor of judgment," meaning and effect of—Scire facias, analysis of—* [illegible]

not absolutely necessary—Two Codes, not to be so construed as to be conflicting—Civil Procedure Code (V of 1908), s. 48. When the Legislature used the term "revivor of judgment" in the Limitation Acts of 1871 and 1877, they had in view the procedure embodied in s 216 of the Code of Civil Procedure of 1859 and s. 248 of the Code of 1877 and also the proceedings to revive then current in the Supreme Court, which were closely analogous to the (English) Common Law Procedure Act of 1852. *Scire facias* analyzed and its history traced. There is the same provision for revivor of judgments under the present law as there was under the old Statutes of Limitation. *Tincourie Dawn* v. *Debendro Nath Mookerjee, I. L. R. 17 Calc 491,* dissented from. *Ashootosh Dutt* v. *Doorga Churn Chatterji, I. L. R. 6 Calc. 504,* followed. *Monohar Das* v *Futteh Chand, I. L. R 30 Calc. 979,* explained and dis- [illegible]

settled principle of construction that the Legislature is presumed to know not only the general principles of law but the construction which the Courts have put upon particular Statutes. English [illegible]

LIMITATION ACT (XV OF 1877)—*contd.*

——— s. 9—*concld.*

vandas, I. L. R. 6 Bom. 25S, Ganapathi v Balasundara, I. L. R. 7 Mad 540, and *Futteh Narain Chowdhry v. Chundrabati Chowdhrain, I. L. R. 20 Calc. 551,* followed Code of Civil Procedure of 1908, s. 48, noticed in this connection It is not necessary for the remaining decree-holders to make a *formal* application for substitution of a deceased decree-holder Section 234 of the Code merely requires that the legal representative should apply for execution of the decree and that his name should be brought on the record. *Syed Nadir Hossein v Baboo Pearoo Thovildarinee, 19 W. R. 255,* and *Ballishoon v Mahommed Tamaz Allee, 4 All. H C 50,* referred to. JOGENDRA CHANDRA ROY v SHYAM DAS (1909)
I. L. R. 36 Calc. 543

——— s. 10 (1871, s. 10; 1859, s. 2)—

See DEBTOR AND CREDITOR.
I. L. R. 25 Calc. 642

See EXECUTION . 13 C. W. N. 557

See EXPRESS TRUST
I. L. R. 31 Bom. 418

See TRANSFER OF PROPERTY ACT, s 119
I. L. R. 30 Mad. 316

See TRUST . I. L. R. 18 Bom. 551
I. L. R. 30 Calc. 369

1. ——— *Trustee—Benamidar* A benami transaction does not create the relation of trustee and *cestui qui* trust. A benamidar is not a trustee within the meaning of s. 2, Act XIV of 1859 UMA SUNDARI DASI v DWARKANATH ROY . 2 B. L. R. A. C. 284: 11 W. R. 72

2. ——— *Trustee—Mortgagee in possession* A mortgagee in possession after the mortgage has been satisfied is not a trustee for the mortgagor within the meaning of s. 2 of Act XIV of 1859 LALL DOSS v JAMAL ALI
B. L. R. Sup. Vol. 901: 9 W. R. 187

3 ——— *Trust—Master and servant.* *A* advanced certain sums of money on different occasions to his servant, *B*, for the purpose of erecting buildings, etc, for *A* In a suit by *A* for recovery of the balance, *B* raised the defence that the suit was barred so far as it related to sums advanced more than three years before the suit. *Held,* that the matter was of the nature of a trust, and limitation would not apply. NARAYAN DAS v MAHARAJAH OF BURDWAN
1 B. L. R. S. N. 11: 10 W. R. 174

4. ——— *Trustee—Mahomedan lady's estate.* In a suit by the purchaser of a Mahomedan lady's share in her father's property against her brother, it was held that as the property, while in the hands of the brother, was in the hands of a trustee, and not in adverse possession limitation could not apply. BACHARAM CHOWDRY v. MAHTAB BIBEE . . W. R. 1864, 377

LIMITATION ACT (XV OF 1877)—*contd.*

——— s. 10—*contd.*

5. ——— *Trust—Position, as regards the daughters, of sons managing estate of deceased Mahomedan.* A solehnama in 1847, to which were parties the sons, daughters, and widow of a deceased Mahomedan proprietor, transferred the shares of two minor daughters in

[illegible]

sons managed the property after their father's death, and at the time the solehnama was executed. *Held,* on the question of limitation, that it was not to be inferred that the sons, by reason of their having managed their late father's estate, should be regarded as trustees, at the time of the execution of the solehnama, for the daughters; and therefore s. 10 of Act XV of 1877 was inapplicable So that, as regards the property included in the solehnama, a suit brought in 1882 by the daughters would be barred by time. MAHOMED ABDUL KADIR *v.* AMTAL KARIM BANU . I. L. R 16 Calc. 161
L. R. 15 I. A. 220

6. ——— *Trustee—Depository—Immoveable property made over to defendant to sell and pay to plaintiff—Limitation Act, 1859, cl. 15, s. 1* Where immoveable property was given into the possession of the defendant under an order of a Revenue officer, which directed the defendant to sell the crops and, after payment of Govern-

[illegible]

7. ——— *Trustee—Possession of property not for person's own use* Where property is vested in a person partly for charitable purposes and partly for the benefit of others, and

[illegible]

8. ——— *Trustee—Idol.* In a suit by the representatives of a shebait to recover possession of property of an idol from the assignees of a purchaser, on the ground that the

[illegible]

as a suit brought against a trustee. BRAJA SUNDARI DEBI *v.* LUCHMI KUNWARI
2 B. L. R. A. C. 155

s c on appeal to the Privy Council, BROJOSOONDERY DEBIA *v* LUCHMEE KOONWAREE
15 B. L. R. 176 note

9. ——— *Suit against dharmakarta of temple to recover money misappropriated.* Plaintiff, as dharmakarta of a Hindu temple, alleging that the defendant, a former

LIMITATION ACT (XV OF 1877)—*contd.*

——— s 10—*contd.*

dharmakarta, who had been removed from office had, when in office, misappropriated certain temple funds held by him, sued to recover a certain sum alleged to have been misappropriated *Held*, that the defendant was a person in whom the temple funds had become vested in trust for a specific

10. ——— *Persons holding endowed property in trust* No limitation applies in the case of persons holding endowed property in trust and under accountability, but no indulgence should be shown to a plaintiff who brings forward claims so stale and antiquated that difficulty arises in finding any reliable evidence whereby to decide on their validity and extent. BUZL RAHIM *v.* LUTAFUT HOSSEIN. KHODEJOONISSA BIBEE *v.* LUTAFUT HOSSEIN . . W. R. 1864, 171

11. ——— *Suit to establish right to beneficial interest in proceeds of debutter land.* A suit to establish a right to a beneficial interest in the surplus proceeds of debutter and after providing for the worship of the idol, where the parties were shebaits, was held to be not a suit between co-trustees to the share claimed, but one *to which the Law of Limitation would apply.* MOHAMAYA DOSSEE *v.* BINDOO BASHINEE DOSSEE

19 W. R. 35

12. ——— *Specific trust—Suit to remove trustee.* In a suit brought for the purpose of removing the trustees or managers of

Held, that the suit was one for the purpose of following the property in the hands of trustees within the meaning of s 10 of the Limitation Act (XV of 1877), and therefore limitation did not run. SREENATH BOSE *v.* RADHA NATH BOSE

12 C. L. R. 370

13. ——— *Suit for possession against agent in charge of endowed property.* A suit for possession against an agent or deputy in charge of endowed property was not barred by limitation according to s 2, Act XIV of 1859. GHOLAM NUJJUFF *v* TOOSOODDUCK HOSSEIN

1 W. R. 126

14. ——— *Religious endowments—Gossami muth—Grant by the head of the muth to his brother for his maintenance—Suit by a successor to recover the land.* In 1544 a village was

LIMITATION ACT (XV OF 1877)—*contd.*

——— s. 10—*contd.*

the plaintiff for possession of the lands in the

BAGI AMMAL . . . I. L. R. 18 Mad. 266

15. ——— *Trustee—Constructive trust—Court of Wards taking possession of estate under order of Government—Mad. Reg. V of 1804—Mad. Reg VII of 1808.* The Government, by directing the Court of Wards to take charge of an estate during the minority of the next claimants, does not constitute itself a trustee for the rightful

KONDA ZAMINDAR (ZAMINDAR OF PALKONDA) *v.* SECRETARY OF STATE FOR INDIA

I. L. R. 5 Mad. 91

16. ——— *Co-sharers—Trustees* The non-receipt of a share of the profits of an estate is no cause of action between shareholders from which limitation runs. SHIBO SUNDARI DASI *v* KALI CHURAN RAI

W. R. 1864, 296

17. ——— *Trustee—Ex-*

LIMITATION ACT (XV OF 1877)—*contd.*

——— s. 10—*contd.*

to the person alleged to be a trustee for the dis-

doned his village, *B* as the representative of *S* sued the representative of *H* for such land, alleging that it had vested in *H* in trust to surrender it to *S* or his heirs on demand As evidence of such trust, *B* relied on the village paper mentioned above and on the village administration paper of 1862, in which it was stated that absent co-sharers might recover their shares on payment of the arrears of Government revenue due by them. *Held*, that such documents did *not prove any express trust within the* meaning of s. 10 of the Limitation Act, 1877, and the suit was therefore barred by limitation BARKAT *v.* DAULAT . . I. L. R. 4 All. 187

18. ——— *Trust—Absconding co-sharer—Purchaser from remaining co-sharer, right of.* Where a clause of the wajib-ul-urz of a village stated in general terms that absconders from such village should receive back their property on their return, and certain persons who absconded from the village before the wajib-ul-urz was framed sued to enforce such clause against the purchaser of their property from the co-sharer who had taken possession of it on their absconding, and who was no party to the wajib-ul-urz, alleging that their property had vested in such co-sharer in trust for them:—*Held*, that, assuming the trust to be established, as the *purchaser* had purchased in good faith for value and without notice of the trust, and was not the representative of such co-sharer within the meaning of s. 10 of Act IX of 1871, and had been more than twelve years in possession, the suit was barred by limitation PIAREY LAL *v* SALIGA . . . . I. L. R. 2 All. 394

KAMAL SINGH *v* BATUM FATIMA
I. L. R. 2 All. 460

19. ——— *Trustee—Executor.* An executor, who by the will is made an express trustee for certain purposes, is, as to the undisposed of residue, a trustee within the scope of s 2 of Act XIV of 1859, for the heir or heirs of the testator LALLUBHAI BAPUBHAI *v* MANKUVARBAI . . . . I. L. R. 2 Bom. 388

20. ——— *Suit by representatives of testator against defaulting executor,*

express an opinion as to whether, in another form of suit, the claimants might not follow their testator's assets under s 2 *In re* PALMER'S ESTATE
Cor. 68

LIMITATION ACT (XV OF 1877)—*contd.*

——— s. 10—*contd.*

21. ——— *Suit to set aside trusts in trust-deed and to enforce others.* S. 10 of the

22. ——— *Specific property—Executors—Trustees—Suit for account.* The firm of *C, T & Co* acted as agents for the trustees of *G D* It appeared from entries in their books, headed "Account of the Trustees for *G. D,*" that the firm had in their hands R12,453 to the credit of the trustees in 1848, at which time the firm stopped payment. *D T*, a member of the firm of *C, T & Co*, and *W S* were the trustees In the earlier accounts the names of *D T* and *W S* both appeared; in the later ones,—namely, from 1842 until they were closed in 1848,—at the head of the account there was a memorandum written in small letters, "*D T*, trustee," but it did not appear that *W S* had ever renounced the trust, or conveyed the trust estate to *D T*. In 1846 *D T* died, leaving *G* and *T* the surviving partners of the firm, the executors of his will *W S* survived *D T* In 1867, the representative of *G D* brought a suit for an

of 1859 MICHAEL *v.* GORDON
2 Ind. Jur. N. S. 271

23. ——— *Trust—Charge of debts by testator* A charge of debts generally by a testator upon his property, or any part of it, will not affect limitation, because it does not at all vary the legal liabilities of the parties or make any difference with respect to the effect and operation of the statute itself The executors take the estate subject to the claims of the executors, and are in

24. ——— *Suit to recover property subject to a trust not carried out* S. 2 of Act XIV of 1859 is applicable to a suit for the recovery of property the possession of which had been transferred upon trust, and in respect of which there had been a disaffirmance of the trust and a refusal to fulfil the conditions of the trust, SOOMBUN RAI *v.* MAHESH DUTT . . 4 N. W. 33

LIMITATION ACT (XV OF 1877)—*contd.*

——— s. 10—*contd.*

25. ——— *Trustee—Claim against rival trustee.* A claim to vindicate the personal right of a trustee to the possession of immoveable property against another person claiming such right in the same character is not governed by s. 10 of the Limitation Act, 1877. KANDISHAH *v.* NATTAN BIBI **I. L. R. 7 Mad. 417**

26. ——— *Suit between co-trustees—Injunction to restrain some of trustees from excluding others from management of temple—Breach of trust, liability for loss occasioned by.* The plaintiffs and defendants, together with one *S* who died in 1884, were trustees of a temple, having been appointed by the committee under Act XX of 1863. For some years before his death *S* was left in exclusive management. Subsequently the defendants were in sole management of the temple until 1891, when the plaintiffs brought the present suit charging that the defendants had excluded them from the right of management, and claiming that they should make good sums lost to the institution by reason of breaches of trust alleged to have been committed by them. Some of the breaches of trust took place before 1884. Of the others, which took place subsequently, some consisted in improper dealings with the temple property to the detriment of the temple and to the advantage of certain relatives of the defendants. The plaintiffs also asked for an injunction to restrain the defendants from excluding them from management. *Held*, (i) that in the absence of evidence of an absolute denial by the defendants of the plaintiff's right to act as trustees, the suit for an injunction was not barred by limitation; (ii) that the suit could not be regarded as a suit by the beneficiaries, and was not within the operation of the Limitation Act, s. 10; (iii) that the suit was not maintainable in respect of breaches of trust committed in the lifetime of the deceased manager, as being to that extent barred by limitation, and also for the reason that such breaches were not more imputable to the defendants than to the plaintiffs; (iv) that even if it had been proved that the community interested in the temple had sanctioned the acts of the defendants now complained of, that circumstance would not suffice to excuse the defendants; (v) that the defendants were liable to make good the loss occasioned by any breach of trust committed within six years of the date when the suit was instituted even in the absence of fraud, and that, in estimating such loss, prospective loss should be assessed. RANGA PAI *v.* BABA **I. L. R. 20 Mad. 398**

27. ——— *Suit against Secretary of State to recover possession of a khoti village and mesne profits.* In the year 1892 plaintiffs brought a suit against the Secretary of State to recover possession of a khoti village with mesne profits. It was found as a fact that Government had been in possession of the rights to which the suit related for upwards of fifty years, and during that time no acknowledgment of their title to khotship had been made either to plaintiffs or their predecessors. *Held*, that the claim was time-barred; Government not being in possession or control of the village as stake-holder, s. 10 of the Limitation Act (XV of 1877) was not applicable, they not holding the village "in trust for a specific purpose" within the meaning of that section. SECRETARY OF STATE FOR INDIA *v.* SAKHARAM BAPUJI NAIK **I. L. R. 24 Bom. 23**

28. ——— *Express trust—Suit against trustees to charge property with trust.* A suit against trustees for the purpose of charging certain property with the trusts declared by the author of the trust in respect of that property and for an account is a suit to follow property, and as such is not barred by any lapse of time. HURRO COOMAREE DOSSEE *v.* TARINI CHURN BYSACK **I. L. R. 8 Calc. 766**

29. ——— *"Trust for specific purpose"—Implied trusts—Adverse possession.* The words of s. 10 of the Limitation Act of 1871 mean that when a trust has been created expressly for some specific purpose or object, and property has become vested in a trustee upon such trust (either from such person having been originally named as trustee or having become so subsequently by operation of law), the person or persons who for the time being may be beneficially interested in that trust may bring a suit against such trustee to enforce that trust at any distance of time without being barred by the law of limitation. The language of the section is specially framed so as to exclude implied trusts, or such trusts as the law would infer merely from the existence of particular facts or fiduciary relations. KHETRODEMONEY DOSSEE *v.* DOORGAMONEY DOSSEE **I. L. R. 4 Calc. 455 : 3 C. L. R. 315**

s.c. in lower Court . . . . . **2 C. L. R. 113**

30. ——— and Art. 62—*Trust for specific purpose—Money received.* *E* sued his father and brother *A* for partition of the family estate, and obtained a decree by which he was entitled to recover, *inter alia*, one-third of a debt due to the family. In May 1878 the debtor, having [illegible] paid the debt to the [illegible]

PILLAI . . . **I. L. R. 6 Mad. 403**

31. ——— and Arts. 118, 133, 134—*"Trust for a specific purpose."*—*Per* GARTH, *C.J.*—The words "in trust for a specific purpose" are intended to apply to trusts created for some defined or particular purpose or object as distinguished from trusts of a general nature such as the law

LIMITATION ACT (XV OF 1877)—*contd.*

——— s. 10—*contd.*

impresses upon executors and others who hold recognized fiduciary positions. *Per* WHITE, J.—The words "in trust for a specific purpose" are used in a restrictive sense, and limit the character and nature of the trust attaching to the property which is sought to be followed. The phrase is a compendious form of expression for trusts of the nature and character mentioned in arts. 133 and 134 of the Limitation Act, namely, such as attach to property conveyed in trust, deposited, pawned or mortgaged. GREENDER CHUNDER GHOSH *v.* MACKINTOSH

I. L. R. 4 Calc. 897 : 4 C. L. R. 193

32. ——— *Trustee and cestui que trust—Will—Void gift—Residue—Gift of interest—Share of rents and profits—Corpus of estate.* A by his last will and testament gave his property to trustees, partly in trust for religious and other purposes, and partly to pay thereout to certain persons and their heirs for ever certain annuities, being fixed portions of the next profits of a certain estate called the Huro estate, which amounted to R3,150. *A* died in November 1863. On the 11th of August 1879, the heir of one of the annuitants instituted a suit claiming a share under the will, and asking for a partition of that share. The plaintiff alleged, besides, that certain of the trusts and provisions in the will were invalid in law; that consequently a large portion of the testator's property remained undisposed of at his death, and she claimed a share of this residue as one of the heirs of the

claim, the suit was not barred by limitation. *Kherodemoney Dossee v. Doorgamoney Dossee, I. L. R. 4 Calc 455, Greender Chunder Ghosh v. Mackintosh, I. L. R. 4 Calc. 897, Anund Moye Dabi v.*

ister the trusts which had not failed. HEMANGINI DASI *v.* NOBIN CHAND GHOSE

I. L. R. 8 Calc. 788 : 11 C. L. R. 370

33. ——— *Trustee for specific purposes—Will, construction of—Void clause in will and consequent intestacy—Suit by heir against executor as trustee for specific purposes.* G died

may remain, that remaining property shall be disposed of in a righteous manner, in a pious and charitable way, as may appear advisable to all my three executors. It shall be disposed of in such manner that people may speak well of me, and that all my three heirs may acquire great fame. The last surviving executor (the brother's widow)

void for uncertainty; that there was therefore an intestacy as to the residue of the estate, and that the executors held such residue in trust for *G*'s heirs within the meaning of s. 10 of the Limitation Act (XV of 1877); and that the suit was therefore not barred. *Held*, that s. 10 of the Limitation Act did not apply, and that the suit was barred by limitation. The executors of *G* were no doubt trustees, and for some specific purposes property became vested in them under the will, but with

I. L. R. 14 Bom. 476

34. ——— *Express trust.* Where the property became vested in the defendants for specific purposes; and, although it was no longer in their hands, the money could be traced to the hands of the trustees, and the losses were caused by their misconduct and improper dealing with it.—*Held*, that the suit fell within the section, and that, under the provisions of s. 10 of the Limitation Act (XV of 1877), it was not barred. THAKERSEY DEVRAJ *v.* HURBHUM NURSEY

I. L. R. 8 Bom. 432

35. ——— *Allegation of holding in trust.* By Act XV of 1877 s. 10, where property has become vested in a person in trust for a specific purpose, a suit to follow such property in his

ceived possession on attaining full age. Upon a subsequent adjudication of forfeiture against him under Regulation VII of 1808, the Government obtained possession of the zamindari. *Held*, that the Government was not placed in the position of a

I. L. R. 8 Mad. 525 : L. R. 12 I. A. 120

LIMITATION ACT (XV OF 1877)—*contd.*

——— s. 10—*contd.*

36. ——— and Arts. 118, 123, and 145 —*Limitation of suit relating to property held in trust.* A suit, in order to fall within Act IX of 1871, s 10, excepting suits against trustees from limitation, must be brought for the purpose of recovering the trust property for the benefit of the trust; that section meaning that, when trust property is used for some purpose other than that of the trust, it may be recovered, without any bar of time, from the hands of those in whom it has been vested in trust Where the plaintiff sued to enforce his own personal right to manage an endowment dedicated to religious purposes, there being no question whether or not the property was being applied

Art. 123 or 145 of the second schedule of Act IX

I. L. R. 6 All. 1

s c. BALWANT RAO BISHWANT CHANDRA CHOR v PURAN MAL CHAUBE . L. R. 10 I. A. 90

37. ——— *Trust—Suit by*

JASODA BIBI v PARMANAND
I. L. R. 16 All. 256

38. ——— *Trust—Resulting trust—Suit against trustee for possession of share and for account and recovery of profits.* M and S purchased certain property jointly in 1865, and had equal interests in it till 1868, when M's interest was reduced to one-third S paid the

his share, to have an account taken of the profits, and to recover his share of them with future mesne profits and costs. *Held*, that, under the above circumstances, there was a resulting trust in favour of the plaintiff, and the defendant became liable to account to him for his share; but, inasmuch as there

LIMITATION ACT (XV OF 1877)—*contd.*

——— s. 10—*contd.*

such trust property in the hands of a trustee within the meaning of the section, such suit was not one which under s 10 might not be barred by any length of time. *Balwant Rao Bishwant Chor v Puran Mal Chaube, L. R. 10 I. A. 90,* referred to. MUHAMMAD HABIBULLAH KHAN v. SAFDAR HUSAIN KHAN . . . . I. L. R. 7 All. 25

39. ——— *Constructive trust.* B and D, father and son, were jointly entitled to

moiety against a person deriving his title from E and K, who had taken possession of the whole. *Held*, looking to all the circumstances of the case, that E and K had taken possession subject to a constructive trust in favour of B and D, and that accordingly D was entitled to assert this right, and no limitation could affect it. DURGA PRASAD v. ASA RAM . . . . I. L. R. 2 All 361

40. ——— and Art 98—*Liability of estate of deceased director—Banker, who is a.* The plaintiffs' company went into liquidation

sum of R8,80,250-14-1, belonging to the company. In this suit the official liquidators of the company sought to recover that sum from the defendants, who had been directors of the company, and a further sum of R2,48,670-14-0 as damages sustained by the company through the fraud and gross negligence of the defendants in permitting Nursey Kessowji, the agent of the company, to deal with certain shares for his own purposes One of the defendants (No 3) died after the institution of the suit and his son were made parties *Held*, that the estate of the deceased director was liable on the ground that the misfeasance of a director is a breach of trust, and not a mere personal default. *Held*, further, that the claim, not being a claim for any specific property still in the hands of the representatives, was not covered by s. 10 and Art. 98 of the second schedule of the Limitation Act, and was

v. KESSOWJI NAIK . . I. L. R. 9 Bom.

41. ——— *Creditor's trust fund—Suit for distribution of unclaimed dividends.*

LIMITATION ACT (XV OF 1877)—*contd.*

——— s. 10—*contd.*

possession allotted to other creditors by way of dividends, but unclaimed by them for forty years.—*Semble*: That, as the trust sought to be established in favour of the plaintiffs would be a resulting trust not expressly declared, s. 10 of the Limitation Act, 1877, would not apply. MANICKAVELU MUDALI *v.* ARBUTHNOT & Co.

I. L. R. 4 Mad. 404

42. ——— *Suit by cestui que trust against trustee—Trust.* *A* alleged that his father *B* had, before his death, placed in the hands of *C* a certain sum of money, and had also transferred to *C* his landed property upon trust that *C* should, during the minority of *A*, hold the money and manage the property for the benefit of *A* and maintain *A*, and should on *A*'s attaining his majority, make over to him the property and so much of the money as should then be unexpended; and that *C* had accepted the trust, but, upon *A*'s coming of age, had refused to render any account. *A* accordingly brought a suit for an account. *C* pleaded that *A* had attained his majority at a much earlier period than he alleged, and that the suit was barred by limitation. *A* replied that, under s. 10 of Act XV of 1877, his suit could not be barred by any

between a *cestui que trust* and a trustee for an account are governed solely by the Limitation Act (XV of 1877), and, unless they fall within the exemption of s. 10, are liable to become barred by some one or other of the articles in the second schedule of the Act. To claim the benefit of s. 10, a suit against a trustee must be for the purpose of following the trust-property in his hands. If the object of the suit is not to recover any property in specie, but

first a right to demand it. SARODA PERSHAD CHATTOPADHYA *v.* BROJO NATH BHUTTACHARJI

I. L. R. 5 Calc 910: 6 C. L. R. 195

43. ——— *Act XI of 1859, s. 31—Collector—Trustee—Suit for surplus sale proceeds of sale for arrears of revenue.* Where *A* instituted a suit in November 1880 to recover from the Secretary of State for India in Council the surplus sale-proceeds of three talukhs sold for arrears of

LIMITATION ACT (XV OF 1877)—*contd.*

——— s. 10—*contd.*

See SECRETARY OF STATE FOR INDIA *v.* GURU PROSHAD DHUR . . I. L. R. 20 Calc. 51

44. ——— *Suit against a*

alleged that some of the property had been given to the plaintiff's mother about the time of her marriage in 1836; that in 1843 her father had appointed

I. L. R. 14 Mad. 61

45. ——— *Laches—Suit against directors of company—Stale demand—Trustees.* The plaintiff company was formed in 1864, and the company went into liquidation in 1867. In April 1890, the present suit was filed against the defendant, who had been one of the directors of the company, and it was alleged that, after the formation of the company, the defendant and his co-directors had carried on speculative dealings in shares of other companies and had used the funds of the company for this purpose, which was not warranted by the memorandum of association. The plaintiffs alleged that their dealings, which were duly set forth in their plaint had resulted in a heavy loss to the company, and they now sought to recover from the defendant the sum of R3,37,700-13-5. There had been originally five

tion. (ii) That in any case, the staleness of the demand was a valid defence to the action, the

46. ——— *Auction-pur-*

LIMITATION ACT (XV OF 1877)—contd.

——— s. 10—*contd.*

47. ——— *Suit by beneficiary against executors.* A suit brought by a beneficiary against the executors of a will, for the purpose of following property vested in them in trust for a specific purpose, and of making them account for it and hand over to such beneficiary, as the result of that account, what may be found due to him, comes within the provisions of s. 10, Limitation Act, and cannot be barred by lapse of time. *Hurro Coomaree v. Tarini Churn, I. L. R. 5 Calc. 766,* followed. *Saroda Pershad v. Broja Nath, I. L. R 5 Calc. 910,* distinguished. NUNDA LAL BOSE v. NISTARINI DASSEE (1902)
7 C. W N. 353

48. ——— *Liability to account—Mahomedan law—Trust—Will—Testamentary document—Trustee de son tort—Express trustee* *Held*, that if express trusts are created by deed or will and some third party takes upon himself the administration of the trust property, he becomes a

49. ——— *Trust for a specific purpose—Express trust—Resulting trust—Indian Trusts Act (II of 1886), ss. 81, 83. Per Batchelor, J. (Obiter)* s. 10 of the Limitation Act does not apply where the object of the original trust being uncertain or undiscoverable a resulting trust arises by operation of ss. 81 and 83 of the Indian Trusts Act, 1882 Whether the resulting trust flow from the invalidity of the declared trust or from the impossibility of ascertaining the declared trust, it is equally a substituted trust, that is, a trust which is created by the law *faut de mieux*, that is as the best arrangement which the law regards as possible in difficult circumstances.

the heir of the testator. MATHURADAS v. VANDRAWANDAS (1906) . . **I. L. R. 31 Bom. 222**

50. ———*Trust for a specific purpose, meaning of the expression—Express trust—English law—Palla*

or dowry, was, on the occasion of her betrothal to the male plaintiff in 1871, made over by the male plaintiff's father to the keeping of the lady's father as a fund constituting her *palla* in accordance with the usual practice prevailing in the caste. This fund having

LIMITATION ACT (XV OF 1877)—contd.

——— s. 10—*contd.*

the suit should be against a person, in whom property has become vested in trust for a specific purpose or against his legal representatives or assigns, and secondly, that the suit should be for the purpose of following such property in his or their hands. The phrase "trust for a specific purpose" in s. 10 of the Act is merely a more expanded mode of expressing the same idea, as that conveyed by the expression "express trust" in English law. It is used in the section in contradistinction to trusts arising by implication of law, trusts resulting and trusts constructive. The meaning of the expression "following the property" discussed and explained. BHURABHAI v. BAI RUXMANI (1908)
I. L. R. 32 Bom. 394

——— s. 10, Art. 48—*Negotiable Instruments Act (XXVI of 1881), ss. 9, 58—Fund in Court—Secretary of State and Court Officers, if trustees—Forged endorsement on Government Promissory notes—Holder in due course—Defect of title of holder* By a consent decree dated 1829, certain Government promissory notes valued at R60,000 were paid into Court for the benefit of *X* and others *X* died in 1834, leaving two sons, both of whom afterwards died unmarried Subsequently *Y* applied for a subdivision of the notes which was done by the Registrar of the Sudder Dewani Adalut. Thereafter one of the notes was lost. *Y* died without issue, but left two widows, *A* and *B*. In 1885

ascertained that the note stood in the name of *C*. *A* subsequently died in 1894 and afterwards in 1898, *B* brought the present suit against the Registrar, Secretary of State, and *C*, alleging fraud on the part of the servants of the Comptroller-General's office. *Held*, that the Government was not a trustee for *B*, and that the negligence committed by the Comptroller-General in 1853 was barred by limitation. *Hunsraj v. Ruttonji, I. L. R 24 Bom. 65*, distinguished. CHANDRA KALI DABEE v. E. P. CHAPMAN (1905) . . **I. L R. 32 Calc 799**
s. c. 9 C. W. N. 443

——— s. 10, Sch. II, Art. 120—

See WILL . **I L R. 32 Bom. 364**

——— s 12 (1871, s. 13; Act VIII of 1859, s. 333)—

See APPEAL—ACTS—COMPANIES ACT. **I. L. R. 18 All. 215**

See HIGH COURT RULES. **I. L. R. 32 Bom. 14**

LIMITATION ACT (XV OF 1877)—*contd.*

——— s. 12—*contd.*

See REVIEW—FORM OF, AND PROCEDURE ON, APPLICATION.
I. L. R. 17 All. 213

1. ——— *Computation of period of limitation—Day on which cause of action*

COMARAPPA SETTE *v.* RAMASAMY SETTE
4 Mad. 409

DURSHUN LAL SAHOO *v* ASMUTOONISSA
19 W R 94

2. ——— *Calculation of period of limitation* In calculating the period of limitation for bringing suits, the day on which the cause of action arose should be included in the computation; and in excluding from the limitation the period during which suit was pending, the day on which proceedings therein were commenced and the day on which they ended should both be counted. HURRO SOONDEREE DABEA *v* KALLYMOHUN
Marsh 138 : W. R. F. B 46 · 1 Hay 301

3. ——— *Exclusion of day on which contract is made or debt is payable* The date on which a contract is made is to be excluded in computing the time allowed for its performance. The date on which a debt becomes payable is to be excluded in calculating the period of limitation LAKSHUMAN SAKHARAM *v.* RANU BIN SIDOJI
6 Bom. A. C 51

4. ——— *Exclusion of day on which agreement was made* In a suit for balance of an account stated, the defendant had given a written acknowledgment, on 22nd July 1867, that the sum sued for was due from him to the plaintiff The plaint was presented on 22nd July 1870 *Held*, that the day on which acknowledgment was made was to be excluded, and therefore the suit was not barred. MADAN MOHUN DAS *v* GAUR MOHUN SIRKAR . **6 B. L. R 293 note**

5. ——— *Suit on bond—Exclusion of date of bond.* The day mentioned in a bond for the repayment of money as that on which the money is to be repaid is to be excluded from the period of computation under the Limitation Act. The borrower in such case has until the last moment of the day mentioned for the payment, and the right to sue accrues not on, but from, that day *Ex parte* PALANY ANDY PILLAY
4 Mad. 330

6. ——— *Suit on bond—Exclusion of day specified for payment—Limitation Act, 1871, s 13.* In a suit on a bond where a day is specified for payment, the period of limitation is to be computed from, and exclusive of the day so specified as being the day on which the right to sue accrued RAM CHURN DEY *v* INA SHEIK
24 W. R. 463

LIMITATION ACT (XV OF 1877)—*contd.*

——— s. 12—*contd.*

7. ——— *Exclusion of day on which cause of action arose—Suit on bond.* On the 29th November 1886, this suit was filed on a bond, dated the 29th November 1881, payable in two years. The Subordinate Judge dismissed it as time-barred, being of opinion that the cause of action had accrued on the 28th November 1883. Against this decision the plaintiff applied to the High Court under s. 623 of the Code of Civil Procedure (Act XIV of 1882) *Held*, reversing the deci-

8. ——— *Holiday—Cause of action—Promissory note payable on demand.* The plaintiff sued on a promissory note payable on demand dated November 14th, 1867. He filed this

be excluded in computing the period of limitation, and that therefore the suit was not barred. ABDUL ALI *v* TARACHAND GHOSE . **6 B. L. R. 292**

s c on appeal TARACHAND GHOSE *v* ABDUL ALI **8 B. L. R. 24 ; 16 W. R. O. C. 1**

MUHTAB *v* RAM DYAL . . **3 Agra 319**

9. ——— *Civil Procedure Code, 1859, s 246—Time for suing* The day on which judgment is pronounced is not to be reckoned within the time allowed for bringing a suit under s 246 PETAMBUR SHAHA *v* KUROONA MOYEE DEBEA . . **W. R 1864, 321**

10. ——— *Civil Procedure Code, 1859, s 246* The day on which the order under s 246 was passed must be excluded in computing the year allowed by that section. KASHEENATH SHAHA *v* JOGENDRONATH BABOO
22 W. R. 68

11. ——— *Computation of period of—Civil Procedure Code, 1859, s. 246.* In

SHUMAN BAJI . . . . **10 Bom. 19**

12. ———

AMMAL VENKATA BALAKRISHNA CHETTI *v.* VIJIARAGUNADHA VALAJI KRISHNA GOPALER
4 Mad. 32

LIMITATION ACT (XV OF 1877)—*contd.*

——— s. 12—*contd.*

13. ——— *Act IX of 1871,* s. 13—Computation of ...

I. L. R. 2 Bom. 673

MANCHARAM KALLIANDAS *v.* RATILAL LALSHANKAR . . . 6 Bom. A. C. 39

14. ——— *Execution of decree—Holiday—Sunday.* A decree was passed on the 6th September 1865. Application for execution was made on 7th September 1868; the 6th September 1868 was Sunday *Held,* that the day on which the ...

LAL *v.* BISWASU KUNWAR

4 B. L. R. A. C. 131; 13 W. R. 122

But *see* BRAJABEHARI *v.* KAMAL ROY

1 B. L. R. S N. 1

s.c. BROJO BEHAREE SAHOY *v.* KEWAL RAM

10 W. R. 5

This section does away with the case of ELIAS *v* HABOOL MOOSHEE MOOSHEE

1 Ind. Jur N. S 18: Bourke 382

in which it was held ...

15. ——— *Time for obtaining copy of judgment* The time which intervenes between the putting in stamps and obtaining a copy of the decree should be excluded from the time prescribed for the presentation of an appeal LALL GOPALNATH SAHEE DEO *v* PUDUM KOONWAR

5 W. R Mis 44

GOPEENATH ROY *v.* GOPEENATH CHATTERJEE

6 W. R. Mis. 106

16. ——— *Deduction of time* ...

appeal, the appellant is, as a matter of right, entitled to deduct the number of days required for taking a copy of the decree only The word "decree" in that section ...
Under the ...
mitted the ...
HOBIL PA...

17. ——— *Deduction of time* necessary for ...

LIMITATION ACT (XV OF 1877)—*contd.*

——— s. 12—*contd.*

section ...

sufficient cause within the ...
of Act I...
the appea...
by the ...
SINGH . ...

18. ——— *Application for copy of decree—Practice.* A suit for possession of land having been ...

January, and accordingly rejected the appeal as having been presented one day late. *Held,* on appeal to the High Court, that the question as to whether the period excluded should have begun on the 7th or 8th was a matter to be determined by the practice of the Court NOBIN CHUNDER ROY *v.* BROJENDRO COOMAR ROY 12 C. L. R 541

19. ——— and Art. 151—*Appeal—Time requisite for obtaining a copy of the decree.* A plaintiff wishing to appeal from a decision passed against him on the original side of the High Court, dated 16th August 1883, presented for filing his memorandum of appeal to the Registrar on the 5th September 1883, but by reason of the decree not having been signed on that date, no copy of the decree was presented therewith. The Registrar refused to accept ...

1883 ...

Court held that the appeal was so barred. *Held,* on review, that the plaintiff having allowed five days to expire after the decree was signed before applying for a copy, and not having filed his appeal, after so obtaining a copy, at the earliest opportunity possible, such a delay being entirely unaccounted

LIMITATION ACT (XV OF 1877)—*contd.*

——— s. 12—*contd.*

for, could not be held to be "time requisite for obtaining a copy of the decree," and that therefore the appeal was out of time. RAMEY v. BROUGHTON
I. L. R. 10 Calc. 652

20. ——— *Exclusion of time necessary for obtaining copy of judgment.* Certain accused persons were convicted on the 20th February 1884, and made their first application for a copy of the judgment on the 25th March, tendering stamped paper for such copy on the 26th and 29th March. The copy was prepared on the 30th, and the prisoners, who had been admitted to bail on the 5th March, presented their appeal on the 7th April 1884, which was rejected as being out of time. *Held,* that the appeal ought to have been admitted *In the matter of* JHABBU SINGH . I. L. R. 10 Calc. 642

21. ——— *Appeal under cl 10 of the Letters Patent.* In computing the period of limitation prescribed for an appeal under cl 10 of the Letters Patent, the time requisite for obtaining a copy of the judgment appealed from cannot be deducted, such copy not being required under the rules of the Court to be presented with the memorandum of appeal. FAZAL MUHAMMAD v PHUL KUAR
I. L. R. 2 All. 192

22. ——— *Time for obtaining copy of decree* ...

... be counted. BEER CHUNDER JOOBRAJ v MOHAMED ASGUR . . W. R. 1864, 145

23. ——— *Delay in appealing—Time for obtaining copy of decree—Civil Procedure Code, 1859, s 333* In calculating the ninety days allowed for an appeal by Act VIII of 1859, s 333, the period between the date on which judgment was pronounced and that on which the decree was signed by the Judge was allowed to be deducted, as coming within the words "exclusive of such time as may be requisite for obtaining a copy of the decree" in that section. *In the matter of* CHOWDHRY MOHENDRO NARAIN ROY
18 W. R. 512

24. ——— *Time for obtaining copy of judgment* The "time requisite for ...

copy is ready for delivery GOPAL CHUNDER ROY v BROJO BEHARY MITTER . 9 C. L. R. 293

25. ——— *Appeal presented after time* ...

LIMITATION ACT (XV OF 1877)—*contd.*

——— s. 12—*contd.*

copy delivered on the 6th, and the appeal filed ...

I. L. R. 12 Calc. 30

26. ——— *Exclusion of time between delivery of judgment and signing decree*— ...

KALI SHUNKER DASS v. GOPAL CHUNDER DUTT
I. L. R. 13 Calc. 104

27. ——— and s. 5, Art. 152—*Civil Procedure Code, ss. 542, 587—Time requisite for obtaining copy of decree—Exclusion of time between delivery of judgment and signing of decree—Exclusion of time between furnishing of estimate of cost of copy and compliance with estimate* Judgment was pronounced by the Court of first instance on the 23rd May 1887 The decree was signed on the 31st May An application for copies was made by the defendants on the same day. Information of the estimate of the cost of copies was given to them on the 1st June, but they did not comply with that estimate until the 9th June. The copies were delivered on the 11th June On the 30th June, the defendants filed their memorandum of appeal in the lower Appellate Court which, on an office report that it was within time, admitted ...

was dismissed On the 27th August, however, the defendants presented a petition to the Judge, in consequence of which he re-admitted the appeal, and cancelling his order of the 2nd August, directed that the appeal should be heard *Held,* that the appeal was barred by limitation under Art. 152, Sch II of the Limitation Act (XV of 1877). S 5 of the Limitation Act cannot be applied in making the computation of time provided for by s 12, and does not become applicable until after such computation has been made *Raj Coomar Roy v Mahomed Waris, 7, W R 337,* dissented from. ...

made it, therefore, after judgment, the decree remains unsigned, such interval is not to be excluded from the period of limitation, unless an application for copies having been made, the appl-

LIMITATION ACT (XV OF 1877)—*contd.*

——— s 12—*contd*

cant is actually and necessarily delayed through the decree not having been signed. *Beni Madhub Mitter* v *Matungini Dassi, I. L R. 13 Calc. 104,* dissented from. *Per* EDGE, C.J , BRODHURST and YOUNG, *JJ.*—A Court, in computing, under s 12 of the Limitation Act, 1877, the time requisite for obtaining a copy of a decree or of a judgment, has no discretion, and is confined to ascertaining, for the purposes of such computation, the time occupied by the office, after application made, in preparing the estimate, and, after payment of the amount of the estimate has been made, the time occupied by

delay may be included in the time requisite for obtaining a copy." Whether or not such delay is not unavoidable is a question of fact in each case BECHI *v.* AHSAN-ULLAH KHAN

I. L. R. 12 All. 461

28. ——— **and s. 5, Art. 170**—*Application for leave to appeal as a pauper—Time requisite for obtaining copy of decree—Exclusion of time between delivery of judgment and signing*

date the day on which the judgment was pronounced. On the 15th April the plaintiff applied for a copy of the decree ; on the 16th she received notice that the estimate of the costs of preparing the copy was prepared ; on the 19th she paid into Court the amount required by the estimate. She had notice to attend on the 23rd for delivery to her of

pauper *Held,* that the application was barred by limitation under Art 170, Sch II of the Limitation Act (XV of 1877), and that s. 5 of the Act did not apply *Per* EDGE, *C J.*—In computing the period of limitation prescribed for an appeal or for an application for leave to appeal as a pauper, where the decree appealed against is not signed until a date subsequent to the date of delivery of judgment, the intermediate period should, under s 12 of the Limitation Act, be excluded if the delay in signing the decree has delayed the appellant or applicant in obtaining a copy of the decree, and not otherwise *Beni Madhub Mitter* v. *Matungini Dassi, I. L. R 13 Calc. 104,* referred to. A delay caused by the carelessness or negligence of a party applying for copy of decree,

——— s. 12—*contd.*

uch as *negligence in coming forward to pay the*

mean requisite by reason of the carelessness or negligence of the applicant : it means the time occupied by the officer who has got to provide the copy in making the copy. The important date with reference to *s* 12 *and Art.* 170 *is not the date* when the copy of the decree is delivered, but the date when it is ready for delivery to the applicant if the applicant chooses to apply, where he has had notice that the copy will be ready on that date. PARBATI *v.* BHOLA . **I. L. R. 12 All. 79**

29. ——— *Delay in obtaining copies of judgment for the purpose of appeal—Limitation Act (XV of 1877), Art 170.* In a suit for land the court of first instance passed a decree for the plaintiff, the judgment and decree bearing date the 29th of September. Defendant, being desirous of appealing *in formâ pauperis,* applied for copies on the following day. Stamp papers were called for on the 28th of October, but were not produced by the 31st, when the application was struck off under the copyist rules On the 6th of November, a petition was put in explaining the circumstances which prevented the stamps being produced within

YANA AYYANGAR . . **I. L. R. 18 Mad. 374**

30. ——— *Exclusion of time requisite for obtaining copies of the decree and judgment—Delay in presentation of appeal owing to Court being closed—Limitation Act, s. 5, and Art 152.* If the period prescribed by the second schedule of the Indian Limitation Act, 1877, for the presentation of an appeal expires on a day on which the Court is closed and if the appellant has not obtained copies of the decree and judgment before the closing of the Court and applies for such copies on the date of the re-opening of the Court, whilst his right of ... he is entitled to the benefit

judgment. The copies were delivered ... 6th November, and on the same day she presented her appeal to the Appellate Court. *Held,*

LIMITATION ACT (XV OF 1877)—*contd.*

——— s. 12—*contd.*

that the appeal was within time. SIYADAT-UN-NISSA *v.* MUHAMMUD MAHMUD

I. L. R. 19 All. 342

31. ——— and Art. 152—*Appeal from decree or order—Civil Procedure Code (Act XIV of 1882), s. 205—Time from which limitation runs—Time requisite for obtaining copy of the decree—Time between pronouncement of judgment and signing of the decree.* The time for presenting an appeal against a decree or order is thirty days from the date of such decree or order (Art. 152 of the Limitation Act, XV of 1877). The date of the decree or order is the date on which judgment is pronounced. The time excluded from the period of limitation by s 12 of the Limitation Act must be taken to commence only when the party appealing does something in order to obtain the copy of the judgment or decree, and to end when he obtains the copy. A party who delays to apply for such copy is not entitled to exclude the period of such delay. A party is at liberty to apply for a copy of the decree, whether the decree has been signed or not If he has applied, but the copy cannot be prepared because the decree has not been signed, then this time and the time taken up in preparing the copy will be excluded, but so long as he has made no application, the non-signature of the decree can have no effect at all upon him. Judgment was pronounced on the 18th December 1897, rejecting an application made by a plaintiff in execution of a decree, but the bill of costs (the order as to costs being a part of the order or decree) was not signed until 18th January 1898 The plaintiff, proposing to appeal against the above order, applied for copies of the judgment and order on the 14th January. The copies were furnished to him on the 24th January 1898 The appeal was presented on the 24th February The lower Court held the appeal barred ... nita- ... urty ... the ... rred ... was ... pies of the ...

... no cause for or explanation of the delay between that date and the 14th January 1898, or for the delay between the 24th January 1898 and the 24th February 1898 YAMAJI *v* ANTAJI

I. L. R. 23 Bom. 442

32 ——— and s. 5, Art. 156—"*Time requisite for obtaining a copy of the decree appealed against*"—*Neglect of Court officials in issuing copies.* A decree of a lower Appellate Court was passed on the 26th March 1888, and an appeal therefrom was presented to the High Court on the 6th July, or twelve days beyond the time allowed by Art 156, Sch II of the Limitation Act (XV of 1877). An application for a copy of the judgment under appeal was made by the appellants on the 28th March, and the 29th March was fixed by the office as the date when the estimate of the cost of such copy was to be delivered, and it was delivered on that day. The estimate was not complied with until the 5th April when the appellants put in the necessary stamp paper according to the estimate. Upon the entry of the stamp paper no intimation was made by the office to the appellants as to when the copy would be ready for delivery. The copy was delivered on the 10th April *Held*, that, under s. 12 of the Limitation Act, the appellants were entitled to a deduction of the whole period between the 28th March and the 10th April, and that, if this were not so, the appeal should be admitted under s. 5 of the Act. The words in s. 12, "the time requisite for obtaining a copy of the decree appealed against" imply that the appellant is not to lose his right of appeal by reason of the neglect of the officials who issue copies, or who are required to give notice when such copies are ready SHEOGOBIND *v.* ABLAKHI . I. L. R. 12 All. 105

See DULALI BEWA *v* SARODA KINKAR PAULIT

3 C. W. N. 55

33. ——— Civil Procedure Code, 1882, s 599—*Period of limitation for an admission of an appeal to Privy Council* On a petition for leave to appeal to the Privy Council, presented on the 8th April, it appeared that the period of six months from the date of the decree to be appealed against had expired on the 23rd of March if the time occupied by the petitioner in ...

... Civil Procedure does not refer to the circumstance, ...

34 ——— *Application for certificate for appeal to Privy Council—Limitation* ...

... able ANDERSON *v* PERIASAMI

I. L. R. 15 Mad. 169

35. ——— *Act XXIV of* ...

... XXIV of 1839 against a decree passed by the Agent to the Governor, and assuming the time for such an appeal to be three months from the date

LIMITATION ACT (XV OF 1877)—*contd.*

——— s. 12—*contd.*

of the decision, the time necessary for procuring copies of decree and judgment appealed against may be deducted. *Held*, however, that no time for such an appeal was fixed. MAHADEVI *v.* VIKRAMA **I. L. R. 14 Mad. 365**

36. ——— *Madras Rent Recovery Act (Mad. Act VIII of 1865), ss. 18 and 69—Deduction of time occupied in obtaining copy of judgment appealed against.* A tenant whose property had been distrained for arrears of rent sued under the Rent Recovery Act, s 18, by way of appeal against the distraint. The Revenue Court decided in his favour. The landlord preferred an appeal under s. 69 more than thirty days after the date when the decision was pronounced. He claimed that the time occupied in procuring a copy of the judgment appealed against should be deducted in the computation of the thirty days period of limitation. *Held*, that the appellant was not entitled to have the deduction made, the provisions of s 12 of the Limitation Act not being applicable to an appeal filed under s 69 of the Madras Rent Recovery Act, and that the appeal was barred by limitation. KUMARA AKKAPPA NAYANIM *v* SITHALA NAIDU . **I. L. R. 20 Mad. 476**

37. ——— and Art. 154—*Appeal by prisoner—Limitation—Time necessary to obtain copy of judgment.* In computing the period of limitation prescribed for an appeal from a sentence of a Criminal Court by Art. 154 of Sch II of [illegible]

38. ——— *Computation of limitation—Act XIV of 1859, s. 1, cl 6.* In computing the period of limitation under cl 6, s 1 of Act XIV of 1859, the day on which the award was passed was to be excluded. RUMONEE SOONDERY DOSSIA *v.* PUNCHANUN BOSE . **4 W. R. 105**

39. ——— *Presentation of appeal—"Time requisite for obtaining copy of judgment."* Judgment was delivered in a case on the afternoon of the last Court day before the commencement of the Christmas vacation, when it was too late to apply for a copy of the judgment. Application for a copy was made on the day upon which the Court re-opened and an appeal was filed on a subsequent day, which would have been in time if the period during which the Court was closed was allowed to be deducted On its being contended that, inasmuch as no application for a copy had been made before the Court closed, the appellant was not entitled to have the period during which the Court was closed, deducted. *Held*, that the appellant was entitled to deduct the period during which the Court was closed. Such period, in the circumstances of the case, must be taken to be part of the "time requisite for obtaining a copy of the judgment" SAMINATHA AYYAR *v.* VENKATASUBBA AYYAR (1904) . **I. L. R. 27 Mad. 21**

40. ——— *Appeal—Time required to obtain copies of judgment and decree* A decree was passed on the 11th September 1900 and prepared on the 8th September; application for a copy of decree was made on the 12th September with four folios; the applicant was asked on the 23rd September to supply the deficient Court-fees, [illegible] filed on the 31st October. *Held*, that the appeal was not barred. *Ganga Das Dey* v. *Ram Joy Dey*, *I. L. R. 12 Calc 30*; *Dulali Bewa* v *Saroda Kinkar Paulit, 3 C. W. N. 55*; *Kali Sankar Bajpai* v. *Baikunta Nath Sen, 7 C. W. N. 109*, referred to. AMEER HOSSEIN KHAN *v.* TULSI DAS (1904) **8 C. W. N. 141**

41. ——— *Time requisite for obtaining copy of the decree.* In computing the period of limitation for an appeal, a party applying [illegible] Court was closed, when he could have [illegible] such application before the Court closed and when on the day he actually applied the period [illegible] *Tularam Gopal* v. [illegible] *584*, referred [illegible] v. *Shankar*, [illegible] distinguished. VENKATA ROW *v* VENKATACHELLA CHETTY (1905) **I. L. R. 28 Mad. 452**

42. ——— *Limitation—"Time requisite for obtaining a copy."* The words 'the time requisite for obtaining a copy' in the second and third paragraphs of s. 12 of the Indian Limitation Act, 1877, are not confined to cases where the person appealing has in person or by a properly authorized agent applied for a copy of a judgment of decree *Ramamurthi Aiyar* v. *Subramania Ayar, 12 Mad. L. J. 385*, dissented from. RAM KISHAN SHASTARI *v* KASHI BAI (1907) **I. L. R. 29 All. 264**

43. ——— ss. 12 and 5—*Appeal—Subsisting right of appeal—Application for copies—Exclusion of time in computing the period of limitation.* So long as the right of appeal is subsisting, an appellant is entitled, under s. 12 of the Limitation Act (XV of 1877), to apply for a copy of the lower Court's decree. The time requisite for obtaining such copy should be excluded in computing the period of limitation prescribed for the appeal. *Siyadat-un-Nissa* v.

LIMITATION ACT (XV OF 1877)—*contd.*

——— s. 12—*concld.*

Muhammed, I. L. R. 19 All. 312, and *Sitaram v. Ramji, (1900) P. J. 53*, followed. TUKARAM GOPAL *v.* PANDURANG SADARAM (1901)
I. L. R. 25 Bom. 584

44. ——— *Appeal—Exclusion of time for obtaining copies of judgment and decree appealed against.* An application for a copy of the decree may be made by an intending appellant at any time within the prescribed period of limitation, and he is then entitled under s. 12 (in computing the period of limitation) to exclude the time requisite for obtaining such copy. By s. 5, in case the period of limitation prescribed for an appeal expires on a day when the Court is closed, the appeal may be presented on the day the Court re-opens. An application for a copy of the decree may be made on that day, and, if so made the time for obtaining such copy is excluded under s. 12. So long as the right to present an appeal subsists, the exclusion sanctioned by s. 12 of the Limitation Act (XV of 1877) applies. *Siyadat-un-Nissa v. Muhammad Mahomed, I L. R. 19 All. 312*, followed. PANDHARINATH SAKHARAM *v.* SHANKAR NARAYAN JOSHI (1901) . . I. L. R. 25 Bom. 586

45. ——— *Computation of time—Deduction of time for preferring an appeal—Time required to obtain a copy of the decree.* The appellant, with a view to prefer an appeal in the lower Appellate Court, applied for obtaining a copy of the decree on the 15th October; information was supplied to him on the 18th November as to the number of folios required for copying the decree, and on the same day the appellant put in the folios, and the copy was ready for delivery on the 21st November. *Held*, that, in preferring an appeal, the appellant was entitled to the deduction of the whole period from the 15th October to the 21st November. KALI SANKAR BAJPAI *v.* BAIKANTA NATH SEN (1902) . . . . . . 7 C. W. N. 109

46. ——— s. 12, Art. 151—*Limitation—Appeal—Copy of judgment—Practice.* The time

——— s. 13 (1871, s. 14; 1859, s. 13)—

1. ——— Defendant's absence from India—*Ignorance of defendant's residence.* Ignorance of defendant's residence does not fall within any of the provisions of the Limitation Act, extending the periods of limitation prescribed by that Act. But under s. 13 plaintiff is entitled to exclude from

LIMITATION ACT (XV OF 1877)—*contd.*

——— s. 13—*contd.*

2 N. W. 173

2. ——— and s. 9—*Continuous running of time—Exclusion of time of defendant's absence from British India.* S. 13 of the Limitation Act, 1877, is not in any way affected or qualified by s. 9 of the same Act. In computing, therefore, the period of limitation prescribed for a suit, the time during which the defendant has been absent from British India should be excluded, notwithstanding that such period had begun to run before the defendant left British India. *Narronji Bhimji v. Mugniram Chandaji, I L. R. 6 Bom. 103*, dissented from. BEAKE & Co *v.* DAVIS
I. L. R. 4 All. 530

3. ——— *Defendant's absence from British India—Computation of the period of limitation—Adjusted and signed account.* Ss 9 and 13 of Act XV of 1877 adopt the law of limitation in England, and they must be read together in computing the period of limitation. Where the statutory period has once begun to run in respect of any cause of action, the subsequent absence of the defendant from British India will not stop it from running. The defendant adjusted and signed his account with the plaintiffs in Bombay on the 13th of January 1871, and shortly afterwards went to reside out of British India, in the territories of His Highness the Nizam. There was no subsequent payment of interest as such, and no payment of any part of the principal. *Held*, that the plaintiff's suit for the balance of the account was barred by the law of limitation not having been brought within three years after the adjustment. NARRONJI BHIMJI *v.* MUGNIRAM CHANDAJI . I. L. R. 6 Bom. 103

4. ——— *Defendant's absence from India.* The plaintiff sued on a bond, dated 20th August 1879, payable by monthly instalments, the first to be due on 4th September 1879, the bond provided that, if default should be made in one instalment, the obligor should, if so required, pay the whole amount. The defendant

years and three months out of the four years and four months which had elapsed between the date of the defendant's default and the date of suit. *Held*, dissenting from *Naronji Bhimji v. Mugniram Chandaji, I L R 6 Bom. 103*, that,

LIMITATION ACT (XV OF 1877)—*contd.*

——— s. 13—*concld.*

ed in computing the period of limitation. HANMANTRAM SADHURAM PITY *v.* BOWELS
I. L. R. 8 Bom. 561

5. ——— *Absence of defendant from British India.* S. 13 of the Limitation Act, which excludes the time during which a defendant has been absent from British India in computing the period of limitation for any suit,

6. ——— *Absence from India—Defendant carrying on business by agent.* The words "absent from British India" in s. 13 of the Limitation Act should be construed broadly, and not limited in their application only to such persons as have been present there, or would ordinarily be present, or may be expected to return. *Semble* A defendant is within s 13, notwithstanding his having carried on a trade or had a shop or a house of
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comment
Co.

7. ——— *Absence of defendant from British India—Defendant carrying on business in British India through an authorized agent.* S. 13 of Limitation Act, which excludes the time during which a defendant has been absent from British India in computing the period of limitation for any suit, applies even where, to the knowledge of the plaintiffs, the defendants, partners in a firm, are during the period of their absence carrying on business in British India through an authorized agent. *Harrington* v *Gonesh Roy, I. L. R. 10 Calc. 440,* overruled. POORNO CHUNDER GHOSE *v.* SASSOON . I. L. R. 25 Calc 496
2 C. W N 269

8. ——— *Absence from British India—Proceedings in execution of decree.* The provisions of s. 13 of Act XV of 1877 are not applicable to proceedings in the execution of a decree AHSAN KHAN *v.* GANGA RAM
I. L. R. 3 All. 185

——— s. 14 (1871, s. 15; 1859, s. 14)—

See CIVIL PROCEDURE CODE, 1882, s. 14.
12 C. W. N. 921

See CIVIL PROCEDURE CODE, 1882, ss. 373, 374 I. L. R. 29 Bom. 219

See EXECUTION OF DECREE—TRANSFER OF DECREE FOR EXECUTION
5 C. W. N. 150

See JURISDICTION I. L. R 35 Calc. 924

See LIBEL . I. L. R. 35 Calc. 728

LIMITATION ACT (XV OF 1877)—*contd.*

——— s. 14—*contd.*

See REGISTRATION ACT (III OF 1877), s. 77 . I. L. R. 30 Calc. 532

See SALE IN EXECUTION OF DECREE—SETTING ASIDE SALE—GENERAL CASES.
I. L. R 29 Calc. 626

The corresponding section of the Act of 1859 was *held* not to apply to cases under the Rent Act (X of 1859). ROY KALLY PROSONNO SEIN *v.* KISTO NUND DUNDEE . W. R. 1864, Act X, 13

SOUDAMONEE DOSSEE *v.* POORNO CHUNDER ROY
W. R. 1864, Act X, 113

DABEE *v.* NUKEESUNNISSA
W. R. 1864, Act X, 116

JUGGURNATH ROY CHOWDHRY *v.* RAJ CHUNDER ROY . . W. R. 1864, Act X, 120

RAM SUNKUR SANAPUTTY *v.* GOPAUL KISHEN DEO . . . . 1 W. R. 68

MODHOO SOODUN MOJOOMDAR *v.* BROJONATH KOOND CHOWDHRY . . 5 W. R., Act X, 44

Nor to its amending Act for the North-West Provinces (Act XIV of 1863). NONA *v.* DHOOMUN DASS . . . . 5 N. W. 30

It was also *held* not applicable to s. 42 of Bombay Act VII of 1867. HARI RAMCHANDRA *v.* VISHNU KRISHNAJI . . . . 10 Bom. 204

1. ——— *Computation of period of limitation—Suit for arrears of rent—Act X of 1859.* The provisions of s 14 of Act XV of 1877 are not applicable to suits for arrears of rent under Act X of 1859. NAGENDRO NATH MULLICK *v* MATHURA MOHUN PARHI I. L. R. 18 Calc. 368

2. ——— *Appeal—Suit—Computation of time for appeal.* S. 14 of the Limitation Act does not apply to the computation of time for appeals, but only to suits. ARDHA CHANDRA RAI CHOWDHRY *v* MATANGINI DASSI
I. L. R. 23 Calc. 325

3. ——— and s. 6—*Application to special laws—Bombay District Municipal Act (Bom. Act VI of 1873), s. 86.* The general provisions of the Limitation Act, 1877, are applicable to cases for which periods of limitation are specially provided by local or special laws Therefore, where a suit

LIMITATION ACT (XV OF 1877)—*contd.*

———— s. 14—*contd.*

Ramchandra v. Vishnu Krishnaji, 10 Bom. 201, distinguished. GURACHARYA v COLLECTOR OF BELGAUM . . . I. L. R. 8 Bom. 529

4. ———————— *Special limitation under Acts other than the Limitation Act—Suit under Registration Act (III of 1877), s 77.* S. 14 of the Limitation Act provides for cases in which a [illegible]

[illegible]

CHUCKERBUTTY v DINABASHY SHAHA I. L. R. 10 Calc. 265

The corresponding section of Act XIV of 1859 and Act X of 1871 was *held* not to apply to cases of execution of decrees. KHETTRONATH DEY v GOSSAIN DOSS DEY . 1 Ind Jur. N. S. 49 4 W. R. Mis. 18

SHEO NARAIN v JOOGUL KISHEN RAM 7 W. R. 327

KRISHNA CHETTY v RAMI CHETTY 8 Mad. 99

NARAN APPA AIYAN v NANNA AMMAL *alias* PARVATHY AMMAL . . . . 8 Mad. 97

MAHALAKSHMI AMMAL v LAKSHMI AMMAL 8 Mad. 105

JIWAN SINGH v. SARNAM SINGH I. L. R. 1 All. 97

TIMAL KUARI v. ABLAKH RAI I. L. R. 1 All. 254

DHONESSUR KOER v ROY GOODER SAHOY I. L. R. 2 Calc. 336

WOOMACHURN MITTER v MOHAMOYA. WOOMACHURN MITTER v BEJOY KISHORE ROY W. R. 1864, 130

BANEE KANT GHOSE v HARAN KISTO GHOSE 24 W. R. 405

GIRIDHARA DOSS MANAKJI TADAHAYAI BIRZI MOHONDOSS v SUPANENI LAKSHMI VENKAMMA ROW. CALAPATAPU KRISTNAYYA v LAKSHMI VENKAMMA ROW . . . . . 5 Mad 93

(*Contra*) PROMOTONATH ROY BAHADOOR v WATSON & Co . . . 24 W. R. 303

But s 14 of Act XV of 1877 now expressly applies to applications of any sort

5. ———————— *Decree passed by Mamlatdar in possessory suit—Execution of decree stayed by proceedings in Subordinate Judge's Court—Suit in Subordinate Judge's Court ultimately dismissed—Subsequent application to Mamlatdar for execution of decree—Jurisdiction of Mamlatdar to grant order for execution—Deduction of time spent on proceedings in second suit* A Mamlatdar having in a possessory suit passed a decree awarding possession of certain land to the applicant, the opponents instituted a suit in the Court of the

LIMITATION ACT (XV OF 1877) *contd.*

———— s. 14—*contd.*

[illegible]

the possessory suit. The Mamlatdar rejected the [illegible]

[illegible]

CHAND TALAKCHAND . I. L. R. 18 Bom. 734

6. ———————— *Deduction of time occupied by former suit under old law of limitation* The plaintiff instituted a suit under the old [illegible]

[illegible]

and claimed to deduct the time occupied in prosecuting the former suit and appeal under the provisions of Act XIV of 1859, s 14 *Held* (by the majority of the Court), that the plaintiff was nonsuited owing to his negligence, and the time sought to be deducted from the period of limitation could not be allowed *Per* LOCH and PUNDIT, *JJ* —Under the circumstances, the time should be deducted in computing the period of limitation CHUNDER MADHUB CHUCKERBUTTY v RAM COOMAR CHOWDHRY . B L R. Sup Vol. 553 6 W. R. 184

The former proceeding must have been taken by the plaintiff or some one through whom he claims (see the definition of "plaintiff" in s. 3 of the Act), and this was the same under the former Acts BARODAKANT ROY v SOOKMOY MOOKERJEE 1 W. R. 29

MORRIS v SAMBAMURTHI RAYAN 6 Mad. 122

7 ———————— *Suit bonâ fide* [illegible]

[illegible]

1[illegible] W. R. [illegible]

LIMITATION ACT (XV OF 1877)—*contd.*

——— s. 13—*concld.*

ed in computing the period of limitation. HANMANTRAM SADHURAM PITY *v.* BOWELS
I. L. R. 8 Bom. 561

5. ——— *Absence of defendant from British India.* S. 13 of the Limitation Act, which excludes the time during which a defendant has been absent from British India in computing the period of limitation for any suit,

6. ——— *Absence from India—Defendant carrying on business by agent.* The words "absent from British India" in s. 13 of the Limitation Act should be construed broadly, and not limited in their application only to such persons as have been present there, or would ordinarily be present, or may be expected to return. *Semble* A defendant is within s. 13, notwithstanding

7. ——— *Absence of defendant from British India—Defendant carrying on business in British India through an authorized agent.* S 13 of Limitation Act, which excludes the time during which a defendant has been absent from British India in computing the period of limitation for any suit, applies even where, to the knowledge of the plaintiffs, the defendants, partners in a firm, are during the period of their absence carrying on business in British India through an authorized agent *Harrington* v. *Gonesh Roy, I. L. R. 10 Calc. 440,* overruled POORNO CHUNDER GHOSE *v* SASSOON . I. L. R. 25 Calc 496
2 C. W. N 269

8. ——— *Absence from British India—Proceedings in execution of decree.* The provisions of s 13 of Act XV of 1877 are not applicable to proceedings in the execution of a decree. AHSAN KHAN *v* GANGA RAM
I. L. R. 3 All. 185

——— s. 14 (1871, s. 15; 1859, s. 14)—

See CIVIL PROCEDURE CODE, 1882, s 14.
12 C. W. N. 921

See CIVIL PROCEDURE CODE, 1882, ss. 373, 374 I. L. R. 29 Bom. 219

See EXECUTION OF DECREE—TRANSFER OF DECREE FOR EXECUTION
5 C. W. N. 150

See JURISDICTION I. L. R. 35 Calc. 924

See LIBEL . I. L. R. 35 Calc. 728

LIMITATION ACT (XV OF 1877)—*contd.*

——— s. 14—*contd.*

See REGISTRATION ACT (III OF 1877), s. 77 . I. L. R. 30 Calc. 532

See SALE IN EXECUTION OF DECREE—SETTING ASIDE SALE—GENERAL CASES
I. L. R 29 Calc. 626

SOUDAMONEE DOSSEE *v.* POORNO CHUNDER ROY
W. R. 1864, Act X, 113

DABEE *v.* NUKEESUNNISSA
W. R. 1864, Act X, 116

JUGGURNATH ROY CHOWDHRY *v* RAJ CHUNDER ROY . . W. R. 1864, Act X, 120

RAM SUNKUR SANAPUTTY *v.* GOPAUL KISHEN DEO . . . . 1 W. R. 68

MODHOO SOODUN MOJOOMDAR *v.* BROJONATH KOOND CHOWDHRY . . 5 W R., Act X, 44

Nor to its amending Act for the North-West Provinces (Act XIV of 1863). NONA *v.* DHOOMUN DASS . . . . 5 N. W. 30

It was also *held* not applicable to s. 42 of Bombay Act VII of 1867. HARI RAMCHANDRA *v.* VISHNU KRISHNAJI . . . . . 10 Bom 204

1. ——— *Computation of period of limitation—Suit for arrears of rent—Act X of 1859.* The provisions of s. 14 of Act XV of 1877 are not applicable to suits for arrears of rent under Act X of 1859. NAGENDRO NATH MULLICK *v.* MATHURA MOHUN PARHI I. L. R. 18 Calc. 368

2. ——— *Appeal—Suit—*

I. L. R. 23 Calc. 325

3 ——— and s. 6—*Application to special laws—Bombay District Municipal Act (Bom. Act VI of 1873), s. 86.* The general provisions

LIMITATION ACT (XV OF 1877)—*contd.*

——— s. 14—*contd.*

Ramchandra v. *Vishnu Krishnaji, 10 Bom. 201*, distinguished. GURACHARYA v. COLLECTOR OF BELGAUM . . . I. L. R. 8 Bom. 529

4. ——— *Special limitation under Acts other than the Limitation Act—Suit*

CHUCKERBUTTY v DINABASHY SHAHA I. L. R. 10 Calc. 265

The corresponding section of Act XIV of 1859 and Act X of 1871 was *held* not to apply to cases of execution of decrees. KHETTRONATH DEY v GOSSAIN DOSS DEY . 1 Ind. Jur. N S. 49 4 W. R. Mis. 18

SHEO NARAIN v. JOOGUL KISHEN RAM 7 W. R. 327

KRISHNA CHETTY v. RAMI CHETTY 8 Mad. 99

NARAN APPA AIYAN v NANNA AMMAL *alias* PARVATHY AMMAL . . . 8 Mad. 97

MAHALAKSHMI AMMAL v LAKSHMI AMMAL 8 Mad 105

JIWAN SINGH v SARNAM SINGH I. L. R. 1 All. 97

TIMAL KUARI v ABLAKH RAI I. L. R. 1 All. 254

DHONESSUR KOER v ROY GOODER SAHOY I. L. R. 2 Calc. 336

WOOMACHURN MITTER v. MOHAMOYA. WOOMACHURN MITTER v BEJOY KISHORE ROY W. R 1864, 130

BANEE KANT GHOSE v HARAN KISTO GHOSE 24 W. R. 405

GIRIDHARA DOSS MANAKJI TADAHAYAI BIRZI MOHONDOSS v SURANENI LAKSHMI VENKAMMA ROW. CALAPATAPU KRISTNAYYA v LAKSHMI VENKAMMA ROW . . . . . 5 Mad 93

(*Contra*) PROMOTONATH ROY BAHADOOR v WATSON & Co. . . . . . 24 W. R. 303

But s 14 of Act XV of 1877 now expressly applies to applications of any sort

5. ——— *Decree passed by Mamlatdar in possessory suit—Execution of decree* ... *'s Court—* ... *ultimately* ... *Mamlatdar* ... *Mamlatdar* ... *of time spent on proceedings in second suit* A Mamlatdar having in a possessory suit passed a decree awarding possession of certain land to the applicant, the opponents instituted a suit in the Court of the

LIMITATION ACT (XV OF 1877) *contd.*

——— s. 14—*contd*

the possessory suit. The Mamlatdar rejected the

the execution of his decree, unless it was barred by limitation It was not barred, inasmuch as in

(XV of 1877) applies to proceedings in execution *Hira Lal* v *Badri Das, I L. R. 2 All. 792 L. R. 7 I. A 167* NAVALCHAND NEMCHAND v AMICHAND TALAKCHAND . I. L. R. 18 Bom. 734

6. ——— *Deduction of time occupied by former suit under old law of limitation* The plaintiff instituted a suit under the old

and claimed to deduct the time occupied in prosecuting the former suit and appeal under the provisions of Act XIV of 1859, s 14 *Held* (by the majority of the Court), that the plaintiff was nonsuited owing to his negligence, and the time sought to be deducted from the period of limitation could not be allowed *Per* LOCH and PUNDIT, *JJ*—Under the circumstances, the time should be deducted in computing the period of limitation. CHUNDER MADHUB CHUCKERBUTTY v. RAM COOMAR CHOWDHRY . B L R. Sup. Vol. 553 6 W. R. 184

The former proceeding must have been taken by the plaintiff or some one through whom he claims (see the definition of "plaintiff" in s. 3 of the Act), and this was the same under the former Acts BARODAKANT ROY v. SOOKMOY MOOKERJEE 1 W. R. 29

MORRIS v SAMBAMURTHI RAYAN . 6 Mad. 122

7. ——— *Suit bonâ fide brought in Court without jurisdiction.* The time for which suits may have been pending in Courts which

17 W. R. 518

LIMITATION ACT (XV OF 1877)—*contd.*

——— s. 14—*contd.*

8. ——— *Deduction of time former suit was being prosecuted* The plaintiffs sued the son of a deceased debtor without ascertaining whether or not he was of age, and then, when the plaint was returned to them, they sued the minor's mother, also without ascertaining whether she was legally constituted guardian of the minor. The lower Courts determined the suit, but the High Court was unable to support their decrees in consequences of the defect, which came to light in special appeal. The plaintiffs having brought a second suit, it was held that, in computing the period of limitation they were not entitled, under provisions of s 15 of Act IX of 1871, to an exclusion of the time occupied by them in prosecuting the first suit. The Court doubted whether, assuming the case fell under the provisions of the section, the plaintiffs could be said, under the circumstances, to have prosecuted the first suit with due diligence and in good faith. BAHAL SINGH *v.* GAURI . . 7 N. W. 284

9. ——— *Execution of decree—Attachment of decree* *Held*, that, in calculat- [illegible]

decree against the judgment-creditor should be deducted, the decree-holder having been prevented from exercising due diligence. CHANDI PRASAD NANDI *v.* RAGHUNATH DHAR

3 B. L. R. Ap. 52

10. ——— *Application for transmission of decree—Proceedings bonâ fide in Court without jurisdiction* On the 2nd March 1887, *S* obtained a mortgaged-decree against *P* in the Court of the Munsif of Hajipore. On the 9th September 1887, *S* applied for execution, and on the 7th November 1887 the mortgaged property was [illegible] the 2nd [illegible] the sale [illegible] ereupon, [illegible] he Haji- [illegible] ution to [illegible] the 19th [illegible] to the [illegible] hile pur- [illegible]

and also as s 14, para. 3, of the Limitation Act [illegible]

[illegible] referred to. RAJBULLUBH SAHAI *v.* JOY KISHEN PERSHAD *alias* JOY LAL . . I. L. R. 20 Calc. 29

LIMITATION ACT (XV OF 1877)—*contd.*

——— s. 14—*contd.*

11. ——— *Suit on hundi payable at fixed date—Deduction of time former suit prosecuted in Court without jurisdiction* On the 14th April 1889, the defendant at Gwalior drew a hundi for R2,500 in his firm at Bombay in favour of *D*, payable forty-five days after date. It was subsequently indorsed at Gwalior by *D* to the plaintiff at Cawnpore, who sent it to the Bank of Bombay at Bombay for collection It was to become payable on the 1st June 1889, but on the 23rd April 1889 the Bank presented it to the defendant's firm at Bombay for acceptance, which was refused The Bank thereupon returned it to the plaintiff at Cawnpore, and it was never presented for payment. [illegible]

BHEKAR *v.* PRALHADDAS SUBKARN

I. L. R. 20 Bom 133

12. [illegible]

that the proceeding had not been prosecuted with due diligence, and that limitation commence to run from the date of the award, and not from the date of the order in the ineffectual appeal proceedings. GHOLAM DARBESH CHOWDHRY *v.* SHAM KISHORE ROY . . . W R. 1864, 378

13. ——— *Due diligence—Non-production of Collector's certificate* The plaintiff brought in 1876 a suit against the defendant in respect of the same cause of action as the present suit. In that suit a certificate of the Collector under s. 6 of the Pensions Act (XXIII of [illegible]

certificate does not necessarily constitute such a [illegible] to [illegible] by [illegible]

MEHETI *v.* TULJA I. L. R. [illegible] 223

14. ——— *Court having no jurisdiction.* A deduction of the time a former [illegible]

NUND DOOLAL SIRCAR *v.* DWARKANATH BISWAS 2 W. R. 9

KALEE CHUNDER CHOWDHRY *v* RUTTUN GOPAL BHADOOREE . . . 2 W. R. Mis. 1

LIMITATION ACT (XV OF 1877)—*contd.*

——— s. 14—*contd.*

15. ——— *Deduction of time former suit was pending—Institution of fresh suit before former is disposed of.* The period during which a suit is pending in a Court not having jurisdiction is to be excluded from the period of limitation provided by Act XIV of 1859, and the fact that the second suit, in bar of which the Act is pleaded, was instituted before the Court not having jurisdiction disposed of the first suit, is immaterial. MORRIS *v* SARAMTHEETHA PILLAY 6 Mad. 45

16. ——— *Deduction of time proceedings are prosecuted in Court the order of which is afterwards set aside.* A period, during which a party to a suit is engaged in prosecuting a claim for wasilat, counts towards limitation if the Court in which the claim is prosecuted has jurisdiction to adjudicate upon it, though its order was reversed as being one which it was beyond the power of the Court to give. PERLADH SEIN *v* GUNNESS LALL TEWARY . . 25 W. R. 540

17. ——— *Deduction of time claim was being prosecuted in another Court* To meet a plea of limitation a judgment-debtor was held [illegible]

18. ——— and Arts. 29, 49—*Time occupied in prosecuting suit in another Court—Dismissal of suit through defect of jurisdiction or other cause of like nature—Court unable to entertain suit because misconceived.* Defendants having attached certain goods on 12th June 1895, in execution of a decree obtained by them against *M*, a claim was preferred by plaintiff on 19th June 1895 and disallowed. Plaintiff thereupon brought a declaratory suit on 2nd August 1895 in the City Civil Court, Madras, and obtained an injunction to stop the sale of the goods, which, however, was dissolved on 27th August 1895, the goods being sold on 5th October 1895, while the suit in the City [illegible]

4th December 1897 [illegible]

should be deducted under s 14 of the Limitation Act. *Held*, that the suit was barred, and that plaintiff was not entitled to have the time spent in prosecuting the previous small cause suit deducted from the period of limitation. That suit [illegible]

DAVY . . . . I. L. R. 23 Mad. 621

19. ——— *Deduction of time suit was being prosecuted in another Court.* *L* and *R*, the holders of a patni estate, granted in 1856 a dar-patni lease to *S* at an annual rent, the lease stipulating that *S* should have full power of sale and gift, but should not sublet without the [illegible]

claimed to set off the amount deposited in the Collectorate against the rent due to *L* and *R* This *L* and *R* refused to allow, and they brought a suit in the Collector's Court [illegible]

payment by *K* On 30th October 1867, *K* brought a regular suit against *S* and *L* and *R* to recover the amount of the deposit, and obtained a decree, but the decision was reversed on appeal, and the suit dismissed for want of jurisdiction On 6th June 1869 *K* filed his plaint in the proper Court *Held*, that, whether the period of three years under s 1, cl 9, of Act XIV of 1859, or of six years as provided by [illegible]

not having jurisdiction LUCKHINARAIN MITTER *v* KETTRO PAL SINGH ROY

13 B. L. R. P. C. 146 : 20 W. R. 380
24 W. R. 407 note

Affirming decision of lower Court in KHETTER PAUL SINGH *v.* LUCKHEE NARAIN MITTER
15 W. R. 125

20. ——— *Deduction of time suit was being prosecuted in another Court.* A suit

LIMITATION ACT (XV OF 1877)—*contd.*

——— s. 14—*contd.*

for arrears of rent was brought by the plaintiff in the Revenue Court, but it was *held* that there being no actual contract between the plaintiff and defendant, and the defendant's liability arising out of equitable considerations with which the Collector's Court could not deal, that Court had no jurisdiction to decide it In a subsequent suit in the Civil Court:—*Held*, that the plaintiff was, under s. 14, Act XIV of 1859, entitled to a deduction of the time he was prosecuting his claim in the Revenue Court. PROSONNOCOOMAR PAL CHOWDHRY v MUDDUN MOHUN PAL CHOWDHRY

11 B L. R. Ap. 31 note

21. ——— *Deduction of time suit was being prosecuted in another Court.* Where a part-proprietor of a talukh, who was also co-sharer in a fractional portion thereof, brought suits in the Revenue Courts against his co-talukdars for arrears of rent without allowing any deduction on account of his share, which suits were dismissed for want of jurisdiction:—*Held*, in a subsequent suit in the Civil Court for the rent for the same period, that the plaintiff was entitled under

22. ——— *Dismissal of*

secuting the former suit could not be excluded when computing the period of limitation. Though the plaintiffs had acted with due diligence instituting their former suit, it was dismissed, not on any technical ground of misjoinder of parties or of causes of action, but on the substantive ground that, having regard to the frame of the suit, no cause of action had been established against any of the defendants; and the suit was not one which the Court, from defect of jurisdiction or other cause of a like nature, was unable to entertain COMMERCIAL BANK OF INDIA v ALLAODDEEN SAHEB

I. L. R. 23 Mad. 583

23. ——— *Defect of jurisdiction, "of other cause of a like nature"—Misjoinder or causes of action—Deduction of time occupied by former suit wrongly instituted.* A Hindu widow alienated certain property belonging to the estate left by her husband, a moiety of it in favour of one party and a moiety in favour of another, and died on the 22nd June 1878. The reversionary

reversionary heirs defendants. On the 19th June 1890 the reversionary heirs were added as co-

LIMITATION ACT, (XV OF 1877)—*contd.*

——— s. 14—*contd.*

ruary 1891, and deduction of the time taken up by the previous proceeding was claimed. *Held*, that, when a suit is instituted upon distinct causes of action against different sets of defendants severally the Court may fairly be said to be "unable to entertain it" from a cause of a "like nature" with

limitation MULLICK KEFAIT HOSSEIN v. SHEO PERSHAD SINGH . I. L R. 23 Calc. 821

24. ——— *Exclusion of time of former suit without jurisdiction.* In 1892 a suit was instituted in the Presidency Court of Small Causes against defendants not resident within the jurisdiction, the leave of the Registrar of the Court having been first obtained. Subsequently it was ruled that the Registrar was not empowered to give such leave, and the suit was dismissed A similar suit was then instituted, the leave of the Court having been first obtained. *Held* that the

I. L R. 19 Mad. 90

25. ——— *Cause of like nature—Misjoinder of causes of action—Want of leave under Civil Procedure Code, s. 44.* In March 1891, the plaintiff sued the defendant to recover the sum of money due on the taking of an account between the plaintiff and the defendant, who was his agent, and to recover possession of certain land. The plaintiff did not obtain leave under the Civil Procedure Code, s 44, for the institution of this suit, which was accordingly dismissed for misjoinder of causes of action. The plaintiff now instituted, on the 5th April 1893, two suits, the one for the money and the other for the land. *Held*, that the plaintiff was entitled, under the Limitation Act, s. 14, to have the time occupied in the previous proceedings deducted in the computa-

suit

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26. ——— *Suit instituted in wrong Court—Bonâ fide mistake of law.* S 14 ... case where

Huro Chunder Roy v *Surnamoyi, I. L. R.* 13 *Calc.* 266; and *Krishna* v. *Chathappan, I. L. R* 13 *Mad.* 269, referred to *Ramjiwan Mal* v. *Chand Mal, I. L. R.* 10 *All.* 587, considered. BRIJ MOHAN DAS v. MANNU BIBI I. L. R. 19 All. 348

27. ——— *Bonâ fide mistake of law—Rejection of appeal on ground of limit-*

LIMITATION ACT (XV OF 1877)—*contd.*

———— s. 14—*contd.*

ation. That a *bonâ fide* mistake of law upon a doubtful point of jurisdiction of procedure as much entitles a person to the benefit of s. 14 of the Limitation Act as a *bonâ fide* mistake of fact. *Brij Mohan Das v. Mannu Bibi, I. L. R. 19 All 348*, referred to. Where a sale under Act VII of 1880 was confirmed on the 28th May 1894 and an

in referring the case to a full Bench, that the mere fact of the Commissioner having rejected the appeal on the ground of limitation is not sufficient to disentitle the plaintiff to the deduction of time under s. 14 of the Limitation Act during which that appeal was pending But it is for the Court, before which the question whether this suit is

the appeal had failed for reasons other than "defect of jurisdiction or other cause of a like nature" and was accordingly outside the scope of s 14 of the Limitation Act BISHAMBHAR HALDAR *v.* BONAMALI HALDAR . . 3 C. W. N 233

28. ———— *Exclusion of time of proceeding bonâ fide in Court without jurisdiction—Misjoinder of causes of action—"Cause of a like nature."* Two suits were brought for partition of the property of a deceased by his heirs under the Mahomedan Law—the first, by his widow and

ordinate Judge. The Subordinate Judge having ruled

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stated explicitly that the duty payable thereon was included in that already paid on the widow's plaint, which sum correctly represented the duty payable on the footing that the share of each formed a distinct subject matter All the plaints were by order placed on the file of the District Munsif's Court The plaints were at first treated at the Munsif's Court as being duly stamped, though payment of fresh Court-fees was subsequently

LIMITATION ACT (XV OF 1877)—*contd.*

———— s. 14—*contd.*

and the two amended suits and the seven fresh plaints had been filed in December 1894, more than twelve years from his death *Held* (on the question of limitation), that the suits by the two children of the first wife were not barred, as they should be treated as a continuation of their original joint claim, which had been instituted in the same Court before the period of limitation had expired That where there has been a misjoinder which has precluded a Court from entertaining

bining causes of action which could not be combined, being covered by the words "from other

period of limitation had expired and had been prosecuted diligently and in good faith, the time during which that original suit had been pending must be deducted and her amended suit held to be not barred That for similar reasons a like deduction should be made in favour of the six fresh suits of her children (unless a contrary decision were necessitated by the fact that their plaints had remained unstamped until after the expiration of the extended period of limitation) ASSAN *v.* PATHUMMA . . I. L. R. 22 Mad 494

29. ———— *Execution by Collector—Application to Collector to set aside sale—Civil Procedure Code (Act XIV of 1882), ss 244, 310A, 311, and 320* A decree passed against the applicant *N* was transferred for execution to the Collector under s 320 of the Civil Procedure Code (Act XIV of 1882) On the 8th May 1897, the

(XV of 1877), his application was not barred. *Held*, that the application was barred by limitation Under the rules made by the Government

Government of the Bombay Presidency, a Collector has not the power of the Court, under s. 311

LIMITATION ACT (XV OF 1877)—*contd.*

——— s. 14—*contd.*

of the Civil Procedure Code, to set aside a sale. NARAYAN *v.* RASULKHAN **I. L. R. 23 Bom. 531**

30. ——— *Deduction of time suit was being prosecuted in another Court.* The plaintiff sued under Act X of 1859 in the Revenue Court to recover her share of certain arrears of rent due from the defendants on a kabuliat executed by them in favour of the plaintiff's mother, but her suit, on the objection by the defendants that her co-sharer was not a party, was dismissed by the Collector, and his decision was

share was not her own; and therefore the Collector's Court had no jurisdiction to determine

VIII of 1869, and s. 29 of that Act would not apply. The limitation applicable was that provided by Act XIV of 1859, under s 14 of which Act the plaintiff was entitled to deduct the time during which she was *bonâ fide* prosecuting her claim in the Revenue Courts HARIS CHANDRA DUTT *v.* JAGADAMBA DASI
8 B. L. R. 190 note : 16 W. R. 61

31. ——— *Certificate granted by Collector under the Public Demands Recovery Act, suit to set aside* Where rent was payable jointly to certain wards of Court, and another proprietor, whose guardianship under the Court of Wards had ceased, and the Collector issued a certificate under Bengal Act VII of 1880, for a proportionate share of the rent due to the wards in a suit to set the certificate aside as invalid, the plaintiff was allowed, under s. 14 of the Limitation Act, to deduct the period during which he was *bonâ fide* seeking redress from the Revenue authorities, who had no jurisdiction to deal with the questions raised by him, and the suit was *held* to be not barred by lapse of time GIRJANATH ROY CHOWDHRY *v.* RAM NARAIN DAS
I. L. R. 20 Calc. 264

32. ——— *Deduction of time plaintiff was prosecuting another suit* Plaintiff as payee of an order drawn by defendant at Ahmedabad, where he (defendant) resided, on a firm at Bankok in Siam, and dishonoured on presentation, sued defendant and an agent of the Bankok firm who resided at Surat in the Subordinate Judge's Court at Surat Permission to proceed with the suit against the defendant (the drawer) having been refused by the High Court, plaintiff withdrew his plaint and filed his suit in the Court at Ahmedabad against the drawer alone. The subordinate Judge rejected the claim as barred by limitation. *Held*, by the High Court in appeal, that under s. 15 of the Limitation Act (IX of 1871) deduction might properly be made of the

I. L. R. 3 Bom. 182

33. ——— *Summary decree—Calculation of period of limitation.* A plaintiff is not bound to sue to enforce a summary decree against the immoveable property of the defendant pending a regular suit brought by the defendant

CHOWDHRY *v* KALEE CHURN ROY CHOWDHRY
7 W. R. 48

34. ——— *Deduction from*

CHETTY

35. ——— *Computation of period of limitation—Exclusion of time while prosecuting suit in Court without jurisdiction.* On the

1878, made an order rejecting it, on the ground that he should have instituted the suit in the Court of the Subordinate Judge R appealed from this order to the High Court, which affirmed it on the 28th January

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LIMITATION ACT (XV OF 1877)—*contd.*

———— s. 14—*contd.*

had jurisdiction, and the inability of that Court to entertain it did not arise from defect of jurisdiction or any cause of the like nature but from misjoinder of plaintiffs—a defect for which he must be held responsible, and from the 16th to the 23rd September he was not prosecuting his suit in any Court, and could not claim to have that period excluded RAM SUBHAG DAS *v.* GOBIND PRASAD I. L. R. 2 All. 622

36. ———— *Exclusion of time former suit was being prosecuted—"Other cause of a like nature."* The words "other cause of a like nature" in s 14 of the Limitation Act (XV of 1877) mean some cause analogous to defect of jurisdiction. Where a suit was dismissed on the ground that the debt sued for was due not to the plaintiff alone, but to the plaintiff and his partner, the latter not having been joined in the suit; and where the plaintiff subsequently brought a fresh suit for the same debt, making his co-partner a party:—*Held,*

v Gobind Prasad, I L R 2 All 622, and *Chunder Madhub Chuckerbutty v. Ram Coomar Choudry, 6 W R 184,* referred to *Deo Prasad Singh v Pertab Kairee, I. L R 10 Calc 86,* not followed. JEMA *v* AHMAD ALI KHAN I. L. R. 12 All. 207

37. ———— *Previous suit—Deduction of time.* In August 1885 the plaintiff and defendant entered into an agreement of partnership in a certain venture On the 2nd September 1887 the plaintiff filed a suit against the defendant in a District Munsif's Court to recover his share of the profits under the agreement In his evidence the plaintiff stated that there had been a settlement of the accounts between himself and defendant. The suit was thereupon dismissed as being cognizable by the Court of Small Causes, and the plaint was returned on the 1st March 1889 On the 27th the plaint was filed in the Court of Small Causes, an addition having been made to it The Court *held* that the addition was irregular, and on the 19th November permitted the plaint-

38. ———— *Deduction of time suit was being prosecuted in another Court* Where *A* brought a suit in the Munsif's Court, and it was found that the suit had been improperly valued, and that the Munsif had no jurisdiction to try it, and the Munsif returned the plaint in order that the suit might be brought in the proper

LIMITATION ACT (XV OF 1877)—*contd.*

———— s 14—*contd*

CHANDI DASI *v* JANAKIRAM 1 B. L. R. S. N. 12

(*Contra*) SHAM KANT BANERJEE *v* GOPAL LAL TAGORE . . . . . 1 W. R. 328

39. ———— *Deduction of time suit was in wrong Court through being overvalued* A suit was instituted in the Court of the Subordinate

instituting the suit in the Court of the Subordinate Judge *Held,* that, in computing the period of limitation prescribed for the suit, the time during which the plaint was on the file of the Subordinate Judge's Court must be deducted. OBHOY CHURN NUNDI *v* KRITARTHAMOYI DOSSEE I. L. R 7 Calc. 284

40. ———— *Deduction of time occupied by former suit—Omission to obtain registered certificate—"Cause of like nature."* At a Court sale held on the 15th November 1871, in execution of a decree, the plaintiff's deceased husband purchased a house, but neglected to register his sale certificate. In attempting to recover possession he was obstructed by the defendant, who claimed the property as her own Summary proceedings under s 269 of Act VIII of 1859 were thereupon instituted against the defendant, and the defendant's claim was upheld by an order passed on the 7th November 1872 In the meantime the plaintiff's husband having died, plaintiff filed, on the 31st March 1873, a regular suit to establish her title On the 8th July 1873 she obtained a second certificate, and registered it The Court of first instance awarded her claim, but on appeal by the defendant the lower Appellate Court reversed that decree, on the ground that, at the institution of the suit, plaintiff had not a registered certificate of sale That decree was confirmed on the 17th November 1879, on second appeal by the High Court On the 30th April 1880 plaintiff brought this suit on the strength of her registered certificate The Court of first instance allowed her claim The defendant appealed, and the lower Appellate Court held her suit not maintainable On appeal by plaintiff to the High Court:—*Held*, that the suit was barred. The plaintiff was not entitled to a deduction of the time during which she was unsuccessfully prosecuting the former suit, inasmuch as her inability to produce a registered certificate was not a "cause of a like nature," to want of jurisdiction within s 14 of Act XV of 1877. BAI JAMNA *v.* BAI ICHHA . . . I. L. R. 10 Bom. 604

41. ———— *"Prosecuting" "Good faith"—"Other cause of a like nature"—*

LIMITATION ACT (XV OF 1877)—*contd.*

——— s. 14—*contd.*

Limitation Act, construction of. In October 1881 an account was struck between *K* and *M*, and a sum of R1,457 was agreed between them to be the correct balance then due by the latter to the former. Of this amount a sum of R885 was paid In March 1885 *K* sued *M* for the balance of R600 then due on the account stated The plaintiff claimed the benefit of s. 14 of the Limitation Act [illegible]

That was a suit for the redemption of certain zamindari property on which the defendant held a mortgage, and the plaintiff claimed in that suit that the amount of the balance due by the defendant on the account stated should be deducted from the mortgage-money under an oral agreement entered into by the parties in October 1881. *Held*, that the plaintiff could not be said to have formerly prosecuted his remedy in respect of the items now claimed in a Court, which, for want of jurisdiction or other cause of a like nature, was unable to entertain it; [illegible]

[illegible] tion are not bound by the rule established by a balance of authority in England, that statutes of this description must be construed strictly. On the contrary, such Acts, where their language is ambiguous or indistinct, should receive a liberal interpretation, and be treated as "statutes of repose" and not as of a penal character or as imposing burdens *Roddam* v. *Morley, 26 L. J. Ch. 438 ; Ali Saib* v. *Sanyairaz Peddabaliyra Simhula, 3 Mad. 5 ; Empress* v *Kola Lalang, I L. R 8 Calc. 214 ; Beil* v *Morrison, 7 Peters (U S.) 360 ; Keramut Hossein* v *Gulab Koonwar, 3 W R 101 ;* and *Muhammad Bahadoor Khan* v. *Collector of Bareilly, L. R. 1 I A 167,* referred to. MANGU *v.* LAL KANDHAI LAL . **I. L. R. 8 All. 475**

42. ——— *Prosecution of* [illegible]

43. ——— *Deduction of* [illegible]

[illegible] first Court and the disposal of the appeal should be excluded in computing the period of limitation prescribed by Act XIV of 1859. RAJ KISTO ROY *v.* BEER CHUNDER JOOBRAJ . **6 W. R. 308**

44. ——— *Deduction of time suit was pending in wrong Court.* Where a suit, prosecuted *bonâ fide* and with due diligence, was dismissed in appeal for want of jurisdiction in the Court of first instance, and a second suit was afterwards brought in a right Court:—*Held*, that in computing under s 14 of Act XIV of 1859 the period of limitation of the suit, the time between the decree of the Court of first instance and the institution of the appeal should be excluded. AJOODHYA PERSHAD *v.* BISHESHUR SAHAI

6 N. W. 141

45. ——— *Deduction of time—Prosecution of suit in another Court.* A bond suit was filed in a Munsif's Court on the day on which the Court re-opened after the Dusserah vacation, during which the period of limitation expired as regards the payment of the bond-debt. The Munsif decreed the suit, but the Subordinate Judge in appeal found that the Munsif had no jurisdiction, and ordered him to return the plaint. This was done, and the plaint was filed in the Small Cause Court on the same day. The defendants pleaded limitation. *Held*, that, under Act IX of 1871, s. 15, the plaintiff was entitled to exclude the time during which he had been prosecuting the suit in the regular Court up to the date of the lower Appellate Court's judgment, but not the time during which he waited to get the plaint back. ABHAYA CHURN CHUCKERBUTTY *v* GOUR MOHUN DUTT . . . . **24 W. R. 28**

46. ——— *Suit not against same defendants.* A former suit brought, not against the same defendants, but only against one of them, did not fall within s. 14, Act XIV of 1859 ; consequently the time of its pendency could not be deducted in computing limitation in a subsequent suit NILMAHDUB SURNOKAR *v* KRISTO DOSS SURNOKAR . . **5 W. R. 281**

47. ——— *Deduction of time suit was being prosecuted in another Court* The question whether the plaintiff is entitled, in computing the period of limitation, to deduct the time occupied in prosecuting a former suit, depends in the first place upon the question whether the former suit was brought upon the same cause of action as the new suit Where the plaintiff brought two suits, one against one branch of the family and the other against another branch, to recover a share of that portion of the property which was in the possession of each, and these suits were rejected on the ground of their having been improperly brought, it was *held* that in bringing a consolidated suit against all sharers for a general partition the plaintiff was not entitled to deduct the time occupied in prosecuting his former suits. JOITARAM BECHAR *v.* BAI GANGA

8 Bom. A. C. 228

LIMITATION ACT (XV OF 1877)—*contd.*

——— s. 14—*contd.*

48. ——— *Deduction of time suit is being prosecuted in Court without jurisdiction.* Under a decree made in a suit brought by *A* against *B*, *A* obtained possession of certain property. The decree was reversed on appeal, but no order was made by the Appellate Court with regard to mesne profits. After such reversal, *B* applied to and obtained an order from the Court of first instance for possession and mesne profits. This order, so far as it awarded mesne profits was set aside by the High Court as being an order he had no power to make, no right to mesne profits having been declared by the Appellate Court, and as being made "altogether without jurisdiction;" they held that *B* should have applied to the Appellate Court which reversed the decree, or should have brought a separate suit for the mesne profits. An application for review of this judgment being rejected, *B* instituted a suit for such mesne profits. *Held per* PEACOCK, C.J., KEMP and MACPHERSON, JJ. (LOCH, J., dissenting), that in the proceedings taken by *B* in the former suit to obtain the mesne profits she was engaged in prosecuting a suit upon the same cause of action against the same defendant within the meaning of s. 14, Act XIV of 1859. HURRO CHUNDER ROY CHOWDHRY *v.* SOORADHONEE DEBIA

B. L. R. Sup. Vol. 985 : 9 W. R. 402

49. ——— *Presentation of plaint in wrong Court—Madras Boundary Act, s. 25.* In 1883 a plaint, by way of appeal from a decision purporting to be passed under s. 25 of the Boundary Act, was presented to the Court of a District Munsif and returned on the ground that the subject-matter of the suit was beyond the jurisdiction of the said Court. The plaint was then filed in the District Court more than two months after the date when the decision of the Boundary

... SANKARA

50. ——— *Proceedings bonâ fide prosecuted in a Court without jurisdiction—Rent Recovery Act (Mad. Act VIII of 1865), s. 78.* A landlord not having tendered a legal pottah to his tenant made a demand on him as for rent, and on his refusal to pay attached his holding. The tenant, to release the attachment, paid the sum demanded under ...

On 22nd Mar...

Small Cause...

to recover th...

Limitation Act, 1877. KULLAYAPPA *v.* LAKSHMIPATHI . . . **I. L. R. 12 Mad. 467**

51. ——— *Execution of time during which former suit was pending—Suit*

LIMITATION ACT (XV OF 1877)—*contd.*

——— s. 14—*contd.*

to set aside order—Limitation Act, 1877, Art. 11. Under a decree obtained against the karnavan

claim was dismissed on 5th September, 1882. On the 27th September 1882, they filed a suit in

a fresh order, and the enquiry, directed by the High Court, did not terminate until 30th October, 1883, when another order was made by the District Judge by which the original decision of the District Munsif was confirmed. *Held*, that under s. 14, expln. 1 of the Limitation Act, the prior suit terminated only on the 30th October 1883, and that the present suit was not barred, under sch. II, art. 11. SANKARAN *v.* PARVATHI

I. L. R. 12 Mad. 434

52. ——— *Deduction of*

of this decree, certain property was attached. *B* claimed this property as his own, and sought to remove the attachment, but the Court passed an order confirming the attachment on the 20th November, 1880. In 1881 *B* filed a regular suit to set aside this order. The suit was dismissed in 1885, as barred by s. 244 of the Civil Procedure Code (Act XIV of 1882). Thereupon *B* filed an appeal from the order in execution made on the

order appealed against and the date of filing the suit. SITARAM PARAJI *v.* NIMBA VALAD HARISHET

I. L. R. 12 Bom. 320

53. ——— *Exclusion of*

LIMITATION ACT (XV OF 1877)—*contd.*

———— s. 14—*contd.*

and obstructed the auction-purchasers in obtaining possession. His obstruction was, however, removed by an order of the Court, dated 23rd October, 1873. In a suit which was filed in 1883, for partition of the ancestral property and possession of his share:—*Held*, that, the suit not having been brought within one year from the date of that order, as required by the law then in force, the claim was clearly time-barred. The plaintiff was not entitled to a deduction of the time taken up in prosecuting a former suit, which was filed in 1872 and disposed of in 1883; as that suit did not fail for want of jurisdiction or any defect of a like nature such as is contemplated by s 14 of the Limitation Act (XV of 1877), but was withdrawn by the plaintiff himself for want of parties, with liberty to bring a fresh suit [illegible]
(Act XIV [illegible]
case. K[illegible] . . .
RENGE[illegible] . . . . .

54. ———— *Appeal preferred to wrong Court through mistake of law—Exclusion of time.* S 14 of the Limitation Act (XV of 1877) does not contemplate cases where questions of want of jurisdiction arise from simple ignorance of the law, the facts being fully apparent, but is limited to cases where from *bonâ fide* mistake of fact the suitor has been misled into litigating in a wrong Court. The phrase "other cause of a like nature" in a section is vague, and cannot be held to release a person from the obligation to know the law of the land *Bilwant Singh* v. *Gumani Ram, I L R 5 All 591*, explained. RAMJIWAN MAL *v.* CHAND MAL **I. L. R. 10 All. 587**

55. ———— *Suit for rent from alleged mal land—Deduction.* Where a plaintiff claims rent on account of lands as mal from defendants, who set up a lakhiraj title and produced lakhiraj sanads in support, he has first of all to prove that he has collected rents from the lands as mal within twelve years of the suit, and in calculating the period of limitation, the plaintiff is not entitled to deduction on account of the periods of pendency of suits for rent and for small portions for the land, they not being suits for the same cause of action. PRODHAN GOPAUL SINGH *v.* BHOOP ROY OJHA . . **9 W. R. 570**

56. ———— *Deduction of time suit is pending in Court without jurisdiction* Where limitation is pleaded, a plaintiff was not entitled, under s 14, Act XIV of 1859, to deduction for the time of the pendency of a suit brought by defendants upon the same cause of action, if it was not a suit in which the Courts were unable to decide the question from defect of jurisdiction or other such cause OODOYMONEE DABEE *v.* BISHONATH DUTT . . . . . . **9 W. R. 455**

57. ———— *Deduction of time suit was pending* In a suit by an executrix, to recover, under deeds of mortgage and sale, dated, respectively, October, 1837 and April, 1840, executed to the testator by first defendant's deceased husband, certain villages which first defendant in 1848 and 1851 mortgaged to second and third defendants, the defendants pleaded that the suit was barred by lapse of time. For the plaintiff it was contended that the operation of the Limitation Act was suspended from 1844 until 1867, by reason of the pendency of an equity suit, commenced by bill filed by the present first defendant against the testator, to set aside the deeds of October, 1837, and April, 1840, which bill was dismissed by consent in June, 1867. *Held* (reversing the decision of the lower Court), that these proceedings had no such effect, that the plaintiff might have brought a suit for ejectment at any time; and that the present suit was barred. TRANQUEBAR SAMI AYYAN *v.* NATHAMBEDU AMMAI AMMAL **6 Mad. 234**

58. ———— *Deduction of time during which former suit for rent was pending which was dismissed for non-joinder of parties.* In suits by the Receiver of the Tanjore estate to recover rent due under muchalkas executed by defendants, the mirasidars of certain villages, agreeing to take the villages on rent for five Faslis, from 1273 to 1277, at an annual rent, the defendants pleaded limitation as to part of the rent claimed. The plaintiff claimed to be entitled to the advantage of s 14 of that Act because he was for a time prosecuting suits against defendants separately for the arrears of rents alleged to be barred, all which suits were dismissed on the ground that plaintiff could not sue the defendants separately while they had executed the muchalka jointly. The District Judge found for the defendant on the questions on the Act of Limitations *Held*, on appeal, that the period of limitation applicable to a suit for rent was three years (under *Act XIV* of 1859), and that, as to the claim to the exception under s 14, it failed at every turn. The cause of action was not the same, for there the obligation sued upon was several, here it is joint; and the Court which decided the former suits not only did not fail to decide them, but did decide them. MORRIS *v.* SIVARAMAYYAN . **7 Mad. 242**

59. ———— *Deduction of time former suit was pending.* Where a plaintiff sues upon his jenm title, having previously instituted a suit in which he unsuccessfully set up his kanam right, the latter suit cannot avail to prevent the Statute of Limitations from running against him. PARAKUT ASSEN CUTTY *v.* EDAPALLY CHENNEN. . . . . . **2 Mad. 266**

60. ———— *Meaning of "suit"—Appeal forbidden by law—Good faith* *Held*, that the word "suit" used in s. 14, Act XIV of 1859, had only one, and that the common and ordinary sense of the term. *Held*, further, that the plaintiff, in preferring an appeal from a summary order, which appeal was expressly forbidden

LIMITATION ACT (XV OF 1877)—*contd.*

——— s. 14—*contd.*

by law, could not be considered to have been prosecuting a suit within the meaning of s. 14, and was therefore not entitled to the indulgence given by the aforesaid section, even assuming that section to be applicable to suits to contest the order under s. 246, Act VIII of 1859. FUTTEH RAM *v.* MONOHUR LALL . . . 3 Agra 3

61. ——— *Deduction of time for appeal from order under s. 246, Civil Procedure Code, 1859.* An unsuccessful claimant, instead of bringing a regular suit to establish his right as provided by s. 246, Act VIII of 1859, chose to file an appeal against the order rejecting his claim His appeal, though successful before the lower Appellate Court, having been thrown out in special appeal, as illegal under the section above cited, he sued to set aside the order rejecting his claim *Held*, that he was not entitled, under s. 14, Act XIV of 1859, to deduct from the period of limitation the time during which the appeal proceedings were pending. RAMDASS BABOO *v.* WATSON . . . W. R. 1864, 371

62. ——— *Suit brought in wrong Court.* Where a plaintiff, relying upon the defendant's representation as to the latter's place of residence, brought his suit in a Court which had not jurisdiction, the time of the pendency of the suit in such Court was *held* to be properly excluded under s. 14, Act XIV of 1859, in computing limitation. BANEE MAHDUB LAHOREE *v.* BIPRO DASS DEY . . . . 15 W. R. 69

The words "or other cause of a like nature," in s. 14 exclude many of the causes which were held to come within the meaning of the corresponding section of the Act of 1859.

63. ——— *"Other cause"* The words "or other cause" in s 4, Act XIV of 1859, applied to cases where the action of the Court was prevented by causes not arising from laches on the part of the plaintiff,—in other words, by accidental circumstances beyond his control. LUCHMUN PERSHAD *v.* NIMHOO PERSHAD 17 W. R. 266

RAMAKRISTNACASTRULU *v.* DARBA LAKSHMIDEVAMMA . . . . 1 Mad. 320

as where the former suit had been dismissed as not having been brought in proper form KERAMUT HOSSEIN *v.* GOLAP KOONWAR . 3 W. R. 101

64. ——— *Other causes of a like nature—Suit wrongly non-suited* Where a suit was non-suited, wrongly on a point unconnected with jurisdiction it was *held* in a subsequent suit that the *time could not be deducted.* DHUNMONEE CHOWDHRAIN *v* BRINDABUN CHUNDER SIRCAR CHOWDRY . . . 7 W R. 160

65. ——— *Other causes of a like nature—Suit against wrong party* For litigation against a wrong party no deduction can be allowed. MUNNA JHUNNA KOONWAR *v* LALJI ROY . . . . . . 1 W. R. 121

LIMITATION ACT (XV OF 1877)—*contd.*

——— s. 14—*contd.*

KAVASJI SORABJI *v* BARJORJI SORABJI 10 Bom. 224

66. ——— *Suit on bond against obligor missing—Subsequent suit against his representatives on presumption of his death* S 14 of the Act of 1859 was *held* to

to a decision, and would, where a suit on a bond

67. ——— *Deduction of time in suit by adoptive son to set aside alienation by mother* No deduction from the period of limitation can be allowed to the adopted son for a period of pendency of suits brought by or against him, to prove or disprove the validity of his adoption. KISHEN MOHUN KOOND *v.* MUDDUN MOHUN TEWAREE . . . . 5 W. R. 32

68. ——— *Suit for mesne profits* In a suit for mesne profits the Limitation Act allows no deduction for the pendency of the suit for possession The only deduction which that Act allows is for the pendency of a suit not adjudged on its merits owing to some objection as to jurisdiction, etc ISSUREENUND DUTT JHA *v* PARBUTTY CHURN JHA . . 3 W. R. 13

69. ——— *Mesne profits* Plaintiff sued for, and recover possession of, land.

excluding from such computation the period of the pendency of the suit for possession from the date of the plaint till the final decree ANNADA GOBIND CHOWDHRY *v* SWARNAMAYI ABHOY GOBIND CHOWDHRY *v* SWARNAMAYI

B. L. R. Sup. Vol. 7

S C UNNODA GOBIND CHOWDHRY *v* SURNOMOYEE OBHOY GOBIND CHOWDHRY *v* SURNOMOYEE . . . . W. R. F. B 163

70. ——— *Deduction of period occupied by suit annulled from defect in jurisdiction or other like cause* Under a decree made in a suit brought by *A* against *B*, *A* obtained possession of certain property. The decree was

being an order the Court had no power to make, no right to mesne profits having been declared by the Appellate Court, and as being made altogether

LIMITATION ACT (XV OF 1877)—*contd.*

——— s. 14—*contd.*

without jurisdiction. The High Court held that *B* should have applied to the Appellate Court which reversed the decree, or should have brought a separate suit for the mesne profits. An application for review of judgment being rejected, *B* instituted a suit for the mesne profits. *Held per* KEMP, MACPHERSON, and LOCH, *JJ.* (PEACOCK, *C.J.*, dissenting), that the order of the Court of first

SOORADHONEE DEBIA

B. L. R. Sup. Vol. 985 : 9 W. R. 402

71. ——— *Deduction of time former suit was pending* An objector's claim under Act VIII of 1859, s. 246, having been dis-

another suit for a declaration that the property (which was still in his possession) was his, and was not affected by the sale *Held*, that, in calculating limitation, no deduction could be made for the time consumed, it not having been dismissed for defect of jurisdiction or for some analogous cause to defect of jurisdiction, in the first suit, and it was also barred because the cause of action in the second suit was the same as that in the first. RAGHOONATH PERSHAD *v* SURJOO PERSHAD SINGH

22 W. R. 162

72. ——— *Exclusion of time of proceeding bonâ fide in Court for a cause of like nature to want of jurisdiction.* The plaintiff, on the 31st March, 1884, brought a suit in the Small Cause Court on a promissory note, dated the 24th April, 1879. In his plaint he omitted to set out certain payments of interest by the defendant, which payments (if so set out) would have had the effect of saving the suit from being barred by limitation The Judge of the Small Cause Court held that, on the face of the plaint, the suit was barred, and rejected the plaint on the 24th April, 1884, under cl (c) of s. 54 of the Civil Procedure Code On the 25th April, 1884, the plaintiff brought a fresh suit on the same promissory note, and in his plaint set out how it was that he claimed exemption from limitation *Held*, that, in computing the period of limitation, the plaintiff was not entitled, under s 14 of Act XV of 1877, to exclude the time during which he was prosecuting the previous suit NOBIN CHUNDER KURR *v.* ROJOMOYE DOSSEE . **I. L. R. 11 Calc. 264**

73. ——— *Deduction of time during which another suit was being tried.* The defendants cut down and carried away some trees which had been growing on the plaintiff's land.

LIMITATION ACT (XV OF 1877)—*contd.*

——— s. 14—*contd.*

The plaintiff's manager brought a suit in his own name against the defendants for the value of the trees so cut and carried away. The suit was dis-

contended that the time occupied in the former suit ought to be excluded in computing the period of limitation prescribed for the second suit. *Held*, that the provisions of Act XV of 1877, s. 14, did not apply, and that the time could not be excluded, as the reason why the previous suit was dismissed was, because it was brought in the name of the wrong person, not from defect of jurisdiction, or from any cause of a like nature. RAJENDRO KISHORE SINGH *v* BULAKY MAHTON

I. L. R. 7 Calc. 367

74. ——— *Deduction of ... due diligence— ...ke nature.* On ... was instituted ... session of land claimed under a kobala, dated the 31st October, 1867. This suit was dismissed on the ground of misjoinder of causes of action. On the 14th of April 1881, the plaintiffs sued for possession of the

diction, was unable to entertain it. *Ram Sabhag Das v. Gobind Prasad, I. L. R 2 All 622*, not followed. DEO PROSAD SINGH *v.* PERTAB KAIREE **I. L. R. 10 Calc. 86; 13 C. L. R. 218**

75. ——— *Exclusion of time of proceeding with suit borâ fide—Cause of like nature.* Of six persons in whom was vested the obligee's interest under a hypothecation-bond, three brought a suit upon it in a District Court, and the other three brought a similar suit in a District Munsif's Court to recover, with interest, their respective shares of the sum secured. The former suit was dismissed as not being maintainable, and the latter was withdrawn. The present suit was brought by all six. *Held*, that in comput- ... sue, ... for- ... *Singh* ...owed.

NARASIMMA *v.* MUTTAYAN **I. L. R. 13 Mad. 451**

76. ——— *Deduction of time during prosecution of suit with due diligence—Defect of jurisdiction—Other cause of a like nature—Misjoinder of causes of action and parties.* Where a previous suit by the same plaintiff against the same defendant has failed by reason of misjoinder of causes of action and parties, the plaintiff in second suit is not entitled to the extra period of limitation allowed by s 14 of the Limitaton Act, since the cause of failure of the previous suit is not

LIMITATION ACT (XV OF 1877)—*contd.*

——— s. 14—*contd.*

due to "defect of jurisdiction" in the Court which entertained the suit, nor is it a cause "of a like nature" thereto. *Deo Prosad Singh v. Pertab Kairee, I. L. R. 10 Calc. 86*, dissented from. TIRTHA SAMI *v* SESHAGIRI PAI

I. L. R. 17 Mad. 299

77. ——— *Multifariousness and misjoinder of parties—"Other cause of a like nature" to defect of jurisdiction—Error in procedure.* In cases in which s. 14 of the Indian Limitation Act, 1877, is pleaded as protecting the plaintiff from the bar of limitation, if there was an inability in the Court to entertain the former suit produced by any cause not connected in any way with want of good faith or due diligence in the plaintiff, that cause is of like nature to defect of jurisdiction within the meaning of s 14 It is not necessary that the cause which prevented the former Court from entertaining the suit should be a cause which was independent of, and beyond the control of, the plaintiff. Hence, where the inability of the Court to entertain the former suit arose from misjoinder of plaintiffs and causes of action, and there was on the plaintiff's part in the former suit no want of good faith or due diligence, the plaintiff was *held* entitled to the benefit of the time during which he was prosecuting the former suit, that is, from the time when the plaint in that suit was filed until the time when it was returned to the plaintiffs for amendment. *Chunder Madhub Chuckerbutty v. Ram Coomar Choudhry, B L R Sup Vol 553; 6 W. R 184, Brij Mohan Das v. Mannu Bibi, I. L R 19 All 348, Deo Prosad Singh v Pertab Kairee, I. L. R 10 Calc. 86, Bishambhur Haldar v Bonomali Haldar, I. L. R 26 Calc 414, Ram Subhag Das v. Gobind Prasad, I L R 2 All 622, Jema v. Ahmad Ali Khan, I L R 12 All 207, Mullick Kefait Hossein v Sheo Pershad Singh, I L R 23 Calc 821, Bai Jamna v Bai Ichha, I L R 10 Bom 604, Narasimma v Muttayan, I L R 13 Mad 451, Tirtha Sami v Seshagiri Pai, I. L. R 17 Mad 299, Subbarau Nayudu v Yagana Pantulu, I L R 19 Mad 90, Venkiti Nayak v. Murugappa Chetty, I L R 20 Mad 48*, and *Assan v Pathumma, I L R 22 Mad 494*, referred to MATHURA SINGH *v* BHAWANI SINGH

I. L. R. 22 All 248

78. ——— *Deduction of period—Defect of jurisdiction* In a suit for rent in which limitation was pleaded the plaintiffs alleged that, in answer to a former suit brought against them by the defendants, they had *bonâ fide* claimed to set off the same rent, but that their claim to set off had been, on technical grounds, disallowed on appeal, and they contended that under s 14 of the Limitation Act (XV of 1877), they were entitled to exclude the period during which that suit as pending *Held*, that the plaintiff's claim of set-off was not disallowed on account of any defect of jurisdiction nor any defect of a like nature, and that therefore he is not entitled to exclude the period as he contended. HAFIZUNNESSA KHATUN *v.* BHYRAB CHUNDER DAS

13 C. L. R. 214

79. ——— *Withdrawal of application with leave to renew it—Deduction of time—Civil Procedure Code, 1877, s. 374* The rule laid down in s. 374 of the Code of Civil Procedure (Act X of 1877), that, where a suit is withdrawn with leave to bring a fresh suit, the plaintiff shall be bound by the law of limitation in the same manner as if the first suit had not been brought, applies to applications for execution. The bar created by s 374 of the Code of Civil Procedure is, in such a case, not removed by s. 14 of the Limitation Act, as causes for which the withdrawal of a suit or application may be permitted are not causes "of a like nature" with defect of jurisdiction PIRJADE *v.* PIRJADE . . . **I. L. R. 6 Bom. 681**

80. ——— *Mistake or want of enquiry—deduction of time during which plaintiff was prosecuting another suit* A plaintiff who through want of enquiry or mistake, brings a suit which he is unable to establish, will not be allowed, on discovering his error and bringing a suit in which he would have been entitled to recover, had he [illegible]

s. c. on appeal to Privy Council.

I. L. R. 9 Calc. 255
12 C. L. R. 129
L. R. 9 I. A. 82

81. ——— *Suit in foreign Court, deduction for* The provision of the Limitation Act, 1877, s 14, which excepts such time as is spent in litigating in a Court of defective jurisdiction in favour of a plaintiff does not apply where the plaintiff brought his suit in a foreign Court which, according to its own laws, had ample jurisdiction, but according to the law of British India had no jurisdiction whatever. PARRY & Co. *v* APPASAMI PILLAI . **I. L R. 2 Mad. 407**

82 ——— *Deduction of time pending suit* A plaintiff is entitled to deduction from the period of limitation of the period [illegible]

83 ——— Proceedings to enforce a decree, taken *bonâ fide* before a Court which the party *bonâ fide* believes to have jurisdiction, is a "proceeding," within the meaning of s. 14 of the Limitation Act *Hira Lal v Badri Das, I L R 2 All 792*, referred to JAFAR *v.* KAMALINI DEBI (1900) . **I. L. R. 28 Calc. 238**
s.c. 5 C. W. N. 150

84. ——— *Act XII of 1851 by (North-Western Provinces Rent Act), s 148—Suit*

LIMITATION ACT (XV OF 1877)—contd

——— s. 14—*contd.*

by intervenor to establish his title in a Civil Court—Limitation. *D* sued *C* for rent of agricultural land alleging *C* to be his occupancy-tenant. *C* pleaded that he was not the tenant of *D*, but was the tenant of *B* and others. *B* and others were accordingly added as defendants to the suit. The suit was decided by the Rent Court of first instance on the 30th September, 1895, against *B* and others. *C*, the tenant, appealed to the Collector. *B* and others did not appeal to the Collector, but when *C's* appeal was dismissed, appealed to the District Judge. The District Judge, on the 28th March, 1898, dismissed this appeal, holding that no appeal lay to him. *B* and others then brought a suit in the Civil Court for declaration of their title. This suit was filed on the 3rd August, 1898. *Held*, that the suit was barred by limitation Whatever might have been the case with *C*, *B* and others, though perhaps acting in good faith, did not prosecute the former proceedings in the Court of Revenue with due diligence within the meaning of s 14 of the Indian Limitation Act, 1877 *Muhammad Salim* v *Abdul Rahim, All. Weekly Notes (1885) 261*, and *Ganga Prasad* v. *Baldeo Bam, I L. R 10 All 347*, referred to DASRATH RAI *v* BHIRGU RAI CHANDAN (1901) . . **I. L. R. 23 All 434**

85. ——————— *Deduction of period during which plaintiff had been prosecuting another proceeding—Former proceeding dismissed for misjoinder of causes of action—Written statement of defendant treated as an acknowledgment.* Plaintiff had previously filed against the same defendants a suit which had been dismissed on the ground of misjoinder of causes of action He now filed this suit, which would be barred by limitation unless the period during which the first suit had been pending should be deducted, under s. 14 of the Indian Limitation Act *Held*, that plaintiff was entitled to have that period deducted, inasmuch as he had prosecuted the first suit with due diligence The written statement of the defendant in the first suit was treated as an acknowledgment, under s 19 of the Limitation Act, from the date of which the period of limitation should be calculated. VENKATARATNAM NAIDU *v* RAMARAJU (1901) . . **I. L. R. 24 Mad. 361**

86. ——————— *Limitation—Suit to recover possession of immoveable property—Extension of period of limitation—Time occupied in prosecuting mutation proceedings before revenue officers* *Held*, that the prosecution of an application for mutation of names under the provisions of the North-Western Provinces Land Revenue Act, 1873, and of appeals [illegible] Settle-

[illegible] in

[illegible] t,

[illegible] er

[illegible] a

[illegible] on

for mutation of names is not a civil proceeding, nor are the Settlement Officer, the Commissioner and the Board of Revenue "Courts," but they are Executive Officers of Government. MUHAMMAD SUBHAN-ULLAH *v.* THE SECRETARY OF STATE FOR INDIA (1904) . . . **I. L. R. 26 All. 382**

87. ——————— *Suspension of right of action.* In 1872, a Hindu died intestate, leaving three sons, *B M*, *M M* and *C L* *C L* died in 1881. On the 18th January, 1892, *M M* and the sons of *C L* were dispossessed of their share in certain property. In 1896 the sons of *C L* instituted a suit against *B M* and *M M* for possession and account, and in 1897 on the death of *B M* and *M M* their sons were brought on the record. The sons of *M M* supported the sons of *C L*, and an issue was raised as between the co-defendants as to whether the sons of *M M* were entitled to a certain share A decree, dated the 20th April, 1903, was passed in favour of the plaintiff, and it was further declared that the defendants, the sons of M M, were entitled to the share they claimed. The sons of *B M* appealed. On the 22nd February, 1904, the Appeal Court confirmed the decree in favour of the plaintiffs, and set aside the decree so far as it related to the sons of *MM*. Thereupon, on the 14th November, 1904, the sons *MM* instituted the present suit against the sons of *C L* and of *B M* for possession, partition and accounts. *Held*, that the right of the plaintiffs to bring an action to recover the property was suspended between the 20th April, 1903, and the 22nd February, 1904, and that in consequence the suit was not barred by limitation. *Ranee Surno Moyee* v. *Shooshe Mokhcey Burmonia, 12 Moo. I. A 244*, and *Prannath Roy Choudhry* v. *Rookea Begum, 7 Moo. I A. 323*, followed *Pulteney* v. *Warren, 6 Ves. 73*, and *East India Company* v. *Campion, 11 Bli. (N. S.) 158*, referred to *Quære* · Whether s. 14 of the Limitation Act covers the case LAKHAN CHANDER SEN *v.* MODHU SUDAN SEN (1907)
I. L. R. 35 Calc. 209
s.c. 12 C. W. N. 326

88. ——————— *Limitation—Suit—Leave to withdraw—Ultra vires—Fresh suit* An order giving leave to withdraw a suit and file a fresh suit on the same cause of action, on the ground that leave under cl. 12 of the Charter to institute it was granted by the Registrar, was held to be *ultra vires*, and the order was regarded [illegible]

Civil Procedure does not apply except to cases where the suit is properly pending in a Court in which the leave was granted A plaint was filed well within the period of limitation. But the leave to institute it under cl. 12 of the Charter was obtained from the Registrar. Under the *practice* [illegible]

LIMITATION ACT (XV OF 1877)—*contd.*

——— **s. 14**—*concld.*

be barred by limitation. *Held*, that the leave to withdraw was not granted under s. 373 of the Code of Civil Procedure; that, therefore, s. 374 of the Code could not operate as a bar to the fresh suit and that under s. 14 of the Limitation Act (XV of 1877), it was not barred by limitation RAMDEO v GONESHNARAIN (1908) . **I. L. R. 35 Calc. 924**
s.c. 13 C. W. N. 921

89. ——— "*Unable to entertain*" *and* "*unable to decide*," *distinction between*—"*Some other cause of the like nature*," *which is Act VII of 1859*—*Non-suit*—*Misjoinder of parties and causes of action*—"*Prosecuted with due diligence*" A plaintiff cannot be said to have prosecuted a suit with due diligence within the meaning of s. 14 of the Limitation Act (XV of 1877) when, owing to his own negligence or default, the suit is so framed that the Court cannot try it out on the merits. An improper joinder of parties or of causes of action is not "a case of a like nature" contemplated to fall within the meaning of s. 14 *Chunder Madhub Chuckerbutty* v *Bissessuree Debea*, *6 W. R. (Civ R) 154*, *Bai Jamna* v *Bai Ichha*, *I. L. R. 10 Bom. 604*, followed *Deo Pershad Sing* v. *Pertab Kairee*, *I L R 10 Calc 86*, *Mathura Sing* v. *Bhowani Sing*, *I. L R 22 All 248*, dissented

——— **s. 14, Sch II, Art. 109**—

see MESNE PROFITS . **I. L. R. 32 Calc. 118**

——— *Limitation*—*Res judicata*—*Past and future mesne profits*—*Profits, previous suit for*—*Civil Procedure Code (Act XIV of 1882), s 13, Expl III.* For the purpose of limitation, mesne profits must be regarded as accruing due from day to day, unless shown to fall due otherwise, so that all mesne profits due for the period antecedent to the three years previous to the institution of the suit are barred. *Thakore Dass Roy Chowdhry* v *Nobin Krista Ghose*, *22 W. R 126*, distinguished *Abas* v *Fassih-ud-din I. L R 24 Calc. 413*, referred to S 14 of the Limitation Act does not entitle a plaintiff in a subsequent suit for mesne profits to a deduction of the period during which his previous suit was pending, when the Court in the previous suit did not pass a decree for mesne profits subsequent to the institution of the suit, either through inadvertence or because the claim was not especially pressed *Deo Prosad Singh* v *Partab Kairee*, *I L R 10 Calc 86*; *Hem Chandra Choudhry* v *Kali Prosanna Bhaduri*, *I. L R 30 Calc. 1033*, *Seth Kahandas Narandas* v *Dahiabhai*, *I L R 3 Bom 182*, and *Putali Meheti* v *Tulja*, *I L R 3 Bom 223*, distinguished. S. 13 of the Civil Procedure Code does not bar a suit for mesne profits, which was claimed in a previous suit between the parties;

LIMITATION ACT (XV OF 1877)—*contd.*

——— **s. 14, Sch. II, Art. 109**—*concld.*

but in regard to which the decree was silent, the mesne profits claimed in the second suit being a period subsequent to the institution of the first suit. *Mon Mohun Sirkar* v *The Secretary of State for India*, *I. L R 17 Calc. 968*; *Ram Doyal* v. *Madan Mohan Lal*, *I L. R. 21 All 425*; *Bhikhrau* v. *Sitaram*, *I L R 19 Bom. 532*, and *Ramabhadra* v *Jagannatha*, *I. L. R 14 Mad. 328*, followed G S. HAYS v PADMANAND SINGH (1905)
I. L. R. 32 Calc. 118

1. ——— **s. 15**—*Deduction of time injunction afterwards dissolved has been in force* Where an injunction obtained against the execution of a decree has been dissolved, the time during which it was in force cannot be deducted under s. 15 of Act XV of 1877 in computing the period of limitation within which an application for execution may be made. S 15 only relates to injunction which stay the institution of suits, and the word "suit" does not include an application (s. 3). KALYANBHAI DIPCHAND v GHANASHAMLAL JADUNATHJI . . . **I. L R. 5 Bom. 29**

2. ——— *Injunction to restrain partner collecting debts*—*Suit by receiver*

to the firm, but leave was given to apply for the recovery of debts which might become barred by limitation After decree, on the application of the plaintiff, a receiver was appointed to collect outstanding debts for the purpose of executing the decree The receiver having sued in 1883 to recover a debt which was due to the firm in 1879, the suit was dismissed on the ground, among others, that the debt was barred by limitation: *Held*, that under s 15 of the Limitation Act the suit was not barred SHUNMUGAM v MOIDIN
I L. R. 8 Mad. 229

3 ——— *Period of time injunction was in force* A member of a firm sued for a partnership debt and obtained a decree, he died before execution In a suit brought by his widow an injunction was issued restraining his partner from realizing the partnership assets. Subsequently, a receiver was appointed for the partnership assets, and he applied for execution of the above decree *Held*, that the time during which the injunction was in force was not to be excluded in computing the period of limitation. RAJARATHNAM v SHEVALYAMMAL
I. L. R. 11 Mad. 103

4. ——— *Order prohibiting creditor from recovering debt*—*Attachment of debt*—*Civil Procedure Code, s 268*—*Injunction or order staying suit* *Semble*. An order of attachment under s. 268 of the Civil Procedure Code is not an injunction or order staying a suit within the meaning of s 15 of the Limitation Act (XV of 1877). SHIB SINGH v. SITA RAM . **I. L. R. 13 All. 76**

LIMITATION ACT (XV OF 1877)—*contd.*

——— s. 15—*concld.*

5. ——— *Attachment of debt secured by bond—Civil Procedure Code ss. 268, 485, 486—Injunction or order staying suit.* An attachment before judgment, under s 485 read with ss 486 and 268 (a) of the Civil Procedure Code, of a debt secured by a bond, or an injunction obtained by a third party and restraining the attaching creditor from subsequently bringing the bond to sale in execution of his decree, is not an injunction or order staying the institution of a suit upon the bond by the obligee, within the meaning of s 15 of the Limitation Act. *Shib Singh* v. *Sita Ram I. L R 13 All. 76*, followed. COLLECTOR OF ETAWAH *v.* BETI MAHARANI . . I. L. R. 14 All. 162

6. ——— *Civil Procedure Code, 1882, ss. 268, 485 and 486—Attachment of debt by third party—Order staying institution of suit by creditor against debtor—Right of suit.* An attachment before judgment under s 485, Civil Procedure Code, issued by a Court at the instance

from receiving payment may, nevertheless, assert his right in a suit for the money due BETI MAHARANI *v.* COLLECTOR OF ETAWAH

I L. R. 17 All. 198
L. R. 22 I. A. 31

——— s. 17.

See ante, s 7 . 9 C. W. N. 537

1. ——— *Suit for account against manager of company—Accrual of right on death of manager against representatives* On the death of the manager of a company, a fresh right to an account accrues to the employer as against the manager's representatives In a suit for such an account accruing to the employer on the death of his manager limitation will not commence to run until administration has been taken out to such manager's estate. LAWLESS *v* CALCUTTA LANDING AND SHIPPING CO , LD. CALCUTTA LANDING AND SHIPPING CO , LD. *v.* LAWLESS I. L. R. 7 Calc. 627

2 ——— *Suit against the representatives of deceased person.* Where the defendant in a suit died before the plaint against him was filed and the suit was some time after carried on against his representatives, the time during which the suit was being prosecuted *bonâ fide* against the dead man may be deducted in calculating the period of limitation against his representatives MOHAN CHAND KANDU *v* AZIM KAZI CHOWKIDAR 3 B. L. R. A. C. 233 : 12 W. R. 45

3. ——— *Death of partner —Subsequent recovery of asset by surviving partner—*

LIMITATION ACT (XV of 1877)—*contd.*

——— s. 17—*contd.*

Suit by administrator of deceased partner against surviving partner for recovered assets—Suit for partnership account—Form of decree. In 1889 one *H* a widow and a partner in a firm carrying on business in partnership with two persons, *viz*, *G* and *B* (defendants Nos. 1 and 2), in Sind and at Behrin in the Persian Gulf, died, and the partnership was then dissolved. *H* had no children, but it was alleged that she had adopted one *P*, the brother of the second defendant. On the 13th February, 1890, the guardian of one *K*, a minor (*H's* husband's nephew), applied to the High Court of Bombay for letters of administration to her estate alleging that *K* was her heir and next of kin A caveat was filed by her father and others, in which they denied that *K* was her heir, and alleged that *P* had performed her funeral ceremonies The matter came on as a suit on the 19th February, 1894, when an order was made, without prejudice to any of the questions raised by the issues, dismissing the application and ordering letters of administration to *H's* estate to issue to the Administrator General of Bombay. Letters of administration were accordingly granted to him on the 30th March, 1894. In the meantime, however, *viz.*, on the 12th April, 1893, *B* (defendant No. 2) had filed three suits in the High Court of Bombay, in the name of himself and *G* (defendant No 1), as surviving partners of *H's* firm, to recover certain debts due to that firm. Disputes subsequently

him until further order On the 1st August, 1893, ... as forthwith ... 22nd April, ... dministrator General of Bombay as administrator of *H* appointed ... recover the whole

belonged to her estate He prayed that the receiver might be directed to pay over the money to him, and that, if necessary, the partnership accounts should be taken. The second defendant,

Held by the Privy Council, affirming the decision of the High Court of Bombay, that the suit was not barred by time; on the ground that the Administrator General having been the only person capable of suing within the meaning of s. 17 of Act XV of 1877 (Limitation), that section operated to allow the period of art. 106 to be computed from

LIMITATION ACT (XV OF 1877)—*contd.*

——— **s. 17**—*concld.*

the issue of administration of the estate. A decree was made for a general partnership account to establish what was due to the estate of the deceased in respect of her share in the partnership, and of any money of hers employed in the business continued by the survivors. BHAGWANDAS MITHARAM *v.* RIVETT-CARNAC **I. L. R. 23 Bom. 544**
L. R. 26 I. A. 32
3 C. W. N. 186

4. ——— *Suit to set aside putni lease—Regulations II of 1803 and II of 1805—Putni—Limitation Act (XIV of 1859)—Alienation by Hindu manager—Legal necessity.* In 1837 a putni lease of a portion of a zamindari was granted to the predecessors of the defendants by a male owner's widow, who had at the time no estate in the property, but was acting as manager for *B*, the widow of her adopted son, who was then the legal owner, and it was recited in the deed that the consideration-money was to pay the Government revenue then due. *B* in 1846 adopted a son, who was the father of the plaintiff, and who attained his majority in 1856 and died in 1880. By ekrars made between her adopted son and *B* she was allowed to remain in possession of the property

of limitation ran from the date on which it was granted; if it was voidable only by *B's* successor the right of action arose on his adoption, and time would begin to run against him from the date when he attained his majority in 1856. BONOMALI ROY *v.* JAGAT CHANDRA BHOWMICK (1905)
I. L. R. 32 Calc. 666

——— **s. 18 (1871, s. 19; 1859, s. 9)**—

1. ——— *Fraud—Want of knowledge of rights.* S. 9, Act XIV of 1859, was only applicable when the plaintiff had been kept from a knowledge of his rights by means of fraud. MUKSOOD ALI *v.* GOWHUR ALI . **W. R. 1864, 364**

2. ——— *Fraud—Person with means of knowledge.* When he was or had been in a position in which he might have known of the fraud and ought to have done so, s. 9, Act XIV of 1859, was not applicable; his knowledge must be presumed. INDROBHOOSUN DEB ROY *v.* KENNY
3 W. R. S. C. C. Ref. 9

3. ——— *Fraud—Cause of action—Act I of 1845, s. 29.* *Semble:* S. 19 of

established, their claim would not be saved from the operation of the Law of Limitation by s. 29, Act I of 1845. RAMDOYAL KHAN *v.* AJOODHA RAM KHAN **I. L. R. 2 Calc. 1; 25 W. R. 425**

LIMITATION ACT (XV OF 1877)—*contd.*

——— **s. 18**—*contd.*

4. ——— *Suit against auction-purchaser.* This section does not apply as against an auction-purchaser, unless the plaintiff can show that she was by intention and fraud ignorant of the sale at or immediately after the time it occurred. SHEO SAHAE PANDAY *v.* RUTTA BEEBEE . . . . . . **2 N. W. 180**

5. ——— *Fraud—Person kept from knowledge of fraud.* Where a plaint sufficiently alleged that the plaintiffs being entitled to property were ousted from its enjoyment under colour of a fictitious revenue-sale in pursuance of a fraudulent contract, the fraud having been so contrived as to make the plaintiffs believe that they had no right of action at all, it was *held* that the allegation, if true, showed that the plaintiffs had been kept by fraud from a knowledge of their right of action and brought the case within Act XIV of 1859, s. 9. DWARKANATH BHOOYA *v.* AJOODHYA RAM KHAN . **21 W. R. 109**

See ROBERT *v.* LOMBARD
1 Ind. Jur. N. S. 192

6. ——— *Fraud—Concealment of cause of action.* In a suit to recover landed

9 W. R. 255

7. ——— *Suit for money received by agent and concealed from principal.* A suit against an agent to recover money received by him and concealed from the plaintiff fell within Act XIV of 1859, s. 9. HOSSEIN BUKSH *v.* TUSSUDUCK HOSSEIN . . . **21 W. R. 245**

8. ——— *Application by Collector to set aside sale of unrecognized portion of bhag—Bhagdari Act (Bom. Act V of 1862), ss. 1 and*

did not know till November, 1877, that the

LIMITATION ACT (XV OF 1877)—*contd.*

——— s. 15—*concld.*

5. ——— *Attachment of debt secured by bond—Civil Procedure Code. ss. 268, 485, 486—Injunction or order staying suit.* An

13 All 76, followed. COLLECTOR OF ETAWAH *v.* BETI MAHARANI . . I. L. R. 14 All. 162

6. ——— *Civil Procedure Code, 1882, ss 268, 485 and 486—Attachment of debt by third party—Order staying institution of suit by creditor against debtor—Right of suit* An attachment before judgment under s 485, Civil Procedure Code, issued by a Court at the instance

and approved,—the same rule relating to all attachments, whether before or after judgment couched in similar terms The person restrained from receiving payment may, nevertheless, assert his right in a suit for the money due. BETI MAHARANI *v.* COLLECTOR OF ETAWAH

I. L. R. 17 All. 198
L. R. 22 I. A. 31

——— s. 17.

See ante, s 7 . . 9 C. W. N. 537

1. ———*Suit for account against manager of company—Accrual of right on death of manager against representatives.* On the

administration has been taken out to such manager's estate LAWLESS *v.* CALCUTTA LANDING AND SHIPPING CO, LD. CALCUTTA LANDING AND SHIPPING CO, LD. *v.* LAWLESS I. L. R. 7 Calc. 627

2 ——— *Suit against the representatives of deceased person.* Where the defendant in a suit died before the plaint against him was filed, and the suit was some time after carried on against his representatives, the time during which the suit was being prosecuted *bonâ fide* against the dead man may be deducted in calculating the period of limitation against his representatives MOHAN CHAND KANDU *v.* AZIM KAZI CHOWKIDAR 3 B. L. R. A. C. 233 : 12 W. R. 45

3. ——— *Death of partner —Subsequent recovery of asset by surviving partner—*

LIMITATION ACT (XV of 1877)—*contd.*

——— s. 17—*contd.*

Suit by administrator of deceased partner against

(defendants Nos 1 and 2), in Sind and at Behrin in the Persian Gulf, died, and the partnership was then dissolved. *H* had no children, but it was alleged that she had adopted one *P*, the brother of the second defendant. On the 13th February, 1890, the guardian of one *K*, a minor (*H's* husband's nephew), applied to the High Court of Bombay for letters of administration to her estate alleging that *K* was her heir and next of kin A caveat was filed by her father and others, in which they denied that *K* was her heir, and alleged that *P* had performed her funeral ceremonies The matter came on as a suit on the 19th February, 1894, when an order was made, without prejudice to any of the *questions raised* by the issues, dismissing the application and ordering letters of administration to *H's* estate to issue to the Administrator General of Bombay. Letters of administration were accordingly granted to him on the 30th March, 1894 In the meantime, however, *viz.*, on the 12th April, 1893, *B* (defendant No. 2) had filed three suits in the High Court of Bombay, in the name of himself and *G* (defendant No 1), as surviving partners of *H's* firm, to recover certain debts due to that firm. Disputes subsequently arose between *B* and *G*, and by a consent order of the 22nd July, 1893, it was ordered that any moneys recovered in the said three suits should be paid over to a receiver (defendant No 3), to be held by him until further order On the 1st August, 1893, consent decrees were passed in the above three suits for a total sum of R28,335, which was forthwith handed over to the receiver. On the 22nd April, 1894, this suit was filed by the Administrator General of Bombay as administrator of *H* appointed

I. L. R. 20 Bom.

Held by the Privy Council, affirming the decision of the High Court of Bombay, that the suit was not barred by time; on the ground that the Administrator General having been the only person capable of suing within the meaning of s. 17 of Act XV of 1877 (Limitation), that section operated to allow the period of art. 106 to be computed from

LIMITATION ACT (XV OF 1877)—*contd.*

——— s. 17—*concld.*

the issue of administration of the estate. A decree was made for a general partnership account to establish what was due to the estate of the deceased in respect of her share in the partnership, and of any money of hers employed in the business continued by the survivors. BHAGWANDAS MITHARAM *v.* RIVETT-CARNAC I. L. R. 23 Bom. 544
L. R. 26 I. A. 33
3 C. W. N. 186

4. ——— *Suit to set aside putni lease—Regulations II of 1803 and II of 1805—Putni—Limitation Act (XII of 1859)—Alienation by Hindu manager—Legal necessity* In 1837 a putni lease of a portion of a zamindari was granted to the predecessors of the defendants by a male owner's widow, who had at the time no estate in the property, but was acting as manager for *B*, the widow of her adopted son, who was then the legal owner, and it was recited in the deed that the consideration-money was to pay the Government revenue then due *B* in 1846 adopted a son, who was the father of the plaintiff, and who attained his majority in 1856 and died in 1880 By ekrars made between her adopted son and *B* she was allowed to remain in possession of the property in suit for her life. The grantor of the putni lease died in 1848 and *B* died in 1891 *Held*, by the Judicial Committee (affirming the decision of the High Court), that a suit brought in 1897 to set aside the putni lease was barred. If it was void the period of limitation ran from the date on which it was granted; if it was voidable only by *B's* successor the right of action arose on his adoption, and time would begin to run against him from the date when he attained his majority in 1856 BONOMALI ROY *v* JAGAT CHANDRA BHOWMICK (1905)
I. L. R. 32 Calc. 669

——— s. 18 (1871, s. 19; 1859, s. 9)—

1. ——— *Fraud—Want of knowledge of rights* S 9, Act XIV of 1859, was only applicable when the plaintiff had been kept from a knowledge of his rights by means of fraud MUKSOOD ALI *v* GOWHUR ALI W. R. 1864, 364

2. ——— *Fraud—Person*

3. ——— *Fraud—Cause of action—Act I of 1845, s 29 Semble* S 19 of Act IX of 1871 was applicable only to those cases where the fraud was committed by the party against whom a right is sought to be enforced. *Per* MITTER *J*—*Quære* Whether, if the plaintiffs' case were established, their claim would not be saved from the operation of the Law of Limitation by s 29, Act I of 1845 RAMDOYAL KHAN *v* AJOODHA RAM KHAN I. L. R. 2 Calc. 1; 25 W R. 425

LIMITATION ACT (XV OF 1877)—*contd.*

——— s. 18—*contd.*

4. ——— *Suit against auction-purchaser.* This section does not apply as against an auction-purchaser, unless the plaintiff can show that she was by intention and fraud ignorant of the sale at or immediately after the time it occurred. SHEO SAHAE PANDAY *v.* RUTTA BEEBEE . . . . 2 N. W. 180

5. ——— *Fraud—Person kept from knowledge of fraud.* Where a plaint sufficiently alleged that the plaintiffs being entitled to property were ousted from its enjoyment under colour of a fictitious revenue-sale in pursuance of a fraudulent contract, the fraud having been so contrived as to make the plaintiffs believe that they had no right of action at all, it was *held* that the allegation, if true, showed that the plaintiffs had been kept by fraud from a knowledge of their right of action and brought the case within Act XIV of 1859, s 9 DWARKANATH BHOOYA *v.* AJOODHYA RAM KHAN . . 21 W. R. 109

See ROBERT *v* LOMBARD
1 Ind. Jur. N. S. 192

6. ——— *Fraud—Concealment of cause of action* In a suit to recover landed

9 W. R. 255

7. ——— *Suit for money received by agent and concealed from principal.*

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.. R. 245

8. ——— *Application by Collector to set aside sale of unrecognized portion of bhag—Bhagdari Act (Bom. Act V of 1862), ss 1 and*

firmed and *B* was put in possession of a portion of the land On the 30th September, 1880, the Collector applied to the Court to set aside the sale on the ground that it was illegal under Bombay Act V of 1862 It appeared that the Collector did not know till November, 1877, that the land sold was an unrecognized portion of the bhag,

LIMITATION (ACT XV of 1877)—*contd.*

——— s. 18—*contd.*

provisions of Act XV of 1877 applied to it, inasmuch as, under s. 18, time began to run against the Collector only from November, 1877. *Quære:* Whether any provision of limitation applied to such applications under the Bhagdari Act. COLLECTOR OF BROACH *v* RAJARAM LALIDAS

I. L. R. 7 Bom. 542

No limitation does apply to such application. *See* COLLECTOR OF BROACH *v.* DESAI RAGHUNATH

I. L. R. 7 Bom. 546

9. ——— *Fraudulent concealment of "necessary document"—Cause of action* Upon the construction of the passage in s. 9 of Act XIV of 1859 "If any document necessary for establishing such right shall have been fraudulently concealed":—*Held*, that the preceding words of the section show clearly that the document must have been fraudulently concealed from the knowledge of the plaintiff; he must, through the fraudulent concealment, be unaware of its existence and when this is so, the statute runs against the person guilty of the fraudulent concealment, or accessory thereto, from the time at which plaintiff had the means of producing or compelling its production, if it is a document necessary for establishing such right of action What is a "document necessary" considered. MUNGAMURU ANANTA LAKSHMINARASU PANTALU *v* YARLAGEDDA ANKINID

7 Mad. 22

10. ——— *Notes lost or plundered in Mutiny Held*, that the limitation applicable to suits for recovery of notes lost or plundered during the Mutiny is six years, and that this should be computed from the time of the losers having requisite knowledge to institute legal proceedings ALI NUQUEE *v.* BHUGWAN DAS

1 Agra 213

11. ——— *Landlord and tenant—Sale by landlord of land held by tenant—Fraud in such sale—Suit by purchaser against tenant—Plea by tenant impeaching sale by his landlord.* The defendant was tenant of the lands in dispute under a lease, dated 22nd June, 1875. In 1878 his landlord sold the lands to the plaintiffs by registered deed, but in 1879 complained to the Mamlatdar that he had been cheated by the plaintiffs who, he alleged, had not paid the purchase-money. This allegation the plaintiffs denied. In September, 1881, the defendant brought a suit against the plaintiffs, in which he prayed for a declaration that the sale of the land to the plaintiffs was fraudulent, and that no consideration had been paid This suit, however, was withdrawn by the defendant on the 15th November, 1881, with leave to bring a fresh suit, but no fresh suit was brought by him within three years from November, 1881, nor was any suit brought by the plaintiffs' vendors to set aside their sale to the plaintiffs. In 1883 the plaintiffs brought this suit against the defendant to recover R960 as arrears of rent for four years for the lands described in their plaint. They alleged that the lands in question had been sold to them on the 12th September, 1878, and that the lands mentioned in their plaint had been leased on the 22nd June, 1875, to the defendant by their (the plaintiffs') vendors, and that in that lease the defendant had contracted to pay R240 annually. The defendant in his defence again raised the question whether the sale to the plaintiffs was not fraudulent and without consideration. *Held*, that the right of the defendant to plead as a defence to this suit, that the plaintiff's purchase of the 12th September was fraudulent and void, was barred. As a tenant he had no independent right to impeach the sale by his own landlords. He could only do so with their consent, assuming it to be still open to them to impeach it. But their complaint to the Mamlatdar in 1879 showed that they were then acquainted with the facts which entitled them to set aside the sale, and by the end of 182 at the latest, their right to file a suit for that purpose was therefore barred. Their right to impeach the sale by suit being thus barred, their tenant (the defendant) could not be allowed to impeach it as a defence to an action by the plaintiffs JUGALDAS *v* AMBASHANKAR . . **I. L. R. 12 Bom. 501**

12. ——— **and Art. 166**—*Civil Procedure Code (Act XIV of 1882), ss 311, 312—Sale in execution—Application to set aside—Fraud.* An application under s. 311 of the Civil Procedure Code to set aside a sale cannot be made after the expiry of thirty days from the date of such sale and after such sale has been confirmed, even [illegible]

such sale had been confirmed, an application had been made, although after thirty days from the date of the sale, the Court would possibly have been justified in granting the application and [illegible] if sufficient cause made out.

[illegible] IA CHARAN

[illegible] Calc. 679

13. ——— *Application by judgment-debtor to set aside sale on ground of fraud—Concealment of right to set aside sale.* When a judgment-debtor makes an application to have an execution-sale set aside under s 311 of the Civil Procedure Code after the expiry of the period of limitation prescribed in art. 166, sch. II of the Limitation Act, he must bring his case within s. 18 of the Act; and to enable him to do this it is not enough for him to show that the execution [illegible] he must [illegible] existence [illegible] n kept [illegible] of the decree-holder or the auction-purchaser [illegible] KAILASH CHANDRA HALDAR *v.* BISSONATH PARAMANIK

1 C. W. N. 67

LIMITATION ACT (XV OF 1877)—*contd.*

——— **s. 18—*contd.***

14. ——— *Fraud—Knowledge kept from the Official Assignee, of his right to sue for an account of assets fraudulently transferred by an insolvent—Burden of proving when first the plaintiff had clear and definite knowledge—Account, decree for* Prior to and in the year 1865 the defendant's brother *B* carried on an extensive business in Bombay and in China. The defendant and another brother (*A*) carried on a separate business under the name *AH*. In December 1866 *B* became insolvent and his property vested in the Official Assignee The present suit was brought in 1887 against the defendant by the Official Assignee to recover certain property which he alleged belonged to the insolvent and ought to be distributed among his creditors. The plaintiff alleged that in 1865 the insolvent was possessed of a very large amount of property, and that, being unwilling to meet his liabilities, he and his son and his two brothers, *viz*, *A* and the defendant *R*, fraudulently concealed his property from his creditors and in September 1866 he himself went to Daman, beyond British jurisdiction. In 1881 the plaintiff, having obtained information that some of insolvent's property was in the possession of his brother *A* filed a suit (*No. 473 of 1881*) against *A* to recover it. That suit was referred to arbitration, and the plaintiff obtained a decree for R3,60,000 The plaintiff now alleged that shortly before the hearing of that suit and subsequently, he had obtained information which led him to believe that the defendant had obtained some of the insolvent's property for which he was accountable. The defendant had been made a party to the former suit, No. 473 of 1881, for the purpose of discovery only, and it was in the course of such discovery being given that some of the above information had been obtained The plaint then set forth, in detail, the various items of claim in respect of which the plaintiff sought to make the defendant liable The defendant pleaded that the claims were barred by limitation. *Held*, by SCOTT, *J*, that the suit was not barred by limitation. There was sufficient evidence of fraud to bring the case under s. 18 of the [illegible]

[illegible] December 1885 The knowledge required by s 18 of the Limitation Act is not mere suspicion It must be knowledge of such a character as will enable the person defrauded to seek his remedy in Court The Court of Appeal (SARGENT, C J and BAYLEY, J.) confirmed the decree of the Court of first instance, except as to one of the allowed items, which it held to be barred by limitation. *Held*, on appeal to the Privy Council: In order to make limitation operate when a fraud has been committed by one who has obtained property thereby, it is for him to show that the injured complainant has had clear and definite knowledge of the facts, constituting the fraud, at a time which

LIMITATION ACT (XV of 1877)—*contd.*

——— **s. 18—*concld.***

is too remote for the suit to be brought Suggestion of his having been defrauded does not amount to such knowledge as is required by s. 18, Act XV of 1877. In this suit it was established that the defendant receiving, in 1869, upon a voluntary [illegible]

to prevent the latter from seeing the accounts of the assets transferred *Held*, therefore, that the burden of proof was on the defendant to show that the plaintiff had clear and definite knowledge of this fraud for more than the period of limitation. This burden had not been discharged by proof of the fact that some hints and clues had reached [illegible]

[illegible] BHOY HABIBBHOY *v* TURNER
I. L. R. 17 Bom. 341
L. R. 20 I. A. 1

Affirming on appeal RAHIMBHOY HABIBBHOY *v.* TURNER . . . . **I. L. R. 14 Bom. 408**

[illegible]

——— **s. 19 (1871, s. 20; 1859, s. 1, cl. 151 and s. 4).—**

See ante, ss 5 AND 19

See ACCOUNT STATED
I. L. R. 22 Bom. 513

See ACKNOWLEDGMENT OF LIABILITY.
I. L. R. 31 Calc. 195

See BENGAL RENT ACT, 1869, s 30
I. L. R. 5 Calc. 303

See BENGAL TENANCY ACT, SCH III, ART 6 . . **9 C. W. N. 1073**

See BILL OF LADING.
I. L. R. 26 Bom. 562

See CIVIL PROCEDURE CODE, 1882, s 258
I. L. R. 16 All. 228

See CONTRACT ACT, s. 25
I. L. R. 4 Calc. 500
I. L. R. 6 Bom. 683

LIMITATION ACT (XV OF 1877)—*contd.*

——— s. 19—*contd.*

See EVIDENCE—CIVIL CASES—SECONDARY EVIDENCE—UNSTAMPED AND UNREGISTERED DOCUMENTS
I. L. R. 18 Bom. 614
I. L. R. 21 Bom. 201

See PLAINT—AMENDMENT OF PLAINT
I. L. R. 30 Calc. 699

See STAMP ACT, 1879, s. 34
I. L. R. 18 Bom. 614

See STAMP ACT, 1879, SCH. I, ART. 1.
I. L. R. 15 All. 56

——— Expln. I—

See STAMP ACT (I OF 1879), SCH. I, ART. 1. . . **I. L. R. 30 Calc. 687**

1. ACKNOWLEDGMENT OF DEBTS.

This section, like s. 4 of the Act of 1859 and s. 20 of that of 1871, requires a distinct acknowledgment.

1. ——— *Oral evidence of acknowledgment—Acknowledgments made before the coming into force of Act XV of 1877.* Under s. 19 of the Limitation Act (XV of 1877), oral evidence of the contents of an acknowledgment cannot be received, nor is there any saving of acknowledgments received or given back before the Act came into operation. ZIULNISSA LADLI BEGAM *v.* MOTIDEV RATANDEV . . **I. L. R. 12 Bom. 268**

2. ——— *Distinct acknowledgment.* Act XIV of 1859 required a distinct acknowledgment of a debt as due by the person who makes the acknowledgment to entitle the creditor to a fresh period of limitation. KALAI KHAN *v.* MADHO PERSHAD. . . **3 N. W. 129**

3. ——— *Acknowledgment how to be gathered or inferred.* S. 4 did not require that the writing should express in terms a direct admission that the debt, or part thereof, was due. It was left to the Court to decide in each case whether the writing, reasonably construed, contained a sufficient admission that the debt, or part of it, was due. KRISTNA ROW *v.* HACHAPA SUGAPA **2 Mad. 307**

It is not necessary to specify the precise amount of the debt.

4. ——— *Acknowledgment* [illegible]

that within the period prescribed he had asserted his right to his claim under the kararnama, and that the defendant admitted this claim to be as of right. It was not necessary that a precise sum should have been mentioned by either party, or that a promise to pay should have been made by the defendant. GUPIKISHEN GOSWAMI *v.* BRINDABUN CHANDRA SIRKAR CHOWDHRY
3 B. L. R. P. C. 37

LIMITATION ACT (XV of 1877)—*contd.*

——— s. 19—*contd.*

1. ACKNOWLEDGMENT OF DEBTS—*contd.*

s.c. GOPEE KISHEN GOSHAMEE *v.* BINDABUN CHUNDER SIRCAR CHOWDHRY **12 W. R. P. C. 36**
13 Moo. I. A. 37

(*contra*) NOBIN CHUNDER MOZOOMDAR *v.* KENNY
5 W. R. S. C. C. Ref. 3

5. ——— *Promise to pay debt of third person.* A promise to pay a third person's debt would be sufficient, though the amount were not ascertained. PEAREE LALL SAHA *v.* WOOMESH CHUNDER MOZOOMDAR
9 W. R. 140

6. ——— *Letters containing no precise sum or promise to pay.* In a suit for the price of goods, the period of limitation had expired, but the Court held that certain letters written by the defendant to the plaintiffs, though they contained no mention of the sum due, nor any promise to pay, were a sufficient acknowledgment of the debt under s. 4, Act XIV of 1859. HARRISON *v.* HOPE . . . . **9 B. L. R. Ap. 43**

7. ——— *Want of assent to amount acknowledged.* A creditor who does not openly assent to an amount acknowledged by his debtor to be due to him is nevertheless entitled to take advantage of such acknowledgment so long as it remains uncontradicted and unexplained by his debtor. LALJEE SAHOO *v.* ROOHOONUNDUN LALL SAHOO . . . **I. L. R. 6 Calc. 447**

8. ——— *Letter in indefinite terms.* A letter containing no distinct admission of a debt, but only doubtful expressions, *held* not to be a written acknowledgment such as s. 4, Act XIV of 1859, requires for the revival of a right of suit. GASH *v.* MCLEAN . **2 N. W. 403**

9. ——— *Acknowledgment inferred from tenor of correspondence.* An acknow- [illegible] debtor him- [illegible] ce from the [illegible] sufficient ack- [illegible] of 1859. To [illegible] no principal writing of a particular date, which can be relied on by itself, when properly construed, as constituting an acknowledgment of the debt. ROGERS *v.* MONTRIOU . . . . **6 B. L. R. 550**

10. ——— *Suit for arrears of rent—Limitation Act, Sch. II, Art. 110.* The plaintiffs sued the defendants for arrears of rent [illegible] the rent due under [illegible]

LIMITATION ACT (XV OF 1877)—*contd.*

——— s. 19—*contd.*

1. ACKNOWLEDGMENT OF DEBTS—*contd.*

to the time of his death unable to produce a perfect title we are still willing to pay him the rent on his giving us a substantial indemnity similar to that which we had from his father." *Held*, that this was a sufficient acknowledgment within s 19 of the Limitation Act. RUNGO LALL LOHEA v WILSON . . . . . I. L. R. 26 Calc. 204
2 C. W. N. 718

11. ——— *Law under Punjab Code—Acknowledgment.* Under the Punjab Code, and before Act XIV of 1859 took effect in Oudh, letters offering to pay a debt by instalments and praying to be excused from the payment of interest, were an ample acknowledgment of the debt to save limitation. MUKHUM LALL v. IMTIAZOODDOWLAH
5 W. R. P. C. 18 : 1 Ind. Jur. N. S. 142
10 Moo. I. A. 362

12. ——— *Letter with remittance "on old account"* The defendant sent a letter, dated 22nd December, 1865, to the plaintiffs, which contain the following postscript · "*P S*—Enclosed a remittance of £40 to old account" *Held* (on appeal, reversing the decision of NORMAN, J.) that the words "remittance of £40 to old account" were ambiguous, and did not necessarily import that a further sum was due, so as to constitute an acknowledgment of a debt which would give a new period of limitation SHEARMAN v FLEMING . . . . . 5 B. L. R. 619

13. ——— *Admission of debt with averment it is not due.* An admission of a debt with the appended averment that it is not yet payable in point of time may be an acknowledgment of a debt under s. 4, Act XIV of 1859 An [illegible]

14. ——— *Bom. Reg V, of 1827, s 7, cl 1—Acknowledgment* *Held*, that an admission in writing of the making of a promissory note, accompanied by a repudiation of liability in respect thereof, was not such an acknowledgment as would revive a barred claim NARBADASHANKAR v RUGHNATH ISHVARJI 2 Bom. 349

15. ——— *Admission of debt to third person* The admission to a third party in writing that a sum is due is not such an acknowledgment of a debt as to remove such debt out of the Statute of Limitations PERSHAD DOSS v DENONATH DEY . 2 Hyde 14

In the matter of the GANGES STEAM NAVIGATION COMPANY . . 2 Ind. Jur. N. S. 180

16. ——— *Admission to third person* An admission by *A* of his debt to *B* contained in a burat given by *A* to his agent may take a suit against *A* out of the Statute of Limitations. HURO CHUNDER ROY v. MONEE MOHINEE DOSSEE . . 3 W. R. S. C. C. Ref. 6

17. ——— *Admission to* [illegible]

acknowledgment to satisfy the section must be made before suit. The English and Indian law of limitation considered and contrasted NIJAMUDIN v MAHAMMADALI . 4 Mad. 385

18. ——— *Admission—Exemption from limitation.* In a suit for the recovery of costs incurred by the Government of Bengal, in virtue of the Stat. 3 & 4 Will. IV, c 41, authorizing the Crown to appoint the East India Company to take charge of appeals, and bring them to a hearing, the admission by a defendant that a demand was claimable from some quarter or other, but not as against the property in question, was held not to be an admission within the meaning of Regulation III of 1793, excepting a suit from limitation under that Regulation GOVERNMENT OF BENGAL v SHURRUFFOTOONISSA
3 W. R P. C. 31
8 Moo I. A. 225

19. ——— *Memo of payments endorsed on bond.* Memoranda of payments made, endorsed on the bond and signed by the defendant, were not acknowledgments in writing within the meaning of s 4, Act XIV of 1859 GORACHAND DUTT v LOKENATH DUTT
8 W. R. 334

20. ——— *Verbal admission of correctness of account* A mere verbal admission of the correctness of an account, the items of which are barred by the Statute of Limitations, does not furnish a new starting-point for the operation of the Statute SUBBARAMA v EASTULU MUTTUSAMI
3 Mad. 378

21. ——— *Admission of balance of account* When an indigo planter and a raiyat contract, the former to make advances of money or seed for the cultivation of indigo plant, and the latter to deliver the indigo plant grown, a mere verbal admission by the raiyat of the correctness of an account containing cross items due, without a written acknowledgment from him that the balance is due, does not operate to create or renew any liability with reference to the law of limitation. DOYLE v ALLUM BISWAS
4 W. R. S. C. C. Ref. 1

DOYLE v EDOO GAZEE
3 W. R. S. C. C. Ref. 13

22. ——— *Suit for balance of account—Balance struck and amount orally*

LIMITATION ACT (XV of 1877)—*contd.*

——— s. 19—*contd.*

1. ACKNOWLEDGMENT OF DEBTS—*contd.*

admitted. In a suit for the recovery of certain sums advanced as loans at different times the account rendered was simply a statement of advance, repayment, and balance which was adjusted, struck and verbally admitted by the debtor. *Held,* that the balance so struck and admitted by the debtor did not amount to a written acknowledgment within the 4th section of Act XIV of 1859, or to a new contract so as to revive the old cause of action. KUNHYA LALL *v* BUNSEE

Agra F. B. 94 : Ed. 1874, 71

23. ——— *Commission agent.* *A* acted as commission agent for *B* and *C*. *A* furnished a debit and credit account in February 1878. The account was disputed, and the matter was referred to arbitration; for which purposes, in March, 1880, a "memorandum of items to be settled" was drawn up and signed by *B* and *C* in which they denied that any balance would be found due to *A*, but acknowledged that accounts must be taken, and that they would be liable if any balance were found due to *A*. In June, 1880, *B*, signed and supplied to the arbitrator an account on behalf of himself and *C* The arbitrator made an award which was set aside. *A* filed a suit against *B* and *C*, in September, 1882, for a balance due to him. *Held,* that *B* and *C* had made an acknowledgment of their debt to *A*, and that the suit was not barred by limitation. SITAYYA *v* RANGAREDDI

I. L. R. 10 Mad. 259

24. ——— *Acknowledgment* [illegible]

defendant's signature, acknowledging the debt and bearing dates the 6th March, 1882, and the 29th October, 1884 The Subordinate Judge being of opinion that the suit was barred, referred the case to the High Court. *Held,* that the suit was not barred; the second acknowledgment, having been made within "the new period" arising from the first acknowledgment, was made within a period prescribed for the suit, and was therefore itself the starting point of a new period. ATMARAM *v.* GOVIND . . . . **I. L. R. 11 Bom. 282**

25. ——— *Acknowledgment —Agreement by debtor to give a bond for amount of debt* On the 7th April, 1888, an agriculturist in the Deccan passed a writing to his creditor to the following effect · "Receipt taken by V from R, agriculturist I have borrowed R1,045 from you from time to time for my private expenses I have passed you no bond for the money To-day I have taken R300 more making R1,345 in all. For that I will give you a bond 15 days hence. I have received the money" In a suit, brought in June, 1897, to recover principal and interest due on this document :—*Held,* that it was not a mere acknowledgment of a debt, but an agreement containing a distinct undertaking that the debtor would pass a bond for the debt within 15 days. *Shankar* v. *Mukta, I. L. R. 22 Bom 513,* referred to. VASUDEO ANANT *v.* RAMKRISHNA RAO NARAYAN . . . **I. L. R 24 Bom. 394**

26. ——— *Verbal promise to pay—New contract.* In a suit by the plaintiff to recover money lent more than three years before suit, the plaintiff alleged an express verbal promise by the debtor to pay the amount sued for made upon a settlement of accounts. *Held,* by HOLLOWAY and KINDERSLEY, *JJ.*—That a verbal promise was not sufficient to prevent the application of the Act of Limitation. *Per* KINDERSLEY, *J.*—If a debtor and creditor enter into a new contract, the debtor promising to pay a barred debt, that would seem to be a new cause of action and it is doubtful whether it was the intention of the Limitation Act to insist that the new promise should be in writing KITTAPPA *v.* SOMANNA

6 Mad. 51

27. ——— *Acknowledgment to third person.* An admission or acknowledgment in writing, under s. 4, Act XIV of 1859, was sufficient to give a new period of limitation, although a promise to pay on request is not inferrible from it. The word "due" in the section means no more than that the debt is owing, and that there is an existing obligation to pay it. NIJAMUDIN *v* MAHAMADALI . . . . . **4 Mad. 385**

28. ——— *Promise to pay sum for which promissory note was given.* A suit was brought on a promissory note, by which the defendant promised to pay to the plaintiff R1,000 with interest at the rate of 12 per cent. per annum. The defendant afterwards wrote the following letter to the plaintiff" "I further hold myself responsible to you for the two sums of R1,000 and R900 respectively, the latter sum bearing interest at 24 per cent per annum. Both these sums of [illegible] " *Held,* that [illegible] n s. 4, Act [illegible] KERJEE *v.* [illegible] 633 note

s.c. WOOMESH CHUNDER MOOKERJEE *v.* SAGEMAN . . . . **12 W. R. O. C. 2**

See GUPIKISHEN GOSWAMI *v.* BRINDABUN CHANDRA SIRKAR CHOWDHRY

3 B. L. R. P. C. 37 : 12 W. R. P. C. 36
13 Moo. I. A. 37

29. ——— *Admission in bill of sale.* The defendant who was the owner of a moiety of certain property (the plaintiff and another being owners of the other moiety), mortgaged his moiety to the plaintiff; the mortgage-deed, dated 11th June, 1863, contained a covenant to pay off the principal and interest at the expira-

LIMITATION ACT (XV OF 1877)—*contd.*

——— s. 19—*contd.*

1. ACKNOWLEDGMENT OF DEBTS—*contd.*

tion of a year, and gave a power of sale in default of payment. The whole property, including the mortgaged portion, was conveyed to one *I D* on 27th November, 1864, by a bill of sale executed by the three owners of the property. On the execution of the bill of sale, the sum of R16,250, the half of the purchase-money which belonged to the defendant, was handed over to the plaintiff in part payment of a sum of R19,555, which was therein recited as being then due on the mortgage In a suit for the balance brought in November, 1869, the defence was that it was barred by the law of limitation *Held*, that the admission by the defendant contained in the bill of sale of November, 1864, was a sufficient acknowledgment to take it out of the operation of Act XIV of 1859, s. 4 MADHUSUDAN CHOWDHRY *v* BRAJANATH CHANDRA 6 B. L. R. 299

30. ——— *Admission in writing.* In a suit to recover the balance alleged to be due on certain promissory notes, the plaintiff relied on a document to prevent the operation of Act XIV, 1859, which was in these terms: "If I

31. ——— *Admission in writing* A debt due on a decree is a sufficient consideration for the making of a promissory note, although execution of the decree be barred by limitation at the time the note is made Where the endorsee of certain promissory notes sued to recover their value, alleging that in respect of four of the notes a new period of limitation had been created by the letter of the maker to the holder's agent which follows, *viz* "with regard to your communication anent promissory notes given by me to Mr *S*, and which I have not paid, I must only say that Mr *S* must trust to my integrity to pay him, and as soon as I have cleared off a couple of decrees against me, I will commence paying him; but if you put the matter in Court, I

acknowledgment to take the claim on the four notes out of the Statute of Limitation MULLINS *v* BEDDY . . . 6 N. W. 150

32. ——— *Suit for compensation for land—Acknowledgment in writing Held,*

tain land is not an acknowledgment in writing within s 4. HILLS *v.* MAGISTRATE OF NUDDEA 11 W. R. 1

LIMITATION ACT (XV of 1877)—*contd.*

——— s. 19—*contd.*

1 ACKNOWLEDGMENT OF DEBTS—*contd.*

33. ——— *Acknowledgment in writing R*, who owed *V* money, drew a hundi in favour of *V*, which was dishonoured. *V* sued *R* to recover the sum for which the hundi had been drawn Within three years before suit *R* wrote a letter to the drawee of the hundi requesting him to pay the amount due by *R* upon the hundi. *Held*, that the letter was a sufficient acknowledgment, within the meaning of s. 19 of the Limitation Act, 1877, of *R*'s liability for the debt for which the hundi was drawn. RAMAN *v.* VAIPAVAN I. L. R. 7 Mad. 392

34. ——— *Acknowledgment in writing—Deposition signed by a witness.* In a

1882, which was endorsed on the bond No other

and signed by him, as a witness in a suit to which he was not a party. *Held*, that an acknowledgment in order to satisfy the requirements of Limitation Act, s 19, must be an acknowledgment of the debt as such and must involve an admission of a subsisting relation of debtor and creditor, and an intention to continue it until it is lawfully determined must also be evident *Semble per* MUTTUSAMI AYYAR, *J* (WILKINSON, *J*, dissenting), that a deposition given and signed by a party as a

PARTHASARADHI . I. L. R. 10 Mad. 20

35. ——— *Acknowledgment*

payable less than three years, before suit In bar

I. L. R. 15 Mad. 380

36. ——— *Acknowledgment of liability in petition—Liability for contribution—Joint debtors* By a payment into Court under an order on account of decrees for rent and revenue in arrear, due to the landlord zamindar from the joint owners of an under-tenure, their estate was saved from sale. In respect of a proportionate

LIMITATION ACT (XV OF 1877)—*contd.*

——— s. 19—*contd.*

1. ACKNOWLEDGMENT OF DEBTS—*contd.*

share of liability for money raised for this purpose one of the joint owners became liable to be sued by another of them for contribution; and a question arose as to the application of Art. 61 of Sch. II of the Limitation Act, 1877. More than three years before this suit all the joint owners had filed in Court a petition for th . . .

Held, that this was an acknowledgment of the joint debt by the co-owner who had not contributed within s. 19 of the Limitation Act; whence had followed the legal consequences, one of which was her liability to be sued within due time for contribution. SUKHAMONI CHOWDHRANI *v.* ISHAN CHUNDER ROY . . I. L. R. 25 Calc. 844
L. R. 25 I. A. 95
2 C. W. N. 402

37. ——— *Post-card sent by defendant to plaintiff* In a suit for R465 the defendant pleaded limitation. In reply the plaintiff relied on an acknowledgment of the debt given by the defendant The alleged acknowledgment was . . .

intelligence of the death of my father I have not been able to fulfil my promise. But now, on his obsequies being over, I will positively pay R30 at Shet Merwanji's You, Sir, should not entertain any anxiety whatever in respect thereof. As to whatever debts may be due by my old man, I am bound to pay the same so long as there is life in me. This is indeed . . .

evidence, and consequently that the plaintiff's claim was barred, and they dismissed the suit. *Held*, for an application to the High Court in its extraordinary jurisdiction discharging the rule, that even if the post-card were admissible in evidence, it did not amount to an acknowledgment of the debt claimed by the plaintiff, which was therefore barred by limitation. MADHAVRAV GANESHPANT OZE *v.* GULABBHAI LALLUBHAI
I. L. R. 23 Bom. 177

38. ——— *Unstamped acknowledgment of debt—Stamp Act (I of 1879), Sch. I.* . . .

LINGU MAKAJI . . I. L. R. 21 Bom. 201

But *see* FATEH CHAND HARCHAND *v.* KISAN
I. L. R. 18 Bom. 614

LIMITATION ACT (XV of 1877)—*contd.*

——— s. 19—*contd.*

1. ACKNOWLEDGMENT OF DEBTS—*contd.*

39. ——— *Default in payment of instalment.* Where a default having been made in payment of an instalment the debtor subsequently filed a suit to compel his creditor to receive his debt by instalments, as they should become due, and in his plaint set out the provisions of the bond, and stated that he had tendered the instalments as they became due to his creditor, which the latter had refused to receive, and that thereupon the debtor had deposited the amount with a third person: *Held*, that the plaint did not contain such an acknowledgment of the whole debt being due as to give a new starting point from which the limitation commenced to run NARAYANAPPA *v.* BHASKAR PARMAYA .
7 Bom. A. C. 125

40. ——— *Acknowledgment—Muchalka under the Rent Recovery Act (Madras), 1865.* A muchalka given by a tenant at the end of a fasli, containing an undertaking to pay instalments of rent at dates then passed, amounts to an acknowledgment of liability for the purpose of Limitation Act, 1877, s. 19 VENKATAGIRI RAJA *v.* BADE SAHEB . . . . I. L. R. 22 Mad. 32

41. ——— *Admission after execution of decree* The admission of a debt after execution is taken out gives a decree-holder a fresh starting point from which to reckon limitation DIGAMBUREE DEBIA *v.* SARODA PERSHAD ROY . . . . 3 W. R. Mis. 27

JOTEERAM DOSS *v.* HURUF
6 W. R. Mis. 115

LUCHMEE NARAIN *v.* SHUDASHEO SINGH
5 W. R. Mis. 12

PROSONNO COMMAR ROY CHOWDHRY *v.* KASHEE KANT BHUTTACHARJEE . 5 W. R. Mis. 31

CHUNDER KANT MITTER *v.* RAMNARAIN DEY SIRCAR . . . . . 8 W. R. 63

42 ——— *Instalment bond—New contract* An instalment bond is not "a promise or acknowledgment" within the meaning of Act IX of 1871, s. 20, but is complete in itself and does not require any reference to the old bond which it supersedes. It is a new contract with new stipulations and terms, and limitation runs from the due dates therein mentioned TARA SOONDUREE KULOONEE *v.* BHOOBUN CHUNDER GHOSE . . . . . 23 W. R. 462

43. ——— *Admission of debt—Petition to file kistbundi.* A petition put into Court by a judgment-debtor, for time to pay the instalments due under a kistbundi, may be considered as evidence of a new contract formally entered into with the decree-holder and declared in Court. PEAREE MOHUN MITTER *v.* MOHENDRO NARAIN SINGH . . . . . 23 W. R. 465

LIMITATION ACT (XV OF 1877)—*contd.*

——— s. 19—*contd.*

1. ACKNOWLEDGMENT OF DEBTS—*contd.*

44. ——— *Signature not by debtor.* A letter not signed by the debtor was not an acknowledgment in writing within the meaning of s. 4, Act XIV of 1859. RAMNARAIN *v.* HUREE DASS . . . . . . 3 Agra 81

45. ——— *Acknowledgment not signed* An acknowledgment in writing sealed, but not signed, by a defendant, was not an acknowledgment within the meaning of s. 4 Act XIV of 1859 LUCHMUN PERSHAD *v.* RUMZAN ALI 8 W. R. 513

46. ——— *Signature not formally added* To entitle a plaintiff to the benefit of a new period of limitation under that section, he must prove that the party sued has in writing authenticated by his signature, either in express

writing would be incomplete in itself, as an admission without a signature If the body of the admission is in the debtor's own hand-writing, and contains his signature and was given over by him as complete in itself, it would be an acknowledgment in writing within the meaning of s. 4 MUHAMMAD JANULA *v.* VENKATARAYAR 2 Mad. 79

47. ——— *Signature by mark—Acknowledgment in writing* Payment en-

EERANAH . . . . . 7 Mad. 358

48. ——— *Suit for balance of account for advances* In a suit to recover a balance on account of indigo advances made on a kabuliat executed by a defendant, where defendant had broken no contract, but the discontinuation of the cultivation had been the act of the plaintiff, limitation was *held* to run from the date of the kabuliat which operated as a written acknowledgment signed by defendant (s 4, Act XIV of 1859) *Held*, also, that a statement of balances found in one of plaintiff's books duly verified, without any signature by defendant (who could not write), was not an acknowledgment within the meaning of s. 4 The entry of defendant's name in one column, taken in connection with a cross in another column, formed no valid signature BENGAL INDIGO COMPANY *v* KOYLASH CHUNDER DOSS . . . . . . 10 W. R. 293

49. ——— *Acknowledgment of debt—Secondary evidence of acknowledgment—Authority to bind minor by acknowledgment* An original account book containing an acknowledgment of a debt had been filed in Court, and subsequently lost whilst in Court. *Held*, that secondary evidence of such acknowledgment might be given, notwithstanding the words of s. 19 of the Limitation Act. A person merely by reason of being

50. ——— *Acknowledgment—Entry of a debt in a debtor's book* An entry in a debtor's own book does not amount to an acknowledgment within the meaning of s 19 of Act XV of 1877, unless communicated to his creditor or to some one on his behalf—Explanation 1 to s. 19 showing that the acknowledgment is contemplated as "addressed" to the creditor Every acknowledgment, in order to create a new period of limitation, must be signed by the debtor, or some one deputed by him, no matter in what part of the document the signature is placed MAHALAKSHMIBAI *v* FIRM OF NAGESHWAR PURSHOTAM) . . . . . I. L. R. 10 Bom. 71

51. ——— *Application by judgment-debtor for postponement of sale.* An application by the defendant for a postponement of the sale of his property when he promised to pay the amount of the decree was *held* to be an admission of the plaintiff's right to execute the decree within the contemplation of s. 19 of the Limitation Act (XV of 1877), and created a new period of limitation VENKATRAV BAPU *v* BIJESING VITHALSINGH . . . I. L. R. 10 Bom. 108

52. ——— *Deposition signed by the debtor* To satisfy the requirements of s 19 of the Limitation Act, an acknowledgment of a debt

SUBRAMANIAN CHETTI SUBRAMANIAN CHETTI *v.* PERIAVENKAN UDAYA TEVAR I. L. R. 20 Mad. 239

53. ——— *Account stated—Signing by debtor.* Although to make an account a stated account it is not necessary that it should be signed, yet, unless it is signed by the debtor, the intention and effect of s. 4 of Act XIV of 1859 is to prevent it being made the foundation of an action to recover a debt which would otherwise be barred by that Act. MULCHAND GULABCHAND *v* GIRDHAR MADHAV . . . 8 Bom. A. C. 6

54. ——— *Signature—* Where an account stated was written by a debtor

LIMITATION ACT (XV of 1877)—*contd.*

——— s. 19—*contd.*

1. ACKNOWLEDGMENT OF DEBTS—*contd.*

himself, by his name at the top of the entry, it was held to be sufficiently signed within the meaning of s. 4 of Act XIV of 1859. ANDARJI KALYANJI *v.* DULABH JEEVAN . . I. L. R. 5 Bom. 88

55. ——— *Signature*—Where the whole of an account stated (khata) was written by a debtor himself with the introduction of his name at the top of the entry the khata was held to be sufficiently signed within the meaning of Act XV of 1877, s 19. JEKISAN BAPUJI *v.* BHOWSAR BHOGA JETHA . I. L. R. 5 Bom. 89

56. ——— *"Signing," what amounts to—Signature.* Certain letters admitting a debt were written by the authority of the debtor who was a desai. The only words, however, of the letter which were actually in his own handwriting were the words "guru samarth" (the exalted preceptor is strong) at the beginning of each letter, and the words "*kalave, bahut kay lihine, lobh karava hi vinanti*" (let this be known what more need be written; keep regard; this is the representation) at the end. It was proved by evidence that this was the usual mode of signing

which was shown to be the usual way amongst persons

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signature, is that the signing in such a manner as is usually adopted by the debtor with the view of showing that he intends to be bound by the document,

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debtor, or of custom as in the case of a class of debtors having a special status in the community can be of no importance. GANGADHARRAO VENKATESH *v.* SHIDRAMAPA BALAPA DESAI I. L. R. 18 Bom. 586

57. ——— *Acknowledgment of guardian for minor.* The signature of a guardian of a minor to an acknowledgment of a debt does not make it such an acknowledgment under s 19 of the Limitation Act as would give a new period of limitation against the minor, the signature of the guardian not being a signature by the person against whom the right is claimed. AZUDDIN HOSSAIN *v.* LLOYD . . . 13 C. L. R. 112

58. ——— *Acknowledgment signed by agent* Under s. 4 Act XIV of 1859, an acknowledgment in writing, signed by the agent or constituted attorney of the debtor, is not sufficient. PURSHOTAM MANCHARAM *v.* ABDUL LATIF 6 Bom. O. C. 67

LIMITATION ACT (XV OF 1877)—*contd.*

——— s. 19—*contd.*

1. ACKNOWLEDGMENT OF DEBTS—*contd.*

BUDOORHOOSUN BOSE *v.* ENAETH MOONSHEE 8 W. R. 1

59. ——— *Powers of sarbarakar—Authority of agent—Collector, notice by, as acknowledgment of debt—Evidence, admissibility of—Parol evidence.* A debtor, since deceased, had executed a bond to his creditor. The heir of the debtor having been disqualified, and a sarbarakar of the estate having been appointed, the latter had executed a muktarnamah or power-of-attorney empowering an agent to act in reference to the land,

of the heir, could have made such an acknowledgment

mortgage, was claimed by the same creditor, and the terms of the notice would apply to either *Held,* that the debt, referred to in the notice to having been identified with the bond-debt in suit, acknowledgment of the latter by the Collector was not established within s 19. The oral evidence of the Collector as to his intention was not admissible to construct the notice, but accompanying circumstances might be shown and considered. BETI MAHARANI *v.* COLLECTOR OF ETAWAH I. L. R. 17 All. 198 L. R. 22 I. A. 31

60. ——— *Acknowledgment of agent.* The acknowledgment of an agent for the management of a zamindar's property is not the acknowledgment of the principal within the meaning of s 4, Act XIV of 1859. REAZOODEEN *v.* COLLECTOR OF CUTTACK . 10 W. R. 175

61. ——— The plaintiff sued three executors for the balance due of their testator's simple contract debt of more than three years' standing. A part payment had been made by the defendants within the three years previous to the commencement of the suit. Two of the defendants had also, but during their testator's lifetime, given a personal undertaking in writing to pay the debt out of a fund coming to their hands. The defendants had also signed as executors, and sent a letter to the plaintiff informing him that

ICVARA DAS *v.* RICHARDSON . 2 Mad. 84

LIMITATION ACT (XV of 1877)—contd.

———— s. 19—contd.

1. ACKNOWLEDGMENT OF DEBTS—contd.

62. ———— *Acknowledgment by agent.* Acknowledgments which, under Act XIV of 1859, were insufficient to keep alive a cause of action, because they were signed only by an agent, *held* to be sufficient to sustain a suit on the same cause of action under Act IX of 1871. Where a series of acknowledgments of a debt have been made, each within three years of the one next preceding and the first of the series has been made within three years of the date on which the debt was contracted, a suit for the recovery thereof is under Act IX of 1871 in time, if instituted within three years from the date of the last acknowledgment. Discussion as to who is an authorized agent, what is a sufficient signature, and what amounts to a sufficient acknowledgment within the meaning of s. 20 of Act IX of 1871. Under s. 20 of Act IX of 1871, the authorized agent may sign either his own name or that of his principal MOHESH LAL *v.* BUSUNT KUMAREE

I. L. R. 6 Calc. 340 : 7 C. L. R. 21

63. ———— *Acknowledgment by agent. Held,* upon the evidence in the case, that an acknowledgment of the debt sued for had not been signed by an agent of the defendant, generally or specially authorized in that behalf within the meaning of s 20, Act IX of 1871.

... ly once ... within ... of the ... elf cannot be proved by secondary evidence of the contents of a letter, the non-production of which is not satisfactorily accounted for DINOMOYI DEBI *v.* ROY LUCHMIPUT SINGH . L. R. 7 I. A. 8

64. ———— *Acknowledgment*

...

there was sufficient evidence that the heading of the letter was written by an agent duly authorized

...

65. ———— *Payment of part of judgment-debt by debtor and acknowledgment of his liability by pleader* The payment of part of the

...

NATH VIDYADHAR GOSAVI I. L. R. 22 Bom. 722

66. ———— *Acknowledgment by agent—Plaint signed by vakil* A plaint signed by a vakil before the Limitation Act (IX of 1871) came into operation does not save limitation, as the earlier Limitation Acts do not

...

by an agent, are equally insufficient to sustain a suit on the same cause of action under Act XV of 1877, as s 2 of the Act expressly bars the revival of a right to sue barred under the earlier Acts, although they might have been sufficient under Act IX of 1871 DHARMA VITHAL *v.* GOVIND SADVALKAR . . . . I. L. R. 8 Bom. 99

67. ———— *Acknowledgment—Authorized agent* A balance of account was written by a person at the request of an illiterate debtor in the debtor's name, and signed by the writer in his own name *Held* that to be a binding acknowledgment by a duly authorized agent within the meaning of s 19, expln. 2 of Act XV of 1877 HEMCHAND KUBER *v.* VOHORA RAJI HAJI . I. L. R. 7 Bom 515

68. ———— *Signature by agent* An application by a judgment-debtor in writing for the postponement of a sale in execution of a decree and the issue of fresh notification of sale signed by the pleader expressly authorized to make it is an acknowledgment "signed" by an "agent duly authorized in the judgment debtor's behalf" within the meaning of s 19, Act XV of 1877 RAMHIT RAI *v* SATGUR RAI

I L R. 3 All. 247

69. ———— *Petition filed on behalf of minor by vakil accompanied by part payment of money due under decree* A petition filed on behalf of a minor by his vakil, admitting liability and accompanied by part payment of the money due under a decree, was held to be an acknowledgment of liability sufficient to prevent execution being barred. *Taree Mahomed v Mahomed Mabood Bux, I L R 9 Calc 730,* referred to. NORENDRA NATH PAHARI *v* BHUPENDRA NARAIN ROY . I. L. R. 23 Calc. 374

70 ———— *Admission of liability contained in a memorandum of appeal in a different suit—Admission necessary for the pleadings in suit—Authority of advocate or vakil.* An admission made by an advocate or duly authorized vakil on behalf of his client in a memorandum of appeal

...

Whether such admission will have a similar effect

LIMITATION ACT (XV OF 1877)—*contd.*

——— s. 19—*contd.*

1. ACKNOWLEDGMENT OF DEBTS—*contd.*

if it was not necessary for the purposes of the suit in which it was made. *Ram Hit Rai* v. *Satgur Rai, I. L. R. 3 All. 247,* followed. HINGAN LAL *v.* MANSA RAM . . . I. L. R. 18 All. 384

71. ——— *Manager of joint Hindu family—Agent, authority of—Principal and agent.* The relation of the managing member of a Hindu family to his co-parceners does not necessarily imply an authority upon his part to keep alive, as against his co-parceners, a liability which would otherwise become barred. The words of s. 20 of Act IX of 1871 must be construed strictly and the manager of a Hindu family as such is not an agent "generally or specially authorized" by his co-parceners for the purpose mentioned in that section. KUMARASAMI NADAN *v.* PALA NAGAPPA CHETTI . . I. L. R. 1 Mad. 385

72. ——— *Manager of Hindu family—Authority to revive barred debt.* The manager of a Hindu family has the same authority to acknowledge as he has to create debts on behalf of the family, but has no power, without special authority, to revive a claim, already barred by limitation, against the family. CHINNAYA *v.* GURUNATHAM . . . I. L. R. 5 Mad. 169

See GOPAL NARAIN MOZOOMDAR *v.* MUDDOMUTTY GOOPTEE . . . . . 14 B. L. R. 21

73. ——— *Manager of a joint Hindu family—Authority to acknowledge a family debt.* The manager of a joint Hindu family has authority to acknowledge the liability of the family for the debts which he has properly contracted, so as to give a new period of limitation against the family from the time the acknowledg-

I. L. R. 17 Bom. 512

74. ——— *Manager of joint family—Power of manager to revive a time-barred debt.* The manager of a Hindu family has no power to revive by acknowledgment a debt barred by limitation, except against himself. DINKAR *v.* APPAJI . . . . I. L. R. 20 Bom. 155

75. ——— *Authority of guardian to acknowledge debt due by minor.* A guardian has authority to acknowledge a debt on the part of the minor, provided that the debt is not barred by limitation at the date of the acknowledgment *Chinnaya* v. *Gurunatham, I. L. R. 5 Mad. 169,* followed. *Wajibun* v. *Kadir Buksh, I. L. R. 13 Calc. 295,* disapproved SOBHANADRI APPA RAU *v.* SRIRAMULU I. L. R. 17 Mad. 221

KAILASA PADIACHI *v.* PONNUKANNU ACHI I. L. R. 18 Mad. 456

LIMITATION ACT (XV of 1877)—*contd.*

——— s. 19—*contd.*

1. ACKNOWLEDGMENT OF DEBTS—*contd.*

76 ——— *Authority of*

as he is not an agent on the part of his ward within the meaning of s. 19 of the Limitation Act (XV of 1887). *Sobhanadri Appa Rau* v. *Sriramulu, I. L. R. 17 Mad. 221,* dissented from. RANMALSINGJI *v.* VADILAL VAKHATCHAND I. L. R. 20 Bom. 61

77 ——— *Acknowledgment by guardian of minor—Guardians and Wards Act (VIII of 1890), ss. 27 and 29—Act XL of 1858.* An acknowledgment of a debt by the guardian of a minor appointed under the Guardians and Wards Act does not bind the minor and is not such an acknowledgment under s 19 of the Limitation Act as would give a new period of limitation against the minor. CHHATO RAM *v.* BILTO ALI I. L. R. 26 Calc. 51

See also AZUDDIN HOSSEIN *v.* LLOYD 13 C. L. R. 112

78 ——— and Art. 59—*Prescribed period.* The expression "prescribed period" in s. 20 (a) of

upon two acknowledgments of the defendant in writing, of which the first was dated the 3rd November 1872:—*Held,* that, to bring the case within s. 20 (a) of the Limitation Act (IX of 1871), the first acknowledgment should have been made before the expiration of the period prescribed by Art. 59 of Sch. II of that Act, *viz.*, three years from the period when the money was paid. LUVAR CHUNILAL ICHHARAM *v.* LUVAR TRIBHOBAN LAL DAS I. L. R. 5 Bom. 688

79.——— *"Promise"—Suit on bond executed for barred debt—Contract Act, s. 25, cl. 3.* The "promise" referred to in s. 20 of Act IX of 1871 is a promise introduced by way of ex-

debt, after the expiration of the period prescribed for its recovery. RAGHOJI BHIKAJI *v.* ABDUL KARIM . . I. L. R. 1 Bom. 590

80.——— *Promissory note for barred debt—Contract Act, s. 25, cl. 3.* Act IX of 1871, s. 20, cl. (a), does not prevent a plaintiff from maintaining a substantive action on a promissory note passed to secure the amount due on an old note which was barred by limitation at the time of the making of the new, the plaintiff's right to bring such action being recognized by the later

LIMITATION ACT (XV OF 1877)—*contd.*

——— s. 19—*contd.*

1. ACKNOWLEDGMENT OF DEBTS—*contd.*

enactment, Act IX of 1872, s. 25, cl. 3 CHATUR JAGSI v. TULSI I. L. R. 2 Bom. 230

81.—— *Acknowledgment of barred decree.* In the case of a decree for money payable by instalments with the proviso that in the event of default the decree should be executed for the full amount, the decree-holder did not apply for execution within three years after default was made. *Held,* that the judgment-debtor having, three years after the first default, acknowledged in writing his liability under the decree, and signed such acknowledgment, that, the decree being already barred, such acknowledgment did not create a new period of limitation SHIB DAT v. KALKA PRASAD I. L. R. 2 All. 443

82.—— *Acknowledgment after period of limitation has expired—Promise to pay—Conditional promise to pay barred debt—Contract Act (IX of 1872), s 25* Where the defendant, after his debt had become barred by limitation, wrote as follows to his creditor in reply to a demand for payment: "I bear the matter in mind, and will do my utmost to repay this money as soon as I possibly can" *Held,* that this promise by the defendant was only a conditional promise, *viz*, to pay when he was able; and the plaintiff having failed to prove the defendant's ability to pay, the promise did not operate, and the plaintiff could not recover WATSON v. YATES I. L. R. 11 Bom. 580

83 —— *Agent—Signature procured after determination of agency* Notwithstanding the ...

be brought upon an acknowledgment or account stated, signed by a person who has been an agent to collect rents, if his signature was not procured till more than a year after the determination of his agency. PARBUTTINATH ROY v. TEJMOY BANERJI I. L. R. 5 Calc. 303

84 —— *Account stated—Adjusted account—Adjustment of accounts, effect of—"Ruzu"—Contract Act (IX of 1872), s 25, cl 3* The "ruzu" or adjustment of an account can operate either as a revival of an original promise or as evidence of a new contract If it is to be used as an acknowledgment giving a fresh start ...

be used as evidence of a new ...

ment of an account not being such a promise RAMJI v. DHARMA I. L. R. 6 Bom. 683

85.—— *Account stated—Promise—Balance admitted due—Baki deva—Act IX of 1872, s. 25.* The Gujarati words "baki deva," which are of common use in balancing ...

I. L. R. 8 Bom. 905

See RAMJI v DHARMA I. L. R. 6 Bom. 683

86.—— *Agreement to pay as per account—Acknowledgment of debt.* The plaintiff as receiver to the estate of *S* instituted a ...

plaintiff's claim to rent, prior to July, 1894, was barred The plaintiff submitted that the letters written by the defendants to the plaintiff within three years of the institution of the suit agreeing to pay as per account enclosed by them to the plaintiff was a sufficient acknowledgment to save the claim for rent from being barred *Held,* that the plaintiff's claim for the portion of rent claimed beyond three years was not barred; the defendants' letters were a sufficient acknowledgment to save limitation, there being an admission that there was an open account between the parties, and that there was a right to have it taken, implied a promise to pay *Prance* v *Sympson, 1 Kay 678,* and *Banner* v *Berridge, L R 18 Ch D 254,* referred to. FINK v. BULDEO DASS I. L R. 26 Calc. 715 3 C W N. 524

87 —— and Sch II, Art 110—*Contract Act (IX of 1872), s 25, cl (3)—Promise to pay a barred debt* In defence to a suit for rent a tenant pleaded that a portion of the claim was barred by limitation Plaintiff relied on a letter which had been signed by defendant, after the disputed portion had become barred, and in which the defendant, after referring to the periods in respect of which the arrears of rent were due, said "I shall send by the end of Vysakha month" *Held,* that the document ...

... signed by the person to be charged ...

LIMITATION ACT (XV OF 1877)—*contd.*

——— s. 19—*contd.*

I. ACKNOWLEDGMENT OF DEBTS—*contd*

To create a "promise" within the meaning of the section, it is not necessary that there should be an accepted proposal reduced to writing, a written proposal, accepted before action, becoming by the definition clause a promise when accepted. The words of the section show that it is the debt and not a sum of money in consideration of the barred debt that the promisor should refer to. APPA RAO *v.* SURYAPRAKASA RAO . I. L. R. 23 Mad. 94

88. ——— *Admission of debt being due in writing itself.* To bring a case within s. 4, Act XIV of 1819, the writing must contain within itself an admission that a debt is due, and oral evidence is not admissible to add to its meaning. LUTCHUMANAN CHETTY *v.* MUTTA IBURAKI MARAKKAYER . . 5 Mad. 90

89. ——— *Oral evidence.* The want of an admission or acknowledgment in writing, as required by s 4, Act XIV of 1859, to qualify the limitation prescribed by cl 9, s. 1 of that Act, cannot be supplied by oral evidence of the admission of the debt sued for. GIREE DHAREE SINGH *v.* KALIKA SOOKUL. DOORGA DUTT SINGH *v.* KALIKA SOOKUL . . 7. W. R 46

WOOMA SOONDERY DOSSEE *v.* BIRESSUR ROY 8. W. R 289

90 ——— *Contents of acknowledgment of debt, secondary evidence of—Evidence Act (I of 1872), s. 91.* Para. 2, s 19 of the Limitation Act, 1877, belongs to that branch of

[illegible]

acknowledgment which has been lost or destroyed. SHAMBHU NATH NATH *v.* RAM CHANDRA SHAHA I. L. R. 12 Calc. 267

91. ——— *Acknowledgment in writing—Evidence Act (I of 1872), ss. 65 and 91—Secondary evidence.* Limitation Act, s. 19, must be read with Evidence Act, ss. 65 and 91, and does not exclude secondary evidence in cases where such would be admissible under s. 65. *Shambhu Nath Nath v. Ram Chandra Shaha, I. L. R. 12 Calc 267,* followed. CHATHU *v.* VIRARAYAN I. L. R. 15 Mad. 491

92 ——— *Registration—*

[illegible]

it relates [illegible] This provision does not prevent such

[illegible]

piration of the prescribed period of limitation. NUNDO KISHORE LALL *v.* RAMSOOKHEE KOOER I L R. 5 Calc. 215: 4 C L R. 361

93. ——— expln. 1—*Acknowledgment in writing.* In a suit upon a bond brought against the defendant as a principal debtor, an acknowledgment of liability as a surety only is sufficient to save limitation, with reference to s. 19, expln. 1, of the Limitation Act (XV of 1877). UNCOVENANTED SERVICE BANK *v.* GRANT I. L. R 10 All. 93

94 ——— *Limitation Act (XV of 1877), s. 19, Expln. I—Acknowledgment—Accounts.* Under s 19, Expln. I, of the Limitation Act (XV of 1877), it is open to the plaintiff, by reference to the accounts or otherwise, to establish a connection between two accounts (*khatas*), and show that the later one was an acknowledgment of the debt due under the first. KALIANDAS PANDUDAS *v* LOTU (1900) . . I. L R. 25 Bom 330

95. ——— *Limitation Act (XV of 1877) s. 19, paragraph 2—Written acknowledgment—Date—Alteration—Evidence—Oral evidence—Oral evidence.* Where a written acknowledgment bears a date which has been altered, oral evidence to prove the date is inadmissible under s. 19, paragraph 2, of the Indian Limitation Act, 1877. *Atmaram v. Umedram, I. L. R. 25 Bom 615,* distinguished. GULAMALI DALUMIA *v* MIYABHAI MAHOMADBHAI (1901) . I. L. R. 26 Bom. 128

96. ——— *Limitation Act (XV of 1877), ss 19 and 20—Guardians and Wards Act (VIII of 1890)—Minor—Guardian—Debt—Part-payment—Acknowledgment of liability—Extension of time.* A guardian appointed under the Guardians and Wards Act (VIII of 1890) can sign an acknowledgment of liability in respect of, or

[illegible]

the ward's property. ANNAPAGAUDA [illegible] GAUDA *v.* SANGADIGYAPA (1901) I. L R 26 Bom 221

97. ——— *Limitation Act (XV of* [illegible] *period during which*

[illegible]

barred by limitation unless the period during which the first suit had been pending should be deducted, under s. 14 of the Indian Limitation Act: *Held,* that plaintiff was entitled to have that period deducted, inasmuch as he had prosecuted the first

———— s. 19—*contd.*

1. ACKNOWLEDGMENT OF DEBTS—*contd.*

suit with due diligence. The written statement of the defendant in the first suit was treated as an acknowledgment, under s 19 of the Limitation Act, from the date on which the period of limitation should be calculated VENKATARATNAM NAIDU v RAMARAJU (1901) **I L R 24 Mad 361**

98. ———— *Suit for foreclosure and sale in the alternative or for sale—Deposition in previous suit of a defendant acknowledging liability—Acknowledgment by agent—Authority of co-mortgagor, merely as such insufficient—Acknowledgment by managing member insufficient where original dealings have been with all the members of the undivided family* By a deed, bearing date 4th August, 1882, three defendants mortgaged certain immoveable property to plaintiff, to secure an advance of R7,000 On 16th April, 1885, the mortgagors executed a written acknowledgment of their liability in respect of that advance Plaintiff instituted a suit against the mortgagors, on 21st April 1897, to recover the amount due under the mortgage, and, in default of payment thereof, for sale of the mortgaged property The plea to limitation was raised First defendant admitted in evidence that he had, in July, 1889, deposed in a suit in another Court, in which he and his co-mortgagors were co-defendants, that their estate was

first defendant For the purposes of s 19 of the Limitation Act, the acknowledgment relied on

mortgagor, or save the suit from being barred as

whether the transaction was really for the benefit of the family,—he cannot rely upon an acknowledgment of the liability, made by one of them, as an acknowledgment duly made on behalf of all the co-obligors, by reason only that the person acknowledging is in fact the managing member of the family consisting of the co-obligors. There may, however, be cases in which that circumstance coupled with the conduct of the joint contractors, may warrant the conclusion that, as a matter of fact, the managing member was duly authorised to make the acknowledgment on behalf of all. NARAYANA AYYAR *v.* VENKATARAMANA AYYAR (1902) . . **I L R. 25 Mad 220**

99. ———— *Civil Procedure Code (Act XIV of 1882), s. 50.* In reply to a letter enclosing a bill for work done, the defendant wrote.

writing was not an acknowledgment of liability

1 Act

6 Ch.

Pro-

I. L. R. 31 Calc. 195
s.c. 8 C. W. N. 168

100. ———— *Acknowledgment of debt—Hat-chita, entry in—Signature, what is sufficient—Customary mode—Intention of parties.* Where at the foot of certain entries made in a *hat-*

Gungadhar Rao v. *Shidramapa, I. L. R. 18 Bom. 586,* applied. *Andarji Kalyanji* v. *Dulabh Jeevan, I. L. R 5 Bom 38 ; Jekishan Bapuji* v *Bhowsar Bhega Jetha, I. L. R. 5 Bom. 89 ; Brojender Coomar* v *Bromomoyee, I. L R 4 Cal 885,* referred to. SADASOOK AGARWALLAH *v.* BAIKANTHA NATH BASUNIA (1905) . . **9 C. W. N. 83**

101. ———— **ss. 19, 20**—*Mortgage—Acknowledgment of debt—Acknowledgment by predecessor in interest—Part payment of interest.* *A* mortgaged several properties to the plaintiffs and then sold one of them, property No. 3, to *B*, who again mortgaged the property to *C* and in a mort-

LIMITATION ACT (XV OF 1877)—*contd.*

———— s. 19—*contd.*

1. ACKNOWLEDGMENT OF DEBTS—*contd.*

gage suit by *C* the property was sold and purchased by *D*. *A* afterwards paid part of the principal as
made
D con-
-gainst
9 and
20 of the Limitation Act the acknowledgment as well as the payments were sufficient to keep the debt alive against the property No 8. *Chinnery v. Evans, 11 H L. C. 115*, referred to. KRISHNA CHANDRA SAHA *v.* BHAIRAB CHANDRA SAHA (1905)
I. L. R 32 Calc. 1077
9 C. W. N. 868

102. ———— *Acknowledgment of debt—Promise to pay implied—Acknowledgment of right to have accounts settled—Debtor and creditor—Debtor appointed executor of will of creditor—Suit to recover balance of account—Limitation Act, Sch. II, Arts 57, 85—Question of fact or law—Concurrent findings—Ground of special appeal* An acknowledgment of liability, should the balance turn out to be against the person making it, is a sufficient acknowledgment under s. 19 of the Limitation Act (XV of 1877), and there is no distinction in this respect between the English and the Indian law.

there is an acknowledgment of a right to have accounts settled, and no qualification of the natural inference that, whoever is the creditor, shall be paid when the condition is performed by the ascertainment of a balance in favour of the claimant *In re Rivers Steam Navigation Company, L R. 6 Ch. App. 822, 828*, followed. The respondent was

application for probate was rejected on the ground that the applicants were not legally appointed executors. The defendant admitted having intermeddled with the estate of the testator, but the Courts in India concurrently found that he did not do so for the reason that as he had not been duly appointed executor he could not have so intermeddled as to make himself responsible as executor. *Held*, that this decision was not a question of fact but one of law and was therefore open to reconsideration by the Judicial Committee, on

LIMITATION ACT (XV OF 1877)—*contd.*

———— s. 19—*contd.*

1. ACKNOWLEDGMENT OF DEBTS—*contd.*

appeal. MANIRAM SETH *v.* SETH RUPCHAND (1906)
I. L. R. 33 Calc. 1047
s c. 10 C. W. N. 874
L. R. 33 I. A. 165

103. ———— *Acknowledgment by Receiver—Receiver, if agent—Admission—Estoppel—Bonâ fide prosecution of claim in Administration suit—Claimant directed to institute fresh suit—Limitation—Exclusion of time.* A Receiver ap-
by a
utor
ing
an
suit

directed the applicant to bring a fresh suit but on the suit being instituted he was met with the plea that the claim was barred by limitation: *Held*, that, in the face of the admission made in his presence, the executor was estopped from setting up the Statute of Limitation as a bar. That, in any case, s 14 of the Limitation Act applied and the time during which the plaintiff was *bonâ fide* prosecuting his claim in the administration suit should be excluded in computing the period of limitation. BAIJ NATH RAM GOENKA *v* HEM CHUNDER BOSE (1906) . . **10 C. W. N. 959**

104 ———— **ss. 19 and 22**—*Acknowledgment—Party defendant, addition of—Mortgagee—Suit—Release of a portion of mortgaged property, validity of—Release in writing—Registration Act (III of 1877), s. 17—Attestation, whether assent.* An acknowledgment of a debt to be operative under s. 19 of the Limitation Act must be addressed or communicated to the creditor or to some one on his behalf. *Mylapore v Yeokay, L. R 14 I. A.*

own motion,
intiff, s. 22 of
d the suit as
be deemed to

LIMITATION ACT (XV OF 1877)—*contd.*

———— s. 19—*contd.*

1. ACKNOWLEDGMENT OF DEBTS—*contd*

The mortgagees cannot claim to throw the entire burden upon a portion of the mortgaged premises, because by reason of their own laches they have lost their remedy against the remainder. *Hari Kissen* v. *Valiat Hossein, I. L. R. 30 Calc. 755*, and *Surjiram* v. *Barham Deo, 2 C. L. J. 202*, referred to. Where, therefore, a purchaser of a portion of the equity of redemption is added as a party (defendant) not by the Court, but upon an application by the mortgagee after the prescribed period of limitation, although the mortgage suit is barred as against the added defendant, yet such mortgagee *is entitled to succeed in respect of a proportionate* part of his claim as against the remaining owners of the equity of redemption. *Ram Sebuk* v. *Ram Lall, I. L. R. 6 Calc. 815*, and *Ram Doyal* v. *Junmenjoy, I. L. R. 14 Calc. 791*, distinguished. A release, when in writing, in order to be operative in law, must be registered under s. 17 of the Registration Act, where the amount of the claim to interest in immoveable property, which is extinguished by the release, is of the value of one hundred rupees or upwards. *Safdar Ali* v. *Lachman Das, I. L. R. 2 All. 554*, *Basawa* v. *Kalkapa, I. L. R. 2 Bom. 489*, *Bhyrub* v. *Kaleechunder, 16 W. R. 56*, and *Nandalal* v. *Gurditta, 2 B. L. R. 615*, referred to. A mere attestation of a deed does not necessarily import an assent to all the recitals contained therein. *Chunder Dutt* v. *Bhagwat Narain, 3 C. W. N. 207*, followed. A mortgagee can not release from his claim a portion of the properties comprised in his security so as to pre- [illegible]

[illegible] from. [illegible]

I. L. R. 23 Calc. 813 [illegible]
[illegible] 10 C. W. N. 55[illegible]

105. ———— ss. 19, 20; Sch. II, Arts 59, 60—*Limitation—Suit to recover money deposited on current account—Loan—Deposit—Acknowledgment.* *Held*, that a suit to recover money deposited with a banker on a current account is governed as to limitation by Art. 59, and not by Art. 60, of the second Schedule to the Indian Limitation Act, 1877. *Piaray Lal* v. *Elizabeth Berkeley, F. A. No. 96 of 1882*, decided on the 4th April, 1885, followed. In order that an acknowledgment of a debt should be effectual *to save limitation under s. 19 of the Indian Limitation Act*, it must be signed by the person to be bound thereby. Similarly a part payment of the [illegible]

LIMITATION ACT XV OF 1877)—*contd.*

———— s. 19—*contd.*

1. ACKNOWLEDGMENT OF DEBTS—*contd.*

of saving limitation, as equivalent to a payment of interest. DHARAM DAS *v.* GANGA DAVI (1907)

I. L. R. 29 All. 773

106. ———————— *Acknowledgment—Essentials of a valid acknowledgment—Acknowledgment contained in a written statement—It need not be addressed to any one.* On the 11th July 1900, a decree was passed against the defendant directing him to pay a certain amount in fixed instalments, and the whole amount became payable on default of paying three instalments. The plaintiff presented an application on the *14th July, 1903*, for execution of the decree for the whole amount alleging that the default contemplated had occurred. To this the defendant submitted a written statement signed by himself, bearing date the 28th September, 1903, wherein he contended that the decree for the whole amount could not be executed, inasmuch as with reference to the second instalment he had deposited its amount with a third person and had given a notice to the plaintiff asking him to take the amount from the third person. As to the third instalment, his submission was that he had no means to pay its amount then and time should therefore be granted to him. The Court held that three defaults had not occurred and dismissed the darkhast. On the 24th September, 1906, the plaintiff gave another darkhast to recover the amount of the aforesaid two instalments, which remained unpaid. The Subordinate Judge dismissed the darkhast as time-barred. *Held*, that the statement by the defendant as to the second instalment was an acknowledgment of liability within the meaning of s. 19 of the Limitation Act (XV of 1877). *Held*, further, that the statement [illegible]

acknowledgment under the section must be addressed to the creditor or some one on his behalf. SHRINIWAS *v.* NARHAR (1908)

I. L. R. 32 Bom. 296

107. [illegible]

ment is by an agent duly authorized in this [illegible] computa- [illegible] *utta Singh,* [illegible] *Chinnya* [illegible] *R. 5 Mad.*

LIMITATION ACT (XV OF 1877)—*contd.*

——— s 19—*contd.*

1. ACKNOWLEDGMENT OF DEBTS—*concld.*

169; Sobhanadri Appa Rau v. *Sriramulu, I. L. R. 17 Mad. 221; Kailasa Padiachi* v. *Ponnukannu Achi, I L. R. 18 Mad. 456, Subramania Ayyar* v. *Arumuga Chetty, I. L. R. 26 Mad. 330, Annapagauda Tammangauda* v. *Sangadigyapa, I. L. R. 26 Bom. 221, Narendra Nath Sarkar* v. *Rai Charan Haldar, I. L R. 29 Calc 647; Beti Maharani* v. *The Collector of Etawah, I. L. R. 17 All 198; Kamla Kuar* v. *Har Sahai, All. Weekly Notes (1888), 187, Chinnery* v. *Evans, 11 H L C. 115*, referred to. *Per* STANLEY, *C. J*—The relation of guardian and ward resembles rather that of trustee and *cestui que trust* than that of principal and agent. A

H L. C. 115, referred to. RAM CHARAN DAS *v.* GAYA PRASAD (1908) **I. L. R. 30 All. 422**

2. ACKNOWLEDGMENT OF OTHER RIGHTS.

1. ——— **Acknowledgment of title to immoveable property** An acknowledgment of title to immoveable property gives a new starting point for limitation under s. 19 of the Limitation Act (XV of 1877) JAGABANDHU BHATTACHARJEE *v* HARIMOHON ROY **1 C. W. N. 569**

2. ——— **Acknowledgment of different tenancy**—*Landlord and tenant* Where a landlord sued to recover arrears of rent due from a tenant who entered as a mulgeni tenant for one year and continued in possession without executing a fresh agreement:—*Held*, that an admission, made in writing and signed by the tenant, that he held the land as mulgeni or permanent tenant at a lower rent, was not an acknowledgment of the landlord's right, which, under s 19 of the Limitation Act, 1877, would entitle the landlord to recover arrears of rent for three years prior to the date of the admission VENKATARAMANAYYA *v* SRINIVASA RAU **I. L. R. 6 Mad. 182**

3 ——— **Redemption of Mortgage**—*Right to redeem mortgage.* Where a mortgage has not legally been put an end to, the mortgagor (or his representatives) is entitled to come into Court and ask to be allowed to redeem, provided sixty years have not elapsed since the last recognition by the mortgagee of the plaintiff's title to the mortgaged property. RUNJEET NARAIN SINGH *v.* SHUREEFOONISSA **10 W. R. 478**

4. ——— *Suit for redemption of mortgage—Acknowledgment.* A mortgage deed having been executed in 1761 and an acknowledgment of the mortgagor's right to redeem having

LIMITATION ACT (XV of 1877)—*contd.*

——— s. 19—*contd.*

2 ACKNOWLEDGMENT OF OTHER RIGHTS—*contd.*

been made in writing in 1838:—*Held*, that a suit to redeem in 1878 was barred. The words "in the meantime" in cl. 15 of s. 1 of the Limitation Act (XIV of 1859) mean within sixty years from the date of the mortgage. *Vassudavan Nambudri* v. *Mussa Kutti, 6 Mad. 138*, followed. *Darachand* v. *Sarfraz Ali, I. L. R 1. All 425*, dissented from. MUKKANNI *v.* MANNAN. **I. L. R. 5 Mad. 182**

KAMMANA KALLACHERI ILLATH VASSUDAVAN NAMBUDRI *v.* CHEMBRAKANDY MUSSA KUTTY **6 Mad. 138**

MAHOMED ABDOOL RUZZAK *v.* ASIF ALI SHAH **3 N. W. 119**

NARAIN LALL *v.* LALLA NUND KISHORE LALL **19 W. R. 78**

5. ——— *Limitation Act,*

joint mortgage and not capable of being redeemed piecemeal. *Bhogill* v. *Amritlal, I. L. R. 11 Bom. 173*, referred to. DHARMA *v.* BALMAKUND **I. L. R. 18 All. 458**

6. ——— *Suit to redeem mortgage—Acknowledgment.* The first plaintiff claimed to redeem a mortgage to defendants' ancestor for R320. Defendants pleaded that the mortgage was for R2,336-4, and redeemable only at the pleasure of the mortgagee. They also pleaded the Limitation Act. The original Court decreed redemption on payment of the amount stated by defendants. The lower Appellate Court reversed

acknowledgments were not made before those suits were brought. The Act for the limitation of suits does not require that the acknowledgment of the title of a mortgagor should be made to any particular person or at any particular time before the institution of the suit in which the bar is pleaded. NARRAINA TANTRI *v* UKKOMA **6 Mad. 267**

7. ——— *Suit for redemption of mortgage—Limitation Act (XIV of 1859), s. 1, cl. (15)—Acknowledgment—Secondary evidence—Beng. Reg IV of 1793.* In a suit instituted on the 20th of February, 1893, to redeem a mortgage

LIMITATION ACT (XV OF 1877)—*contd.*

——— s. 19—*contd.*

2. ACKNOWLEDGMENT OF OTHER RIGHTS —*contd.*

years have elapsed from the date of an usufructuary mortgage, a suit by the mortgagor to recover possession of the mortgaged property is barred unless it can be shown that there is an acknowledgment signed by the hand of the mortgagee himself to take the case out of the operation of the Act *Luchmee Buksh Roy v. Runjeet Ram Panday, 13 B. L. R. 177*, followed. A mere statement in a plaint or written statement, which is not proved to have been signed by the mortgagees, and which, under Bengal Regulation IV of 1793, was not required to be so signed, does not amount to an acknowledgment within the meaning of the above rule. SUNDER DAS v FATIMULUNISSA

1 C. W. N. 513

Upheld on appeal to Privy Council in FATIMATULNISSA BEGUM v. SUNDAR DAS

I. L. R. 27 Calc 1004
L. R. 27 I. A. 103
4 C. W. N. 565

8. ——— *New period—Revival of barred suit—Plaint—Receipt—Decree—Agent—Vakil—Mortgage—Redemption.* The plaintiff's ancestor mortgaged a piece of land to the defendants' ancestor in 1797, and placed him in possession as agreed upon Three years afterwards both the mortgagor and the mortgagee went out of the country The mortgagor returning first resumed possession of the land, the mortgagee returning afterwards filed a suit in 1826 to recover possession under the terms of the mortgage, and obtaining a decree in his favour, possession was

having received possession of the mortgaged land as directed by the decree The plaintiff, the representative of the original mortgagor, on the 4th of

9. ——— and Art. 148—*Redemption of mortgage—Acknowledgment of the mortgagor's title signed by mortgagee's agent. Held,* following the decision of the Privy Council in *Luchmee Buksh Roy v Runjeet Ram Panday, 13 B. L R. 177,* under Act XIV of 1859, that an acknowledgment of the title of the mortgagor or of this right of redemption signed by the mortgagee's agent is not sufficient under art 148, sch II of Act IX of 1871, to create a new period of limitation RAHMANI BIBI v HULASA KUAR . **I. L. R. 1 All. 642**

10. ——— *Acknowledgment, of title prior to Act XIV of 1859* In a suit for redemption of landed property the plaintiffs, representatives of the mortgagors, relied on an acknowledgment of the mortgagors' title contained in an entry in the settlement records of the year 1841, which was attested by the representatives of the mortgagees, defendants in the suit, and the lower Courts having differed as to whether the acknowledgment was sufficient without proof that it was made within the sixty years from date of the alleged mortgage :—*Held,* that, inasmuch as there was no limitation to suits for redemption of mortgage of landed property prior to Act XIV of 1859,

Act IX of 1871 DAIA CHAND v SARFRAZ ALI

I. L. R. 1 All. 425

11. ——— *Suit for redemption of mortgage—Acknowledgment of title of mortgagor or of his right to redeem* Where the defendants attested as correct the record-of-rights prepared at a settlement with them of an estate in which they were described as mortgagees of the

there was also an acknowledgment of the mortgagor's title *Per* SPANKIE, J (*contra*) DAIA CHAND v SARFRAZ ALI **I L. R 1 All 117**

But *see* MUKKANNI v MANAN BHATTA

I L. R. 5 Mad. 182

12. ——— *Suit for redemption of mortgage—Acknowledgment of title of mortgagor or of his right to redeem* An acknowledgment to be within the meaning of art 148, sch. II, Act IX of 1871, must be an acknowledgment of a present existing title in the mortgagor An acknowledgment of the original making of the mortgage-deed and of possession having been taken

LIMITATION ACT (XV OF 1877)—*contd.*

———— s. 19—*contd.*

2. ACKNOWLEDGMENT OF OTHER RIGHTS —*contd.*

meaning of that article, so as to prevent limitation from opertating RAM DAS *v.* BIRJNUNDUN DAS *alias* LALOO BABOO
I. L. R. 9 Calc. 616 : 12 C. L. R. 284

13. ———— *Acknowledgment of liability—Will of mortgagee—Suit for redemption* In a suit to redeem a kanom of 1805 the plaintiff set up in bar of limitation an acknowledgment contained in the will of the deceased mortgagee, who

however, was admitted to be the land in question in the suit *Held*, that the will constituted an acknowledgment under s 19. UPPI HAJIV MAMMAVAN . . **I. L. R. 16 Mad. 366**

14. ———— **Acknowledgment of liability**—*Suit for possession. Acknowledgment of* liability, in order to be within the meaning of s. 19 of the Limitation Act, must be an acknowledgment of liability to the person who is seeking to recover possession, or some person through whom he claims MYLAPORE IYASAWMY VYAPOORY MOODLIAR *v* YEO KAY. **I. L. R. 14 Calc. 801**
L. R. 14 I. A. 168

15. ———— **Acknowledgment made to third party.** A written acknowledgment by the *mortgagee of* the title of the mortgagor, or of

PANDAY. **3 W. R. 3**

16. ———— *Acknowledgment to third person.* An acknowledgment of title under cl. 15, s. 1 of Act XIV of 1859, need not be made to the mortgagor or his representatives; any acknowledgment in writing signed by the mortgagee is sufficient AHILOJI VALAD KHANDOJI *v.* DONGAR HARICHAND GUJAR **5 Bom. A. C. 176**

UNICHA KHANDYIB KUNHI KUTTI NAIR *v.* VALIA PIDIGAIL KUNHAMED KUTTY MARACCAR
4 Mad. 359

ALI HOSSEIN *v.* RAMDYAL **3 N. W. 78**

17. ———— **Entry in wajib-ul-arz**—*Acknowledgment.* An entry in a wajib-ul-arz is not tantamount to an acknowledgment on the part of the defendant, mortgagee, of the plaintiff's proprietary right so as to allow him to sue within sixty years from that date as provided by cl 15, s 1, Act XIV of 1859. CHUJJOO SINGH *v.* NAZIR HOSSEIN . . . **2 Agra. 227**

18. ———— **Acknowledgment by vakil**—A solemn and *bonâ fide* acknowledgment in writing of the mortgage and right of the mortgagor, made by the mortgagee for the purpose of a suit through his vakil, whose act and statement for the purpose of the suit were within the scope of his authority according to the law then in force (cl 1, s. 21 of Regulation XXVII of 1814), and were to be considered as if his client were personally present and consenting, was a sufficient acknowledgment in writing of the mortgagor's right to redeem as provided by cl. 15, s 1, Act XIV of 1859, and gave a fresh starting point to the mortgagor to sue for redemption within sixty years from the date of such acknowledgment. Such acknowledgment in writing need not be made directly to the party entitled, or, in other words, to the mortgagor. ESREE SINGH *v.* BISHESHUR SINGH
3 Agra. 255

19. ———— **Acknowledgment by Mooktear**—*Usufructuary mortgage.* Where sixty years have elapsed from the date of a usufructuary mortgage, a suit by the mortgagor to recover possession of the mortgaged property is barred by cl 15, s. 1, Act XIV 1859. Where a mortgagee signed a mooktearnama, in which he stated that he would abide by any arguments which might be urged, and any documents which might be filed, by the mooktear thereby appointed, and the mooktear subsequently filed a written statement signed by himself alone, in which he admitted the mortgagor's title *Held*, that the Mooktearnama and written statement could not be read together as amounting to an acknowledgment sufficient to satisfy the requirements of cl. 15, s 1, Act XIV of 1859 LUCHMEE BUKSH ROY *v.* RUNJEET RAM PANDAY **13 B. L. R. P. C. 177: 20 W. R. 358**

s. c. in lower Court **12 W. R. 443**

See RAHMANI BIBI *v.* HULASA KUAR
I. L. R. 1 All. 642

20. ———— **Acceptance of sale certificate**—*Acknowledgment of title.* The acceptance of a sale certificate, granted by a Zillah Court in 1824 to the purchaser of a mortgagee's interest ... decree ... the ... con- ditions of s 19 of the Limitation Act ... re a fresh starting point from which limitation will run for redemption. AMBALA VAVERI MANAKEL RAMAN SOMAYAJIPAD *v.* NADUVAKAT KRISHNA PODUVAL
I. L. R. 6 Mad. 325

21. ———— **Execution of decrees**—*Petition.* S. 4, Act XIV of 1859, is not applicable to the execution of decrees Thus an incidental mention by a judgment-debtor, in a petition filed by him in another case in which another decree-holder had taken out execution, that he owed money to the decree-holder in the present case, was held not to be an admission within the

LIMITATION ACT (XV OF 1877)—*contd.*

——— s. 19—*contd*

2. ACKNOWLEDGMENT OF OTHER RIGHTS —*contd.*

meaning of that section to keep the decree alive LUCHMAN KOONWAR v LUCHMUN BHUKUT
7 W. R. 79

22. ——— *Execution of decree—Petition* The word "debt" in s 20 of

April, 1876, that further execution was barred by limitation. KALLY PROSONNO HAZRA v HEERA LAL MUNDLE . . **I. L. R. 2 Calc. 468**

23. ——— *Execution of decree.—Petition.* An application was made for

DABIA v GRIJA KANT LAHIRY CHOWDHRY
3 C. L. R. 572

24. ——— *Acknowledgment in writing of debt by judgment-debtor* An acknowledgment in writing of a debt by a judgment-debtor is not such an acknowledgment as is contemplated by Act IX of 1871, s 20, and will not therefore operate to extend the period of limitation in favour of the judgment-creditor. The "debt" referred to in that section is not a judgment-debt, but a liability to pay money for which a suit can be brought. MUNGOL PRASHAD DICHIT v SHAMA KANTO LAHORY CHOWDHRY
I. L. R. 4 Calc 708

25. ——— *Execution of decree—Acknowledgment in writing* An application for the execution of a decree is an application in respect of a "right"—that is to say, the "right of the decree-holder to execution," within the meaning of s. 19 of Act XV of 1877 An application in writing by a judgment-debtor for the postponement of a sale in the execution of the decree and the issue

26. ——— *Application for execution of decree.* The provisions of s 19 of the

LIMITATION ACT (XV OF 1877)—*contd.*

——— s. 19—*contd.*

2. ACKNOWLEDGMENT OF OTHER RIGHTS —*contd.*

VENKATESA . . **I. L. R. 5 Mad. 171**

27. ——— *Application for execution of decree—Acknowledgment.* An applica-

of a decree, constitutes an "acknowledgment of liability" within the meaning of that section, and a new period of limitation should be computed from the date of such petition in order to ascertain whether the execution of the decree is barred or not under the provisions of art 179, sch II of the Limitation Act *Ramhit Rai v Satgur Rai, I. L. R, 3 All 247*, and *Ram Coomar Kur v. Jakur Ali, I L R. 8 Calc 716*, followed TOREE MAHOMED v MAHOMED MAHBOOB
I. L. R. 9 Calc. 738 : 13 C. L. R. 91

28. ——— *Execution of decree—Acknowledgment in writing—Part payment —Act XV of 1877, s 20, and sch II, No. 179* A decree for money, dated the 24th June, 1878, directed that a certain instalment should be paid on the 22nd July, 1878, and a like instalment on the 20th December, 1878, and the balance by cer-

part-payments of the amount of the decree were made by the judgment-debtor from time to time out of Court On the 7th May, 1879, he made a part-payment and an endorsement on the decree to the following effect · "I, *G*, judgment-debtor of this decree, have myself paid R—, and have endorsed this payment on the decree in my own handwriting" On the 5th September, 1881, the decree-holder applied for execution of the whole decree *Held* by the Court, that the application was governed by the rule contained in s 19 of the Limitation Act, 1877, that the endorsement made

I L R 3 All 247, followed, but with doubt. *Per* MAHMOOD, *J*—That following the *ratio decidendi* in *Ramhit Rai v Satgur Rai, I L R 3 All. 247*, the part-payment made and endorsed on the decree by the judgment-debtor fell within the terms of s 20 of the Limitation Act, 1877. *Asmutullah Dalal v Kally Churn Mitter, I L. R 7 Calc 56,*

LIMITATION ACT (XV OF 1877)—*contd.*

——— s. 19—*contd.*

2. ACKNOWLEDGMENT OF OTHER RIGHTS —*contd.*

meaning of that article, so as to prevent limitation from opertating. RAM DAS *v.* BIRJNUNDUN DAS *alias* LALOO BABOO

I. L. R. 9 Calc. 616 : 12 C. L. R. 284

13. ——— *Acknowledgment of liability—Will of mortgagee—Suit for redemption.* In a suit to redeem a kanom of 1805 the plaintiff

acknowledgment under s. 19. UPPI HAJI *v.* MAMMAVAN . . **I. L. R. 16 Mad. 386**

14. ——— **Acknowledgment of liability**—*Suit for possession.* Acknowledgment of liability, in order to be within the meaning of s. 19 of the Limitation Act, must be an acknow-

L. R. 14 I. A. 168

15. ——— **Acknowledgment made to third party.** A written acknowledgment by the mortgagee of the title of the mortgagor, or of his right of redemption, was sufficient within the meaning of cl 15, s. 1, Act XIV of 1859, though made to a third party and not the person entitled to the land. DUR GOPAL SINGH *v.* KASHEERAM PANDAY. **3 W. R. 3**

16. ——— *Acknowledgment to third person* An acknowledgment of title under cl. 15, s. 1 of Act XIV of 1859, need not be made to the mortgagor or his representatives, any

UNICHA KHANDYIB KUNHI KUTTI NAIR *v.* VALIA PIDIGAIL KUNHAMED KUTTY MARACCAR

4 Mad. 359

ALI HOSSEIN *v.* RAMDYAL **3 N. W. 78**

17 ——— **Entry in wajib-ul-arz**—*Acknowledgment* An entry in a wajib-ul-arz is not tantamount to an acknowledgment on the part of the defendant, mortgagee, of the plaintiff's proprietary right so as to allow him to sue within sixty years from that date as provided by cl 15, s 1, Act XIV of 1859. CHUJJOO SINGH *v.* NAZIR HOSSEIN . . . **2 Agra. 227**

18. ——— **Acknowledgment by vakil**—A solemn and *bonâ fide* acknowledgment in writing of the mortgage and right of the mortgagor, made by the mortgagee for the purpose of a suit through his vakil, whose act and statement for the purpose of the suit were within the scope of his authority according to the law then in force (cl. 1, s. 21 of Regulation XXVII of 1814), and were to be considered as if his client were personally present and consenting, was a sufficient acknowledgment in writing of the mortgagor's right to redeem as provided by cl 15, s. 1, Act XIV of 1859, and gave a fresh starting point to the mortgagor to sue for redemption within sixty years from the date of such acknowledgment Such acknowledgment in writing need not be made directly to the party entitled, or, in other words, to the mortgagor. ESREE SINGH *v.* BISHESHER SINGH

3 Agra. 255

19. ——— **Acknowledgment by Mooktear**—*Usufructuary mortgage.* Where sixty years have elapsed from the date of a usufructuary mortgage, a suit by the mortgagor to recover possession of the mortgaged property is barred by cl. 15, s. 1, Act XIV 1859. Where a mortgagee signed a mooktearnama, in which he stated that he would abide by any arguments which might be

… and … as … to … XIV of 1859 LUCHMEE BUKSH ROY *v.* RUNJEET RAM PANDAY **13 B. L. R. P. C. 177: 20 W. R. 358**

s c in lower Court **12 W. R. 443**

See RAHMANI BIBI *v.* HULASA KUAR **I L. R. 1 All. 642**

20. ——— **Acceptance of sale certificate**—*Acknowledgment of title* The acceptance of a sale certificate, granted by a Zillah Court in 1824 to the purchaser of a mortgagee's interest in land sold by auction in satisfaction of a decree

SOMAYAJIPAD *v.* NADUVAKAT KRISHNA PODUVAL **I. L. R 6 Mad. 325**

21. ——— **Execution of decrees**—*Petition.* S. 4, Act XIV of 1859, is not applicable to the execution of decrees Thus an incidental

LIMITATION ACT (XV OF 1877)—*contd*

——— s. 19—*contd.*

2. ACKNOWLEDGMENT OF OTHER RIGHTS —*contd.*

the order of the lower Court), that the plaintiff's applicat ons in 1892 and 1894 did not operate as an acknowledgment so as to prevent limitation JEDDI SUBRAYA VENKATESH SHANBHOY *v.* RAMRAO RAM CHANDRA MURDESHVAR

I. L. R. 22 Bom. 998

32. ——— Acknowledgment in writing—*Existing liability—Proof* Though, under s. 19 of the Limitation Act, the exact nature of the right or liability need not be disclosed by the acknowledgment, and its exact nature may be established by ev dence *dehors* be written acknowledgment, yet the acknowledgment in itself should import that the person making it is under an existing liability at the time. Such liability cannot be read into it by proof *aliunde* or by an admission subsequently made by a party to a suit, in which the acknowledgment is relied on as saving the bar of limitation ITTAPPAN KUTHIRAVATTAT NAYER *v.* NANU SASTRI (1902) . **I. L. R. 26 Mad. 34**

33. ——— *Limitation—Acknowledgment of title—By whom such acknowledgment may be made* S 19 of the Indian Limitation Act, 1877, does not require that the person making an acknowledgment should have an interest in the property in respect of which the acknowledgment was made at the time when the acknowledgment was given. it prescribes that, if, before the period of limitation expires, an acknowledgment of liability or right has been made in writing signed by the parties against whom the property or right is claimed, a new period of limitation will be computed from the time of the acknowledgment *Gaganbandhu Bhattacharjee v Harimohan Roy, 1 C. W N 569,* referred to JUGAL KISHORE *v* FAKHRUD-DIN (1906) . . **I. L R 29 All. 90**

34. ——— Acknowledgment of existence of mortgage assigning a wrong date thereto—*Limitation* Where parties, defendants to a suit for redemption of a mortgage, had in a previous suit, in which it had been sought to eject them as trespassers set up the existence of a mortgage, under which they alleged that they were in [illegible] the [illegible] mor[illegible] wro[illegible] defendants claimed to be in possession would not of itself prevent the acknowledgment so made by them from being a good acknowledgment for the purposes of s 19 of the Limitation Act, 1877, *in a subsequent suit for redemption of* the mortgage DIP SING *v* GIPAND SINGH (1904)

I. L R. 26 All. 313

35. ——— Acknowledgment, effect of, in execution proceedings. S 19 of the Limitation Act is applicable to proceedings in execution of a decree *Ramhit Rai v. Satgur Rai, I L R 3 All 247 , Ram Coomar Kar v. Jakur Ali, I L R 8 Calc 716 , Toree Mahomed v. Mahomed Mabood, I. L R 9 Calc 730, Norendra Nath Pahar v Bhupendra Narain Roy, I L. R 23 Calc. 374,* followed *Rama Rau v Venkatesa Bhandari, I L R 5 Mad 171,* dissented from *Mungo Prosad Dichit v Shama Kanto Lahiri Choudhry, I L R 4 Calc 708 , Kally Prosonna Hazra v. Heera Lal Mondol. I. L R 2 Calc 468 , Kader Buksh Sarkar v Gour Kishore Roy Chowdhry, 6 C W N. 766,* explained and distinguished. BHAGABATY CHARAN CHUKRABURTY *v.* ASHUTOSH CHATTOPADHAYA (1904) . **8 C. W. N. 470**

LIMITATION ACT (XV OF 1877)—*contd.*

——— s. 19—*concld.*

2 ACKNOWLEDGMENT OF OTHER RIGHTS —*concld.*

36. ——— Requisites of a valid acknowledgment—*Transfer of Property Act (IV of 1882), s 55 (5) (d)—Where no contract to the contrary, liability to pay public charges attaches to vendee on the passing of property—Condition precedent to liability* Under s 55 (5) (d) of the Transfer of Property Act, the liability of the vendee to pay the public charges on the property sold attaches in the absence of a contract to the contrary, as an *incident of the transfer and is complete* [illegible] the property passes Where the adjustment [illegible] matters, which form part, but are not the [illegible] and substance of the contract, cannot be [illegible] out in the mode contemplated, the Court [illegible] whatever may be right and proper to [illegible] adjustment itself *Dinham v. Bradford* [illegible] *Ch App 519,* referred to Where a [illegible] provides that the vendee shall pay [illegible] due, as per sub-division of the [illegible] Government " and the deed contains [illegible] to show that the sub division was a [illegible] the vendee's liability, the mere use [illegible] *per sub-division* does not make [illegible] no sub-division is effected, and [illegible] whole peshkush, the Court [illegible] between the vendor and vendee [illegible] payable by the latter and [illegible] An acknowledgment of a con[illegible] not, under s 19 of the Limitation [illegible] start as long as the condition [illegible] There must be an unqualified [illegible] admission qualified by a [illegible] filled ARUNACHELLA R[illegible] APPA ROW BAHADUR (19[illegible]

[illegible]

——— s. 20 [illegible]

See ante, [illegible] DEEIS [illegible]

See CIVIL P[illegible]

[illegible]

See LIMIT[illegible]

[illegible]

LIMITATION (ACT XV OF 1877)—*contd.*

——— s. 20—*contd.*

1. ——— *Case under Punjab Code before Limitation Act, 1859* In a case under the Punjab Code before the Limitation Act of 1859 came into operation in Oudh it was *held* by the Privy Council that payments made by an agent upon account, and continued monthly for several months, ought to be regarded as tantamount at least to, if not correctly described as, a [illegible]

See Gowra Bebee *v* Kissen Misser
1 Ind. Jur. N. S. 224

and Potitpabun Sen *v* Chunder Caunt Mookerjee . . . 1 Ind Jur N. S. 329

Under the Act of 1859, part-payment was not an admission of a debt, though evidenced by writing Muhamad Janula *v* Venkatanayar
2 Mad. 79

Icvara Das *v* Richardson . 2 Mad. 84

Kristna Row *v* Hachapa Sugapa
2 Mad. 307

Madho Singh v Thakoor Pershad
5 N. W. 35

2. ——— *Prescribed period* Two of the sons out of a joint Mitakshara family, consisting of a father and three sons and the widow and sons of a deceased son, and carrying on business in partnership, sued to recover money due on a hath-chitta, dated 11th December 1876, the last payment made and entered by the defendant being on the 20th July 1877; no time was fixed for payment of the money, so that it became payable on the date of the hath-chitta The suit was instituted on the 19th July 1880 and came on for hearing on the 26th of July, when an objection was taken that all the parties who ought to sue were not on the record. On the application of the original plaintiffs, the names of the father and the third son were then added, and the plaintiffs were described as surviving partners of the deceased son. At the time the additional plaintiffs were made parties the suit was, as regards them, barred by limitation *Held*, that the suit, if all the plaintiffs had originally joined in suing, would not have been barred by s. 20 of Act XV of 1877. The words "prescribed period" in that section mean, not the period prescribed for the payment of the debt, but the prescribed period of limitation. Ramsebuk *v* Ramlal Koondoo
I. L. R. 6 Calc. 815
8 C. L. R. 457

In the matter of Mongola Koiborto *v* Annoda Ram . . . . 12 C. L. R. 277

See Luvar Chunilal Icharam *v* Luvar Tribhovan Laldas I. L. R. 5 Bom. 688

LIMITATION ACT (XV OF 1877)—*contd*

——— s. 20—*contd.*

3. ——— *Part-payment of principal—Payment in kind.* A payment may be made not only in the current coin of the realm, but in any other medium that the creditor may choose to accept. Where goods are delivered by the debtor and taken by the creditor in payment either of principal or interest as such, such delivery would be a good payment of principal or interest, as the case may be, so as to extend the period of limitation under s. 20 of the Limitation Act (XV of 1877) Ragho Shitaram *v.* Hari [illegible]
I. L. R. 24 Bom. 619

4. ——— *Payment of interest* S. 21 of Act IX of 1871 has no application where the payments of interest admitted were made after the expiration of the period prescribed for the repayment of the loan Tariney Churn Nundy *v.* Abdur Rohoman . 2 C. L. R. 346

5. ——— *Payment of interest—Payment made before Act came into operation.* The exception of payment of interest contained in s 21, Act IX of 1871, is not confined to payments made after that Act came into force, but applies also to payments made before that date. Teagaraya Mudali *v.* Mariyappa Pillai
I. L. R. 1 Mad. 264

6. ——— *Bond—Payment of interest—Adjustment of accounts* Suit to recover the principal sum and one year's interest due on a bond, dated the 11th March 1866. By the terms of the bond the rent of certain land was assigned to the lender as security for interest. No date was specified in the bond for the payment of the principal. [illegible] Act IX of 1871 [illegible]

Naganna v [illegible] guished. [illegible] of limitati[illegible] constitute [illegible] the rents [illegible] adjustmen[illegible] became payable. Valia Tamburatti *v* Vira Rayan . . . I. L. R. 1 Mad. 228

7. ——— *Payment of interest—Contract in writing.* The defendant at different times made payments to the plaintiff who was his creditor, in reduction of the general balance of account against him, but without intimating that any of such payments was to be appropriated in satisfaction of the interest due on his debt. *Held,* that there had been no payment

LIMITATION ACT (XV OF 1877)—*contd.*

——— s. 20—*contd.*

of interest, "as such," by the defendant so as to [illegible]

[illegible]

8. ——— *Receipt of rent—Payment of interest—Mortgage.* In 1858 land was mortgaged to the plaintiff with possession for a term of five years, and in 1861 the defendant, the [illegible]

[illegible]

gagor. It was pleaded that the suit was barred by limitation, to which plaintiff replied that the receipt of rent was in fact a payment of interest, and that from the last payment of interest a new period of limitation arose. *Held*, that, the case being governed by the provisions of Act IX of 1871, the payment of rent under an agreement entirely independent of the original mortgage could not be regarded as a payment of interest UMMEF KUTTI *v* ABDUL KADAR . I. L. R. 2 Mad. 165

9. ——— *Payment of interest—Prescribed period—Extension of period.* The words "prescribed period," used in s 20 of the Limitation Act, 1877, mean the period prescribed by the Act. The contention that only one extension of the period of limitation is given by payment of interest is unfounded VENKATARATNAM *v* KAMAYYA . . I. L. R. 11 Mad. 218

10. ——— *Payment of interest—Entry on account of interest in debtors' books in presence of plaintiff* The plaintiffs, who were members of the Dalvadi community, sued in 1883 to recover from the defendant the sum of R2,611-3-6 as found credited to their account in 1880 by the [illegible]

[illegible]

were made in the defendants' books as being credited to the plaintiffs. The defendants contended that the suit was barred For the plaintiffs it was contended that the entry of interest in the defendants' book was made in the plaintiffs' presence and amounted to a payment of interest within the meaning of s. 20 of the Limitation Act (XV of 1877) *Held*, that such an entry did not amount to payment of interest within the meaning of the section so as to save limitation Nothing took place which could be regarded as equivalent to payment of interest. ICHHA DHANJI *v* NATHA

I. L. R. 13 Bom 338

11. ——— *Payment of interest as such—Mortgage—Payment of rents to mortgagee in lieu of interest on debt—Deed of assignment showing payment of rent in lieu of interest—Admis-*

LIMITATION ACT (XV OF 1877)—*contd.*

——— s. 20—*contd.*

[illegible]

that B should receive the assessment, and, after making certain payments, should retain the balance in lieu of interest until the principal debt should be repaid The bond was not registered. The assessment was duly received by *B* until April 1887. In February 1890, *B* filed this suit to recover the principal sum from *A* personally, relinquishing his claim against the land, as the bond was not registered *A* pleaded limitation *B* contended that the receipt of the assessment in lieu of interest was a payment of "interest as such" within the meaning of s 20 of the Limitation Act (XV of 1877), and that the last of such payments having been made within three years before suit, his claim was not barred *Held*, that the suit was barred by limitation The assignment of the "vahivat of [illegible]

[illegible]

in evidence, as it was not registered. But it was only by reading the terms of the bond that the Court could gather that the assessment was to be received in lieu of interest This would be to admit indirectly the provisions of the bond in evidence. Apart from the bond, there was no evidence that the plaintiff (*B*) had been paid "interest as such" within three years of the filing of the suit by the duly authorized agents of the defendants, and the claim was therefore barred VENKAJI BABAJI NAIK *v* SHIDRAMAPA BALAPA DESAI

I. L. R. 19 Bom. 663

12. ——— *Payment of interest on a debt—Authority of a previous guardian of a debtor remaining in management after the debtor's majority—Hindu law—Guardian* The mother and guardian of an infant borrowed money for his [illegible]

[illegible]

13. ——— *Payment of interest as such—Credit of interest made in accounts of defendants* In a suit brought by a creditor against certain persons to whom she had lent money on interest —*Held*, that, in order to save the bar of limitation, a mere credit of interest entered in the

LIMITATION ACT (XV OF 1877)—*contd.*

——— s. 20—*contd.*

accounts of the defendants was not a sufficient payment of "interest as such" under s 20, Limitation Act, to save the bar. KOLLIPARA PULLAMMA *v.* MADDULA TATAYYA . **I. L. R. 19 Mad. 340**

14. ——— *Acknowledgment of liability—Interest paid on debt—Contribution—Joint debtors.* By a payment into Court under an order on account of decrees for rent and revenue in arrear, due to the landlord zamindar from the joint owners of an under-tenure, their estate was saved from sale. In respect of a proportionate share of liability for money raised for this purpose one of the joint owners became liable to be sued by another of them for contribution; and a question arose as to the application of Art 61 of Sch II of the Limitation Act, 1877 More than three years before this suit all the joint owners had filed in Court a petition for the appointment of a manager of their estate who should, out of its profits, pay debts and interest to creditors from whom had been borrowed the money for the payment into Court. Whilst the three years from the date of that acknowledgment were running and at a date less than three years before this suit, interest on part of the money borrowed had been paid by the manager whom the appellant, jointly with the other co-owners of the estate, had authorized as her agent to pay it. *Held,* that this interest, being clearly a payment in exoneration, *pro tanto* of the plaintiff's liability, was such a payment as was contemplated by s. 20, and gave a new departure for the period of limitation SUKHAMONI CHOWDHRANI *v.* ISHAN CHUNDER ROY

I L R. 25 Calc. 844
L. R. 25 I. A. 95
2 C. W. N. 402

15. ——— *Payment of interest as such—Settlement of accounts* To satisfy the requirements of s 20 of the Limitation Act (XV of 1877), the payment of principal or interest as such need not be in money It may be in goods or by a settlement of accounts between the parties, but the payment must be of such a nature that it would be a complete answer to a suit brought by the creditor to recover the amount Where a debtor consents that money due by him for interest should be credited to the account of the principal and the interest balance reduced by that amount such a consent is really tantamount to a payment of interest; it is as if the debtor makes the payment and the creditor advances it again. When both parties agree to such a settlement, and the accounts are so adjusted, the adjustment operates as a payment of interest under s 20 of the Limitation Act (XV of 1877) Plaintiffs used to lend [illegible]

LIMITATION ACT (XV OF 1877)—*contd.*

——— s. 20—*contd.*

amount so debited was thenceforward treated as principal for calculation of future interest. Corresponding entries were made in the debtors' books [illegible]

16. ——— *Suit for money—Payment on account of principal within the period of limitation—Evidence of such payment by writing made after period expired.* The ... [illegible]

under. In bar of limitation the plaintiff relied on entries of part payments from time to time in [illegible]

of them. The last of these payments was made on a date which was less than six years (the period of limitation for the suit) before the date of institution of the suit, but it was not entered in the defendants' accounts until after the date when the claim would otherwise have been barred by limitation. *Held,* that the provisions of the Limitation Act, s. 20, were satisfied, and that the suit was not barred by limitation. VENKATASUBBU *v.* APPUSUNDRAM . . **I. L. R. 17 Mad. 92**

17. ——— *Mortgage—Suit for arrears of rent* Where a kanom was granted in 1858 for five years to secure repayment of a loan, and a lease made in 1865 to the grantor of the kanom by the kanom-holder and rent paid under the lease until 1871 —*Held,* that a suit brought in 1877 to recover the kanom amount and arrears of rent for seven years was barred by limitation except as to three years' arrears of rent. PALLIAGATHA UMMER KUTTI *v.* ABDUL KADAR

I. L. R. 3 Mad. 57

18. ——— *Entry of account stated by debtor in creditor's books—Implied contract.* An entry of an account stated, made by a debtor in his creditor's books, is not a contract in writing within the meaning of Act IX of 1871, s 21. AMRITLAL MANSUK *v.* MANIKLAL JETHA

10 Bom. 375

This case was followed in HANMANTMAL MOTICHAND *v.* RAMBABAI . **I. L. R. 3 Bom. 198**

where it was *held* that, consequently, the payments made by the defendant on account were not such payments of the principal of the debt due by him as would bar the operation of the Act.

See RANCHODDAS NATHUBHAI *v.* JEYCHAND KHUSAL CHAND . . **I. L. R. 8 Bom. 405**

19. ——— *Payments towards adjusted account.* Where, subsequently to the adjustment of his account with the plaintiffs, the defendant had been credited with amounts of

LIMITATION ACT (XV OF 1877)—*contd.*

——— s. 20—*contd.*

surplus proceeds of goods and of a hundi, *held* that such amounts were not payments within the meaning of s. 20 of the Limitation Act. NARRONJI BHIMJI *v.* MUGNIRUM CHANDAJI

I. L. R. 6 Bom. 103

20. ——— *Sum realized by execution-sale—Part-payment.* A sum realized by an execution-sale cannot be considered a part-payment under s. 21, Act IX of 1871, so as to give a new period of limitation. RUGHOONATH DOSS *v.* SHIPOMONEE PAT MOHADEBEE . **24 W. R. 20**

BENUL DOSS *v.* IKBAL NARAIN **25 W. R. 249**

RAMCHANDRA GANESH *v.* DEVBA **I. L. R. 6 Bom. 626**

21. ——— *Part-payment of principal of bond—Endorsement, facts which must appear in.* To satisfy the conditions of s. 20 of the Limitation Act, the endorsement in the handwriting of the person making a part-payment of the principal of a bond need not show the appropriation of the payment to principal, but only the fact of the payment. JADA ANNAMMA *v.* NADIMPALLE RAMA . . **I. L. R. 6 Mad. 281**

22. ——— *Part-payment of principal—Endorsement—Handwriting of payer—Marksman.* In s. 20 of the Limitation Act, 1877,

[illegible]

his mark beneath an endorsement not written by him. MADABHUSHI SESHACHARLU *v.* SINGARA SESHAYA . **I. L. R. 7 Mad. 55**

23. ——— *Part-payment of principal—Endorsement—Handwriting of payer—Marksman.* The mark of the payer subscribed to an endorsement not in the handwriting of the payer will satisfy the proviso to s. 20 of the Limit-

[illegible]

person making the payment, in order that a new period of limitation may run from the date of such payment. ELLAPA NAYAK *v.* ANUMATI GOUNDAN **I. L. R. 7 Mad. 76**

24. ——— *Part-payment of principal of debt—Endorsement of cheque by debtor.* Where the only evidence in the handwriting of the debtor of the part-payment of the principal of a

[illegible]

25. ——— *Part-payment of principal of debt—"Person making the same"—Mode of creating new period of limitation by part-payment.* In order to create a new period of limit-

[illegible]

writing of the person making the part-payment and not in that of any other person, however authorized. *Bhugabuth Thakur v. Madhub Kristo Sett, I. L. R. 23 Calc. 553 note*, over-ruled. MUKHI HAJI RAHIMUTULLA *v.* COVERJI BHUJA

I. L. R. 23 Calc. 546

(*Contra*) BHUGABUTH THAKUR *v.* MADHUB KRISTO SETT **I. L. R. 23 Calc. 553 note**

[illegible]

security for the promissory note and for any future advances, a letter of lien over his stock-in-trade, etc., and undertook at the time to execute, whenever called upon to do so, an assignment of his business. This undertaking was never carried out. Two years and three months from the date of the loan the insolvent had addressed a letter to the Bank enclosing a cheque for R600, and requesting that it should be placed to the credit of the loan account. *Held*, that the payment of R600 was a part-payment, and that the fact of such part-payment appeared in the handwriting of the insolvent within the meaning of s. 20 of the Limitation Act. *In the matter of* SUMMERS **I. L. R. 23 Calc. 592**

27. ——— *Part-payment of debt—Endorsement of hundi by debtor.* Where the only evidence in the handwriting of the debtor of the part-payment of the principal of a debt was the endorsement of a hundi to the creditor:—*Held*, that such endorsement was not sufficient within the meaning of s. 20 of Act XV of 1877 to give a new starting point for limitation. *Mackenzie v. Tiruvengadathan, I. L. R. 9 Mad. 271*, referred to. RAM CHANDAR *v.* CHANDI PRASAD

I. L. R. 19 All. 307

28. ——— *Unregistered mortgage—Receipt of produce in lieu of interest.* Receipt of the produce of land held under a deed of mortgage required to be, but not registered, cannot be deemed to be a payment for the purpose of s. 20 of the Limitation Act, 1877. PICHANDI *v.* KANDASAMI **I. L. R. 7 Mad. 539**

29. ——— *Agent, authority*

[illegible]

BIRJMOHUN LALL *v.* RUDRA PERKASH MISSER **I. L. R. 17 Calc. 944**

30. ——— *Usufructuary mortgage—Right of redemption.* The last clause of s. 20 of Act XV of 1877 does not have the effect of extending indefinitely the period within which a

LIMITATION ACT (XV OF 1877)—*contd.*

——— s. 20—*contd.*

usufructuary mortgage must be redeemed. KALLU *v.* HALKI . . . **I. L. R. 18 All. 295**

31. ——— *Part-payment of principal. Per* BANERJEE, *J.*—In case of part-payment of the principal under s. 20 of the Limitation Act, it is not necessary that the writing evidencing the payment should, on the face of it, show expressly that the payment was made as such. MANDARDHAR AITCH *v.* SECRETARY OF STATE FOR INDIA (1901) . . . . **6 C. W. N. 218**

32. ——— *Part-payment—Fact of such payment must appear in writing of person making the payment.* Under s. 20 of the Limitation Act (XV of 1877), the fact of a part-

I. L. R. 20 Bom. 216

33. ——— *Certificated guardian, power of—Authorized agent—Payment of interest by certificated guardian, effect of.* The certificated guardian of a minor is an agent duly authorized to pay interest upon a debt due by the minor within the meaning of s. 20 of the Limitation Act (XV of 1877) *Chhato Ram* v *Bilto Ali, I. L R. 26 Calc 51*, and *Maharana Shri Ranmal Singji* v. *Vadilal Vakhat Chand, I. L R. 20 Bom. 61*, referred to NARENDRA NATH SARKAR *v.* RAI CHARAN HALDAR (1902) **I L. R. 29 Calc. 647 s.c. 6 C. W. N. 729**

34. ——— *Indian Limitation Act (XV of 1877), ss. 19, 20—Construction of Statute—"Debt," in s 20, if includes judgment-debt—Limitation Act, 1871, ss 20, 21* The word 'debt,' occurring in s. 20 of the Indian Limitation Act does not refer to judgment-debts, but to debts upon which an action can be brought Therefore, part-payment made by the judgment-debtor subsequent to the decree cannot be taken cognizance of in determining the question whether an

6 C. W. N. 766

35. ——— *Guardian and minor—Payment of interest by mother as guardian on behalf of her minor sons—Limitation. Held*, that the payment by the mother and natural guardian of minors of interest due upon a bond executed by the father of the minors is not such a payment as is contemplated by s. 20 of the Limitation Act, 1897, and does not operate to give a fresh starting point for limitation. *Wajibun* v. *Kadir Buksh, I. L R 13 Calc 292*, and *Maharana Shri Ranmalsingji* v *Vadilal Vakhatchand, I. L. R. 20 Bom. 61*, followed. *Kailasa Padiachi* v. *Ponnukannu Achi, I. L. R. 18 Mad. 456*, dissented from. TILAK SINGH *v.* CHHUTTA SINGH (1901) **I. L. R. 26 All. 598**

36. ——— *Payment of interest by principal—Liability of surety.* The payment of interest by the debtor within limitation does not give a fresh starting point for limitation against the surety under s. 20 of the Limitation Act (XV of 1877) even in the absence of a prohibition by the surety against the payment of interest by the debtor on his account. GOPAL DAJI *v.* GOPAL BIN SONU (1904) **I. L. R. 28 Bom. 248**

37. ——— *Application to execute decree* The provisions of s. 20 of the Limitation Act are not applicable to applications in execution of a decree. *Rama Rau* v. *Venkatesa Bhandari, I. L. R 5 Mad 171*, followed KUPPUSAMI CHETTY *v.* RUNGASAMI PILLAI (1904) **I. L. R. 27 Mad. 608**

38. ——— *Part-payment—Statement in writing not in debtor's hand—Debtor's mark × beneath—Limitation* The condition prescribed by s. 20 of the Limitation Act (XV of 1877) that part-payment of the principal debt should appear in the handwriting of the person making the same is satisfied, if the payer affixes his mark beneath an endorsement not written by him. JAMNA *v.* JAGA BHANA (1904) **I. L. R. 28 Bom. 263**

39. ——— *Mortgage—Part-payment—Payment by predecessor in interest.* The

and the fact of the payment appears in his handwriting, the new period of limitation created by the section would also take effect as against the purchaser, before the payment was made, of the equity of redemption in the mortgaged property under a

Newbould v. *Smith, 33 Ch. D. 127*; *s.c.* ... *App Cas 423*, referred to. DOMI LAL SAHU *v.* ROSHAN DOBAY (1906) **I. L. R. 33 Calc. 1278**

40. ——— *Payment of interest as such —Payment must be of such a nature as to be a good defence to an action for the amount.* Where the payee of a promissory note was put in possession of certain lands under an agreement that he was to take the produce of the land as interest, such receipt of produce will be a payment of interest as such sufficient to satisfy the require-

LIMITATION ACT (XV OF 1877)—*contd.*

——— **s. 20**—*contd.*

ments of s. 20 of the Limitation Act, as it will be a good defence to an action by the payee for the interest. The payment contemplated by s. 20 need not necessarily be in money, but must be of

41. ——— *Limitation—Execution of decree—Decree payable by instalments—Default in payment of instalments—Civil Procedure*

execute for the whole amount at once Default was made, and the decree-holder exercised his option and obtained an order absolute for recovery of the whole amount due under the decree On the 23rd of February 1901, the decree-holder

of July 1904, the decree-holder again applied for execution *Held*, that execution of the decree was barred by limitation, and that the decree-

I. L. R. 28 All. 249

42. ——— *Part-payment—Endorsement not in debtor's hand, but only signed by him—When debtor can write, whether such signature is sufficient to save limitation* Where a debtor can write, but an endorsement is written by another person and only signed by him, it is not an endorsement, which is, as far as possible, in his handwriting, and therefore it is not sufficient under the provisions of s 20 of the Limitation Act to create a new period of limitation *Mukhi Haji Rahmuttulla* v *Coverji Bhuja, I L R 23 Calc 546*, referred to *Madabhusi Sesha Charlu* v *Singara Seshaya, I L R 7 Mad 55, Ellappa Nayak* v *Annamalai Goundan, I L R 7 Mad 76*, and *Jamna* v. *Jaga Bhana, I L R 28 Bom 262*, distinguished. SANTISHWAR MAHANTA v LAKHIKANTA MAHANTA (1908) . . . I. L. R 35 Calc 813

ation when the payment is made as such, that

LIMITATION ACT (XV OF 1877)—*contd.*

——— **s. 20**—*concld.*

is to say, the debtor has paid the amount with the intention that it should be paid towards interest, and there must be something to indicate that intention. The mere appropriation by the creditor of these payments to interest is not such an indication A letter containing a promise to pay a time-barred debt within one month is an

44. ——— *Execution of decree—Sale of judgment-debtor's property—Such sale not part-payment so as to save limitation.* In order that the provisions of s 20 of the Indian Limitation Act, 1877, should apply in favour of the decree-holders, it is necessary that the fact of part-payment of the principal of a debt should appear in

was not a good payment within the meaning of s 20 of the Limitation Act. OUDH BIHARI PANDE v MAHABIR SAHAI (1909) I. L R 31 All 590

45. ——— *Part-payment of principal—Endorsement written by another person but signed by debtor—Extension of period—Judgment, appellate, not in accordance with law—Finding of fact—Second appeal* When the debtor can write, an endorsement as to payment of a part of the principal money, written by another person but signed by the debtor himself is not sufficient under the provisions of s 20, Limitation Act, to create a new period of limitation *Mukhi Haji Rahmuttulla* v *Coverji Bhuja, I L R 23 Calc. 546*, applied in principle SANTISHWAR MAHANTA v. LAKHIKANTA MAHANTA (1908)

13 C. W. N 177

46. ——— **s. 20, Sch. II, Art. 148**—*Limitation—Suit for redemption of a usufructuary mortgage. Held*, that s 20 of the Limitation Act does not apply to a suit for redemption of a usufructuary mortgage in such a manner as to extend indefinitely the period of limitation, within which such a suit must be filed *Kallu* v *Halki, I. L. R. 18 All 295*, and *Khilanda Ram* v *Jinda, Punj. Rec (1883) 115*, followed *Jamna Prasad* v. *Gokla, Weekly Notes (1894) 87*, dissented from ANSWAR HUSAIN v LALMIR KHAN (1904)

I L R. 26 All 167

——— **s. 21 (1871, s. 20, expl. 2: 1859, s. 4).**—

See PARTNERSHIP—DISSOLUTION OF PARTNERSHIP I. L. R. 26 Bom. 42

1. ——— *Acknowledgment by partner.* An acknowledgment by one partner sufficient to save limitation will not bind another partner who has not subscribed such acknowledg-

LIMITATION ACT (XV OF 1877)—*contd.*

——— s. 21—*contd.*

ment. BENARSEE DASS *v.* KHOOSHAL CHUND. KHOOSHAL CHUND *v.* PALMER

2 Agra, Pt. II, 170

2. ——— *Partnership accounts.* S. 20, Act IX of 1871, does not apply to partnership accounts. KHOODEE RAM DUTT *v.* KISHEN CHAND GOLEECHA . 25 W. R. 145

3. ——— *Acknowledgment given by one partner when binding on the firm—Partnership—Practice—Parties—Same person both plaintiff and defendant.* The plaintiff, as heir of his mother, sued a firm, in which he was himself a partner, to recover the amount of certain loans which he alleged that his mother in her lifetime had made to the said firm. The plaintiff was made a defendant in the suit along with the other partners. The alleged loans were made on the 2nd November 1881 and the 12th October 1882. The present suit was not filed until December 1885. The plaintiff, however, relied on an acknowledgment signed in his mother's account book by himself as partner in the firm on the 1st November 1883. The first defendant did not appear, or put in any defence. The second defendant pleaded limitation, and alleged that, on the 2nd November 1880, prior to the date of the alleged loans he had retired from the firm, and therefore was not liable. From the evidence given at the hearing it appeared that the business stopped, so far as buying and selling and fresh trading were concerned at the end of the year 1881, and that subsequently to that date the partners were occupied solely in winding up the affairs of the firm. *Held*, that, under the circumstances, the acknowledgment given by the plaintiff did not bind the other partners, and that the claim against them was barred. If, at the time the acknowledgment was given the firm had been a going concern, the plaintiff's authority to make such an acknowledgment on behalf of the firm might have been presumed: but in this case the business had been closed, and the partnership entirely dissolved. The presumption, therefore, which arises in active partnership, no longer existed, and there was no evidence that the plaintiff had been expressly authorized to act for the other partners in making the acknowledgment. The meaning of the word "only" in s. 21 of the Limitation Act (XV of 1877), is that it must also be shown that the partner signing the acknowledgment had authority, express or implied, to do so. In a going mercantile concern such agency is to be presumed as an ordinary rule. PREMJI LUDHA *v.* DOSSA DOONGERSEY

I. L. R. 10 Bom. 358

4. ——— *Acknowledgment signed by one of several partners.* The word "only" in s. 21 of the Limitation Act (XV of 1877) is not to be treated as a surplusage. It means that the mere writing or signing of an acknowledgment by one partner does not necessarily of itself bind his co-partner, unless it can be shown that he had otherwise power to bind that partner for the purpose of making such acknowledgment and in effect purported so to bind him. GADU BIBI *v.* PARSOTAM

I. L. R. 10 All. 418

5. ——— *Part-payment by one partner will save limitation only if made under authority from the other partners.* A part-payment by one partner of a going mercantile firm of a debt due by the firm will not save the operation of limitation under s. 21 of the Limitation Act XV of 1877 against the other partners, in the absence of evidence to show that, in the course of business, the partner who made the payment had authority to do so on behalf of the firm. *Premji Ludha v. Dossa Doongersey, I. L. R. 10 Bom. 358, 362*, referred to. VALASUBRAMANIA PILLAI *v.* RAMANANATHAN CHETTIAR (1908)

I. L. R. 32 Mad. 421

——— s. 22 (1871, s. 22)—

See BENGAL TENANCY ACT (VIII OF 1885), s. 106 . . 12 C. W. N. 8

See FALSE IMPRISONMENT.
I. L. R. 9 Bom. 1

See HINDU LAW.
I. L. R. 33 Calc. 1079

See LIMITATION I. L. R. 34 Calc. 612

See MAHOMEDAN LAW—DOWER.
12 C. W. N. 84

See MESNE PROFITS.
I. L. R. 33 Calc. 329

See PARTIES—ADDING PARTIES TO SUITS —PLAINTIFFS I. L. R. 14 All. 524
I. L. R. 17 Bom. 29; 413

See PARTIES—ADDING PARTIES TO SUITS —DEFENDANTS.
I. L. R. 32 Calc. 583
9 C. W. N. 421
11 C. W. N. 350
I. L. R. 35 Calc. 519

See PARTIES—ADDING PARTIES TO SUITS —RESPONDENTS I. L. R. 13 All. 78
I. L. R. 14 All. 154

See PARTIES—SUBSTITUTION OF PARTIES —PLAINTIFFS . 7 C. W. N. 817

See PLAINT—AMENDMENT OF PLAINT.
I. L. R. 16 Mad. 319

1. ——— *Party added under s. 73, Civil Procedure Code, 1859.* When a party was substituted or added as a defendant, under s. 73 of Act VIII of 1859, the suit was held to be commenced against him at the time, and not before; therefore, where *A* sued *B* as representative of *C* for land, and more than twelve years after the cause of action accrued found that *B* was not in possession, but *D*, and by order of Court *D* was

LIMITATION ACT (XV OF 1877)—*contd.*

——— s. 22—*contd.*

substituted as defendant: *Held*, that the claim against *D* was barred. RAJ KISHOREE DOSSEE *v.* BUDDEN CHUNDER SHAW

2 Ind. Jur. N. S. 49 : 6 W. R. 298

NUNDO GOPAL ROY *v.* JANKEERAM CHUCKERBUTTY . . . . . W. R. 1864, 316

ESHAN CHUNDER BANERJEE *v.* KRISTO GUTTY NAG . . . . . . 14 W. R. 377

2. ——— *Act XIV of 1859* —*Parties added after expiration of period of limitation.* A suit was held not to be barred by the Limitation Act, 1859, as against parties added after the expiration of the period allowed by law, provided the plaint be filed against the original parties prior to the expiration of such period. ISSUREEPERSAUD *v.* UNJOONLOLL . . 2 Hyde 248

KALEE KISHORE CHATERJEE *v.* LUCKHEE DEBIA CHOWDHRANI . . . 6 W R. 172

3. ——— *Act XIV of 1859* —*Suit by widow on behalf of minor son—Son afterwards joined as plaintiff.* In 1864, a Hindu widow having a minor son sued, in her own name and on her own behalf, to recover certain immoveable property. The action was brought on a lease which expired in 1854. The defendant denied the lease, and contended that the suit should be dismissed, as it could not be maintained by the widow in her own name. In 1871, the son, who had in the meantime attained his majority in 1865, was made a co-plaintiff on his own application. *Held*, that the suit was barred, inasmuch as it must, if maintainable, be deemed to have been instituted in 1871, when the son was made a co-plaintiff, the plaint previously to that time having been in the widow's own name and expressly on her own behalf. *Held*, also, that making the son a co-plaintiff in 1871 could not change the character of the suit as it had existed previous to that date, so as to defeat the law of limitation. *Held* (by PINHEY, J.), that the minor was wrongly made a plaintiff in 1871. *Dhurm Dass Pandey v Sham Soondri Dabiah, 6 W R P. C 44*, distinguished. GOPAL KASHI *v* RAMA BAI SAHEB PATVAR . 12 Bom. 17

4. ——— *Act IX of 1871, s 1, and s 22*—"*Commenced*," "*Instituted*"—*Added defendants—Suit for contribution of partnership account—Cause of action.* *Quære*: Whether the word "commenced" in s 22 of Act IX of 1871 is equivalent to the word "instituted" in s 1, and apply, then under a general principle of law, be allowed to reckon the period of limitation on which they rely from the date at which they were added,

LIMITATION ACT (XV OF 1877)—*contd.*

——— s. 22—*contd*

but the periods of limitation provided by Act IX of 1871 do not necessarily apply to defendants so added. The plaintiff and three of the defendants, being four members of a partnership, consisting of which they gave their joint and several promissory notes, and shortly afterwards two of the partners retired, leaving the plaintiff and the four defendants alone constituting the firm. On 27th September 1865, the plaintiff and first defendant were sentenced to transportation for life, and on 15th April 1867 one of the other defendants became insolvent. On 25th April 1867, the liquidators of the Commercial, Finance and Stock Exchange Corporation obtained a decree against the plaintiff and the three defendants who had joined in the making of the promissory notes for the amount due on their joint and several promissory notes and costs. In March 1868, the immoveable and moveable property of the plaintiff and the moveable property of the first defendant were sold in execution, and the whole of the proceeds of the plaintiff's immoveable property, together with the balance of the proceeds of the moveable properties of the plaintiff and first defendant, after satisfying thereout two prior decrees against them, were applied in part satisfaction of the decree of 25th April 1867, and the moneys so recovered were distributed to the shareholders by the liquidators, who, however, retained in their hands such portion as would have been payable in respect of the shares held by the judgment-debtors fit of Act XXVIII of 1865, and obtained their discharge in April and December 1869. The plaintiff therefore sued the first defendant alone on 18th March 1873 as contributory for the satisfaction of the joint decree, but subsequently, by amendment made on the 6th February 1874, added the other defendants, and prayed for a decree that he was entitled to receive and appropriate the balance of R25,212, and that the first defendant should pay to the plaintiff, the balance of the moneys paid by him

LIMITATION ACT (XV OF 1877)—*contd.*

——— s. 22—*contd.*

that as to the added defendants, the period of limitation was to be reckoned back from 6th February, 1674 *Fourthly*, that the plaintiff's cause of action arose in April 1868, when his property was sold and applied in satisfaction of the joint decree of 25th April 1867, and not on the date of the decree itself. DAYAL JAIRAJ v KHATAV LADHA . 12 Bom. 97

5. ——— *Substitution of heirs of decree-holder.* In a suit to set aside the sale of certain lands which had been attached and sold

news from the return made to the summons. SREE KISHEN CHOWDHRY v. RAM KISTO BHUTTACHARJEE 10 W. R. 317

6. ——— and Art. 60—*Adding party as defendant* On 2nd August 1872, *A K* filed a plaint against *M H* and *M R*, in which he alleged that on 1st April 1870, *M R* had given a hundi for R500 for value received, to *A K*; that on 27th March 1871, *M H* purchased this hundi from *A K*, promising to pay him R534 for it; that *M H* gave the hundi to his brother *I H* for the purpose of obtaining payment of the amount from *M R*; and that *I H* subsequently informed *A K* that the hundi had been lost. *A K* accordingly prayed that the defendants *M H* and *M R* might be decreed to pay him R534 with profit and interest. *M H* denied

R500 He further alleged that it had been presented to him for payment by *I H*, to whom he had paid the amount with interest on 31st March 1871, and he produced the hundi with a receipt, purporting to be by *I H* indorsed on it. The trying

ence to s 22 of Act IX of 1871, that the law of

before 25th June 1874, the day on which *I H* was added as a defendant, the suit as against him was barred. *Dayal Jairaj* v. *Khatav Ladha, 12 Bom. 97*, and *Chinnasami Iyengar* v. *Gopalacharry, 7*

LIMITATION ACT (XV OF 1877)—*contd.*

——— s. 22—*contd.*

Mad. 392, dissented from. ABDUL KARIM v. MANJI HANSRAJ . . I. L. R. 1 Bom. 295

But *see* ISSUREPERSAUD *v.* URJOON LALL 2 Hyde 248

7. ——— *Adding plaintiffs whose suit is barred.* Where the original plaintiffs could only enforce their claim in conjunction with the added plaintiffs, and the added plaintiffs were barred by s 22 of Act XV of 1877: *Held*, that the claim of the original plaintiffs was also barred. *Boydonath Bag* v. *Grish Chunder Roy, I. L. R. 3 Calc 26*, dissented from RAMSEBUK v RAM LALL KOONDOO

I. L. R. 6 Calc. 815 : 8 C. L. R. 457

8. ——— *Parties—Civil Procedure Code, ss 27 and 32—Institution of suits—Change of parties* The change of parties as plaintiffs in conformity with the provisions of s 27 of the Civil Procedure Code does not give rise to such a question of limitation as arises upon the addition of a new person as a defendant under s. 32. SUBODINI DEBI v. KUMAR GANODA KANT ROY BAHADUR I. L R. 14 Calc. 400

9 ——— *Joint purchase—Suit against one of the purchasers—Addition of other purchaser as defendant—Effect of suit as regards the latter being barred by limitation.* P, on the 12th April 1880, instituted a suit against *Z* claiming to enforce a right of pre-emption in respect of the sale of a share of an undivided estate to the latter and his minor brother *A* jointly, under an instrument, dated the 12th April 1879. On the 3rd May 1880, *A* was made a defendant to such suit, *Z* being appointed guardian for the suit for him. *Held*, that, inasmuch as such suit, as regards *A*, was beyond time, and as the only relief which could be granted therein to *P* was the invalidation of the joint sale to *Z* and *A*, such suit, even admitting it was within time as regards *Z*, was not maintainable HABIB-UL-LAH *v.* ACHAIBAR PANDEY

I. L. R. 4 All. 145

10. ——— *Adding defendant*

action against the other persons in possession had elapsed, these latter were added as defendants. *Held*, that the suit must be dismissed as against the added defendants on the ground that it was barred by limitation. OBHOY CHURN NUNDI v KRITARTHAMOYI DOSSEE . . I. L. R. 7 Calc. 284

11. ——— *Suit for partnership accounts—Joint contract—Necessary parties, omission of—Addition of new defendant—Time of joinder, how material.* A suit was brought for partnership accounts. Upon the objection of the defendant it was found that a necessary party defendant had been omitted, and such party was

LIMITATION ACT (XV OF 1877)—*contd.*

——— s. 22—*contd.*

afterwards added as a defendant at a time when the suit as against him was barred *Held*, that the whole suit was rightly dismissed. RAMDOYAL *v.* JUNMENJOY COONDOO . I. L. R. 14 Calc. 791

12. ——— *Parties defendants substituted as plaintiffs after suit by them is barred—Suit to set aside sale—Civil Procedure Code, s. 32.* A mitta held by tenants-in-common was sold for arrears of revenue at a time when the owners of a moiety thereof were minors In a suit brought by the mother of these minors on their behalf against the Collector to set aside the sale, the plaintiffs impleaded also the other previous owners, of whom one was the purchaser at the sale Two others, in their written statement, pleaded that the purchase had been made in fraud of their rights, and claimed to be still entitled to their shares in the mitta on the ground that the purchaser must be held to have purchased for their benefit (Indian Trusts Act, II of 1882, s. 90) They further claimed that should the sale be set aside so far as the plaintiff's interests were concerned, the sale of their interests also should be held to be null and void. Before the suit came on for hearing, the District Judge *suo motu* ordered that these two defendants should be made plaintiffs in the suit under s. 32 of the Code of Civil Procedure. At the date when this order was made the claim of these defendants, had they sued to set aside the sale in their own interest, was barred by limitation *Held*, that the order was illegal. KRISHNA *v* MEKAMPERUMA. COLLECTOR OF SALEM *v* MEKAMPERUMA . . . . I L R. 10 Mad. 44

13. ——— *Parties to suit—Transfer of defendants to category of plaintiff, effect of—Land Registration Act (Beng Act VII of 1876), s. 7.* A and B, two joint zamindars, having brought a patni within their zamindari to sale for arrears of rent, purchased it themselves During the existence of the patni a dar-patni had been created of which C was in possession A instituted a suit against C to recover arrears of rent of the dar-patni for a period of three years, and joined B as a *pro formâ* defendant, alleging that he was away from home as the time of the institution of the suit and could not therefore join as co-plaintiff A's proprietary interest was registered under the provisions of Bengal Act VII of 1876, the Land Registration Act, but B's interest was not so registered [illegible]

transferred from the category of defendant in the [illegible]

being specified), having regard to the provision of s 78 of the Land Registration Act. The lower Appellate Court having dismissed the suit on this

LIMITATION ACT (XV OF 1877) *contd.*

——— s. 22—*contd.*

latter ground, and also held that the right to recover the rent for the first two out of the three years, as suit was barred by limitation: *Held*, that, when B was sued as a party-defendant, he was made a party in violation of the rule applied in *Dwarka Nath Mitter* v. *Tara Prasunna Roy, I. L R 17 Calc. 160*, and that the suit was not therefore in the first instance properly brought. B not being properly on the record at all, that the effect of making B co-plaintiff was practically to institute [illegible]

the plaintiffs were entitled to a decree for the rent in respect of the third year which was not barred by limitation at the time B was made co-plaintiff. JIBANTI NATH KHAN *v* GOKOOL CHUNDER CHOWDRY . . . I L R. 19 Calc. 760

14. ——— *Parties changed* [illegible]

that an agreement entered into by them in 1886 with the other defendants was void as having been executed under coercion, and because part of the consideration was the withdrawal of a pending criminal charge of trespass and theft against them. These averments were proved The first-named defendants were made plaintiffs in the suit more than three years after the execution of the agreement. *Held*, that the first plaintiff was entitled to a declaration of the invalidity of the agreement, but not the others who had been joined as plaintiffs more than three years from its date SRIRANGACHARIAR *v* RAMASAMI AYYANGAR

I L. R. 18 Mad. 189

15. ——— *Suit by heirs of deceased Mahomedan—Suit originally filed in time by one heir—Another heir subsequently made co-plaintiff beyond time of limitation—Letters of administration obtained only by second plaintiff—Parties, joinder of* The plaintiff, as widow and heir of a Khoja Mahomedan, sued on a promissory note dated the 21st October 1892, passed by the defendant to her deceased husband The suit was filed on the 9th October 1895 Disputes subsequently arose between her and her father-in-law as to the succession to her husband's property, and she applied to the High Court for letters of adminis- [illegible]

LIMITATION ACT (XV OF 1877)—*contd.*

——— s. 22—*contd.*

1889). adminis suit was of 1877,

favour. S 22 of the Limitation Act in terms

as a party plaintiff. When one or more heirs sue, there is no objection to joining all to make the representation complete. FATMABAI *v* PIRBHAI VIRJI . . . I. L. R. 21 Bom. 580

16 ——— *Civil Procedure Code (Act XIV of 1882), s. 27—Suit by benami purchaser at sale in execution of decree—Addition of real purchaser as co-plaintiff* The plaintiff

March 1892, February 1892, and 12th October 1892. In the course of the proceedings, the defendant ascertained that Ravji was not the real owner of the land, but had purchased it and was holding it benami for his uncle Ravji admitted that he had no interest in the land On the 30th March 1895 Ravji's uncle applied to be made a party to the suit, and was thereupon added as second plaintiff The Subordinate Judge on the merits passed a decree awarding damages to the second plaintiff. The defendant appealed, and in appeal for the first time objected that Ravji (plaintiff No 1), being only a benamidar, could not bring the suit in his own name, and that the claim of the second plaintiff, or a large portion of it, was barred by limitation under s 22 of the Limitation Act. The

cured by the Court acting under s 27 of the Civil Procedure Code *Bhola Pershad v Ram Lall, I. L R 24 Calc 34*, and *Subodini Debi v Cumar Ganoda, I L R 14 Calc. 400*, followed. *Per* RANADE, *J* —The first plaintiff as benami purchaser had full right to bring the suit. If the true owner holds back, a decree against a benamidar owner would bind him as *res judicata* The present suit was therefore properly instituted The addition of the second plaintiff's name made no difference in the character of the suit The defendant was estopped by his conduct in the previous proceed-

LIMITATION ACT (XV OF 1877)—*contd.*

——— s. 22—*contd.*

ings, carried on between him and the first plaintiff for over seven years, from questioning his right to sue The rights of the parties must therefore be

by the lower Court of Appeal RAVJI APPAJI KULKARNI *v.* MAHADEV BAPAJI KULKARNI I. L. R 22 Bom. 672

17. ——— *Suit for damages for illegal distraint—Joinder of parties—Party plaintiff joined beyond period of limitation* A suit for compensation for illegal distraint of crops was brought by one of two persons jointly entitled to the crops distrained Objection being taken on the ground of non-joinder of a party, that party was on his own application added as a plaintiff, but his claim was then barred by limitation. *Held*, that the whole suit was not barred by limitation in consequence of the provisions of s 22 of the Limitation Act JAGDEO SINGH *v* PADARATH AHIR . I. L. R. 25 Calc. 285

18. ——— *Joinder of persons as plaintiffs after period of limitation for suit has expired—Frame of suit—Parties A*, who with his three brothers composed a joint Hindu family, brought a suit in his own sole name to recover a joint debt. When the objection was taken to the form of the suit on the ground of the non-joinder of *A's* three brothers, it was too late ... 22 of the ... hree ... ness ... assent ... all the ... he suit ... further, ... on had ... fs after the suit was, as regards them, time-barred; since such a suit would have been virtually a suit by himself alone, and therefore bad *Boydonath Bag v. Grish Chunder Roy, I. L R. 3 Calc 26*, disapproved of. KALIDAS KEVAL DAS *v.* NATHU BHAGVAN I. L. R. 7 Bom. 217

19. ——— *Necessary party added after period of limitation expired—Objection*

LIMITATION ACT (XV OF 1877)—*contd.*

—— s. 22—*contd.*

das v. *Nathu Bhagvan, I. L. R. 7 Bom. 217*, distinguished. SHIREKULI TIMAPA HEGADE v. AJJIBAL NARASHINV HEGADE . I. L. R. 15 Bom. 297

20. —— *Addition of parties on appeal—Civil Procedure Code, 1877, ss 32, 582.* S sued N and R jointly and severally for certain moneys The Court of first instance

1877, to give S a decree against R, the former not having appealed from the decree of the Court of first instance within the time allowed by law. RANJIT SINGH v. SHEO PRASAD RAM

I. L. R. 2 All 487

21. —— *Civil Procedure Code, 1882, s 32—Party to contract joined as defendant and subsequently made a plaintiff—Substitution of parties* Limitation Act, s 22, is not applicable to cases where the Court of its own motion

22. —— *Assignee of right of suit—Leave to carry on suit* S 22 of Act XV of 1877 does not apply to a case in which the persons to whom a right of suit is assigned after the institution of the suit obtain leave to carry on the suit SURUT SINGH v IMRIT TEWARI

I. L. R. 5 Calc. 720 : 6 C. L. R. 62

23. —— *Names of partners inserted as defendants instead of name of company* In a suit against the Elgin Mills Company for recovery of the price of wood supplied up to 11th November 1879, the suit was instituted on

pany, and at most what was done was to correct a misdescription. PRAGI LAL v MAXWELL

I L R. 7 All. 284

24. —— *Assignment pendente lite—Substitution of assignees as plaintiffs.*

LIMITATION ACT (XV OF 1877)—*contd.*

—— s. 22—*contd.*

In a suit instituted within the period prescribed by the law of limitation the plaintiff assigned over

SINGH v DENONATH SAHAY

I. L. R. 25 Calc. 409

25. —— *Partnership—*

time barred under s. 22 of the Limitation Act. *Held*, that the case was one of misdescription, and not of non-joinder, for the action was brought in the name of the firm by its manager. The order

26. —— *Suit by Official Liquidator—Description of plaintiff—Civil Procedure*

amended, but after the period of limitation pre-

might be considered that the amendment made

27. —— *Defendant added by Court of its own motion—Civil Procedure Code,*

LIMITATION ACT (XV OF 1877)—*contd.*

——— s. 22—*contd.*

1882, s. 32. No question of limitation arises, and s. 22 of the Limitation Act does not apply when the Court of its own motion acts under s. 32 of the Code of Civil Procedure, and orders that the name of any person be added as a defendant. *Grish Chunder Sasmal* v. *Dwarka Nath Duida, I. L R 21 Calc. 640*, and *Oriental Bank Corporation* v. *Charriol, I. L. R. 12 Calc. 642*, followed *Khadir Moideen* v. *Rama Naik, I. L. R. 17 Mad. 12* referred to; and *Imamuddin* v. *Liladhar, I. L R 14 All. 524*, dissented from. FAKEERA PASBAN v. AZIMUNNISSA

I. L. R. 27 Calc. 540
4 C. W. N. 459

28. ——— *Municipalities Act, N.-W. P. and Oudh, s. 43—Suit against Secretary to Municipal Committee—Substitution of President as defendant.* Where, after a notice required by s. 43 of Act XV of 1873 had been left at the office of a municipal committee, such committee were sued within three months of the accrual of the plaintiff's cause of action in the name of their secretary, instead of the name of their president as required by s. 40 of Act XV of 1873, and the plaintiff applied to the Court more than three months after the accrual of his cause of action to substitute the name of the president for that of the secretary: *Held*, that, by reason of such substitution, such suit could not be deemed to have been instituted against such committee when such substitution was made, s. 22 of Act XV of 1877 applying to the case of a person personally made a party to a suit, and not to the case of a committee sued in the name of their officer, and that such substitution, when applied for should have been made. MANNI KASAUNDHAN v. CROOKE

I. L. R. 2 All. 296

29. ——— *Non-joinder of* [illegible]

opera [illegible]
The [illegible]
be d [illegible]
share [illegible]
sharers were necessary parties. At the hearing on the 24th January 1889, the plaintiffs' co-sharers [illegible]

[illegible]

the suit was barred by limitation. On appeal to the High Court :—*Held*, remanding the case, that [illegible]

LIMITATION ACT (XV OF 1877)—*contd.*

——— s. 22—*contd.*

[illegible]

the Court, and the plaintiffs should not suffer from it. RAMKRISHNA MORESHWAR v. RAMABAI

I. L. R. 17 Bom. 29

30. ——— *Amendment of plaint—Defendant sued in different capacity from that originally stated.* The creditor of a deceased trustee of a temple sued two persons as his successors in office to recover the amount of the debt. One of the defendants died; the other, who was the brother of the deceased, pleaded that other persons were joint trustees with him, and should have been impleaded with him; he also alleged that the debt in question was a private debt, and had not been incurred by the deceased as a trustee. The persons named were joined as defendants, and they repeated the above allegation. The plaintiff thereupon amended the plaint and prayed for a personal decree against the original surviving defendant, and the others were removed from the record. The amendment took place more than three years after the date when the debt was payable, but the suit had been instituted within that period. *Held*, that the claim was not barred by limitation. SAMINATHA v. MUTHAYYA

I. L. R. 15 Mad. 417

31. ——— *Civil Procedure Code (Act XIV of 1882), s. 33—Party, addition of.* In a suit to recover the price of work done for the [illegible]

tion or substitution of the original defendant, and, for the purpose of limitation against the Secretary of State, the suit should be considered to have been instituted on the date when he was made a party. MANDARDHAR AITCH v. SECRETARY OF STATE FOR INDIA (1901) . **6 C. W. N. 218**

32. ——— *Addition of new defendant.* Two sons were placed on the record, in substitution for and as heirs of their deceased father. Subsequently it transpired that the deceased had left a will appointing one of the sons his executor. The record was thereupon altered, by placing him on it, as executor instead of as one of the heirs. *Held*, that there was no addition of a new defendant, within the meaning of s. 22, Limitation Act. PROSUNNO KUMAR SEN v. MAHABHARAT SAHA (1903) . . . . **7 C. W. N. 575**

33. ——— *Civil Procedure Code (Act XIV of 1882), s. 32—Suit to recover possession—Suit by one of the plaintiffs as manager of the family—Right of manager to sue—Objection as* [illegible]

LIMITATION ACT (XV OF 1877)—*contd.*

——— s. 22—*contd.*

as the manager of the family Subsequently at a late stage of the suit, the defendants having raised an objection of non-joinder of parties, the other

first Court allowed the claim. The Judge in appeal reversed the decree and dismissed the suit as time-barred under s. 22 of the Limitation Act (XV of 1877). *Held*, reversing the decree of the Judge and restoring that of the first Court, that s 22 of the Limitation Act (XV of 1877) does not in itself purport to determine directly whether the joinder of the parties after the institution of a suit shall in all cases necessarily involve the bar of limitation, if the period prescribed for such a suit has then expired. Such a result must depend upon consideration of the question whether the joinder was necessary to enable the Court to award

the institution of the suit as regards such freshly joined parties does not ordinarily affect the right of the original plaintiff to continue the suit and would not therefore attract the application of the general provisions of the Limitation Act (XV of 1877) The question of the right of a manager to sue in that capacity is rather one of authority, if the other co-sharers are adults, and the right to ... brought on ... defendant to ... tion and is being taken at an early stage, the objection on the score of want of authorization being one of a character, which it would clearly be open to the defendant to waive. GURUVAYYA *v* DATTATRAYA (1904)

I. L. R. 28 Bom. 11

34. ——— *Civil Procedure Code, s 32 —Hindu law—Suit by head of family to recover possession of immoveable property—Non-joinder of plaintiff's brother—Objection to non-joinder not raised until a late stage of the suit—Competence of Court to add party after the expiry of the period of limitation* The plaintiff came into Court claiming possession of certain immoveable property on the grounds (i) that it was a portion of an impartible raj of which he was the head, and (ii) that he was in any case entitled to the property claimed by ... *namah*) exe... favour of h... The plaint... made a party to the suit. *Held*, that it was unnecessary to decide the plaintiff's first plea, because even if the property did, as asserted, belong to an

LIMITATION ACT (XV OF 1877)—*contd.*

——— s. 22—*contd.*

become divested of the character of impartibility, if it ever possessed such character, the plaintiff's brother was entitled equally with the plaintiff to a share in it; (iv) that the suit did not necessarily fail by reason of the plaintiff's brother not having been made a party to it, but then it was competent to the Court under the circumstances to add the plaintiff's brother as a party even in the stage of appeal, although the suit, so far as he was concerned, would have been by that time barred by limitation, no objection on the ground of non-joinder having been pressed by the respondents until the Court in appeal suggested that he ought to have been made a party *Guruvayya Gouda v Dattatraya Anant*, I L R 28 Bom 11, followed. *Radha Proshad Wasti v Esuf*, I L R 7 Calc 414, and *Hulodhur Sen v Gooroo Doss Roy*, 20 W R. 126, referred to PATESHRI PARTAP NARAIN SINGH *v* RUDRA NARAIN SINGH (1904)

I. L. R. 26 All. 528

A's upon an application of *B*, to which *A* consented, stating that *A* had sold his interest to *B* Later

meaning of s 22 of the Limitation Act The suit was therefore barred RAMJOY NATH SARCAR *v* SHAMBHU NATH SHAHA (1905) . 9 C. W. N. 883

36. ——— *Parties, substitution of—New plaintiff—Assignment—Assignee substituted after period of limitation—Civil Procedure Code (Act XIV of 1882), s 372—Limitation Act (XV of 1877). s 22.* In a suit brought within the period of limitation the name of the assignee of the original plaintiff was, after expiry of the period,

in the place of the original plaintiff under s 372 of the Code of Civil Procedure, the person so substi-

LIMITATION ACT (XV OF 1877)—*contd.*

——— s. 22—*concld.*

as a new plaintiff within the meaning of the latter section. *Harrack Chand* v. *Deonath Sahay, I. L. R. 25 Calc 409*, approved. *Suput Singh* v. *Imrit Tewari, I. L. R. 5 Calc. 720*, disapproved and distinguished ABDUL RAHMAN *v.* AMIR ALI (1907)

I. L. R. 34 Calc. 612

37. ——— *Co-plaintiff—Suit—New plaintiff—Transfer of a pro formâ defendant to the category of the plaintiff after the period of limitation—Effect of such transfer—Such added plaintiff, whether a new plaintiff* In a suit for rent, one of the co-sharers, having refused to join as co-plaintiff, was made a party defendant The plaintiff asked for the entire 16 annas rent due, but at the same time he asked to have awarded to him half the money actually due. An *ex parte* decree was passed, which was subsequently set aside and the suit was restored to its original number After the expiration of three years from the time when the rent last became due, the *pro formâ* defendant by an application got himself transferred to the category of plaintiff Upon a defence taken that s. 22 of the Limitation Act applied to the case, and the suit was barred by limitation: *Held*, that the added plaintiff was not a new plaintiff, and s 22 of the Limitation Act had no application, and therefore the suit was not barred by limitation NAGENDRABALA DEBYA *v.* TARAPADA ACHARJEE (1908) . . . **I. L. R. 35 Calc 1065**

38. ——— ——— *Suit for rent by co-sharer making the other co-sharer a defendant—Pro formâ defendant added as co-plaintiff, if "new plaintiff"—Addition, if irregular* When, in a suit for rent originally instituted by a co-sharer landlord, the remaining co-sharer was added as a *pro formâ* defendant, but subsequently more than three years after the rents in suit accrued due, the *pro formâ* defendant obtained an order joining him as a co-plaintiff instead of a defendant: *Held*, that the latter was not a "new plaintiff" within the meaning of s 22, Limitation Act, and the suit was not barred by limitation. *Abdul Rahman* v. *Amir Ali, 11 C. W. N. 521: s c. I. L. R 34 Calc 612, Ramkinkar Biswas* v. *Akhil Chandra Chowdhuri, 11 C W. N 350: s c I. L. R. 35 Calc. 519, Krishna* v. *Mekamperuma, I L R 10 Mad. 44*, referred to The addition of *pro formâ* defendant as plaintiff after limitation was not irregularly made *Oriental Bank* v *Chariol, I. L. R 12 Calc. 642, Guruvayya* v. *Dattatraya, I L. R. 28 Bom 11, 20*, referred to NOGENDRA BALA DEBYA *v* TARAPADA ACHARJEE (1908)

13 C. W. N. 186

——— s. 23 (1871, s. 23)—

See post, SCH. II, ART. 35

I. L. R. 25 Bom. 644

See PRESCRIPTION—EASEMENTS—RIGHTS OF WATER **I. L. R. 6 Bom. 20**

1 C. W. N. 96

1. ——— ——— *Consent decree for payment by instalments* A consent decree for payment by instalments is governed by s. 23, Act IX, and, on default in the payment of one instalment, the whole amount becomes due. RUGHOO NATH DASS *v.* SHIROMONEE PAT MOHADEBEE

24 W. R. 20

LIMITATION ACT (XV OF 1877)—*contd.*

——— s. 23—*contd.*

2. ——— *Breach of contract—"Continuing breach"—Limitation Act (IX of 1871), s. 23.* The purchasers of certain land agreed to pay the vendors certain fees annually in respect of such land, and that in default of payment the vendors should be entitled to the proprietary possession of a certain quantity of such land. The purchasers never paid such fees, and more than twelve years after the first default the vendors sued them for possession of such quantity of such land. *Held*, that there had not been a "[illegible] an- in [illegible] the pr[illegible] to tt[illegible]

[illegible] 193

3. ——— *Breach of covenant for title—Continuing breach—Covenants for quiet possession and further assurance.* S L, by a deed of gift of 16th February 1847, granted and assured to S, his daughter, certain immoveable property. By a subsequent unregistered deed of gift of 15th July 1865, S L purported, in consideration of natural love and affection, to grant and convey the same property, the value of which exceeded R100, to B R, the husband of S, his heirs, executors, administrators, and assigns The last-mentioned deed contained covenants on the part of [illegible]

his heirs, executors, administrators, and assigns S died in the lifetime of B R, who in 1867 mortgaged the premises comprised in the deed of 15th July 1865 and died in 1868 In 1870 the mortgagee sold the premises by auction, under the power of sale contained in the mortgage-deed; the plaintiff became the purchaser; and the mortgagee, [illegible]

ejectment against the parties in possession, who [illegible]

LIMITATION ACT (XV OF 1877)—*contd.*

——— s. 23—*contd.*

covenant for further assurance there had been no breach at all, as such covenant would be broken only by refusal on the part of the covenantor or his representatives to execute a further assurance when required so to do by the covenantee or his representatives RAJU BALU v. KRISHNARAV RAMCHANDRA . . . I. L. R. 2 Bom. 273

4. ——— *Bond—Interest post diem—Non-payment of principal and interest at agreed date—Continuing breach—Act XV of 1877, Sch. II, Arts. 115, 116* Upon failure to pay the principal and interest secured by a bond upon the day appointed for such payment, breach of the contract to pay is committed, and there is no "continuing breach" within the meaning of s 23, nor "successive breaches" within the meaning of art. 115 of the Limitation Act (XV of 1877) MUNSAB ALI v. GULAB CHAND I. L. R. 10 All. 85

5. ——— *Suit for restitution of conjugal rights—Demand and refusal—Continuing cause of action—Husband and wife—Suit for possession of wife.* Where a husband sued to recover possession of his wife, making the wife herself the defendant to the suit;—*Held*, that it was in substance a suit for the restitution of conjugal rights, and art 35 of the Limitation Act (XV of 1877) applied The demand and refusal, which form the starting point for limitation under art 35 are a demand by the husband and refusal by the wife (or *vice versâ*) being of full age A positive that refusal on the part of the wife to return to her husband is not essential to the husband's cause of action *Quære* Whether in case of a refusal by a wife of full age to a demand made by her husband, she should return to him, a suit by him for her recovery is barred under Art 35 of Sch II of the Limitation Act, or falls within the purview of s. 23 as based on a continuing cause of action FAKIRGAUDA v. GANGI . . I. L. R. 23 Bom. 307

6. ——— *Disturbance of right of Ferry—Nuisance—Continuing wrong—Cause of action* The disturbance of a right of [illegible]

within s. 23 of the Limitation Act NITYAHARI ROY v. DUNNE . I. L. R 18 Calc. 652

7. ——— and Arts. 34, 35—*Suit for restitution of conjugal rights—Wife's refusal to return to her husband—Husband and wife* The [illegible]

Act. BAI SARI v. HIRACHAND I. L. R. 16 Bom. 714

LIMITATION ACT (XV OF 1877)—*contd.*

——— s. 23—*contd.*

HEMCHAND v. SHIV. I. L. R. 16 Bom. 715 note

See PINDA v KAUNSILIA I. L. R. 13 All. 126

——— Sch. II, Arts. 35, 120—*Suit for restitution of conjugal rights—Limitation* A suit for restitution of conjugal rights between Mahomedans is governed by Art 35 of the second Schedule of the Limitation Act, if at the time of the demand and refusal the wife or husband was of full age and the sound mind, otherwise Art. 120, Sch. II, of the Limitation Act would apply to such a suit. S 23 of [illegible]

I. L. R. 34 Calc. 79

——— ss 23 and 28, and Sch. II, Arts. 120, 142 and 144— *Attachment by Magistrate under s 146, Criminal Procedure Code—Cross suits for declaration of right to possession—"Continuing wrong"—Limitation.* Certain lands were attached by a Magistrate, in 1886, under s 146 of the Code of Criminal Procedure, in consequence of disputes relating to their possession. The Magistrate continued in possession of the lands, and realised some income from them. Both claimants instituted, in 1897, suits, in which each claimed the lands as his own, and sought to obtain a declaration of title to them, as well as to the accumulated income, with a view to obtaining possession [illegible]

[illegible] applicable, the suits not being for the recovery of immoveable property, within the meaning of [illegible] The actual or physical possession was with the [illegible]

purposes of limitation, simply as a [illegible] custody, pending the decision [illegible] behalf of the party entitled. [illegible] limitation, the seizin or legal [illegible] the attachment, in the true [illegible] *chor Lalji v Sri Girdhariji* [illegible] commented on With [illegible] still less applicable, as [illegible] true owner and as [illegible] possession of the Magistrate [illegible] sion for purposes of limitation [illegible] in the person who had [illegible] attachment, and [illegible] guished by the [illegible] attachment might [illegible] accrued on the date of the attachment [illegible] of action for the [illegible]

LIMITATION ACT (XV OF 1877)—*contd.*

———— s. 23—*concld.*

wrongful denial by the defendant in each case of the plaintiff's title and possession, and the procuring by such denial the attachment by the Magistrate. There was no continuing wrong, within the meaning of s. 23 of the Limitation Act, so as to

s. 28 of the Limitation Act is limited to cases in which the bar of limitation applies to suits for possession of property. The right of the true owner to lands cannot be extinguished, however long such an attachment may continue; nor can

———— s. 24—*Calingula constructed by Government—Necessary effect to cause water to flood*

land. To obviate this, a small drainage channel was formed by Government to carry off the surplus water. Plaintiffs contended that the drainage channel was not sufficient to carry off the water and that the water which flowed over the calingula stagnated on their lands and made them unfit for

Government, in connection with the distribution of water, do not include a right to flood a man's land because, in the opinion of Government, the erection of a work, which has this effect, is desirable in con-

plaintiffs of their right to have their property protected. Even if Government had been empowered by statute to construct the calingula in question, it would be for Government to show that they could not exercise their statutory powers

LIMITATION ACT (XV OF 1877)—*contd.*

———— s. 24—*concld.*

without injuring the plaintiff's lands. The position of persons acting under statutory authority discussed. *Held,* also, that the injury was a continuing one and that the suit was governed by s 24 of the Limitation Act and was not barred by limitation. SANKARAVADIVELU PILLAI *v.* SECRETARY OF STATE FOR INDIA (1905).

I. L. R. 28 Mad. 72

———— s. 25 (1871, s. 26)—

See MARINE INSURANCE.

13 C. W. N. 425

1. ———— *Computation of time—English calendar.* In calculating time for

for goods sold and delivered, the debt for which

2. ———— *Bond—Limitation* ... Where

3. ———— *Native date—Gregorian calendar.* Where a bond bears a native

or the Gregorian (British) calendar. s. 25 of Act XV of 1877.

NILKANTH *v.* DATTATRAYA . I. L. R. 4 Bom. 103

4. ———— *Native date—Month.* The plaintiff sued on a note, bearing a native date, Ashad Vadya 13th, Shake 1799 (7th

LIMITATION ACT (XV OF 1877)—*contd.*

———— s. 25—*concld.*

5. ———— *Computation of time—Difference in calendars—Date from which time runs.* A registered lease provided that the rent should be paid on 30th Masi Tharana. The month Masi in the year Tharana ended on the 29th day, which corresponded with the 11th March 1885. A suit to recover the rent was filed on the 12th March 1891. *Held*, that the suit was not barred by limitation. GNANASAMMANDA PANDARAM *v.* PALANIYANDI PILLAI . . I. L. R. 17 Mad. 61

———— s. 26 (1871, s. 27).

See PRESCRIPTION—EASEMENTS—LIGHT AND AIR . . 15 B. L. R. 361
I. L. R. 14 Calc 839

Se

See PRESCRIPTION—EASEMENTS—RIGHTS OF WATER . I. L. R. 5 Mad. 226
I. L. R. 6 Bom. 20
I. L. R. 6 Calc. 394

1. ———— *Enjoyment "as of right"—User in assertion of right.* The enjoyment described in Act IX of 1871, s. 27, by the words "as of right" does not mean user without trespass, but it means user in the assertion of a right. ALIMOODDEEN *v.* WUZEER ALI . . 23 W. R. 52

2. ———— *Easement—Presumption of a grant.* In a suit to establish an easement when limitation is pleaded, the proper issues to frame under s 26 of Act XV of 1877 are—(1) whether the easement in question was peaceably, openly, and as of right enjoyed by the plaintiff or those through whom he claims, within two

3. ———— *Right of way—Easement—User as of right—Prescriptive right*

4. ———— *Easement—Light and air—Apertures—Enjoyment as of right.* The enjoyment by the plaintiff of light and air through apertures in the wall of his house, when it is open and manifest, not furtive or invisible, and when it is not had in such wise as to involve the admission of any obstructive right in the owner of the servient tenement, is an enjoyment "as of right" within the meaning of s. 26 of Act XV of 1877. The phrase does not imply a right obtained by grant from the owner of the servient tenement. MATHURADAS NANDVALABH *v.* BAI AMTHI . . . I. L. R. 7 Bom. 522

LIMITATION ACT (XV OF 1877)—*contd.*

———— s. 26—*contd.*

5. ———— *Prescription—Easement—Accrual of cause of action.* At any time within twenty years, should injury accrue from the recurring use of an easement to the owner of the servient tenement, a new cause of action arises to the owner of the servient tenement, which he may put in suit within twelve years from its accrual. JOGAL KISHORE *v.* MULCHAND . 7 N. W. 293

6. ———— *Suit for easement based on continuous user.* A suit to establish a claim to an easement, based upon a continuous user for twenty years, must, with reference to s. 27, be brought within two years from the end of such period LUCHMEE PERSHAD NARAIN SINGH *v.* TILUCKDHAREE SINGH . . 24 W. R. 295

7. ———— *Easement—Prescription—User—Fishery, Right to—Limitation Act, 1877, s. 3.* The word "easement," as used in the Limitation Act, 1877, has by force of the inter-

sion, enjoyment, or occupation of any dominant tenement' CHUNDEE CHURN ROY *v.* SHIB CHUNDER MUNDUL I. L. R. 5 Calc. 945 : 6 C. L. R. 269

8. ———— *Jalkar—Easement.* A jalkar is not an easement within the meaning of s. 27 of Act IX of 1871, but is an interest in immoveable property within the meaning of sch. II, art 145, of that Act. PARBUTTY NATH ROY CHOWDHRY *v.* MUDHO PAROE
I. L. R. 3 Calc. 276 : 1 C. L. R. 592

9. ———— *Dispossession—Fishery—Custom—Suit to restrain fishing in certain bhils.* In a suit to restrain the defendants from fishing in certain bhils, which admittedly belonged

LIMITATION ACT (XV OF 1877)—*contd.*

——— s. 26—*contd.*

to the plaintiff's zamindari, it appeared that the plaintiff had let out some of the bhils to ijaradars who had sued the defendants for the price of fish taken by them from the bhils, and that the suit had been dismissed on the ground that the defendants, in common with other inhabitants of the villages in the zamindari, had acquired a prescriptive right to fish in the bhils. The defendants contended that they had been in possession of the bhils for more than twelve years, and that they had a prescriptive right to fish therein, under a custom according to which all the inhabitants of the zamindari had the right of fishing. *Held*, that the mere fact that the [illegible]

I. L. R. 3 Calc. 276, distinguished. *Held*, also, that no prescriptive right of fishery had been acquired under s. 26 of the Limitation Act, and that the custom alleged could not, on the ground that it was unreasonable, be treated as valid. *Lord Rivers v. Adams, L. R. 3 Ex. D. 361*, followed. LUTCHMEEPUT SINGH *v.* SADAULLAH NUSHYO

I. L. R. 9 Calc. 698 : 12 C. L. R. 382

10. ——— *Easement—Right of way—Prescription—Effect of illustrations.* On the 6th of April 1878, the plaintiffs sued for obstructing a right of way for boats in the rainy season. The defendants admitted the obstruction, but denied the right of way. The plaintiffs proved that the right was peaceably and openly enjoyed, and actually used by them, claiming title thereto as an easement and as of right, without interruption, from before 1855 down to November 1875, since when no actual user of the way by the plaintiffs had taken place. The lower Appellate Court dismissed the suit on the ground that the plaintiffs had made no actual use of the way within two years previous to the institution of the suit. *Held*, reversing the decision of the Court below, that, notwithstanding Act XV of 1877, s. 26, illus. (b), actual user within two years previous to the institution of the suit is not necessary, in order that the right claimed may be acquired under Act XV of 1877, s. 26. Illustrations in Acts of [illegible]

sense would confer. KOYLASH CHUNDER GHOSE *v.* SONATUN CHUNG BAROOIE

I. L. R. 7 Calc. 132 : 8 C. L. R. 281

11. ——— *Easement—Prescription—Right of way—Continuance of enjoyment as of right—Cessation of user—Actual user.* No rule can be laid down as to what would or would not constitute a continuance of the enjoyment as of right of a right of way, when there has been no exercise it for any given period ; that must depend upon the circumstances of each case and the nature of the right claimed. For the plaintiff to succeed [illegible]

years, there must, when there is no user for a long time, be circumstances from which the Court can infer the continuance of enjoyment as of right over the whole statutory period, and the cessation of the user must be at least consistent with such continuance. The enjoyment required by the Act cannot be in abeyance, and at the same time continue so as to give the plaintiff the special right claimed. The question of continued enjoyment is an inference to be drawn from facts, rather than one of fact, and if there are no facts to sustain the inference, a decision in favour of such enjoyment cannot stand. The plaintiffs sued the defendant for the declaration of a right of way, as acquired under s. 26 of the Limitation Act, over a plot of land belonging to the defendant. It was alleged that in April 1892 the defendant dispossessed the plaintiffs from the dominant tenement ; and that the plaintiffs sued the defendant for recovery of possession of it under s. 9 of the Specific Relief Act, and, having obtained a decree, got possession on the 19th June 1895. It was further alleged that thereupon the defendant, on the 21st June 1895, obstructed the disputed way by erecting sheds. The present suit was instituted on the 25th November 1895. *Held*, that, the enjoyment of the right of way on the part of the plaintiffs not having continued until within two years of the institution of the suit, the suit must fail. *Koylash Chunder Ghose v. Sonatun Chung Barooie, I. L. R. 7 Calc. 132*, distinguished. JANHAVI CHOWDHURANI *v.* BINDU BASHINI CHOWDHURANI

I. L. R. 26 Calc. 593
3 C. W. N. 610

12. ——— *Suit to restrain co-sharer from appropriating portion of property to his own particular use.* The Limitation Act, 1871, [illegible]

SHAHA *v.* SHIB CHUNDER SHAHA . **22 W. R. 20**

13. ——— *Easement—Riparian proprietors—Obstruction to flow of drainage water—Prescription—Right of action—Special damage.* [illegible] easement within the meaning of Act IX [illegible] *Held*, further, that the defendants, lower riparian proprietors, who had obstructed such a right of the plaintiff by blocking up the stream, could only justify their act if they had acquired an easement to do it, that their act was actionable whether [illegible] and that,

———— s. 26—*contd.*

s. 27, Act IX of 1871, considered. SUBRAMANIYA AYYAR *v.* RAMACHANDRA RAU
I. L. R. 1 Mad. 335

14. ———————— *Construction of statute—Act when applicable to Crown—Easement—Profit a prendre—Right of pasturage claimed by a village against Government—Prescription—Custom*

does not relate to the limitation of suits, but to an entirely different matter, *viz*, the creation of rights

apart under the Land Revenue Code, s 38, for grazing purposes, and that the plaintiffs could not acquire, as against the Government, a right of grazing by prescription. The Court of first instance held the defendant not excluded from the operation of s 26 of the Limitation Act (XV of 1877), but found that there was a break in the period of prescription, and therefore rejected the plaintiffs' claim The

village, does not necessarily confer the right of

LIMITATION ACT (XV OF 1877)—*contd.*

———— s. 26—*contd.*

in question having been used for grazing by the

15. ———————— *Enjoyment as of right for twenty years—Right of ownership—Right of easement as distinguished from a right of ownership—Bombay Regulation V of 1827, s 1—User.* In order to acquire an easement under s 26 of the Limitation Act (XV of 1877), the enjoyment must have been by a person claiming title thereto as an easement as of right for twenty years Evidence of immemorial user adduced in support of a right founded on ownership does not, when that right is negatived, tend to establish an easement *Quære* Whether upon a correct construction of s 1 of Regulation V of 1827, which applies to the acquisition of easements, the mere user would be sufficient to establish the right to the easement claimed CHUNILAL FULCHAND *v.* MANGALDAS GOVARDHANDAS . . I. L. R. 16 Bom. 592

16. ———————— *Right of way—User as of right—Onus* In a suit to establish a right of way, the propriety of the English rule that the presumption from user should be that it is as of

here the same inference from user that would be

17. ———————— *Cultivators—Indigo concern—Zamindars—Waste lands—Decree, form of.* The plaintiffs, resident cultivators of villages belonging to the defendants, the proprietors of an indigo concern, claimed a right of free pasturage over the waste lands of the villages, and the Subordinate Judge made a decree in accordance with the finding of the two lower Courts that the plaintiffs had enjoyed the right without interruption from time immemorial.

their remarks. On appeal the Judicial Committee

LIMITATION ACT (XV OF 1877)—*contd.*

———— s. 26—*concld.*

was not a right in gross. BHOLA NATH NUNDI *v.* MIDNAPORE ZAMINDARI CO. (1904)
I. L. R. 31 Calc. 503
s.c. 8 C. W. N. 425
L. R. 31 I. A. 75

———— s. 26, Sch. II, Art. 47—

See RIPARIAN OWNER.
I. L. R. 35 Calc. 851

———— s. 26, Sch. II, Arts. 49, 120—

See post, ART. 145 . 8 C. W. N. 500

———— s. 28 (1871, s. 29)—

See ante, SS. 23 AND 28 AND SCH. II, ARTS. 120, 142 AND 144.

See FOREIGN COURT, JUDGMENT OF.
I. L. R. 3 Mad. 400

See GUARDIAN AND WARD.
I. L. R. 30 Mad. 393

See MALABAR LAW—MORTGAGE.
I. L. R. 13 Mad. 490

See ONUS OF PROOF—LIMITATION AND ADVERSE POSSESSION.
I. L. R. 14 All. 193

See POSSESSION—ADVERSE POSSESSION.
I. L. R. 21 Bom. 509

See POSSESSION—EVIDENCE OF TITLE.
I. L. R. 1 Bom. 592

See RES JUDICATA—JUDGMENTS ON PRELIMINARY POINTS I. L. R. 21 Bom. 91

———— meaning of "possession"—

See MORTGAGE—REDEMPTION—RIGHT OF REDEMPTION. . 6 C. W. N. 601

1. ———— *Effect of Law of* ... aw of ... y was ... h the

1 Mad. 85

VENKOPADHYAYA *v.* KAVARI HENGUSU
2 Mad. 36

2. ———— *Extinction of right as well as remedy.* The rule of law laid down by the Privy Council that a person entitled to an interest in immoveable property loses, not only all remedy, but his title, by being out of possession for more than twelve years, was *held* to apply to the case of a recusant proprietor claiming malikana. CHUMMUN *v.* OM KOOLSOOM . . 13 W. R. 465

3. ———— *Limitation in relation to persons in undisturbed possession—Delay.* The law of limitation operates against parties who have been guilty of delay and in favour of persons in possession. S. 28 of the Limitation Act has no application to persons who are in possession, and who have had no occasion to sue for recovery of possession. ORR *v.* SUNDRA PANDIA
I. L. R. 17 Mad. 255

4. ———— *Regulation VI of 1831 (Madras), s. 3—Village service inam—Village blacksmith.* The mortgagee of maniam land attached to the hered...

possession for many years up to a date not long prior to the suit. *Held,* that, as the plaintiff could have sued only under Regulation VI of 1831 in a Revenue Court, he could not, under Limitation Act, 1877, s. 28, acquire a title by prescription to the land. PICHUVAYYAN *v.* VILAKKUDAYAM ASARI . . . I. L. R. 21 Mad. 134

5. ———— and Bom. Reg. V of 1827—*Cause of action to establish title and obtain arrears founded on that title.* Where there has been no recognition of title, nor any payment of dues within the period of limitation prescribed by law, there is a sufficient bar to the claimant's right to recover, if he ever had any. The cause of action to establish title and the cause of action to recover arrears which rest on such title are not distinct and independent of each other so that if the former be barred, even those arrears which may be within the law of limitation cannot be recovered. MADVALA BIN GINAPA *v.* BHAGVANTA BIN DEVJI
9 Bom. 260

6. ———— *Trees—Land.* Trees growing upon land are "land" within the meaning of s. 29, Act IX of 1871. Possession of land by a wrong-doer for twelve years not only extinguishes the title of the rightful owner of such land but confers a good title on the wrong-doer. JAGRANI BIBI *v.* GANESHI . I. L. R. 3 All. 435

7. ———— *Possession of land forming endowment* When the land in suit was alleged to have formed an endowment, it was held that the plaintiff by his twelve years' occupation had acquired a title, even though his vendor had not had power to alien the property. NURSINGH DASS *v.* MOOSHAROO BHANDAREE
25 W. R. 283

8. ———— *Possessory title—Mortgage—Receipt of rent by co-owner of equity of redemption for fifteen years.* Where the equity of redemption of a certain estate became, on the death of the mortgagor, the property of two divided ...

acquired thereby a title to the estate mortgaged. CHATHU *v.* AKU . . . I. L. R. 7 Mad. 26

9. ———— *Suit for hereditary office and for account.* Where the plaintiff's right of succession to an hereditary office accrued in

LIMITATION ACT (XV OF 1877)—*contd.*

——— s. 28—*contd.*

1847, when *A* took it under a will, and it was held his possession was adverse to the plaintiff :—*Held*, that plaintiff was precluded from setting up a fresh right as accruing to him on the death of *A* as the only male survivor of the founder's family by the provisions of s 29 of the Limitation Act, IX of 1871. MAHALLY CHENNA KESAVARAYA *v.* MANGAPU VAIDELINGA . . . I. L. R. 1 Mad. 343

10. ——— *Adverse possession—Bar of remedy and extinguishment of right—Debts* The 28th section of the Limitation Act of 1877 extends the doctrine that twelve years' adverse possession of land not only bars the remedy of the rightful owner, but extinguishes his right to property other than land, but *per* GARTH, *C J*,—*Quære* Whether this principle would apply to debts. RAM CHUNDER GHOSAUL *v* JUGGUTMONMOHINEY DABEE

I. L. R. 4 Calc. 283 : 3 C. L. R. 336

11. ——— *Operation of Limitation Act IX of 1871 and Act XV of 1877* The Limitation Acts (IX of 1871 and XV of 1877) merely bar the remedy, but do not extinguish the debt. NURSING DOYAL *v* HURRYHUR SAHA

I. L. R. 5 Calc. 897 : 6 C. L. R. 489

MOHESH LAL *v* BUSUNT KUMAREE

I. L. R. 6 Calc. 340 : 7 C. L. R. 121

Overruling the case of KRISHNA MOHAN BOSE *v.* OKHILMONI DOSSEE . I. L. R. 3 Calc. 331

NOOCOR CHUNDER BOSE *v* KALLY COOMAR GHOSE . . . . I. L. R. 1 Calc. 328

and RAM CHUNDER GHOSAUL *v* JUGGUTMONMOHINEY DABEE . . . I. L. R. 4 Calc. 283

See, also, VALIA TAMBURATI *v.* VIRA RAYAN I. L. R. 1 Mad. 228

and MADHAVAU *v* ACHUDA I. L. R. 1 Mad. 301

12. ——— and Arts. 91 and 95—*Extinguishment of right and title—Plea of fraud—Fraudulent sale—Vendor's right to plead fraud after twelve years from the date of sale—Vendor and purchaser.* In 1872 the plaintiffs induced the first defendant by fraud and misrepresentation to execute in their favour a deed of sale of the property in dispute They did not pay the purchase-money [illegible]

the defendant had not sued to set aside the deed [illegible]

fraud. *Held* (SCOTT, *J.*, doubting), that the defendant's right to raise the plea of fraud was not barred by the law of limitation *Per* SCOTT, *J.*—There was another point of limitation which could be raised. The consideration-money was never paid by the plaintiffs, and possession was never given There was no complete contract of sale passing the property. Therefore the plaintiffs' only right was to sue for specific performance of the contract. Such a suit, however, became barred in three years after the date of the contract The plaintiffs therefore had lost their rights against defendant No 1; and even if they have not the present claim for posses- [illegible]

deed of sale *Per* JARDINE, *J*—S 28 of the Limitation Act (XV of 1877) does not apply to the case of defendants, who rely on an actual possession which has never been disturbed. HARGOVANDAS LAKHSHIDAS *v* BAJIBHAI JIJIBHAI . I. L. R. 14 Bom. 222

13. ——— *Civil Procedure Code, 1882, s 214—Right of pre-emption asserted by one in possession under an otti mortgage in Malabar—Limitation Act, Sch. II, Art 10* Land in Malabar was in the possession of the defendants and was held by them as otti mortgagees under instruments executed in August 1873 and January 1876. The plaintiff having purchased the jenm right under instruments executed and registered in May and June 1877, now sued in 1893 for redemption. [illegible]

I. L. R. 20 Mad. [illegible]

14. ——— *Limitation Act (XV of 1877), ss. 7, 18 and 28, and Sch II, Arts 142, 144—Joint family—Separate estate—Possession, discontinuance of—Property, extinguishment of right to* Under s 7 of the Limitation Act, a person under disability cannot bring his suit after three years after the disability ceases. Under s 28 of the Limitation Act, the right of a person to property is extinguished at the determination of the period limited for bringing a suit for possession of it VASUDEVA PADHI KHADANGA GARU *v.* MAGUNI DEVAN BAKSHI MAHAPATRULU GARU (1901) . . . 5 C. W. N. 545

s c. I. L. R. 24 Mad. 387;
L. R. 28 I. A. 81

——— s. 28, Art. 111—*Sale of land—Possession retained by vendor—Suit to recover possession seven years thereafter—Non-payment of purchase price pleaded—Vendor's lien not extinguished.* A sale-deed had been executed in plaintiff's favour more than seven years before the present suit, but the purchase-money was not paid and the vend-

LIMITATION ACT (XV OF 1877)—*contd.*

——— s. 28—*contd.*

ors continued in possession of the land. On the present suit being filed for a declaration of plaintiff's right and for the recovery of possession of the land :—*Held*, that the vendors had a charge, by operation of law, on the property sold, for the purchase-money. As the purchaser had not paid the price and had taken no steps to recover possession, the vendors were not bound to sue to enforce their lien. Though a suit by the vendors to enforce their lien would have been barred by limitation under Art. 111, when the present suit was filed, their lien was not extinguished by s. 28 of the Limitation Act, and inasmuch as they were still in possession they had a right to retain possession, until the purchase-money should be paid and the lien be extinguished by such payment. *Umedmal Motiram* v. *Davu bin Dhondiba, I. L. R. 2 Bom. 547*, approved. SUBRAHMANIA AYYAR *v.* POOVAN (1902) I. L. R. 27 Mad. 28

——— s. 28, Art. 142—*Suit between third parties—Delivery of present defendant's land in execution—Present defendant not a party—Knowledge of delivery—Acquiescence—Failure to apply for re-instatement—Dispossession for more than twelve years—Extinction of title.* The title to a piece of land was (apparently) vested in defendant prior to 1877, and defendant till then (apparently) had possession of the land. In 1867 a suit was brought by the father of the present first plaintiff against a third party for the recovery of the land. The present defendant was not a party to that suit. In 1874, in execution of the decree in that suit, passed in favour of the plaintiff therein, the Subordinate Court appointed a Commissioner to make a local investigation and submit a report showing the land to be delivered to the plaintiff therein. The Commissioner personally inspected the land and, in his report, mentioned that the present defendant, though not a party to that suit, raised the objection that the boundaries fixed by the Commissioner of the land to be delivered to the plaintiff therein included land belonging to the present defendant. The report was considered by the Subordinate Judge, but the present defendant apparently did not appear before him, and the Subordinate Judge heard the parties to that suit and confirmed the plan prepared by the Commissioner and ordered delivery to be given to the plaintiff in that suit of the land shown in the plan. That order was modified by the District Court [illegible]

but, as the marks which had previously been placed on the land had been washed away, the Nazir fixed the boundaries again, on this occasion also the present defendant's officials appeared before the Nazir and objected to his delivering over the land, and requested him to communicate their objection to the Court. The delivery was, however, made to the plaintiff in that suit, in the presence of the present defendant's officials, and in spite of their objection raised on his behalf. In 1889, the present suit was instituted by the son of the plaintiff in the former suit (and another) to recover possession of the same piece of land, when it was objected for the defendant that, though the delivery of the land in 1877 might be operative as a transfer of possession to the decree-holder as against the [illegible]

without the present defendant's knowledge. But inasmuch as such delivery had been made in the [illegible]

the land with fences, though the boundaries were marked. Having regard to the nature of the land, [illegible]

of possession and praying for his reinstatement. Defendant had, however, taken no action in the matter, but had acquiesced in the proceedings [illegible]

——— s. 28, Arts. 142, 127, 124—*Religious Endowments Act—Trustees of temple—Hereditary trustees—Management by rotation—Discontinuance of possession of trust properties of junior branch of trustees—Continuous possession by members of senior branch—Extinction of rights of junior branch in favour of senior branch.* On the [illegible]

Until 1881, the management was conducted by the two branches respectively in rotation, each acting for a year. Since 1882, the members of the junior [illegible] possession of the immove- [illegible] so per- [illegible] to the [illegible] senior branch had been, in turns, successively in possession of the properties and had performed the duties, to the exclusion of and adversely to the members

LIMITATION ACT (XV OF 1877)—*contd.*

——— s. 28—*contd*

of the junior branch, and the High Court found that there had been an ouster of the members of the junior branch for about 19 years prior to the present suit, and that the members of the senior branch had been in turns successively in possession of the properties and had performed the duties of the office of trustee, to the exclusion of and adversely to the members of the junior branch. Plaintiff, a son of the last sole trustee by his senior wife, now sued a grandson of the last sole trustee, whose father was also a son by the senior wife, to enforce his turn of management by the institution Since 1882, plaintiff had been managing, not only during the years of his own turn, but also during the years of the turns of the members of the junior branch, who, plaintiff alleged, had transferred their turns to him It was contended for the defendant that, inasmuch as the plaintiff had not himself been in continuous possession for 12 years, and the possession of the defendant and of the other two members of the senior branch during the 19 years had not been adverse to the members of the junior branch, the

Each of the members of the senior branch must be deemed, in law, to have held and discharged the duties of the office on behalf of himself and the other members of the senior branch, to the exclusion of the junior branch. Consequently, the office and the properties had been for more than 12 years held and possessed by the members of the senior branch as a whole body, adversely to the members of the

that the junior branch, or one of its members,

be acquired merely by the operation of the law of limitation But *held*, that plaintiff was entitled to the reliefs sought for upon the basis of the

trustees to settle a scheme of management by each of the co-trustees in rotation, at any rate where no

LIMITATION ACT (XV OF 1877)—*contd.*

——— s. 28—*concld.*

cute the duties of the office in their joint capacity. Management by members of undivided and divided

trustees in rotation *Sri Raman Lalji Maharaj v. Sri Gopal Lalji Maharaj, I. L. R. 19 All 428*, discussed RAMANATHAN CHETTY *v.* MURUGAPPA CHETTY (1904) . . I. L. R. 27 Mad. 192

Schedule II.

——— Art 2—

See post, ART. 28 . . 7 C. W. N. 728

See BOMBAY MUNICIPAL ACT (BOM. ACT III OF 1888), s. 527. I. L. R. 25 Bom. 387

See LIMITATION . I. L. R. 31 Calc. 228

——— Arts. 2 and 28—*Suit for compensation for an illegal distress—Limitation—Principal and agent—Liability in tort of principal for acts of agent* Where the Secretary of a Municipal Board acting under orders from the Chairman of the Board procured the issue of a warrant of distraint for a sum exceeding what was due from the person against whom the warrant was obtained and proceeded to seize and sell the goods of such person: *Held*, that the Municipal Board was liable for the acts of its Secretary whether or not there had been any resolution of the Board directing the Secretary to obtain a warrant of distraint for the particular sum for which the warrant was issued *Held*,

and not by art. 2 of the same schedule *Smith v. Birmingham and Staffordshire Gas Light Company, 1 Ad. & El. 526*, referred to. MUNICIPAL BOARD OF MUSSOORIE *v* GOODALL (1904) I. L. R. 26 All. 482

——— Art. 3 (1871, art. 3; 1859, s. 15)—

against the Government.

1. ——— *Suit to recover*

LIMITATION ACT (XV OF 1877)—contd.

Schedule II—contd.

———— **Art. 3—concld.**

KOMAPEN KURUPU v. CHANGARACHAN KANDIL CHEMBATA AMBU . . 2 Mad. 313

See KUMUL DUTT v MOHUN MOLLA 15 W. R. 278

2. ———— *Unlawful dis-*

of those powers resumes lands for the benefit of the minor and unlawfully dispossesses the previous holder,—*Quære*. Whether such a dispossession is within the contemplation of s. 15, Act XIV of 1859, or not That section does not confer on the person who unlawfully acquires possession of land the advantage of a short period of limitation, on the expiration of which the dispossessed person is bound to show an absolute title to recover. It gives to the dispossessed person who has been wrongfully

reference to the production of proof PROTAB CHUNDER BUROOAH v KANTAESWURREE DABEE 2 W. R. 250

3. ———— *Proof of title—Possession* In a suit brought on the 11th March 1872, to recover certain plots of land (a) as re-formations after diluviation of lands which had

re-formed lands and had been maintained in possession under awards under Act IV of 1840, but that in 1868 they were ousted by the Collector who assessed the same under Regulation XI of 1825 and settled them with the co-defendants. *Held*, that s.

4. ———— *Suit by non-occupancy raiyat for recovery of possession—Limitation Act, 1877, Sch II, Art. 3—Specific Relief Act (I of 1877), s 9—Bengal Tenancy Act (VIII of 1885), s. 89.* The limitation applicable to a suit to recover possession by a non-occupancy raiyat

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Calc.

ROY

LIMITATION ACT (XV OF 1877)—contd.

Schedule II—contd.

———— **Arts. 6, 115—**

See CONTRACT ACT (IX OF 1872), s. 74 I. L. R. 31 Mad. 54

———— **Art. 7 (1871, art. 7; 1859, s. 1, cl. 2)—**

1. ———— *Suit for servant's wages.* A suit for servant's wages was governed by the limitation prescribed by cl. 2, s. 1. NOBIN CHUNDER MOZOOMDAR v. KENNY 5 W. R. S. C. C. Ref. 3

2. ———— *Household servant—Labourer—Temple servant* A person whose duties are to sweep and clean a temple, provide flowers for daily worship and garlands for the idol, is not a household servant within the meaning of art. 7 of sch. II of the Limitation Act MUTTIRANGOT MANAKAL BHAVATHRADAN BHATTA THIRIPAD v ERANGOT TRIKOVIL PISHARETH RAMA PISHAROTI . . . . I. L. R. 7 Mad. 99

3. ———— *Suit for arrears of* ... for arrears ... ade for in- ... governed ... t, as that clause does not apply to the pay of a teacher or instructor. PYLWAN JARKAN SAHIB VASTHATH v. JENAKA RAJA TEVAR . . . 8 Mad 87

4. ———— *Chowkidar—Servant* Under Act XIV of 1859, a chokwidar was *held* to be a servant within the meaning of s. 1, cl 2, of that Act. GOLAMEE v POSLAN 18 W. R. 28

The following were held not to be servants:—

A manager of a company. *In the matter of the* GANGES STEAM NAVIGATION COMPANY 2 Ind. Jur. N. S. 181

A tahsildar or collector of rent. ARUN CHANDRA MANDAL v. RAMANATH RAKHIT 1 B. L. R. S. N. 20

S C. OROON CHUNDER MONDUL v ROMANATH RUKHIT . . . . 10 W. R. 260

A mohurir under an amin for batwara purposes. ABHAYA CHARAN DUTT v HARO CHANDRA DAS BUNIK . . . 4 B. L. R. Ap 68

S C OBHOY CHURN DUTT v HURO CHUNDER DOSS BUYEE . . . 13 W. R. 150

A mooktear. NITTO GOPAL GHOSE v MACKINTOSH . . . . 6 W. R. Civ. Ref. 11

5. ———— *Employer and* ... the defendant ... of ... a- ... on ... at ... er

and labourer. ANDI KONAN v. VENKATA SUBBAIYAD . . . . 2 Mad. 387

LIMITATION ACT (XV OF 1877)—*contd.*

Schedule II—*contd.*

———— **Art 7**—*concld.*

Under the present Limitation Act, the servant must be a household servant to come within Art 7

6. ———————— *Suit by one servant against another.* Cl 2, s 1, applies only to suits for wages brought by a servant against the person liable as the master in whose service he had been employed, and the section does not apply to a suit brought by one Government servant against another for the recovery of a sum of public money received by the defendant as a disbursement on account of the wages of the plaintiff, to whom the defendant was legally bound to pay it over SIVA RAMA PILAI *v.* TURNBULL . . 4 Mad. 43

7. ———————— *Suit for servant's wages—Fixed monthly salary.* Where a servant is appointed on a fixed monthly salary, and there is nothing to show that the salary is to be paid in advance, the limitation as to each month's salary commences from the time at which the salary became due, *i e.*, the end of the month, and not from the date of the dismissal of the servant. KALI CHURN MITTER *v.* MAHOMED SOLEEM

6 W. R. Civ. Ref. 33

———— **Art. 10 (1871, art. 10; 1859, s. 1, cl. 1)**—

1. ———————— *Possession—Constructive and actual possession.* Under the Act of 1859, the possession necessary under the corresponding clause was *held* to be not a mere constructive possession, but actual manual possession. GOSHAIN GOBIND PERSHAD *v.* FATIMA . 2 W. R. 5

KUMAR ALI *v.* AZMUT ALI . . 8 W. R 383

MAHOMED HOSSEIN *v.* MOHSUN ALI 7 W. R. 195

JAI KUAR *v.* HEERA LAL . . 7 N. W. 5

And under the present Act the cause of action dates from the obtaining of physical possession in cases where it is practicable to obtain it.

2.———————— *Actual possession—Possession opposed by person without right* The purchaser cannot be said not to obtain actual possession where he is only opposed in taking possession by some one who has no right to oppose his possession, as a mere farmer who was tenant of the vendor. BECHUN *v.* MAHOMED YAKOOB KHAN

3 W. R. 225

3. ———————— *Suit for pre-emption* In pleading limitation as a bar to a suit

W. R. 1864, 117

4. ———————— *Pre-emption, Suit for—Conditional sale.* Where a shareholder, if he desires to transfer his share, is bound to offer the transfer of it to his co-sharers, before transferring it to a stranger, the right of pre-emption, in the case of a conditional sale, under which possession is not transferred, arises, not when such sale is made, but when the conditional sale becomes absolute Under art 10, sch. II of Act XV of 1877, the period of limitation runs from the date physical possession is taken of the whole of the property sold JAIKARAN RAI *v.* GANGA DHARI RAI

I. L. R. 3 All. 175

JANKEE KOER *v.* LEKRANEE KOER

W. R. 1864, 285

5. ———————— *Suit for pre-emption—Foreclosure by conditional vendee.* The defendant, a conditional vendee, foreclosed the mortgage, and subsequently sued the auction-purchaser of the rights of the conditional vendor

2 Agra, Pt. II, 164

6. ———————— *Pre-emption—Possession after sale in execution of decree of conditional sale.* In 1861, *B* purchased conditionally certain immoveable property, which in 1865 was attached in execution of a decree In 1874, the conditional sale having been foreclosed, *B* obtained a decree for possession of such property In February 1875, he obtained mutation of names in respect of such property. In November 1875, arrangements having been made by him to satisfy the decree in execution of which such property had been attached, the attachment was removed.

RAM *v.* KALLU . . . I. L. R. 1 All. 592

7. ———————— *Mortgage—Con-*

by virtue of the conditional sale having become absolute. He obtained a decree, in execution of which he obtained, on the 30th April 1879, formal

LIMITATION ACT (XV OF 1877)—*contd.*

Schedule II—*contd.*

——— Art. 10—*contd.*

(*Contra*) BUDDREE DOSS *v.* DOORGA PERSHAD 2 N. W. 284

8. ——— *Purchase by mortgagee—Claim for pre-emption—Cause of action.* Where a mortgagee becomes a purchaser of the

9. ——— *Suit for pre-emption—Purchase by mortgagee in possession* When a mortgagee in possession purchased the property mortgaged :—*Held*, that his possession as pro-

10. ——— *Pre-emption, suit for. Held*, in a suit for pre-emption, where the property had been purchased by the mortgagee in possession, that the purchaser obtained physical possession of the property under the sale, *not from* the date of the sale-deed, but when the contract of sale became completed. *Held*, therefore, that the contract of sale having become completed on the

11. ——— *Sale by mortgagor of usufructuary mortgage—Possession of vendee—Cause of action* When landed property sold by a mortgagor is at the time of sale in the usufructuary possession of the mortgagee, the vendee must be *held* to have taken possession in the sense of the limita-

12. ——— *Suit for pre-emption—Cause of action.* In a suit for pre-emp-

LIMITATION ACT (XV OF 1877)—*contd.*

Schedule II—*contd.*

——— Art. 10—*contd.*

MAHURBAN SINGH . . . . 5 N. W. 110

13. ——— *Pre-emption—Actual possession—Purchase of equity of redemption. Held* (STUART, *C.J.*, dissenting), that the purchaser of the equity of redemption of immoveable property, which is at the time of the sale in the usufructuary possession of the mortgagee, takes "actual possession" of the property, within the meaning of that term in art 10, sch II of Act IX of 1871, when the equity of redemption is completely transferred to and vested in him *Per* STUART, *C.J.*—That such a purchaser does not take "actual possession" of the property until he takes visible and tangible possession thereof or enjoys the rents and profits of the same, after redemption of mortgage. JAGESHAR SINGH *v.* JAWAHIR SINGH . . I. L. R. 1 All. 311

14. ——— *Suit for pre-emption—Cause of action—Mutation of names—*

15. ——— *Suit for pre-emption—Possession.* On the 19th December 1876, *A* gave *T* a mortgage of his share in a certain village. The terms of the mortgage were that *A* should remain in possession of his share and pay the interest on the mortgage money annually to the mortgagee, who, in the event of default in payment of the interest, was empowered to sue for actual possession of the share. On the 19th May 1877, *T's* name was substituted for that of *A* in the proprietary registers in respect of the share. On the 8th February 1878, *G* sued *T* and *A* to enforce his right of pre-emption in respect of the share, alleging that his cause of action arose on the 19th May 1877, and that *A*, notwithstanding the mutation of names, was still in possession. *T* alleged that he had been in possession since the execution and registration of the deed of mortgage. *Held*, that, whether *T* had been in plenary possession of the share since the date of the deed, or whether he had only such constructive or partial possession of it as was involved in the receipt of interest on the

LIMITATION ACT (XV OF 1877)—*contd.*

Schedule II—*contd.*

——— Art. 10—*contd.*

mortgage money, the plaintiff was equaly bound to have sued within a year from the date of the deed, and was not entitled to reckon the year from the date on which the possession by the mortgagee of the share was recognized by the revenue department, and the suit was therefore barred by art 10, sch. II of Act XV of 1877 GULAB SINGH v AMAR SINGH . . . . I. L. R. 3 All. 237

16. ——— *Suit to enforce pre-emption of share of undivided mehal—Physical possession* A share in an undivided zamindari mehal is not susceptible of "physical possession" in the sense of art 10, sch II of Act XV of 1877 Limitation, therefore, in a suit to enforce a right of pre-emption in respect of such a share runs from the date of the registration of the instrument of sale. UNKAR DAS v. NARAIN . I. L. R. 4 All. 24

17. ——— and Art. 120—*Mahomedan law—Pre-emption—Conditional sale—Right of pre-emption among co-parceners—Private partition of putidari estate* A and B had certain proprietary rights in an 8 annas putti of a certain mehal. C and D had no rights in that putti but D had a small share in the remaining 8 annas putti A private partition between the puttis having taken place, C and D's brother lent to B two sums of R200 and R199 by deeds of bai-bil-wufa, dated the 12th and 21st June 1876 C and D subsequently instituted foreclosure proceedings, and on the 5th May 1884 were put into possession of B's share in the first mentioned putti in execution of a decree which they had obtained. On the 18th April 1885, A sued C and D to enforce his right of pre-emption. *Held*, that the suit was not barred by limitation, t

there would be six years allowed from that time. DIGAMBUR MISSER v RAM LAL ROY

I. L. R. 14 Calc. 761

18. ——— *Joint sale of undivided mehal and other property* In a suit to enforce a right of pre-emption in respect of a sale of property consisting in part of a share of an undivided mehal, which does not admit of physical possession, limitation will run from the date of registration of the instrument of sale. BHOLI v IMAM ALI . . . . I. L. R. 4 All. 179

19. ——— *Wajib-ul-urz—Co-sharers—Effect of perfect partition—"Physical possession"—Purchase of equity of redemption by*

LIMITATION ACT (XV OF 1877)—*contd.*

Schedule II—*contd.*

——— Art. 10—*contd.*

these villages were made the subject of a perfect partition and divided into separate mehals. Subse-

was, at the time of the sale, in possession of another of the original co-sharers under a possessory mortgage On the 17th January 1885, this last-mentioned co-sharer brought a suit against the vendors and the vendees to enforce his right of pre-emption under the wajib-ul-urz in respect of the shares sold in the three villages *Held*, that in the case of the

meaning of art 10, sch II of the Limitation Act. In a statute, such as the law of limitation, which contemplates notice, express or implied, to the party to be affected by some act done by another in respect of which a right accrues to him to impeach it and as to which time begins to run against him *quoad* his remedy from a particular point, the word "physical" implies some corporeal or perceptible act done which of itself conveys or ought to convey to the mind of a person notice that his right has been prejudiced. An equity of redemption is not susceptible of possession of this description under a sale by which it is transferred and a pre-emptor impeaching such a sale has one year from the date of registration of the instrument of sale within which to bring his suit. *Held*, therefore, that the period of limitation began to run from the date of the registration of the deed of sale and that the suit was within time. SHAM SUNDER v. AMANAT BEGAM . . I. L. R. 9 All. 234

20. ——— *Suit for pre-emption based on a mortgage by conditional sale—Limitation Act, art 120—"Physical possession."* *Held*, (i) that the other conditions being present

sale with the right of redemption gone. (ii) That in such a case as above limitation begins to run where Regulation XVII of 1806 applies, from the expiry of the year of grace. (iii) That a share in an undivided zamindari mehal is not susceptible of "physical possession" in the sense of art. 10 of the second schedule to Act XV of 1877. (iv)

LIMITATION ACT (XV OF 1877)—*contd.*

Schedule II—*contd.*

——— Art. 10—*contd.*

That constructive possession, *e g*, by receipt of rent from tenants, is not "physical possession" within the meaning of the said article. *Ali Abbas* v. *Kalka Prasad, I. L. R. 14 All. 405; Nath Prasad*

Goordhan
866), 181 ;
: Jageshar
All. 311,

and *Unkar Das* v. *Narain, I. L. R 4 All 24,* referred to. BATUL BEGAM v. MANSUR ALI KHAN I. L. R. 20 All. 315

See RAHAM ILAHI KHAN v. GHASITA I. L. R. 20 All. 375

and ANWAR-UL-HAQ v. JWALA PRASAD I. L. R. 20 All. 358

21. ——— *Limitation Act (XV of 1877), Sch. II, Arts. 10, 120, 144—Suit for pre-emption against heir of mortgagee by conditional sale—"Physical possession," meaning of—Accrual of cause of action in suit for pre-emption of property mortgaged by conditional sale—Expiration of year of*

of the year of grace, that being the period when the right of the mortgagee has become mature. the mere fact that he has not enforced that right by a suit for possession is immaterial *Ali Abbas* v. *Thakur Prasad, I. L. R 14 All 405,* followed Where the property sold was an undivided share in certain villages. *Held,* that the "subject of the sale" did not admit of "physical possession," within the meaning of Art. 10 of Sch. II to the Indian Limitation Act The expression used by STUART, C.J, in *Jageshar Singh* v. *Jawahir Singh, I. L R 1 All. 311,* in regard to the words "actual possession," is applicable with still more certainty to the words "physical possession" by which is meant a "personal and immediate" possession In the present case such possession could not have been taken by the mortgagee with-

it, that did not affect the construction of Art. 144 as illustrated by Art. 10. A claim to enforce a

inverted the proper order and, instead of first asking for the setting aside and then asking posses-sion as the consequence had asked for possession "by setting aside," could not alter the nature of the action. BATUL BEGAM v. MANSUR ALI KHAN (1901) . . . . I. L. R. 24 All. 17
s.c. L. R. 28 I. A. 248
5 C. W. N. 888

——— Arts. 10 and 20—*Limitation—Suit for pre-emption—"Physical possession"—Right of pre-emption not a purely personal right.* The term "physical possession," as used in Art. 10 of the second schedule to the Indian Limitation Act, 1877, cannot apply to property which is in the possession of tenants. To a suit for pre-emption of such property, Art. 120 applies. *Batul Begam* v. *Mansur Ali Khan, I. L. R. 24 All. 17,* followed. *Held,* also, that the right of pre-emption being a right incident to or arising out of the ownership of land, the successor in title of a person in whose favour such right has arisen is not debarred from suing to enforce it by the fact only that his predecessor has not done so *Muhammad Yusuf Ali Khan* v. *Dal Kuari, I. L. R 20 All 148,* followed. KUNSILLA KUNWAR v. GOPAL PRASAD (1906) . . . . I. L. R. 28 All. 424

——— Art. 11—

See ante, s 7, AND SCH. II, ARTS. 11, 13.

See CIVIL PROCEDURE CODE, 1882, s 335 I. L. R. 34 Calc. 491

See SALE IN EXECUTION OF DECREE—MORTGAGED PROPERTY I. L. R. 29 Calc. 25

See post, ART. 13.

1. ——— and Art. 146—*Order rejecting claim under s. 246, Civil Procedure Code, 1859—Ss. 280, 281, 282 of Civil Procedure Code, 1882—Suit for possession.* Where, in consequence of an adverse order passed under the provisions of Act VIII of 1859, s 246, a suit is (since the Limitation Act, 1877, came into force) instituted to establish the plaintiff's right to certain property, and for possession, such suit is not governed by the provisions of art. 11, sch II of Act XV of 1877, but by the general limitation of twelve years *Koylash Chunder Paul Choudhry* v. *Preonath Roy Chowdhry, I. L. R. 4 Calc 610: 3 C. L. R. 25; Matonginy Dossee* v. *Chowdhry Junmunjoy Mullick, 25 W. R. 513, Joyram Loot* v. *Panram Dhoba, 8 C. L. R 54;* and *Raj Chunder Chatterjee* v. *Shama Charan Garai, 10 C. L. R. 435,* cited. GOPAL CHUNDER MITTER v. MOHESH CHUNDER BORAL I. L. R. 9 Calc. 230 : 11 C. L. R. 363

BISSESSUR BHUGUT v MURLI SAHU I. L. R. 9 Calc. 163 : 11 C. L. R. 409

2. ——— *Civil Procedure Code, 1859, s. 246—Release of property from attachment on application of defendant* The plaintiff

LIMITATION ACT (XV OF 1877)—*contd.*

Schedule II—*contd*

—— Art. 11—*contd*

in the Civil Court to establish his right within a year from the order of release JUGOO LAL UPADHYA v EKBALOONISSA . . . 7 W. R. 456

3. —— *Civil Procedure Code, 1859, s 246—Date from which period of limitation runs* The effect of the last sentence of s 246, Act VIII of 1859, is to exclude a party to an investigation under that section from any other remedy than that expressly provided for him by that section, *viz*, a regular suit to be brought within one year from the date of the order made against him, and such party cannot wait till the sale of the attached property has taken place and been confirmed, and then bring his suit within one year from the last date SETTIAPPAN v SARAT SINGH 3 Mad. 220

4. —— *Civil Procedure Code, 1859, s. 246—Money-debts* Act VIII of 1859, s 246, applies only to immoveable property or to specific moveable property not to debt due. When a debt due to a judgment-debtor is attached in the hands of the person who owes it, he may pay it into Court voluntarily under s 241, or under compulsion under s 242 or be sued for it under s 243 A person thus sued would not be barred because of the lapse of a year from setting up any ground of defence which he may have against the claim RAMBUTTY KOOER v KAMESSUR PERSHAD 22 W. R. 36

5. —— *Goods illegally seized in execution of decree—Suit by owner* A person suing for goods which have been illegally sold in execution of a decree, or their value, must, under art 11, sch II, Act XV of 1877, bring his suit within one year from the time when the adverse order in the execution-proceedings was made SHIBOO NARAIN SINGH v. MUDDEN ALLY I. L. R. 7 Calc. 608 : 9 C. L. R. 8

6 —— *Civil Procedure Code, 1859, s 246—Suit for possession by virtue of inheritance of portion of attached property.* It was *held* that the mere fact that the plaintiff sued to recover possession, by virtue of inheritance, of one-fourth only of certain immoveable property, to which he had laid claim, when attached in execution of decree, on the ground that it belonged to

proved that he held exclusive possession of the property attached. TILOK CHAND v. SADA RAM 7 N. W. 113

7. —— *Suit to avoid sale in execution of decree of Small Cause Court passed without jurisdiction* A obtained a money-decree

to the Court of the Sudder Ameen of the same district, the property was put up for sale, and it was purchased by C ... B alienated the prope... to it ... disall... this suit against C to recover possession. In special appeal it was *held* that the decree of the Small Cause Court being on the face of it without jurisdiction, the suit was not barred, and the case was remanded, to be tried on the merits. LALA GANDAR LAL v. HABIBANNISSA 7 B. L. R. 235 : 15 W. R. 311

8. —— *Civil Procedure Code, 1859, s 246* The period of limitation contained in s. 246, Act VIII of 1859, is applicable only to a case in which the procedure prescribed by that section has been adopted. VENKATANARU v AKKAMMA . . . 3 Mad. 139

9 —— *Claim to attached property* Property attached was, on the claim of a third party, released by the Court without proceeding under the provisions of s 246, Act VIII of 1859.

10. —— *Order passed in*

11. —— *Claim to attached property—Separate suit—Civil Procedure Code, 1882, ss. 281, 283* The order contemplated by s.

12. —— *Limitation—Applicability of s. 246* Limitation under s. 246,

LIMITATION ACT (XV OF 1877)—*contd.*

Schedule II—*contd.*

———— Art. 11—*contd.*

adjudication under that section. RADHA NATH BANERJEE *v* JODOO NATH SINGH . 7 W. R. 441

13. ———— *Claim to attached property—Suit for possession.* A claim to property about to be sold in execution of a decree was made under s. 246 of Act VIII of 1859, but the Court de- ... er s ... the ... e his claim was not bound to institute his suit within one year from the date of the order disallowing the investigation MAHOMED AFZUL *v.* KANHYA LAL 2 W. R. 263

14. ———— *Civil Procedure Code, 1859, s. 246—Suit after order releasing property from attachment to establish right to bring property to sale* *N* caused certain property to be ...

ment. *Held*, that the suit was not barred by limitation by reason of not having been instituted within one year from the date of the order. KAMRAN *v.* NEIT RAM . . . . 6 N. W. 185

15. ———— *Limitation Act (IX of 1871), Art 15* A claimant against whom an order has been made under s. 246 of the Civil Procedure Code (Act VIII of 1859) must sue to establish his right within one year from the date of such order But when the Civil Court disallows an investigation under s. 247 of the Code, the claimant may bring his suit within the ordinary period of limitation applicable to his suit. VENKAPA *v.* CHENBASAPA . . . I. L. R. 4 Bom. 21

See JETTI *v.* HOSSAIN I. L. R. 4 Bom. 23 note

16. ———— *Suit by purchaser at sale after rejection of claim in execution-proceedings* In execution of a decree upon a mortgage ...

under a sale of arrears of Government revenue, had avoided the tenure with *A's* consent. The Court to which the application was made thereupon refused to enter into evidence or make any enquiry, leaving the decree-holders to establish their right by a regular suit The order was made under Act VIII of 1859. A suit having been brought: *Held*, that the one year's limitation provided by Art. 11 of Act XV of 1877 did not apply. RASH BEHARY BYSACK *v.* BUDDUN CHUNDER SINGH 12 C. L. R. 550

17. ———— *Refusal to stay sale in execution of decree* Certain lands having been attached in execution of a decree obtained by *A* ...

however, refused to stay the sale, and the lands were sold in execution. More than a year from the d ... sued ... that ... s. 24(... Court to postpone the sale was not an order under that section, but was a mere refusal to order a postponement under s. 247. MUKHUN LALL PANDAY *v.* KOONDUN LALL 15 B. L. R. 228 : 24 W. R. 75 L. R. 2 I. A. 210

18. ———— *Civil Procedure Code, 1859, s 246—Claim rejected otherwise than on the merits* S 246, Act VIII of 1859, made no distinction in favour of cases not decided on the merits, but made it imperative on the party whose claim to attached property had been rejected, under any circumstances, to sue within one year KHODA BUKSH *v.* PURMANUND DUTT . . 5 W. R. 214

19. ———— *Rejection of* ...

any evidence, and the order rejecting ... on the merits and not on default A suit therefore for the property must be brought within one year after the rejection of the claim. GOOROO DOSS ROY *v.* SONA MONEE DOSSIA 20 W. R. 345

SREEMUNTO HAJRAH *v.* TAJOODDEEN 21 W. R. 409

KAMINEE DABIA *v.* ISSUR CHUNDER ROY CHOWDHRY . . . . . 23 W. R. 39

TRIPOORA SOONDUREE DEBIA *v.* IJJUTOONNISSA KHATOON . . . . . 24 W. R. 411

20. ———— *Order rejecting claim to attached property—Dismissal of claim on failure to produce evidence.* Certain property having been attached in execution of a decree, the plaintiff intervened claiming the property and was directed to adduce evidence, which, however, he failed to do,

LIMITATION ACT (XV OF 1877)—*contd.*

Schedule II—*contd.*

——— Art. 11—*contd.*

and the case was struck off. *Held*, that the order striking off the case must be taken as an order disallowing the claim, and that the plaintiff was bound to bring his suit to establish his claim within one year from the date of the order SADUT ALI *v.* RAM DHONE MISSER . . 12 C. L. R. 43

21. ——— When a Court disallows claim to attached property by reason of the claimant not having given any evidence in support of the claim, there cannot be said to have been any investigation under s 378 of the Civil Procedure Code, and the order cannot be said to be one under s 281 : Art. 11 of the Limitation Act does not therefore apply to such a case. *Gooroo Doss Roy* v *Sona Monee Dassia*, 20 W R 345, *Sreemunto Hajra* v *Tajooddeen*, 21 W. R 409, *Tripoora Soondurce Debia* v *Ijjutoonnissa Khatoon*, 21 W. R 411, and *Sadut Ali* v. *Ram Dhone Misser*, 12 C L R 43, dissented from *Kallu Mal* v *Brown*, I L. R. 3 All 504, and *Chundra Bhusan* v *Kamkanth*, I L R 12 Calc 108, followed. *Sardhari Lal* v *Ambika Prasad*, I L R. 15 Calc. 521 : L R 15 I A 123, explained. KALLAR SINGH *v* TORIL MAHTON 1 C W N. 24

22. ——— *Party refused admittance to proceedings.* The law of limitation, under s. 246, Act VIII of 1859, could not apply to a person whom the Court had refused to make a party to the proceedings under that section because he came in too late to be made such a party ROGHOONATH DOSS MOHAPATTUR *v* BYDONATH DOSS MAHARATHA . . . 14 W. R. 264

23. ——— *Judgment debtor not a party to proceedings.* When the judgment-debtor was not made a party to a proceeding under s. 246 of Act VIII of 1859, he was not bound by the law of limitation to sue to establish his right to the property within one year from an order under that section releasing it from attachment. IMBICHI KOYA *v.* KAKKUNNAT UPAKKI

I. L. R. 1 Mad. 391

24. ——— *Civil Procedure Code, 1859, s 246—Party against whom order is "given"—Right of suit—Limitation* The plaintiff [illegible]

NETTIETOM PERENGARYPROM *alias* PANISHERRY DAMODHEN NAMBUDRY *v.* TAYANBARRY PARAMESHWAREN NAMBUDRY . . . 4 Mad. 472

LIMITATION ACT (XV OF 1877)—*contd.*

Schedule II—*contd.*

——— Art. 11—*contd.*

25. ——— *Civil Procedure Code, 1859, s 246* Certain lands were attached under a decree against the ancestor of the plaintiffs; but on the intervention of the defendant under s. 246, Act VIII of 1859, they were released to him. *Held*, that that was not an order made between plaintiffs and defendant, such as to make it necessary for the former to sue for declaration of title within one year. NITTA KOLITA *v.* BISHUNRAM KOLITA . . . . 2 B. L. R. Ap. 49

26. ——— *Civil Procedure Code, 1859, s 246.* On attachment of certain property, plaintiff and defendants preferred their respective claims thereto The plaintiff's claim was disallowed, but the defendant's claim was allowed The plaintiff, after the lapse of a year from the date of the order disallowing his claim, sued to recover possession of the said property The defence was that the suit was barred by lapse of time under s 246, Act VIII of 1859. *Held*, that s 246 did not apply to such a suit. DURGARAM ROY *v.* NARSING DEB

2 B. L. R. A. C. 254

S C DOORGARAM ROY *v.* NURO SINGH DEB

11 W. R. 134

27. ——— *Suit to establish right—Attachment in execution of decree* B caused certain immoveable property to be attached in the execution of a decree M objected to the attachment, claiming to be in possession of such property on his own account The investigation of such claim which followed under s 246 of Act VIII of 1859 took place as between B, the decree-holder and M, N, the judgment-debtor, not being a party to it except in name. M's objection was allowed in May 1871, but no suit was brought either by B or N to establish N's right to such property. H subsequently obtained a decree against N in 1877, and in execution thereof caused such pro- [illegible]

right MANNU LAL *v.* HARSUKH DAS

I. L. R. 3 All. 233

28. ——— *Claim by intervenors—Share of attached property* When intervenors claim a share of attached property the Court should define the respective shares of the debtor and the intervenors, and sell the debtor's definite share only. If the Court omits to do so, and sells the undefined rights and interests, there is no deci-

LIMITATION ACT (XV OF 1877)—*contd.*

Schedule II—*contd.*

——— **Art. 11—*contd.***

sion under s. 246, Act VIII of 1859, of which the purchaser, *by lying in wait without possession for one year*, can take advantage. MONOHUR KHAN *v.* TROYLUCKHO NATH GHOSE . . **4 W. R. 35**

29. ——— *Civil Procedure Code (Act XIV of 1882), ss. 280, 283—Mortgagee, suit by, against mortgagor and third party who has*

attempt to have the property sold, and an order was passed under s 280 of the Code of Civil Procedure,

gaged property declared, and to bring it to sale in execution of his decree, alleging that the title set up by such third party was a fraudulent one, collusively created between the mortgagor and such third party with a view to deprive him of his rights, and asking to have the order passed under

right to attach and sell the property in dispute in execution of the decree which the plaintiff had

SHEO PERGASH TEWARI . **I. L. R. 12 Calc. 453**

30. ——— *Suit to establish right as auction-purchaser to immoveable property sold in execution of decree—Adjudication of proprietary right—Res judicata—Possession* In a suit brought by plaintiff to establish his right as auction-purchaser to certain immoveable property sold in execution of a decree under the provisions of s 246 of Act VIII of 1859, disallowing the claim of the objector—represented by the defendant—and adjudging the property attached to be that of the

proprietary right on the basis of possession, but the matter is not "*res judicata*" as to matters, in dispute between decree-holder and claimant, unless the party against whom an order is passed under s. 246 of Act VIII of 1859 fails to bring a regular suit to establish his right. In the case mentioned in the order of reference as apparently conflicting with the above view there had been no adjudication on the basis of possession by the Court passing an order under s. 246 of Act VIII of 1859, and the defendant in possession was therefore at liberty to assert his proprietary title against the lien set up by plaintiff under the said order, passed without jurisdiction on the miscellaneous side. BADRI PRASAD *v.* MUHAMMAD YUSUF **I. L. R. 1 All. 382**

Distinguished in JOY PROKASH SINGH *v.* ABHOY KUMAR CHUND . . . . **1 C. W. N. 701**

31. ——— *Suit to establish right.* *B* caused a certain dwelling-house to be attached in execution of a decree held by him against *M* as the property of *M*. *J* preferred a claim to the property which was disallowed by an order made under s. 246 of Act VIII of 1859. Two days after ... More

r sued *B* t to the udulently l Bench *inf*, *I. L.* prove her precluded ler s 246 r not the

decree was satisfied after the order was made, the effect of the order was the same JEONI *v.* BHAGWAN SAHAI . . . **I. L. R. 1 All. 541**

32. ——— *Suit for declaration of right and confirmation of possession* The limitation of one year in s 246, Act VIII of 1859, did not apply to a suit for declaration of right and confirmation of possession. WUZEER JAMADAR *v.* NOOR ALI . . . . . **12 W. R. 33**

33. ——— *Possession*— ... decree against *A*. certain

land was not barred by the limitation provided by s. 246, though brought more than a year after her claim was refused, since she was at the time in possession and had remained afterwards in possession of the property. LAKHI PRYA DEBI *v.* KHYRULLA KAZI . . . . **7 B. L. R. 238 note**

s c. LUCKHEE PREA DEBIA *v.* KHYROOLLAH KAZEE . . . **14 W. R. 367**

LIMITATION ACT (XV OF 1877)—*contd.*

Schedule II—*contd.*

———— Art. 11—*contd.*

34. ———— *Claimant in possession where claim is rejected* If a person making a claim under Act VIII of 1859, s. 246, is in actual possession, his claim is only a declaration that his possession is without title. A suit to establish his rights, *i e*, for confirmation of his possession, must be brought within one year BROJO KISHORE NAG *v* RAM DYAL BHUDRA . 21 W. R. 133

35. ———— *Suit for declaration that property ostensibly held by one defendant belonged to another* A suit for a declaration that certain property which has been ostensibly held by one of the defendants was in fact the property of another of the defendants who was the judgment-debtor of the plaintiff, is governed by s 246, Act VIII of 1859, and barred by the limitation of one year. ABDOOLAH *v*. SHOKOOR ALI 14 W. R. 192

36. ———— *Order rejecting claim to attach property* Certain property having been attached in execution of a decree, the plaintiff preferred a claim to it as being his exclusive property, but the Court in which the claim was made was of opinion that the plaintiff and the judgment-debtor were in joint possession, and it made an order directing that on the plaintiff's claim being notified the sale should proceed More than a year afterwards the plaintiff filed a suit to

[illegible]

7 *W R* 256, that the order not having been adverse to the plaintiff, the suit was not barred by reason of its not having been brought within a year from the date of the order RASH BEHARI DASS *v*. GOPI NATH BARAPANDA MOHAPATU

11 C. L. R. 352

37. ———— *Failure to establish claim—Suit for establishing title.* A party failing to establish his claim to attached property under s 246, Act VIII of 1859, on the point of possession, is not debarred from afterwards bringing a suit to establish title within the period allowed by law for bringing such suit BISHENPERKASH NARAIN SINGH *v* BABOOA MISSER . . 8 W. R. 73

38. ———— *Right of one decree-holder against another—Suit for declaration of prior lien* Two several judgment-creditors attached certain property, which was released upon the claim of a third party, under s 246 of Act VIII of 1859. One of them sued the successful claimant, and obtained a decree declaring the property in dispute to belong to the judgment-debtor, and thereupon caused the property to be sold, and became the purchaser thereof. Thereupon an assignee of the other judgment-creditor sued him, alleging an earlier lien, and praying a sale in satisfaction thereof The defence set up was that, as the plaintiff did not come into Court to set aside the order under s. 246 with a year from the date thereof, he was barred from bringing the present suit:—*Held*, that the omission to bring a separate suit for that purpose did not bar him from obtaining a declaration of his prior lien CHINTAMANI SEN *v* ISWAR CHANDRA

3 B. L. R. Ap. 122

S C CHINTAMONEE SEIN *v* ISSUR CHUNDER CHUNDER . . . . 12 W. R. 221

39. ———— *Possession—Civil Procedure Code, 1859, s. 246* In a suit for redemption of an itti by an alleged purchaser of the same, and for recovery of land on which he had purchased a kanem, the defence was that the purchase was made by the father of the first defendant, and that the plaintiff was constructively a

[illegible]

under a claim of the defendants, which attachment was made in execution of two decrees for money

[illegible]

possession was in the claimants, and there was nothing in the rights of the judgment-debtor which could make such possession his possession. This being so, even assuming that he was a party to the order made, such order could not be said to be against him, because his claim was one which could not have been determined by any order made under

[illegible]

40. ———— *Civil Procedure Code, 1859, s. 246.* Certain property having been mortgaged by *B D* to *L*, the mortgagee obtained

[illegible]

20 W. R. 393

LIMITATION ACT (XV OF 1877)—*contd.*

Schedule II—*contd.*

——— Art. 11—*contd.*

41. ——— *Suit to recover property sold in execution—Civil Procedure Code (Act VIII of 1859, s. 246, and Act X of 1877, ss. 280, 281, and 282).* Certain property, which the plaintiff alleged to belong to her, was sold in execution of a decree obtained by the purchaser of the property at the auction-sale, against a third party. The plaintiff put in a claim to the property under s. 246 of Act VIII of 1859, which claim was rejected on the 6th of September 1873. The plaintiff, on the 10th of January 1878, brought a suit to recover possession of the property sold:—*Held*, that the suit was not barred under Art. 11 of Sch II of Act XV of 1877, which refers to the section in Act X of 1877, corresponding to s. 246 of Act VIII of 1859. LUCHMI NARAIN SINGH *v.* ASSRUP KOER

I. L. R. 9 Calc. 43

42. ——— *Suit after order rejecting claim to property attached in execution of decree.* In execution of a decree against *M* the plaintiff attached and advertised for sale certain property in mouzah A. At that time there were pending proceedings in execution of two other decrees obtained against *M* by the first and second defendants respectively. These two decrees were obtained on a bond executed by *M*, by which an eight annas share of mouzah A was hypothecated as collateral security, and in execution of those decrees the defendants brought to sale, and themselves purchased, not an eight annas share only but the whole of mouzah A, and were allowed by the Court to set-off the purchase-money against the amounts due to them under their decrees. At the same time the plaintiff's execution case was struck off on 30th June 1880. In a suit brought [illegible]

of the defendants in selling the whole mouzah under their decrees, of which he only became aware in July 1882, from which time he dated his cause of [illegible]

BHAGAT . . . I. L. R. 12 Calc. 499

43. ——— *Suit for possession after rejection of claim.* In a suit for possession [illegible]

44. ——— *Suit to set aside order removing attachment—Civil Procedure Code,* [illegible]

I. L. R. 18 Bom. 260

45. ——— *Code of Civil Procedure, ss. 278, 280, 283—Investigation of claim to* [illegible]

by Art. 11 of Sch. II of Act XV of 1877 (the Indian Limitation Act) to one year within which to institute a suit to establish that the property is that of his judgment-debtor. SARDHARI LAL *v.* AMBIKA PERSHAD

I. L. R. 15 Calc. 521 : L. R. 15 I. A. 123

46. ——— *Civil Procedure Code (Act XIV of 1882), ss. 280-283—Judgment-debtor, suit by, to establish title to property, the subject-matter of claim in execution-proceedings.* A [illegible]

Procedure so as to preclude his instituting a suit after the lapse of one year from the date of such order, the period of limitation prescribed by Art 11, Sch. II, Act XV of 1877, to establish his title to, and to recover possession of, the property which has been the subject-matter of a claim in execution-proceedings, and in respect of which an order has been made under s. 280 of the Code. *G* in execution of a decree attached certain immoveable property belonging to the plaintiff, whereupon *B* [illegible]

the plaintiff. *K* was not made a party to that suit, [illegible]

the 15th August 1883. *G* then brought another suit against *K* to obtain relief similar to that claimed in his suit against *B*, but his suit was dismissed on the 17th February 1885 On the 25th September 1885, the plaintiff instituted a suit against *G*, *B*, and *K* to obtain a declaration of his title to, and to recover possession of, the property. It was contended that the suit was barred by limitation, being governed by Art. 11, Sch. II of Act XV of 1877, inasmuch as it was brought more than one year after the date of the order of the 15th August 1883. *Held*, that the suit

LIMITATION ACT (XV OF 1877)—*contd.*

Schedule II—*contd.*

———— **Art 11—*contd.***

was not such a suit as was contemplated by s. 283 of the Code of Civil Procedure, not being one to establish any right which was the subject-matter of the litigation in the execution-proceedings, and that consequently the provision of Art. 11 did not apply to it, and it was not barred by limitation. KEDAR NATH CHATTERJI *v.* RAKHAL DAS CHATTERJI . . **I. L. R. 15 Calc. 674**

47. ———— *Claim to attached property—Order passed against claimant—Neglect of claimant to sue within a year after date of order—Civil Procedure Code (Act XIV of 1882), ss. 278, 279, 280, and 283* V mortgaged certain land to the defendant's father for a sum of R64 advanced by the latter at the date of the mortgage The mortgage-deed stated that V owed the mortgagee another debt of R100, which was

back the land along with this document as well as that document Till then you are to continue to enjoy the land . . . . " The plaintiff, having obtained a decree against the mortgagor, attached the land in execution The defendant (son of the original mortgagee) thereupon claimed that he held a mortgage upon it to the extent of R164. On the 9th March 1881, the Court

bought the land at the execution-sale, and offered the defendant R64 in redemption of his mortgage, which the defendant refused The plaintiffs then brought the present suit to recover possession *Held*, that the charge on the land did not include the old debt of R100. There were no words in the

48. ———— *Civil Procedure Code, 1882, ss. 278 and 281—Disallowance of claim to property under attachment—Suit for property attached.* In 1879, the plaintiff purchased at a Court-sale the first defendant's interest in certain land, but did not obtain possession In 1888, the same property was purchased by the fourth defendant in execution of another decree against the same judgment debtor It appeared that the plaintiff raised an objection by petition in the course of the pro-

Held, that no order had been passed under the Civil Procedure Code, s 281, and that the suit was not barred under Limitation Act, Sch II, Art. 11 MUNISAMI REDDI *v.* ARUNACHALA REDDI **I. L. R. 18 Mad. 265**

49. ———— *Attachment of property of judgment-debtor—Application by third party to have attachment removed—Order refusing to remove attachment—Suit by claimant to establish his title to attached property.* *A* obtained a decree against *B* and in execution attached certain property. The plaintiff objected, and applied to have the attachment removed His application was rejected on the 14th January 1881, but on the 23rd of March 1881 the judgment-debtor paid the amount of the decree into Court, and the attachment was thereupon removed *A* subsequently again attached the same property in execution of another

was refused. Within one year from that date he filed the present suit to establish his title to the property attached The defendant contended that the suit was barred, not having been filed within one year from the date (14th January 1881) of the ... sing his ap- ... *Held*, that ... No doubt an order had been made against the plaintiff on the 14th January 1881; but as the attachment in respect of which that order had been made was finally withdrawn on the 23rd March 1881, although not on the plaintiff's application, and as he con-

I. L. R. 15 Bom.

50. ———— *Civil Procedure Code, 1859, s. 246—Limitation Acts (IX of 1871), Sch II, Art. 15; (XV of 1877) Sch. II, Art. 13—Suit after rejection of claim to attached property.* A petition under s. 246 of the Code of Civil Procedure of 1859, objecting to the execution of the decree by the attachment of certain land on

LIMITATION ACT (XV OF 1877)—*contd.*

Schedule II—*contd.*

——— **Art. 11—*contd.***

the ground that the land was the property of the petitioner, was heard and dismissed in July 1875 In July 1877, within twelve years from the dis-

purchaser at the execution-sale *Held*, that the suit was not barred by limitation NARASIMMA *v.* APPALACHARLU . . **I. L. R. 12 Mad. 294**

51. ——— *Civil Procedure Code (Act XIV of 1882), s. 281—Order disallowing claim to attached property* The effect of an order made under s 281 of the Civil Procedure Code disallowing a claim to attached property is to give the auction-purchaser a title as against the claimant unless the order is set aside by a suit; and a suit for that purpose can only be brought within a year from the date of the order. *Sardhari Lal v Ambika Pershad, I. L. R. 15 Calc 521 L. R 15 I. A. 123,* referred to. KHUB LAL *v* RAM LOCHUN KOER **I. L. R. 17 Calc. 260**

52. ——— *Civil Procedure Code, 1882, s 283—Order on claim to property found not to be attached.* Land having been granted to several persons jointly, disputes arose among them with reference to its allotment. The disputes having been settled by arbitration, one of the grantees sold his share to the plaintiff Before the arbitration, another of the grantees mortgaged seven acres of the land to *A*, who did not become a party to the arbitration. *A* subsequently obtained a decree on his mortgage and proceeded to execute it by attachment The plaintiff intervened in execution, but, on the 1st March 1884, the Court passed an order, stating that the plaintiff's land was not attached, and in fact his possession then remained undisturbed. *A* subsequently executed his decree, and purchased the land brought to sale by the Court The plaintiff's possession was disturbed under colour of this purchase, and he now sued in 1889 to recover the land sold to him. *Held*, that the order of the 1st March 1884, was not an order within the meaning of the Civil Procedure Code, s. 283, and accordingly that the suit was not barred by the one year's rule of limitation PULLAMMA *v.* PRADOSHAM **I. L. R. 18 Mad. 16**

53. ——— *Civil Procedure Code, s. 283—Order removing attachment—Party to execution-proceedings* *A* in execution of a decree against *B* attached a house. *C* intervened and the property was released from attachment *A* then

LIMITATION ACT (XV OF 1877)—*contd.*

Schedule II—*contd.*

——— **Art. 11—*contd.***

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54. ——— *Civil Procedure Code, 1882, s. 282—Order in attachment proceeding, effect of—Judgment-debtor—Party against whom order in execution-proceedings was made.* The plaintiff obtained a decree. The defendants appealed. At the hearing of the appeal in the District Court a question was raised as to whether the defendants were not barred by limitation from denying the genuineness and validity of the lease

had been attached The plaintiff on that occasion had intervened, and set up his mortgage and lease which he produced They were then held to be

accordingly remanded the case that the District Judge might investigate the facts and pass a decree accordingly AJIBAL NARASINHA HEGDE *v* SHIREKOLI TIMAPA HEGDE . **I. L. R. 17 Bom. 629**

55 ——— *Civil Procedure Code (Act XIV of 1882), s. 283—Order passed in attachment proceedings not binding on judgment-debtor if not a party—Order passed without investigation—Suit to set aside the order.* One *A* was in possession of certain land as plaintiff's tenant, and in his lifetime mortgaged it with possession to the

other hand, that *A* was a permanent tenant, and that his interest, as such, had descended to his heirs and was liable to attachment. On the 20th February 1892, the Court ordered the attachment to be removed without deciding the question raised

LIMITATION ACT (XV OF 1877)—*contd.*

Schedule II—*contd.*

——— Art. 11—*contd.*

by the parties which it held could not be determined in such a proceeding Defendant No 1 did not bring any suit under s. 283 of the Code of Civil Procedure (Act XIV of 1882), to set aside the order and establish his right to the land. In 1894 the plaintiff filed the present suit against the first defendant and the heirs of *A* to recover possession of the land. The Subordinate Judge passed a de-

Civil Procedure Code He, however, refused to pass any decree against the heirs of *A*, inasmuch as they had not been parties to the attachment proceedings, and, moreover, were not in possession

its merits By PARSONS, *J*, on the ground that,

not recover The first defendant being in possession might set up this *jus tertii*, and might plead the title of the other defendants By RANADE, *J*, on the ground that the order in the attachment proceedings having been passed without investigation of the question there raised by the parties, it did not become conclusive against the first defendant not-

56. ——— *Suit on title after summary order—Omission of judgment debtor to set aside summary order—Right of purchaser from judgment-debtor to sue* On the 24th March 1879 a certain property was attached in execution of a money-decree against *S*, and was finally sold on the 22nd September 1879 and purchased by the plaintiffs' father Subsequently to the attachment, the defendant caused the same property to be attached in execution of his decree against *R*. On the 15th August 1879, *S* intervened and

LIMITATION ACT (XV OF 1877)—*contd.*

Schedule II—*contd.*

——— Art. 11—*contd.*

the interest of *S* as it stood at that date, that interest could not be affected by any subsequent act or omission of the judgment-debtor, *S* PAYAPA *v* PADMAPA . . I. L. R. 11 Bom. 45

57. ——— *Civil Procedure Code, 1882, ss 278, 283—Suit by a judgment creditor to establish his judgment-debtor's right to property so as to make it subject to attachment in execution of his decree—Dismissal of such suit—Judgment-debtor not represented by judgment-creditor in such suit—Subsequent suit by judgment-debtor to recover the same property—Second appeal, point taken for the first time on* A judgment-creditor of the plaintiff, having obtained a decree against the plaintiff attached the house in dispute The defendant intervened in 1878, and set up a previous purchase of the house by himself from the plaintiff. The attachment was removed The judgment-creditor brought a suit against the defendant for a declaration that the property belonged to the plaintiff, and as such was liable to be attached and sold in execution At the hearing of this suit the judgment-creditor did not appear The defendant appeared and produced a sale-deed, which the Court found proved, and dismissed the judgment-creditor's suit. The plaintiff now brought the present suit against the defendant to recover possession of the house It was contended for the defendant that the plaintiff, as the judgment-debtor, might at any rate be regarded as a party against whom the order in the execution proceedings in 1878 was made, and that the present suit was therefore barred by limitation. *Held*, that the plaintiff could not be regarded as a party to those proceedings. Whether a judgment-debtor is to be regarded as a party to an investigation under s. 278 of the Code, must depend upon the facts of each case. As the question of limitation was raised for the first time on second appeal, it could not be decided against the plaintiff. SHIVAPA *v* DOD NAGAYA . I. L. R. 11 Bom. 114

58. ——— *Execution of decree—Deceased judgment-debtor—Execution against*

LIMITATION ACT (XV OF 1877)—*contd.*

Schedule II—*contd.*

——— Art. 11—*contd.*

district and obtained it. On the 20th of August

on business separately; and that, there was no connection or partnership between him and the deceased judgment-debtor, and that he had no property of the deceased in his possession. Further, as *A* left issue, it was wrong to call him as heir to *A* and take out execution-process against him. In reply to these objections, the judgment-creditors (defendants) did not contend that *A L* was the legal representative of the deceased judgment-debtor, but treated him as a person in possession of a sum of money belonging to the deceased, and therefore liable to the extent of the sum so received by him The Subordinate Judge, holding that *A L* was the brother of the deceased and had realized the amount from the Commissariat office, which he failed to prove that he

a *suit under s.* 283 of the Code of Civil Procedure, and therefore barred as not having been

this case. Angan Lal *v.* Gudar Mal

I. L. R. 10 All. 479

59. ——— *Suit by reversioner for possession—Accrual of right to sue—Unsuccessful application in execution-proceedings against widow—Civil Procedure Code, 1882, s 283.* Under Art 141, Sch. II of the Limitation Act (XV of 1877), a reversioner's right to sue accrues on the death of the widow. The fact that the eversioner has made an unsuccessful application for

a regular suit. Tai *v.* Ladu

I. L. R. 20 Bom. 801

60. ——— *Civil Procedure Code (Act XIV of 1882), ss. 278 to 283 and 12—Claim to attached property by holder of several mortgages—Order made on claim—Claim partly allowed and partly disallowed—Sale in execution—Suit for redemption by auction-purchaser within a year—Claim by defendant (mortgagee) in respect of mortgage disallowed by order.* Certain property was attached in execution of a money-decree. *A* intervened, and applied to have the property sold, subject to the incumbrances created in his favour by

respect of the sixth mortgage-bond which had been disallowed by the order in execution on the 20th February 1893. The rule is that an unsuccessful intervenor in execution-proceedings must establish his right by a regular suit within twelve months, at the expiration of which the order passed in execution becomes conclusive against him. The fact

That section only provides that no suit shall be tried if the same issues are involved in a previously instituted suit. It does not dispense with the institution of a suit within the proper time when the law requires such institution. Nemagauda *v.* Paresha . . . I. L. R. 22 Bom. 640

61. ——— *Suit for posses-*

LIMITATION ACT (XV OF 1877)—*contd.*

Schedule II—*contd.*

———— Art. 11—*contd.*

[illegible] An order which [illegible]

the alternative in his own right as an heir to the last full owner, on a declaration that certain execution- [illegible]

Court of Wards, the suit was not barred under Art 11, Sch II of the Limitation Act, although it was brought more than one year after the claim was rejected RAM CHANDRA MUKERJEE v RANJIT SINGH . . . . I. L. R. 27 Calc. 242
4 C. W. N. 405

62. ———— *Civil Procedure Code (Act XIV of 1882), ss. 278, 281, and 283—Claim preferred by a defendant's predecessor in title—Claim disallowed, but no suit brought within one year to set aside the order—Effect of such an adverse order as against the defendant in a suit, and how far binding* In a suit brought by the plaintiff to recover possession of certain lands by virtue of a purchase by his father, at an execution-sale held by a Civil Court, it was found by the Court below that the vendor of the defendant had purchased the said lands at a sale held by a Deputy [illegible]

defendant was concluded by that order, even if she was not the plaintiff in the suit, to establish her right to the property in dispute *Nemagauda* v. *Paresha, I L R 22 Bom. 640,* referred to SURNAMOYI DASI v. ASHUTOSH GOSWAMI
I. L. R. 27 Calc. 714

63. ———— *Civil Procedure Code, 1882, s 280—Claim by a mokuraridar.* Upon attachment of immoveable property in execution of decree, a claim was made on the ground that the judgment-debtor had granted a mokurari in respect of the property in favour of the claimant. The claim was allowed, and the property was ordered to be sold with a declaration of the mokurari. More than a year after this order, the decree-holder who purchased at an execution-sale brought a suit for a declaration that the mokurari was fraudulent and benami and for possession and mesne profits. *Held*, that the order was a judicial determination under s 280 of the Civil Procedure Code, 1882, and that therefore the suit was barred under Art 11 of the second schedule of the Limitation Act (XV of 1877) RAJARAM PANDEY v. RAGHUBANSMAN TEWARY . . . I. L. R. 24 Calc. 563

64. ———— and Art. 13—*Civil Procedure Code, 1882, s 332* Where an application was made under s 332 of the Code of Civil Procedure for possession of property and rejected, and the applicant brought a suit to recover the property more than one year subsequent to the order rejecting the application *Held*, that the suit was not barred either by Art 11 or Art. 13 of Sch. II of the Limitation Act, 1877 AYYASAMI v SAMIYA
I. L. R. 8 Mad. 82

65. ———— *Civil Procedure Code, 1859, s 269, Order rejecting application under—Suit brought after one year—Civil Procedure Code, 1877, s. 335.* An order having been passed on the 10th August 1877 under s 269 of the Code [illegible]

1st October 1877 did not deprive the order of [illegible]

VENKATACHALA v. APPATHORAI
I. L. R. 8 Mad. 134

66. ———— *Civil Procedure Code, 1859, s. 269—Party not in possession.* S 269, Act VIII of 1859, does not contemplate that the party in actual possession must sue regularly to get possession within one year, but that the person who is not in actual possession shall do so FIDAYE SHIKDAR v. OOZEEOODDEEN . . 7 W. R 87

67. ———— *Civil Procedure Code, 1859, s. 269—Claim by mortgagee.* An attachment having been made in execution of a decree for rent, an intervenor claimed the land as mortgaged to himself, but his application was rejected, and he was directed by the Collector to bring his objection, if he had any, under s. 269, Act VIII of 1859. *Held*, that he was not bound to do so, and his omission did not bar his right to bring a suit to establish

LIMITATION ACT (XV OF 1877)—*contd.*

Schedule II—*contd.*

———— **Art. 11**—*contd.*

the validity of the mortgages under which he claimed, provided it was brought within the period permitted by Act XIV of 1859. DEEN DYAL BURMO DOSS *v.* PORAN DOSS . . . **9 W. R. 474**

68. ———— *Civil Procedure Code, 1859, s. 269—Obstruction in taking possession after sale in execution of decree—Order.* A purchaser of immoveable property at a Court sale, having been obstructed by the defendant, made an application to the Court, under s. 268 of Act VIII of 1859, for the removal of the obstruction, but

tion contemplating at least an order against one party or the other; and that, therefore, the provi-

69 ———— *Civil Procedure Code (Act XIV of 1882), s 335—Order under s. 335—Subsequent suit—Partition—Present possession—Limitation* The plaintiff purchased certain land at a Court sale in execution of a money decree against defendant No 1 In attempting to obtain possession he was obstructed by defendant *No 8*, who claimed the land under a mortgage with possession from the co-parceners of defendant No. 1. He then applied to the Court for the removal of the obstruction, under s 335 of the Civil Procedure Code (Act XIV of 1882), but his application was rejected on the 12th March, 1898 The present suit was brought on the 13th March, 1899, in which the plaintiff, while seeking a partition of the family property of the

1898, passed under s 335 of the Civil Procedure Code, and as it was in form and substance one for establishing the plaintiff's right to and for the present possession of the particular land in question BHIMAPPA *v* IRAPPA (1901)
I. L. R. 26 Bom. 146

70. ———— *Claim to attached property—Suit to establish right to attached property —Civil Procedure Code (Act XIV of 1882), ss. 278, 281, 283.* The plaintiff preferred a claim to properties in dispute, which were attached in execution of a decree The claim was disallowed, but the decree was satisfied and attachment withdrawn:

LIMITATION ACT (XV OF 1877)—*concld.*

Schedule II—*contd.*

———— **Art. 11**—*concld.*

Held, that the plaintiff was not required to institute a suit under s. 283 of the Civil Procedure Code to establish his right to the property in dispute, and that accordingly a suit brought by him to recover possession of the property was not barred by Art 11, Sch II of the Limitation Act. *Ibrahimbhai* v. *Kabulabhai, I. L R 13 Bom. 72*, and *Gopal Purshotam* v *Bai Divali, I. L R. 18 Bom. 241*, followed. *Surnamoyi Dasi* v. *Ashutosh Goswami, I. L R. 27 Calc. 714*, distinguished. KRISHNA PROSAD ROY *v.* BEPIN BEHARY ROY (1904)
I. L. R. 31 Calc. 228

71. ———— *Claim to attached property—Investigation of claim—Civil Procedure Code (Act XIV of 1882), ss. 278, 281 and 283—Waqf property.* Where a Court rejects a claim to attached property by reason of the claimant

is one properly made under s 281 of the Civil Procedure Code, and is conclusive as between the parties, if no suit is brought within one year to

I. L. R. 32 Calc. 537

72. ———— *Purchasers at Court-sale—Obstruction to delivery of possession—Obstructor manager of joint family consisting of minors—Partition between obstructor and minors—Allotment of the property to the share of minors—Withdrawal of the obstructor by default without notice to minors—Design on the part of the obstructor—Order awarding possession to purchasers —Suit by minors to recover possession—Limitation* Certain purchasers of lands at a Court sale applied to be put in possession of the property, but the delivery of possession was obstructed by one *V*, who was the manager of a joint family consisting of himself and his two minor step brothers. While

passed on the 6th August 1898 ... settlement on partition, which for its validity required the sanction of the Court, had never received that sanction and it was subsequently set aside at the instance of the plaintiffs In the year 1903 the

LIMITATION ACT (XV OF 1877)—*contd.*

Schedule II—*contd.*

——— **Art. 11—*concld***

plaintiffs, that is, the step-brothers of *V*, to whom

second appeal by plaintiff No. 1, that the suit was not time-barred under Art. 11, Sch II of the Limitation Act (XV of 1877), as the minors were not "efficiently represented"—*Padmaker Vinayak Joshi v Mahadev Kishna Joshi, I L R 10 Bom. 21,* followed. The withdrawal of *V* by default from the obstruction proceedings was designed by him

them or to any one on their behalf SHIDAPA *v* VENKAJI (1908) . . I. L. R. 32 Bom. 404

——— **Art. 12 (1871, Art. 14 ; 1859, s. 1, cl. 3)—**

See MINOR, SUIT BY . **11 C. W. N. 1078**

See RENT RECOVERY ACT, ss 38 AND 39. **I. L. R. 30 Mad. 444**

See REVENUE SALE LAW, s 33 **13 C. W. N. 518**

See SALE IN EXECUTION OF DECREE—SETTING ASIDE SALE—GENERAL CASES **I. L. R. 29 Calc. 626**

1. ——— *Suit to set aside fraudulent sale.* Cl 3, s 1, applied only to suits to

2 ——— *Suit to set aside*

3 Agra 89

3. ——— *Suit by mortgagee*

1 Agra 111

4 ——— *Suit to set aside sale in execution of decree—Civil Procedure Code,*

LIMITATION ACT (XV OF 1877)—*contd.*

Schedule II—*contd.*

——— **Art. 12—*contd.***

5. ——— *Sale of moveable property in execution of decree—Irregularity in sale—Civil Procedure Code, 1859, s. 252.* The law (s 252, Act VIII of 1859) provides that no irregularity in the sale of moveable property under an

2 Agra, Pt. II, 175

KISHEN SOONDUR *v.* FUKEEROODEEN MAHOMED **W. R. 1864, 61**

6. ——— *Suit to set aside sale in execution of decree.* *Per* INNES, *J.*—Art 12 of the second schedule of the Limitation Act, 1877, which requires suits to set aside a sale in execution of a decree of a Civil Court to be brought within one

7. ——— *Suit to set aside sale—Suit to recover land sold in execution of decree.* *V* having bought lands from *A*, whose husband (deceased) acquired them at a Court sale, sued *S* in ejectment in 1879 *S* pleaded limitation on the ground that *B* (her deceased husband) had purchased the lands in question at a Court sale in 1876. *Held*, that, as *A* was no party to the decree or the execution-proceedings under which *B* purchased, it was not necessary for *V* to set aside the sale to *B* in this suit, and it was not barred by Art 12 of the Limitation Act, 1877. VENKATA NARASIAH *v.* SUBBAMMA . . . **I. L. R. 4 Mad. 178**

8. ——— *Sale of tarwad property in execution of decree against party not sued as karnavan* Where a suit was brought to recover

9. ——— *Suit to set aside*

LIMITATION ACT (XV OF 1877)—*contd.*

Schedule II—*contd.*

———*Art.* 12—*contd.*

chased by *B*; but in a suit brought by *A* for a declaration that *S* was not the real purchaser, the

date of the sale, was barred ABUL MUNSOOR *v* ABDOOL HAMID *alias* SABHAN MIAH

I. L. R. 2 Calc. 98

10. ——————— *Suit to set aside sale in execution—Party to suit* After the death of the widow of *K*, the plaintiff sued as the heir of *K* to recover certain immoveable property alleged to have been granted to the widow for life by *K* for her

present plaintiff was not a party in her own character to the suit in execution of the decree in which the property was sold KALI MOHUN CHUCKERBUTTY *v.* ANANDA MONI DABEE . . 9 C. L. R. 18

11. ——————— *Suit to set aside sale of land in execution of decree.* A suit to set aside a sale of land in execution of a decree against a third party was *held* not barred by limitation under cl 3, s. 1, if brought within a year after the sale actually took place. DOSSEE *v.* SHEEBANEE DABIA

5 W. R. 123

See MAHOMED AFZUL *v.* KANHYA LALL

2 W. R. 263

RAM GOPAL ROY *v.* NUNDO GOPAL ROY

4 W. R. 42

But these cases were overruled by JODOONATH CHOWDHRY *v.* RADHOMONEE DOSSEE

B. L. R. Sup. Vol. 643; 7 W. R. 256

12. ——————— *Suit for possession by setting aside sale* In a suit not only for reversal of sale but also for possession and declaration of title, the limitation of one year does not

LIMITATION ACT (XV OF 1877)—*contd.*

Schedule II—*contd.*

——— Art. 12—*contd.*

apply. ANOORAGEE KOOER *v.* BHUGOBUTTY KOOER. SHAM SUNDER KOOER *v.* JUMNA KOOER

25 W. R. 148

13. ——————— *Cause of action—Suit for possession after sale in execution* The plaintiffs sued to recover possession by declaration of right to certain chur lands as accretions to a patni talukh and for damages, alleging that they held possession under a mokurari lease granted by the defendant No. 3, but were ejected by the defendant No. 1, who had purchased at a sale in execution of an *exparte* decree for arrears of rent obtained by the

set aside the sale, but a suit for possession on declaration of title. BANEE MADHUB BUKSHEE *v.* RADHA MADHUB MOZOOMDAR . 22 W. R. 196

14. ——————— *Suit for possession and declaration of right by setting aside sale.* The plaintiffs sued for possession of, and a declara-

the prayer was for possession and declaration of right was substantially to set aside the sale of 16th

CHOWDHRY *v.* KALEE MOHUN MOOKERJEE

22 W. R 84

15. ——————— *Sale subject to claimant's right* Where a person's claim to attached property was not rejected, but the sale took

16. ——————— *Suit to recover*

LIMITATION ACT (XV OF 1877)—*contd.*

Schedule II—*contd.*

———— **Art. 12—*contd.***

KINOO DOSS *v.* RUGHOONATH DOSS **4 W. R. 34**

17. ———————— *Suit by claimant*

property belonging to himself in which the judgment-debtors had no right or interest, and upon

s. 1; and it was not incumbent on such a claimant

MED HOSSEIN . . . . **3 Agra 171**
s.c. **Agra F. B. Ed. 1874, 145**

See SHARAFATUNNISSA *v.* LACHMI NARAIN
7 N W. 28

18. ———————— *Suit by prior purchaser for possession—Sale to second purchaser.* The one year's limitation provided in s. 1, cl. 3, did not apply to a suit by a prior purchaser to assert his rights after an auction-sale of the right and interest of the judgment-debtor in the property to another purchaser subject to those rights MUNGROO SAHOO *v* JEYDAR SINGH . **2 Agra 231**

Nor where he has become the representative by purchase of the other purchaser. BITHUL BHUT *v* LALLA RAJKISHORE . . **2 Agra 284**

19. ———————— *Suit to set aside sale in execution of decree—Suit to recover possession.* *A* purchased immoveable property at an auction-sale The same property was subsequently purchased by *B* at another auction-sale. *Held*, that

(*Contra*) LALCHAND AMBAI DAS *v.* SAKHARAM
5 Bom. A. C. 139

20. ———————— *Suit to set aside execution-sale—Suit for possession of immoveable property.* The plaintiff, alleging that certain im-

I. L. R. 5 All. 614

LIMITATION ACT (XV OF 1877)—*contd.*

Schedule II—*contd.*

———— **Art. 12—*contd.***

21. ———————— *Suit for possession after dispossession in sale proceedings in execution of decree.* The rights and interests of

right to the limitation of twelve years TONOO RAM GOSSAIN *v* MOHESSUR GOSSAIN
24 W. R. 302

22. ———————— *Suit to recover*

of sale, to sue within the period of limitation prescribed by law for a suit to set aside the sale. The mere circumstance that there is a specification of the subject of the sale at the time of sale is of no force It is not the property specified, but the right of the judgment-debtor therein, that is offered for sale and conveyed. *Mahomed Buksh* v. *Mahomed Hossein, 3 Agra 171: s.c. Agra F. B, Ed. 1874, 145,* followed. SHARAFATUNNISSA *v* LACHMI NARAIN
7 N. W. 288

23. ———————— *Sale of land in execution of decree—Suit by third party to recover—Burden of proof.* In a suit to redeem certain land demised on kanam in 1850 by *A* to the predecessor of *B, C,* who was in possession of the land, was made a defendant. *A* proved his title to the land, and possession up to 1850. *C* pleaded title to the land, and denied that *B* had ever been in possession. Both pleas were found to be false. It was found, however, that *C* had been in possession from 1869 to 1885, and that in 1876 the land had been sold in

contrary was proved; but that the suit was barred

THANDAMMA . . . **I. L. R. 9 Mad. 460**

24. ———————— *Decree—Sale in execution—Land described by boundaries in proclamation of sale—Land so described really com-*

LIMITATION ACT (XV OF 1877)—*contd.*

Schedule II—*contd.*

——— Art. 12—*contd.*

included another piece of land, Survey No. 294, Pot No. 4, which comprised 3 acres 2¼ gunthas This latter piece of land was put up for sale on the following day, and was purchased by defendant No. 5. On 28th November 1877, the plaintiff applied to the Court to have the sale set aside and his money returned, unless he was put in possession of all the land included in the boundaries mentioned in the proclamation; but his application was refused, and the sale was confirmed on 20th July 1878. The plaintiff on the 3rd July 1881 brought the present suit, praying that he might be put into possession of the land as described in the certificate of sale, which was identical with the proclamation, and included Pot No. 4, or that the first defendant might be ordered to pay him the amount of his purchase-money with interest. Both the lower Courts rejected the plaintiff's claim. On appeal to the High Court:—*Held,* confirming the decree of the Court below, that the suit regarded as one to set aside the sale, was barred by Act XV of 1877, Sch. II, Art. 12, cl. (*a*) MAHOMED SAYAD PHAKI *v* NAVOJI BALABHAI . I. L. R. 10 Bom. 214

25. ——— *Suit to set aside sale in execution of decree—Suit for possession of immoveable property sold in execution of decree—Limitation Act, IX of 1871, Sch II, No 14.* *P* obtained a decree against *M* in April 1874 in execution of which property belonging to the latter was sold in 1874, 1875, and 1876 In March 1880, this decree was reversed by the Court of last appeal. In February 1881, *M* sued to set aside the sales of

barred by limitation PARSHADI LAL *v* MUHAMMED ZAIN-UL-ABDIN. MUHAMMED ASHGAR ALI *v.* MUHAMMED ZAIN-UL-ABDIN . I. L R. 5 All. 573

26. ——— *Suit to set aside*

aside, a valid sale a suit to set aside such a sale is governed by Art. 12, cl (*a*), of Sch II of Act XV of 1877. The word "disallowed" in s 312 of the Civil Procedure Code has no reference to an order

17th December 1878, applied, under the provisions of s 311 of the Civil Procedure Code (Act XIV of 1882), to set aside the sale on the ground of material irregularity, but that application was ultimately rejected on the 17th May 1879, and the sale was confirmed on the 21st May 1879 On the 2nd April 1880, the judgment-debtor applied to set aside the sale on the ground that the decree, in execution of which it had taken place, had been held to be barred, and though an order setting aside the sale was made by the original Court, it was subsequently set aside by the High Court on the 13th

the suit was barred MAHOMED HOSSEIN *v.* PURUNDUR MAHTO . I. L. R. 11 Calc. 287

See GUNESSAR SINGH *v.* GONESH DAS I. L. R. 25 Calc. 789

27. ——— *Endowment by*

share of the management of certain lands granted for the maintenance of a Hindu temple. In that suit *V* obtained a decree that he should have the exclusive management every third year, but was ordered to pay costs. To enforce payment of these costs, *H* in execution of the decree attached the

defendant No 2) *V* died in 1878. ... plaintiff sued *G* and the appellant (the two sons of *H*) for his share of the management. It was contended for the defence that as the execution- ... hin a year, ... intiff was ... V of 1877. ... imself reinstated in the management without bringing a suit to set aside the sale within a year from the date of the order confirming it. TRIMBAK BAWA *v.* NARAYAN BAWA . . . . I. L. R. 7 Bom. 188

28. ——— *Rights of purchasers at sales in execution of decree—Two judicial sales of the same property, each in execution of a separate decree—Conflicting claims thereunder—*

LIMITATION ACT (XV OF 1877)—*contd.*

Schedule II—*contd.*

———— Art. 12—*contd.*

afterwards contested title to the property. The sale to the first purchaser was confirmed in November 1882. The sale to the second, who obtained possession, took place in October 1881, the property having been attached under the second decree in March 1883 The first purchaser on the 28th July 1884 brought a suit, to which the second purchaser was not a party, to have that attachment declared invalid By a decree of the 14th November to that effect the second purchaser was bound as a purchaser *pendente lite*, and his possession was of no avail to him *Held*, that the attachment of March 1883, although it had preceded the institution of the first purchaser's suit of 1884, afforded no support to the second purchaser's claim, attachment under Ch. XIX of the Civil Proced...

there having been the decree of 1885, the second ...

right of the first purchaser, there being a wide differ... that Moti ...

1 C. W. N. 639

29. ———— *Minor, when bound by proceedings against him—Minors Act (XX of 1864), s 2—Suit by a minor, one year after attaining majority, to recover property sold in execution of a decree obtained against him during minority* In ...

presented by his mother and guardian. At the sale held in 1871, in execution of the decree, the property in question was purchased by the defendant, who obtained ...

LIMITATION ACT (XV OF 1877)—*contd.*

Schedule II—*contd.*

———— Art. 12—*contd.*

30. ———— and Art 7—*Guardian—Representative of minor in a suit against him—Certificate—Act XX of 1864—Joint family—Mortgage by father and eldest son—Death of father and eldest son—Decree obtained by mortgagee against minor son represented by the widow—Sale in execution—Subsequent suit by minor to set aside sale.* In 1862 *R* and his son *A* mortgaged the property in ...

brought within one year after *P* had attained majority, was barred by limitation under Art 12, Sch. II of Act XV of 1877 *Held*, that the suit was not barred by limitation *P* had not been properly ...

I. L. R. 12 Bom. 18

31. ———— "*Order*", *of* ...

occupant refusing to pay a fine to be allowed to ...

LIMITATION ACT (XV OF 1877)—*contd.*

Schedule II—*contd.*

——— Art. 12—*contd.*

XIV of 1859. SAKHARAM VITHAL ADHIKARI *v* COLLECTOR OF RATNAGIRI . 8 Bom. A. C. 288

32. ——— and Art 14—*Suit to set aside an act or order of an officer of Government—Suit for possession—Dispossession under an order made by officer of Government.* Arts. 12 and 14 of Sch. II of the Limitation Act (XV of 1877) refer to orders and proceedings of a public functionary, to which by law is given a particular effect in favour of one person or against another, subject in the regular course to a further judicial proceeding having for its object to quash them or set them aside. When an order does not fall within the authority of an official who makes it, it is legally a nullity, and therefore need not be set aside. SHIVAJI YESJI CHAWN *v.* COLLECTOR OF RATNAGIRI I. L. R. 11 Bom 429

33. ——— *Fraud—Suit to set aside sale in execution of decree—Beng Reg XLV of 1793.* In a suit for the cancelment, on the ground of fraud, of an auction-sale made under the provisions of s. 12, Regulation XLV of 1793, and for the reversal of a Judge's order in appeal confirming the sale, the period of limitation was held (under s. 9, Act XIV of 1859) to run at the latest from the date of the Judge's order of confirmation, and to extend to one year under cl. 3, s. 1 ENAET ALI KHAN *v* KUMOLA KOONWAR . 11 W. R. 261

34. ——— *Suit to set aside sale.* A sale having been effected by order of a Deputy Collector, an appeal was made to the Collector, who set aside the sale. The Commissioner, however, considering that the Collector had no

order was in time. PRANNATH ROY *v* TROYLUCKONAUTH ROY . . . . 14 W. R. 281

35. ——— *Suit to set aside*

CHUNDER CHUCKERBUTTY *v.* KINOO KHAN I. L. R. 8 Calc. 329

36. ——— *Suit brought to*

against a *bonâ fide* purchaser for value from Government was barred by limitation. KARUPPA TEVAN *v.* VASUDEVA SASTRI . . I. L. R. 6 Mad. 148

37. ——— *Sale in execution of decree for arrears of revenue—Suit to recover*

LIMITATION ACT (XV OF 1877)—*contd.*

Schedule II—*contd.*

——— Art. 12—*contd.*

Court sale, that the suit, not having been brought within one year from the date of the confirmation of the sale, was barred by Art 12 of Sch. II of the Limitation Act, 1877. SURYANNA *v.* DURGI I. L. R. 7 Mad. 258

38. ——— *Suit to set aside sale in execution of decree—Suit for land sold in*

cution of a decree against the plaintiffs' cousins, but the sale had not been confirmed. A decree was passed as prayed in respect of a moiety of the land which represented the plaintiff's share: *Held,* that decree was right. *Quære*. Whether the suit would have been barred under the one year's rule of limitation if the sale had been confirmed. *Suryanna* v. *Durgi, I. L. R. 7 Mad 258,* doubted. *Parekh Ranchor* v. *Bai Vakhat, I. L. R. 11 Bom. 119,* referred to. NARASIMHA NAIDU *v* RAMASAMI I. L. R. 18 Mad. 478

39. ——— *Bonâ fide purchasers.* Art. 12 of that Schedule which prescribes a period of one year for suits to set aside sales for arrears of revenue is intended to protect *bonâ fide* purchasers only VENKATAPATHI *v* SUBRAMANYA I. L. R. 9 Mad. 457

40. ——— *Sale for arrears of revenue—Suit for possession of land—Fraud.*

purchaser was thereupon put in possession In 1886 the plaintiff sued to recover possession of the land in question. *Held,* that the suit, having been brought more than one year after the date of the sale, was barred by Art 12, cls. (*b*) and (*c*), of Sch. II of the Limitation Act (XV of 1877). The sale was one in pursuance of an order of the Collector or other officer of revenue, and, if not for arrears of Government revenue, was at any rate a sale for arrears of rent recoverable as arrears of revenue. The plaintiff, as occupant of the land, was bound by the sale, unless and until it was reversed and the title of the purchaser at the sale was a perfectly good title until the sale was set aside in due course of law. BALAJI KRISHNA *v* PIRCHAND BUDHARAM I. L. R. 13 Bom. 221

41. ——— *Sale under Public Demands Recovery Act (Bengal Act VII of 1880) for arrears of cesses—Confirmation of sales*

LIMITATION ACT (XV OF 1877)—*contd.*

Schedule II—*contd.*

——— Art. 12—*contd.*

—*Held*, that the confirmation of sale dated only from the 21st August 1886, and that a suit brought in July 1887 to set aside the sale was not barred by Act XV of 1877, Art. 12 BAIJNATH SAHAI *v* RAMGUT SINGH . . . I. L. R. 23 Calc. 775
L. R. 23 I. A. 45

42. ——— *Madras Rent*

43. ——— *Dispossession—Suit to recover land sold by mistake in execution of decree.* Limitation Act, Sch II, Art. 12 (*a*), is not applicable to a case in which dispossession is the cause of action, and in which the plaintiff was not a party to, or bound by, the sale *Held*, accordingly, that a suit brought in 1892 to recover possession of the plaintiff's share of land sold by mistake in execution of a decree against his uncle in 1881 was not barred by limitation. KADAR HUSSAIN *v* HUSSAIN SAHEB . . . I. L. R. 20 Mad. 118

44. ——— *Suit to recover*

287; and *Sadagopa* v. *Jamuna Bhai Ammal, I. L. R. 5 Mad. 54*, referred to. *Suryanna* v. *Durgi, I. L. R 7 Mad. 258*, dissented from. NAZAR ALI *v* KEDAR NATH . I. L. R. 19 All. 308

45. ——— *Suit by rever-*

purposes; but it is her duty not only to represent

LIMITATION ACT (XV OF 1877)—*contd.*

Schedule II—*contd.*

——— Art. 12—*concld.*

the estate, but to protect it. When a suit is brought on the ground that the widow did not in a former suit protect the interests of the person who was to take after her death, but collusively suffered judgment against herself and sale of her husband's property in execution, then if such person on that

——— Arts 12, 49, 115, 145—*Deposit—Loan—Debtor—Executor—Assets* *K* made over certain Government securities to *I* to be kept by him in deposit and, if necessary, to be used by him for raising funds wherewith to pay the purchase money of a house; and *I* was to draw the interest accruing due on the securities from time to time and pay the same to *K*, and in case *I* had occasion to pledge or sell the securities he would redeem or

a loan, inasmuch as *I* was *K*'s executor and acted as such, the equitable doctrine that a debtor-executor is accountable for the amount of his debt as assets in his hands would apply, and the plaintiff as administratrix of *K* having instituted the suit within two years of her appointment was not

effect of suspending the running of the Statute and which controls and modifies the rule enacted by s 4.

TOR-GENERAL OF BENGAL *v.* KRISTO KAMINI DASSEE (1904) . . . . I. L. R. 31 Calc. 519
s.c. 8 C. W. N. 500

——— Arts. 12, 142—

See LIMITATION . I. L. R. 34 Calc. 811

——— Arts. 12 and 144—

See EXECUTION OF DECREE.
I. L. R. 26 All. 346

——— Art. 2 (*b*)—

See NOTICE . I. L. R. 34 Calc. 787

LIMITATION ACT (XV OF 1877)—*contd.*

Schedule II—*contd.*

——— Arts. 12, cl. (*b*), 95 and 120—

——— *Public Demands Recovery Act* (*Bengal Act VII of 1880*), *ss.* 10 *and* 12—*Suit to set aside a sale on the ground that no notice under s.* 10 *was served—Fraudulent purchase by a co-sharer.* *A* instituted a suit to set aside a sale held under the Public Demands Recovery Act, on the allegation that the defendants, who were his co-sharers, fraudulently suppressed the notice under s. 10 of the Act, and purchased the property in the name of their agent. Upon an objection being taken that the suit was barred by limitation under Art. 12, cl. (*b*) of the Limitation Act:—*Held*, that the suit to set aside such a sale is governed not by Art. 12, cl. (*b*), but either by Art. 95 or Art. 120 of the Limitation Act. SYAMLAL MANDAL *v.* NILMONEY DAS (1907) . . . I. L. R. 34 Calc. 241

——— Arts. 12, 144, 148—

See NEW TRIAL, APPLICATION FOR
I. L. R. 32 Calc. 339

See SALE IN EXECUTION OF DECREE.
I. L. R. 32 Calc. 296

——— Art. 13 (1871, Art. 15; 1859, s. 1, cl. 5)—

See SALE IN EXECUTION OF DECREE—DISTRIBUTION OF SALE-PROCEEDS.
5 C. W. N 649

1. ——— *Suit to set aside summary order.* *Quære* Whether, with reference to cl. 5, s. 1, a suit will lie to set aside a summary order after the expiration of one year. GOBIND NATH SANDYAL *v.* RAMCOOMAR GHOSE
6 W. R. 21

2. ——— *Final decision—Order dismissing appeal* The final decision, award, or order contemplated by cl 5, s. 1, was a final

[illegible]

jurisdiction OLEO-UNISSA *v.* BULDEO NARAIN SINGH . . . . . . 7 W. R. 151

3. ——— *Order under Act XIX of 1841—Official Trustees Act—Suit for possession—Limitation Act* (*XIV of 1859*), *s.* 1, *cl.* 12. A summary order under Act XIX of 1841 for possession of property left by a deceased person is no bar to a regular suit to try the title to such property and to obtain possession under that title; it is therefore unnecessary to set aside the order before granting relief in the suit. Hence the period of limitation for such regular suit is that provided by cl. 12, s. 1, Act XIV of 1859, namely, twelve years, and not one year as provided by cl 5 of the same section LAKNARAIN SINGH *v* MANKOER
B. L. R. Sup. Vol. 633

LIMITATION ACT (XV OF 1877)—*contd.*

Schedule II—*contd.*

——— Art. 13—*contd.*

s c. LOKNARAIN SINGH *v* MAYNA KOER.
2 Ind. Jur. N. S. 191: 7 W. R. 199

4. ——— *Civil Procedure*

[illegible]

LALLA BEHAREE LALL *v.* LALLA MODHO PERSAD
6 W. R. 69

[illegible]

Act XIV of 1859, s. 1, cl 5, in the case of suits to alter or set aside summary decisions and orders of any of the Civil Courts not established by Royal Charter, when such suit is maintainable, namely,

[illegible]

Marsh 573: 2 Hay 633

s.c. on appeal to Privy Council. GREEDHAREE DOSS *v.* NUNDKISHORE DOSS
11 Moo. I. A. 405: 8 W. R. P. C. 25

(*Contra*) BIPRO PERSHAD MYTEE *v.* KANYE DEYEE
1 W. R. 341

6. ——— *Suit to recover*

[illegible]

LIMITATION ACT (XV OF 1877)—*contd.*

Schedule II—*contd.*

——— Art. 13—*contd.*

third persons in dealing with the person who claims

right claim, is in time, is to be determined by the sections of the Limitation Act relating to suits for the possession of property. BAI KASHI *v.* BAI JAMNA . . . I. L. R. 10 Bom. 449

7. ——— *Suit to set aside order under Act XXVII of 1860.* A suit to set aside a summary order passed under Act XXVII of 1860 may be brought within a year from the date of the order; but such order is no bar to a suit upon title though brought after the year. KALEE PROSUNNO MOOKERJEE *v.* KOYLASH MONEE DEBIA

8 W. R. 126

8. ——— *Order relating to landed property of intestate—Summary order. Held,* that the Judge's order relating to the landed property of a person dying intestate, being apparently an order made without jurisdiction, had no legal operation, and was not a summary order within the meaning of the 5th clause of s. 1, Act XIV of 1859. AUGUDH NATH *v.* DOORGA GIR . 1 Agra 241

9. ——— *Suit to eject representative of person put in possession by order of Civil Court—Summary decision.* The plaintiff was, by an order of the Civil Court in execution of a decree to which the plaintiff was no party, ejected from the possession of a muttah. He brought a suit more than three years afterwards to eject the legal

property raised for hearing and determination by a summary proceeding between the parties disputing. APPUNDY IBRAM SAHIB *v.* SAM . 4 Mad. 297

10. ——— *Suit against order of Mamlatdar under Bom. Act V of 1864.* Although a Mamlatdar's order under the last clause of s. 1 of Bombay Act V of 1864 is a summary

11. ——— *Suit for proceeds of sale in execution.* A suit to recover the proceeds of sale in execution of a decree alleged to have been drawn out by defendant by virtue of an order

LIMITATION ACT (XV of 1877)—*contd.*

Schedule II—*contd.*

——— Art. 13—*contd.*

of a Civil Court, under s. 270, Act VIII of 1859, is in reality a suit to alter or set aside a summary decision of a Civil Court, and is governed by the limitation of one year prescribed by cl. 5, s. 1, Act XIV of 1859. DWARKANATH BISWAS *v.* ROY DHUNPUT SINGH . . . . . 17 W. R. 227

12. ——— *Suit for money paid into Court by defendant, but recovered from third person in execution of decree.* A suit to recover money paid by the defendant into Court which was payable to the plaintiff, and which was afterwards recovered by the defendant in the execution of a decree against a third person, under an order of the Court executing the decree, was held not barred by limitation, under the provisions of Act IX of 1871, second schedule, Art. 15, by reason of not having been instituted within one year from the date of the order. DEBI DAS *v.* NUR AHMED . 7 N. W. 174

13. ——— *Suit for refund of sale-proceeds paid in accordance with order for distribution under s. 295, Civil Procedure Code, 1882—Multifariousness.* In execution of a decree against six persons the plaintiffs had certain property brought to sale, the proceeds of which were brought into Court. The defendants, who held five separate decrees against some of the persons against whom the plaintiffs' decree was obtained, applied to have the amount in Court rateably distributed; and in accordance with an order of the Court, dated 13th

distinguished. GOWRI PROSAD KUNDU *v.* RAM RATAN SIRCAR . . I. L. R. 13 Calc. 159

14. ——— and Art. 62—*Civil Procedure Code (Act XIV of 1882,) s. 295—Suit for a refund of assets paid to a wrong person under s. 295.* An order under s. 295 of the Code of Civil Procedure (Act XIV of 1882) refusing a decree-holder's application for a rateable distribution of the assets realized by a sale or otherwise in execution

money-decree, certain immoveable property belong-

LIMITATION ACT (XV OF 1877)—*contd.*

Schedule II—*contd.*

——— Art. 13—*contd.*

property was put up for sale in execution of the defendant's decree. The defendant was allowed to

Art 13 of the Limitation Act. The order made under s. 295 of the Civil Procedure Code was no bar to the suit, and a suit to set it aside was unnecessary. *Gowri Prosad Kundu v. Ram Ratan Sircar, I. L. R. 13 Calc 159*, dissented from VISHNU BHIKAJI PHADKE *v.* ACHUT JAGANNATH GHATE

I. L. R. 15 Bom. 438

15. ——— *Mortgage—Sale by first mortgagee—Arrears of rent—Lien—Claim by puisne mortgagee on proceeds of sale.* Certain land was mortgaged to *A* with possession to secure the re-payment of a loan of R2,000 and interest. It was stipulated in the deed that the interest on the debt should be paid out of the profits, and the balance paid to the mortgagors. By an agreement subsequently made, it was arranged that the mortgagors should remain in possession and pay rent to *A*. *A* obtained a decree for R2,000 and arrears of rent and costs and for the sale of the land in satisfaction of the amount decreed The land was sold for R2,855 in March 1881 In May 1881 *B*, a puisne mortgagee, applied to the Court for payment to him of R500 of this sum, alleging that *A* was entitled only to R2,000 and R280 costs, but not to

mortgage On the 23rd May 1884 *B* sued to recover R510 paid to *A* on account of rent on the 27th May 1881. *Held*, on second appeal, that the suit was not barred by Art. 13 of the Limitation Act, neither that Art nor Art. 12 being applicable to the case, that *B* was entitled to recover the sum claimed SIVARAMA *v.* SUBRAMANYA

I. L. R. 9 Mad. 57

16. ——— *Suit to recover possession from a successful claimant under s. 246, Act VIII of 1859.* A suit brought, not to set aside an

LIMITATION ACT (XV OF 1877)—*contd.*

Schedule II—*contd.*

——— Art. 13—*contd.*

order of release under s. 246 of Act VIII of 1859, but

DHURUP *v.* ABDOOL HOSSEIN

17. ——— *Order of Judge on claim to attached property—Summary decision.* Property being attached under a decree obtained before Act VIII of 1859, a third party claimed to be entitled as against the judgment-creditor under a bill of sale. The Judge enquired into his claim, found that the assignment was fraudulent; and ordered that the property should be sold under the decree *Held*, that the order of the Judge was a

Marsh. 520

18. ——— *Suit to have property declared not liable to seizure in execution of a decree* The plaintiff sued to obtain a decree declaring that the ancestral land possessed by the family of the plaintiff was not liable to seizure and sale in satisfaction of an *ex parte* decree obtained by the defendant in a suit against the yejaman of the plaintiff's family on the ground that the decree had been obtained collusively and fraudulently for a debt alleged to have been contracted for the benefit of the family. The decree against the yejaman was passed on the 22nd June 1857, and upon attachment of the family property the plaintiffs made a claim, under s. 246 of the Civil

the Civil Code, or by cl 6, s 1 of Act XIV of 1859, was applicable, and that the suit was not barred. RAMANADA BUTT *v.* BITHEE . 4 Mad. 263

19. ——— *Claim, rejection* On

his claim, sued to recover possession of the property. The defence was, that the suit was barred by lapse of time under cl 5, s. 1, Act XIV of 1859. *Held*, that cl. 5, s. 1, Act XIV of 1859, did not apply to such a suit. DURGARAM ROY *v.* NARSING DEB 2 B. L. R. A. C. 254

S C. DOORGARAM ROY NURO SINGH DEB 11 W. R. 134

LIMITATION ACT (XV OF 1877)—*contd.*

Schedule II—*contd.*

——— **Art. 13**—*contd.*

20. ——— *Suit to set aside order releasing property from attachment—Irregular attachment—Deduction of time when appeal was*

decreed the case against *M* with costs, and released *A* from *K*'s claim In appeal to the Sudder Court the plaintiff obtained a decree with interest and costs against *A* as well as against *M* In execution *K* prayed on 2nd December 1858 for the attachment

Regulation VIII of 1825, s. 7 In September 1861, one *B A*, who had objected to the attachment,

appealed, but the appeal was struck off on 29th November 1862 On review the first order was upheld, but it was declared that this would not be a

operation of the law of limitation while it was

21. ——— *Suit after release of property under s 246, Civil Procedure Code, 1859.* Where a property is released from attachment, and the person at whose instance attachment was made is not debarred by the order of

MUNJOY MULLICK . . . **25 W. R. 513**

LIMITATION ACT (XV OF 1877)—*contd.*

Schedule II—*contd.*

——— **Art. 13**—*contd.*

22. ——— *Suit to recover attached property to which claim has been disallowed.* A person who has been unsuccessful in a proceeding under s. 246 of Act VIII of 1859, and who sues to recover the attached property from the purchaser at the Court sale may be said to sue, not to set aside the sale, but to set aside the order of the Court under s 246 and therefore the suit must be brought within one year as provided in Art. 15 of the Limitation Act, 1871. The decision in *Jetti v Hossain, I. L R. 4 Bom 23 note*, qualified. VENKAPA *v.* CHENBASAPA . **I. L. R. 4 Bom. 21**

23. ——— *Suit to remove attachment—Adverse possession* In a suit for a partition of family property in the possession of the plaintiff and defendants, part of the property was attached at the instance of one of the defendants in 1852, and the remainder of the property in 1864. Nothing was done with regard to the first attachment, but in 1865 a petition was presented by the

24. ——— *Suit to establish title to property ordered to be sold in execution—Suit to set aside summary order.* The plaintiff's property was ordered to be sold in execution of a decree to which the plaintiff was not a party. The

within Act IX of 1871, Sch II, cl 15. KOYLASH CHUNDER PAUL CHOWDHRY *v* PREONATH ROY CHOWDHRY **I. L. R. 4 Calc. 610 : 3 C. L. R. 25**

25. ——— *Civil Procedure Codes (Act VIII of 1859, s 246, and Act X of 1877, ss. 280, 281, and 282).* *V* (defendant No. 1) obtained a decree against *W* and, in execution thereof, at-

rate debt. They prayed that the sale should be set aside. The Subordinate Judge dismissed the suit as barred by Art. 15, Sch. II of the Limitation Act (IX of 1871). His order was reversed, on appeal, by the District Judge, who held that Art. 14, Sch. II of the Limitation Act, applied to the case. *K* thereupon appealed to the High Court :—*Held*, that Art. 15, and not Art. 14, of Sch. II of Act IX of 1871, applied to the case, and that the suit was barred. The intention of the Legislature in passing s 246 of the Civil Procedure Code (Act VIII of 1859) was that the order made under that section should be a final bar to the plaintiff's right, unless such a suit as that section prescribed, was brought to re-try the question of that right; and if on such action being brought, the Court on the trial held that the plaintiff had established his right, its ruling would amount to a reversal of the order made under s 246, and the suit would fall within Art 15 of Sch II of the Limitation Act (IX of 1871), which is substituted for the limitation provided by the twelve repealed words in s 246 of Act VIII of 1859. *Settiappan* v. *Sarat Sing, 3 Mad. 220,* followed. *Koylash Chunder Paul Chowdhry* v. *Preonath Roy Chowdhry, I L R. 4 Calc 610,* referred to and discussed. KRISHNAJI VITHAL *v* BHASKAR RANGNATH . . . I. L. R. 4 Bom. 611

26. ——— *Order declaring that Court has no jurisdiction.* The period of limitation prescribed by Art. 15, Sch. II, Art. IX of 1871, for a suit to set aside an order of a Civil Court, does not apply where the order simply amounts to a declaration that the Court considers it has no jurisdiction to act in the proceeding before it KRISTODASS KUNDOO *v.* RAMKANT ROY CHOWDHRY I. L. R. 6 Calc. 142 : 7 C. L. R. 396

27. ——— *Suit to recover property sold in execution—Civil Procedure Codes (Act VIII of 1859, s 246, and Act X of 1877, ss. 280, 281, and 282)* Certain property, which the plaintiff alleged to belong to her, was sold in execution of a decree obtained by the purchaser of the property at the auction-sale against a third party The plaintiff put in a claim to the property under s. 246 of Act VIII of 1859 which claim was rejected on the 6th of September 1873. The plaintiff, on the 10th of January 1878, brought a suit to recover possession of the property sold:—*Held*, that the suit was not barred by Art. 15, Sch. II of Act IX of 1871, the suit not being one to set aside a summary order within Art. 15 of the schedule to that Act *Koylash Chunder Paul Chowdhry* v. *Preonath Roy Chowdhry, I. L. R. 4 Calc. 610,* followed. LUCHMI NARAIN SINGH *v.* ASSRUP KOER I. L. R. 9 Calc. 4

28. ——— *Execution of decree—Res judicata—Act VIII of 1859, s. 246—Civil Procedure Code (Act X of 1877), s. 278.* In the course of certain execution proceedings in execution

LIMITATION ACT (XV OF 1877)—*contd.*

Schedule II—*contd.*

——— Art. 13—*contd.*

[illegible] application was [illegible] alienation had [illegible] In 1877 the [illegible] decree-holder above-mentioned obtained another decree for arrears [illegible]

[illegible] Courts dismissed the suit on the ground that it ought to have been brought within one year from the 24th of March 1869 On appeal to the High Court :—*Held*, that the suit was not barred by limitation, nor as *res judicata.* UMESH CHUNDER ROY *v.* RAJ BULLUB SEN . I. L. R. 8 Calc. 279 10 C. L. R. 204

29. ——— *Order substituting [illegible] judgment-debtor for another—Sale or transfer* [illegible]

[illegible] tion VIII of 1819; C, the darpatnidar [illegible] then [illegible]

[illegible] sold his equity of redemption in the [illegible] concern to *B*, and by this sale, all the dena and powna, or liabilities and outstanding of the concern, were transferred from *A* to *B*. *C* then, after notice to *B*, obtained an order, by which *B* was made the judgment-debtor in the place of *A*. *B* took no proceedings within one year to set aside this order; but, after the lapse of three years, upon *C* attempting to execute his decree, instituted the present suit to set aside the order, and for an injunction to restrain *B* from executing the decree against him :—*Held*, that *B* was barred by limitation from suing to set aside that order, but he was entitled to an injunction restraining *C* personally from executing the decree against him. DHURONIDHUR SEN *v.* AGRA BANK I. L. R. 5 Calc. 86 : 4 C. L. R. 434

30. ——— *Civil Procedure Code (Act VIII of 1859), s 269, Summary proceedings under—Neglect to set aside order passed in such proceedings within one year by purchaser at a Court sale—Suit to establish title to property by such purchaser.* At a Court sale held on the 15th November 1871 in execution of a decree, the plaintiff's deceased husband purchased a house, but neglected to register his sale-certificate. In attempting to

LIMITATION ACT (XV OF 1877)—*contd.*

Schedule II—*contd.*

——— Art. 13—*concld.*

recover possession he was obstructed by the defendant who claimed the property as her own Summary proceedings under s. 269 of Act VIII of 1859 were thereupon instituted against the defendant, and the defendant's claim was upheld by an order passed on the 7th November 1872. In the meantime the plaintiff's husband having died, plaintiff filed on the 31st March 1873 a regular suit to establish her title On the 8th July 1873, she obtained a second certificate, and registered it. The Court of first instance awarded her claim but on appeal by the defendant the lower Appellate Court reversed that decree, on the ground that, at the institution of the suit, plaintiff had not a registered certificate of sale. That decree was confirmed on the 17th November 1879 on second appeal by the High Court On the 30th April 1880, plaintiff brought this suit on the strength of her registered

Judge having, by his order of the 7th November

within one year from its date BAI JAMNA *v.* BAI ICHHA . . . . I. L. R. 10 Bom. 604

——— Art. 14 (1871, Art. 16)—

See BENGAL TENANCY ACT, s 107
I. L. R. 28 Calc. 676

See BOMBAY LAND REVENUE ACT, s 135.
I. L R. 15 Bom. 424

See CHAUKIDARI CHAKRAN LAND, SETTLEMENT OF I L R. 32 Calc. 1107

See ESTATES PARTITION ACT (BENGAL ACT VIII OF 1876), s 116
I. L. R 33 Calc. 693

See RECORD OF RIGHTS.
11 C. W. N. 48

1. ——— *Suit for land of which a pottah has been granted by Collector after*

was governed by the 12 years' period of limitation running from the date of the grant by the Collector. KRISHNAMMA *v.* ACHAYYA I. L. R 2 Mad. 308

2. ——— *Suit for declaration of title—Suit to set aside an order of revenue authorities—Land Registration Act (VII of 1876),*

LIMITATION ACT (XV OF 1877)—*contd.*

Schedule II—*contd.*

——— Art. 14—*contd.*

s. 89. The Civil Court has no power to set aside an

Held, that such a decree was wrong, that the suit ... tiffs ... 14

I. L. R. 10 Calc 525

3. ——— *Suit to set aside order of Commissioner directing payment of Government revenue.* A suit to set aside an order of a

article. KEBUL RAM *v.* GOVERNMENT
5. W. R. 47

4. ——— *Suit to set aside order of Government officer—Order null and void.* Art. 14 of Sch. II of the Limitation Act with reference to suits to set aside orders of officers of Government does not apply to a case where the order is an absolute nullity. BEJOY CHAND MAHATAB BAHADUR *v.* KRISTO MOHINI DASI
I. L. R. 21 Calc. 626

5. ——— *Khoti Settlement Act (Bom Act I of 1880), ss. 20, 21, and 22—Act or order of Settlement Officer—Dhara lands—Suit for a declaration that lands were khoti lands—Jurisdiction of Civil Court—Collector, power of—Adverse*

LIMITATION ACT (XV OF 1877)—*contd.*

Schedule II—*contd.*

——— Art. 14—*contd.*

from its date, the suit was time-barred under Art. 14, Sch. II of the Limitation Act (XV of 1877) :—*Held*, reversing the decree, that the claim was not time-barred. Under ss. 20 and 21 of the Khoti Settlement Act, it is the "decision" on the rival claims of the parties which is open to reversal by the Civil Court, and not the consequences of that

being made by the Survey Officer between the

Held, further, that although the defendants might have paid only the assessment be ore 1878-79, their adverse possession of the lands as dhara did not begin to run against the plaintiffs until 1878-79, when such a claim was actively advanced by the defendants. The plaintiffs' cause of action arose in 1882, when the Survey Officer determined that the lands were dhara, and the present suit, which was brought within six years to reverse that decision was therefore in time FAKI GULAM MOHIDIN v. SAJNAK . . . **I. L R. 18 Bom. 244**

6. ——— *Land Revenue Code (Bom. Act V of 1879), ss. 37, 39, 135—Land presumably the property of the plaintiff—Plaintiff in uninterrupted possession—Revenue survey—Entry of the land in the register as Government waste land—Order of the Revenue Commissioner directing land*

was uninterruptedly in his possession till the 10th November 1895 was at the introduction of the revenue survey in 1882 entered in the register as Government waste land On the 12th November

defendant No 2 was placed in possession. The plaintiff thereupon, on the 15th November 1896,

sioner's order :—*Held*, that the plaintiff could

the suit was brought within one year of that date, it was in time. SURANNANNA DEVAPPA HEGDE v SECRETARY OF STATE FOR INDIA **I. L. R. 24 Bom. 435**

7. ——— *Estates Partition Act (Beng. Act VIII of 1876), ss. 116 and 150—Right of suit—Suit for possession.* A suit for pos-

8. ——— *Estates Partition Act (Bengal Act VIII of 1876), ss. 116, 149 and 150—Suit for possession.* In a partition proceeding before the Collector, under the Estates Partition

howla, the defence was that the suit not having

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I. L. R. 26 Calc. 367
s c. 6 C. W. N. 93

9. ——— *Execution of decree—Civil Procedure Code, ss 230 et seq.—Sale held by Collector, but afterwards set aside—Suit by auction-purchaser to have sale confirmed—Limitation.*

been transferred

LIMITATION ACT (XV OF 1877)—*contd.*

Schedule II—*contd.*

——— Art. 14—*contd.*

was entered up ; and, on the 21st of December, 1891, the execution case was struck off On the 12th of September, 1894, the auction-purchaser, who, after the sale had been set aside, had withdrawn the purchase-money paid in by her, brought a suit to have the sale in her favour confirmed —*Held*, that, inasmuch as the plaintiff's claim involved the setting aside of the Collector's order of the 30th of October, 1891, by which the sale to the plaintiff had been set aside, the suit was barred by limitation, having regard to Art 14 of the second Schedule to Act XV of 1877 *Mallarjun v Narhari, I L R 25 Bom. 337*, and *Banke Lal v Jagat Narain, I L R 22 All 168*, referred to *Ayyasami v Samiya, I. L. R. 8 Mad. 82*, and *Debi Charan v Bari Babu, All. Weekly Notes (1894) 78*, held not to be of effect since the ruling of the Privy Council in *Malkarjun v. Narhari* *Moti Lal v. Karrabuldin, I L R 25 Calc 179*, distinguished RAGHUNATH PRASAD *v.* KANIZ RASUL (1902) . I. L. R. 24 All. 467

10. ——— *Executive Government—Ultra vires order—Nullity* Art. 14 of Sch II of the Limitation Act is applicable to acts or orders done in the exercise of powers legally exerciseable by the executive, subject to conditions the fulfilment of which is denied by the party im-

BALVANT RAMCHANDRA *v.* SECRETARY OF STATE (1905) . . . I. L. R. 29 Bom. 480

11. ——— *Estates Partition Act (Bengal Act VIII of 1876), s. 116—Suit for*

partition proceedings. The Collector passed an order on the 9th August 1893, under s. 116 of the Estates Partition Act, directing that the partition

barred.

LIMITATION ACT (XV OF 1877)—*contd.*

Schedule II—*contd.*

——— Art. 14—*concld.*

I. L. R. 29 Calc. 367, distinguished RAJ CHANDRA ROY *v.* FAZIJUDDIN HOSSEIN (1905) I. L. R. 32 Calc. 716

12. ——— *Ganjam and*

decision by an Agent acting under the Ganjam and Vizagapatam Agency rules on a question of limitation is a 'special ground' which will authorise an interference by the High Court under Rule 20 of such rules. Art 14, Sch. II of the Limitation Act, does not apply to an act done by a Government officer, when such act purports to be done in pursuance of an order, but is, in fact, owing to a mistake, not so done Such an act is a nullity which need not be set aside MAHARAJA OF VIZIANAGRAM *v* SATRUCHERLA SOMASEKARA RAJU (1906) I. L. R. 30 Mad. 280

——— Arts 14, 45—*Alluvial accretion—Settlement of khas mehal land—Suit to set aside an order refusing settlement—Reg. IX of 1825.* A suit to set aside an order of the Commissioner refusing to make a settlement of *khas* mehal land with the plaintiff, who claimed settlement of it

——— Art. 15 (1871, Art. 17 ; 1859, s. 1, cl. 4)—

1. ——— *Suit to set aside*

14 W. R. 203

2. ——— *Suit to establish*

11 Bom

——— Art. 16 (1871, Art. 18 ; 1859, s. 1, cl. 4)—

——— *Act XIV of 1859, s 1, cl 4—Suit for revenue.* Cl. 4 of s. 1 of Act XIV of 1859 is not applicable where the revenue, for recovery of a portion of which a suit is brought, was

LIMITATION ACT (XV OF 1877)—*contd.*

Schedule II—*contd.*

———— Art. 16—*concld.*

a payment made to the Government on account of a clear and admitted liability, the object being to save the estate from sale Plaintiff may be entitled to recover from a co-sharer what he has paid to the Government beyond his just share, but his case is not governed by the 4th clause Cl. 16 allowing six years appears rather to be applicable. SHADEE LALL v. BHAWANEE . . . 2 N. W. 52

———— Art. 17 (1871, Art. 19)—*Suit for compensation for land—Cause of action.* In a cause decided under Act XIV of 1859 the cause of action in a suit for compensation for land taken for public purposes was held to arise from the time the plaintiff was dispossessed, and not from the date when his application for compensation was rejected HILLS v. MAGISTRATE OF NUDDEA 11 W. R. 1

This would not now be law.

———— Arts. 18, 120—*Land taken under Land Acquisition Act—Refusal by Collector to give award—Possession taken by Government.* Land had been taken under the Land Acquisition Act, possession having been taken by the Collector before an award was made. The Collector subsequently refused to give an award, on the ground that the land belonged to Government More than one year after the Collector's refusal to give an award the present suit was instituted for a declaration that the land belonged to the plaintiffs and for recovery of possession or in the alternative for damages for the wrongful refusal of the Collector to give the award The finding was that the land was the plaintiff's; but the plea of limitation was raised:—*Held*, that the suit was not barred by limitation The land had vested absolutely in Government, and so plaintiffs were not entitled to recover possession, but could only claim damages for breach of a statutory duty on the Collector's part. The suit contemplated by Art 18 of the Limitation Act is one for compensation for non-completion and that article does not apply to a case in which the land has vested in Government. Art. 120, therefore, governed the suit. MANTHARAVADI VENKAYYA v THE SECRETARY OF STATE (1904) . . . I. L. R. 27 Mad. 535

———— Art. 19 (1871, Art. 21)—

See FALSE IMPRISONMENT.

I. L. R. 9 Bom. 1
I. L R. 30 Calc 872

———— Art. 23 (1871, Art. 25; 1859, s. 1, cl. 2)—

1. ———— *Suit for malicious prosecution.* The limitation of one year prescribed by cl. 2, s 1, for bringing a suit for damages for injury caused to reputation by malicious prosecution in a Criminal Court runs from the date on which the plaintiff was discharged from

LIMITATION ACT (XV OF 1877)—*contd.*

Schedule II—*contd.*

———— Art. 23—*concld.*

custody, and not from the date on which the criminal charge was preferred. OBEDUL HOSSEIN v. GOLUCK CHUNDER . . 8 W. R. 443

2. ———— *Suit for damages for malicious statement—Cause of action* In an

previous to the suit, and there was nothing to show that any of the resulting damage which would constitute a cause of action occurred within a year before the suit:—*Held*, that the action was barred by s. 1, cl 2, Act XIV of 1859 The cause of action did not arise from the date of the plaintiff's discharge *Obedul Hossein* v. *Goluck Chunder, 8 W. R. 443*, distinguished HARINARAYAN MAITI v. AJODHYA RAM SHI . 1 B. L. R. S. N. 17 : 10 W. R. 308

3. ———— *Malicious prosecution—Termination of prosecution—Presentation of revision petition against acquittal—Commencement of period of limitation.* A suit for damages for malicious prosecution was brought more than one year from the date of the plaintiff's acquittal, but within a year from the dismissal of a revision petition which had been filed against the acquittal. On its being contended that the period of limi- ... of the

secution
ning of
—*Held*,
acquit-
a case

in which an appeal is preferred by Government against an acquittal. NARAYYA v. SESHAYYA I. L. R. 23 Mad. 24

———— Art. 24 (1871, Art. 24; 1859, s. 1, cl. 2)—

———— *Cause of action—Suit for defamation. Held*, that the cause of action in a suit for damages on account of defamation of character, arises on the date of the publication of the letter containing the defamatory matter, and that a suit not instituted within one year from that date is barred by cl. 2, s. 1, Act XIV of 1859 MAHOMED IMDADALLY v. AMEER ALY 2 Agra 47

———— Arts. 24, 25—*Arts. 23, 24, 25, 36—Limitation—Suit to recover damages on account of injury caused by a false report made to the police—Suit for damages for malicious prosecution.* The defendant laid information at a police station against the plaintiff, alleging that the plaintiff and several other persons entered the female apartments of the defendant,

LIMITATION ACT (XV OF 1877)—*contd.*

Schedule II—*contd.*

——— Arts. 24, 25—*contd.*

broke open locks, plundered his goods, and caused hurt to his wife. Thereupon an inquiry was made by the police, with the result that the information was found to be false The defendant was prosecuted under s 182 of the Indian Penal Code, convicted, and sentenced to six months' imprisonment The plaintiff thereafter sued to recover damages from the defendant "as compensation on account of

All. 121, referred to ISHRI *v.* MUHAMMAD HADI (1902) . . . . I. L. R. 24 All. 368

——— Art. 28—*Bengal Tenancy Act (VIII of 1885), ss 121, 140—Suit for wrongful distraint—Limitation Act (XV of 1877), Sch II, Arts 2, 28, 29* The limitation applicable to a suit for compensation for illegal distraint of crops by the landlord is one year from the date of the wrongful seizure Art 28 or 29, and not Art. 2, of the 2nd Schedule to the Limitation Act applies to such suits JAGATJIBAN NANDO ROY *v* SARAT CHANDRA GHOSH (1902)

7 C. W. N. 728

——— Art. 29 (1871, Art. 30 ; 1859, s. 1).

See ante, ART. 28 . 7 C. W. N. 728

See post, ARTS. 42 AND 29.

See ATTACHMENT BEFORE JUDGMENT I. L. R. 29 All. 615

1. ——— *Wrongful seizure of goods—Injury to personal property* Wrongful seizure of goods under process of law was held to be not an "injury to personal property" within the meaning of cl 2, s 1, Act XIV of 1859 INDERCHUND *v.* NUNDEERAM SING . . Cor. 3

But was governed by cl 16 of the same section. NUSEEUTOOLLAH *v* ROOP SONA BIBEE

7 W. R. 499

2. ——— *Suit for damages*

instituted an action for damages caused by the ...se fell ... that ... SINGH

24 W. R. 268

LIMITATION ACT (XV OF 1877)—*contd.*

Schedule II—*contd.*

——— Art. 29—*contd.*

3 ——— *Suit for money taken in execution of a decree—Compensation—Damages for loss of gain or interest upon money.* A suit to recover money wrongly taken under a decree is a suit for compensation to which the

JAVHERDAS *v.* GULAM CHAUDHRI

I. L. R. 8 Bom. 17

4 ——— *Mortgage—Presumption that person paying off a mortgage intends to keep the security alive—Power of Court to order refund of money wrongfully paid out of Court in another suit* In 1861 *B* granted a lease of his zamindari to *A* for 30 years, *A* undertaking to pay off all debts then due by *B* *B* died in 1882, and

January 5th, 1875, *A* had mortgaged the whole zamindari, which consisted of 22 villages, to *M* to

took to pay the balance out of the income of the estate, *M* releasing the 22 villages from the mortgage of January 5th, 1875 On June 28th, 1879,

of the sum paid into Court by the zamindar In a suit brought in 1885 by *S* against *L* to have her debt declared a first charge on the money paid into Court by the zamindar it was contended by *L* that *S* could have no decree for repayment of this sum, and that, if the money was wrongly paid under the order of the Court to *L*, it was wrongfully seized within the meaning of Art. 29 of Sch. II of the Limitation Act :—*Held*, that the Court had power to order a refund, and that Art. 29 of Sch II of the Limitation Act was not applicable. RUPABHAI *v* AUDIMULAM . I. L. R. 11 Mad. 345

5. ——— *Suit for money wrongly taken out in execution—Bengal Regulation VIII of 1819—Patni taluk.* A suit to recover the surplus proceeds of a sale held under Bengal

LIMITATION ACT (XV OF 1877)—*contd.*

Schedule II—*contd.*

———Art. 16—*concld.*

a payment made to the Government on account of a clear and admitted liability, the object being to save the estate from sale. Plaintiff may be entitled [illegible]

[illegible]

———Art. 17 (1871, Art. 19)—*Suit for compensation for land—Cause of action* In a cause decided under Act XIV of 1859 the cause of action in a suit for compensation for land taken for public purposes was held to arise from the time the plaintiff was dispossessed, and not from the date when his application for compensation was rejected. HILLS *v.* MAGISTRATE OF NUDDEA

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——— Arts. 18, 120—*Land taken under Land Acquisition Act—Refusal by Collector to give award—Possession taken by Government* Land had been taken under the Land Acquisition Act, possession having been taken by the Collector before an award was made The Collector subsequently refused to give an award, on the ground that the land belonged to Government More than one year after the Collector's refusal to give an award the present suit was instituted for a declaration that the land belonged to the plaintiffs and for recovery of possession or in the alternative for damages for the wrongful refusal of the Collector to give the award The finding was that the land was the plaintiff's; but the plea of limitation was raised:—*Held*, that the suit was not barred by limitation. The land had vested absolutely in Government, and so plaintiffs were not entitled to recover possession, but could only claim damages for breach of a statutory duty on the Collector's part. The suit contemplated by Art. 18 of the Limitation Act is one for compensation for non-completion and that article does not apply to a case in which the land has vested in Government. Art 120, therefore, governed the suit. MANTHA-RAVADI VENKAYYA *v.* THE SECRETARY OF STATE (1904) . . . I. L. R. 27 Mad. 535

———Art. 19 (1871, Art. 21)—

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I. L. R. 9 Bom. 1
I. L. R. 30 Calc. 872

——— Art. 23 (1871, Art. 25; 1859, s. 1, cl. 2)—

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LIMITATION ACT (XV OF 1877)—*contd.*

Schedule II—*contd.*

——— Art 23—*concld.*

custody, and not from the date on which the criminal charge was preferred. OBEDUL HOSSEIN *v.* GOLUCK CHUNDER . . 8 W. R. 443

2. ——— *Suit for damages for malicious statement—Cause of action* In an action for damages for making a false and malicious statement in consequence of which the Magistrate took proceedings in the course of which the plaintiff's house was searched, and he alleged he was thereby injured in various ways, the alleged false statement [illegible]

[illegible]

distinguished. HARINARAYAN MAITI *v* AJODHYA RAM SHI . 1 B. L. R. S. N. 17 : 10 W. R. 308

3. ——— *Malicious prosecution—Termination of prosecution—Presentation of revision petition against acquittal—Commencement of period of limitation.* A suit for damages for [illegible]

in which an appeal is preferred by Government against an acquittal NARAYYA *v* SESHAYYA

I. L. R. 23 Mad. 24

——— Art. 24 (1871, Art. 24; 1859, s. 1, cl. 2)—

——— *Cause of action—Suit for defamation Held*, that the cause of action in a suit for damages on account of defamation [illegible]

1859. MAHOMED IMDADALLY *v* AMEER ALY

2 Agra 47

——— Arts. 24, 25—*Arts. 23, 24, 25, 36—Limitation—Suit to recover damages on account of injury caused by a false report made to the police—Suit for damages for malicious prosecution.* The defendant laid information at a police station against the plaintiff, alleging that the plaintiff and several other persons entered the female apartments of the defendant,

LIMITATION ACT (XV OF 1877)—*contd.*

Schedule II—*contd.*

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broke open locks, plundered his goods, and caused hurt to his wife. Thereupon an inquiry was made by the police, with the result that the information was found to be false The defendant was prosecuted under s 182 of the Indian Penal Code, convicted, and sentenced to six months' imprisonment. The plaintiff thereafter sued to recover damages from the defendant "as compensation on account of mental distress and defamation." *Held*, that this was not a suit for damages on account of malicious prosecution, for no prosecution had been initiated; but it was a suit for compensation for libel or slander, the limitation applicable to which was that prescribed by Art 24 or Art. 25 of the second Schedule to Act XV of 1877. *Austin v Dowling, L R 5 C P. 534*, *Yeats v The Queen, L R Q B D 648*, and *Queen-Empress v. Bisheshar, I. L R 16 All. 124*, referred to. ISHRI *v* MUHAMMAD HADI (1902) . . . I. L. R. 24 All. 368

———— Art. 28—*Bengal Tenancy Act (VIII of 1885), ss 121, 140—Suit for wrongful distraint—Limitation Act (XV of 1877), Sch II, Arts 2, 28, 29.* The limitation applicable to a suit for compensation for illegal distraint of crops by the landlord is one year from the date of the wrongful seizure Art 28 or 29, and not Art. 2, of the 2nd Schedule to the Limitation Act applies to such suits JAGATJIBAN NANDO ROY *v.* SARAT CHANDRA GHOSH (1902)
7 C. W. N. 728

———— Art. 29 (1871, Art. 30 , 1859, s 1).

See ante, ART. 28 . 7 C. W. N. 728

See post, ARTS 42 AND 29

See ATTACHMENT BEFORE JUDGMENT
I. L. R. 29 All. 615

1. ———— *Wrongful seizure of goods—Injury to personal property.* Wrongful seizure of goods under process of law was held to be not an "injury to personal property" within the meaning of cl 2, s 1, Act XIV of 1859 INDERCHUND *v.* NUNDEERAM SING . . Cor. 3

But was governed by cl. 16 of the same section NUSEEUTOOLLAH *v* ROOP SONA BIBEE
7 W. R. 499

2. ———— *Suit for damages*

instituted an action for damages caused by the detention of the bullocks;—*Held*, that the case fell under Act IX of 1871, Sch II, Art 30, and that the suit was barred by limitation. RAM SINGH MOHAPATTUR *v.* BHOTTRO MANJEE SONTHAL
24 W. R. 268

LIMITATION ACT (XV OF 1877)—*contd.*

Schedule II—*contd.*

———— Art. 29—*contd.*

3 ———— *Suit for money taken in execution of a decree—Compensation—Damages for loss of gain or interest upon money.* A suit to recover money wrongly taken under a decree is a suit for compensation to which the

JAVHERDAS *v.* GULAM CHAUDHRI
I. L. R 8 Bom. 17

4 ———— *Mortgage—Pre-*

another suit. In 1861 B granted a lease of his

January 5th, 1875, *A* had mortgaged the whole zamindari, which consisted of 22 villages, to *M* to

took to pay the balance out of the income of the estate, *M* releasing the 22 villages from the mortgage of January 5th, 1875 On June 28th, 1879, *A* executed a mortgage of the 22 villages to *L* to secure repayment of R1,30,000 Of this sum,

brought by B's successor against *A* to recover the zamindari *L* was a party, but *S* was not In that suit *L* obtained an order for payment of R1,00,000 of the sum paid into Court by the zamindar In a suit brought in 1885 by *S* against *L* to have

5. ———— *Suit for money wrongly taken out in execution—Bengal Regulation VIII of 1819—Patni taluk.* A suit to recover the surplus proceeds of a sale held under Bengal

LIMITATION ACT (XV OF 1877)—*contd.*

Schedule II—*contd.*

———— Art. 29—*contd.*

Regulation VIII of 1819, wrongfully taken out by the defendant in execution of a decree against a third party, does not come under Art. 29, Sch. II, of the Limitation Act. *Jagjivan Javherdas* v. *Gulam Jilani Chaudhri, I. L. R. 8 Bom. 17,* dissented from. LAKSHMI PRIYA CHOWDHURANI *v.* RAMA KANTA SHAHA (1902)

I. L. R. 30 Calc. 440
s.c. 7 C. W. N. 520

6. ———————— *Civil Procedure Code*

The door was not broken open, nor was physical possession taken of the goods inside :—*Held,* that this, in effect, was actual seizure within the meaning of s. 269 of the Code of Civil Procedure, and that the suit was, in consequence, barred under Art 29 of Sch. II to the Limitation Act. MULTAN CHAND KANYALAL *v.* BANK OF MADRAS (1904)

I. L. R. 27 Mad. 346

7. ———— Arts 29, 36—*Suit for damages —Fictitious distress—Standing crops—Immoveable property.* The defendants, under fraudulent and fictitious proceedings of distraint between a fictitious landlord and a fictitious tenant, seized standing crops belonging to the plaintiff :—*Held,* that a suit for damages for the crops so seized not being specially provided for in the Act, is

I. L. R. 32 Calc. 459
s.c. 9 C. W. N. 376

8. ———— Arts. 29, 49, 62, 120—*Suit to recover proceeds of sale of moveable property wrongfully attached and sold, governed by Art. 29 or 49 of Sch. II.* *A, B* and *C* brought a suit against *D* and on the 10th December 1899 at-

senting), that limitation began to run from the date of the wrongful seizure ; that the suit for purposes of limitation fell within Art. 29 or 49 of Sch. II of the Limitation Act and that it was accordingly barred by limitation. *Per* SANKARAN-NAIR, *J.*—The suit was not barred, the Article which applied was either Art: 62 or 120 of the second Schedule to the Limitation Act. The wrong complained of was the payment to the defendants of the sale-proceeds, to which the plaintiff was entitled. Art. 29 did not apply, because so long as the property remained in the custody of the Court, it was not lost and plaintiff could not claim any compensation for its loss. The loss of the property was not a necessary consequence of the attachment, as the Civil Procedure Code contains provisions, which enable the party to establish his right and recover the property attached. Art. 29 only applied when the loss complained of was directly due to the seizure. Art. 49 did not apply as the suit was not for any specific moveable property and the defendants had not wrongfully taken, injured or detained such property. *Per* SIR ARNOLD WHITE, *C. J.*—Art. 29 of the second Schedule, which is specific in its terms, applied to the suit and not the general

property attached, cannot have the effect of post-

RAO *v.* THADINADA GANGARAJU (1908)

I. L. R. 31 Mad. 431

———— Art. 30 (1871, Art. 36)—

1. ———————— *Suit for compensation for value of goods short delivered—Suit for breach of contract.* The defendants were owners of a fleet of steamships plying periodically along the coast of British India by which they undertook to

nonfeasance independent of contract. BRITISH INDIA STEAM NAVIGATION COMPANY *v.* MAHAMMED ESACK & CO. . . . I. L. R. 3 Mad. 107

2. ———————— *Action against railway company for loss of goods.* An action

LIMITATION ACT (XV OF 1877)—*contd.*

Schedule II—*contd.*

——— Art. 30—*contd.*

against a railway company for loss of goods, when there is no contract, is governed by Sch II, cl 30, of the Limitation Act. *B. I. S N. Co.* v. *Mahommed Esack, I. L R. 3 Mad. 107*, followed. KALU RAM MAIGRAJ v. MADRAS RAILWAY COMPANY

I. L. R. 3 Mad. 240

3. ——— *Suit for value of goods carried by railway company, and lost—Railways Act (IV of 1879), s 11—Claim for compensation for loss of goods* In January 1890, a box containing rupees was delivered by the plaintiffs to the defendant company in Bombay to be carried to Saugor From the evidence it appeared that the plaintiffs did not intend to insure the box The box was taken to the booking office at the station, and the parcel clerk asked what it contained, and was told that it contained coin, and he learned casually that the amount was R6,000 The clerk charged R18-1-0 for the box, which was the "treasure rate" for carriage This sum was paid, and the box was

charge been paid. The plaintiffs obtained a decree in the lower Court On appeal, *held*, (reversing the decree) that the defendant company was not liable. *Per* BAYLEY, J —That the claim of the plaintiffs was one against the defendants for compensation

WAY CO. v RAISETT CHANDMULL

I. L. R. 19 Bom. 165

Reversing on appeal, RAISETT CHANDMULL v. GREAT INDIAN PENINSULA RAILWAY CO

I. L. R. 17 Bom. 723

4. ——— *Carrier by railway—Loss—Non-delivery of goods—Onus of*

bags was no proof of their loss, the onus of proving

LIMITATION ACT (XV OF 1877)—*contd.*

Schedule II—*contd.*

——— Art. 30—*concld.*

5. ——— and Art. 115—*Bill of lading—Contract, breach of, for delivery of goods—Onus of proof of loss of goods* Where a plaintiff

——— Art. 31—

See BILL OF LADING.

I. L. R. 26 Bom. 582

——— *As amended by Act X of 1899, s. 3—Carrier—Failure to deliver goods—Suit for compensation—Limitation.* A suit against a

AND RAILWAY COMPANY, LTD v NANDA LAL BANIK (1909) 13 C. W. N 851

1. ——— Art. 32—*Suit for the removal of*

Limitation Act (XV of 1877). *Raj Bahadur* v. *Birmha Singh, I. L R. 3 All 85*; *Amrit Lal* v. *Balbir, I. L R. 6 All 68*; and *Kedarnath Nag* v. *Khetterpaul Srittrutno, I. L. R. 6 Calc. 341*, referred to GANGADHAR v. ZAHURRIYA

I. L. R. 8 All. 44

2. ——— *Suit for removal of trees.* A suit by a zamindar for removal of trees planted in certain waste land of his village by persons who had no right to plant them, is governed by Art,

LIMITATION ACT (XV OF 1877)—*contd.*

Schedule II—*contd.*

———— Art. 32—*concld.*

120, Sch. II of the Limitation Act, and not by Art. 32, Sch. II of the Act. Where a defendant having a right to use property for a specified purpose perverts it to other purposes, and a suit has to be instituted for any relief in respect of any injurious con-

3. ———— *Bengal Tenancy Act (VIII of 1885), s. 25, cl. (a), and s. 155—Suit for* ... t (XV ... II of ... a suit ... Bengal ... , of a

tenant and removal of trees planted by him on land leased out for agricultural purposes. Art. 120 does not apply to such a case. *Kedarnath Nag* v. *Khettturpaul Srittrutno, I. L. R. 6 Calc. 341*, and *Gunesh Dass* v. *Gondour Koormi, I. L. R. 9 Calc. 147*, distinguished. SOMAN GOPE *v.* RAGHUBIR OJHA

I. L. R. 24 Calc. 160
1 C. W. N. 223

4. ———— *Suit for removal of trees from tenant's holding—N.-W. P. Rent Act (XII of 1881), s. 93. Held*, that a suit by zamindars for the removal of trees planted by a tenant on his cultivatory holding was governed by the limitation prescribed in Art. 32 of Sch. II of the Limitation Act, 1877. *Gangadhar* v. *Zahurriya, I. L. R. 8 All 446*, and *Musharaf Ali* v. *Iftikhar Husain, I. L. R. 10 All 634*, referred to. JAI KISHEN *v.* RAM LAL

I. L. R. 20 All. 519

5. ———— *Bengal Tenancy*

it was brought more than two years after the excavation of the tank. *Held*, that Art. 32 of Sch.

SAROOP DAS MONDOL *v.* JOGESHUR PAL CHOWDHRY . . . . . 3 C. W. N. 464

LIMITATION ACT (XV OF 1877)—*contd.*

Schedule II—*contd.*

———— Art. 34 (1871, Art. 41)—

———— *Suit for recovery of person of wife—Suits under Act XIV of 1859.* Suits for the recovery of a wife's person were, under the Act of 1859, held to be governed by cl. 16 of s. 1 of that Act. BHUGNA *v.* GUNGOOA

2 Agra 170

———— Art. 35—

See RESTITUTION OF CONJUGAL RIGHTS
I. L. R. 28 Calc. 37

1. ———— *Suit for possession of wife making wife defendant—Restitution of conjugal rights—Demand and refusal—Continuing cause of action—Limitation Act (XV of 1877), s. 23.* Where a husband sued to recover possession of his wife making the wife herself the defendant to the suit:—*Held*, that it was in substance a suit for the res-

to her husband is not essential to the husband's cause of action. *Quære*: Whether in case of a refusal by a wife of full age to a demand made by her husband, that she should return to him, a suit by him for her recovery is barred under Art. 35 of Sch. II of the Limitation Act or falls within the purview of s. 23 as based on a continuing cause of action. FAKIRGAUDA *v.* GANGI

I. L. R. 23 Bom. 307

2. ———— *Husband and wife—Parsis—Suit for restitution of conjugal rights—Limitation Act (XV of 1877), s. 23, Sch. II, Art.*

the suit. DHANJIBHOY BOMANJI *v.* HIRABAI (1901) . . . . I. L. R. 25 Bom. 644

3. ———— *Applicability to Hindus—Suits for restitution of conjugal rights—Starting point of limitation for.* A suit brought by a Hindu or Mahomedan husband against his wife for restitution of conjugal rights is barred under Art. 35, Sch. II of the Limtation Act, if

126, dissented from. SARAVANAI PERUMAL PILLAI *v.* POOVAYI (1905) . I. L. R. 28 Mad. 436

———— Art. 36 (1871, Art. 40)—

See HINDU LAW—ENDOWMENT—DEALING WITH, AND MANAGEMENT OF, ENDOWMENT . . . 5 C. W. N. 273

LIMITATION ACT (XV OF 1877)—*contd.*

Schedule II—*contd.*

——— Art. 36—*contd.*

1. ——— and Art. 23—*False complaint to Magistrate—Attachment and detention of goods—Action for damages* On the 26th of July

plaint, but continued the attachment pending the decision of the Civil Court to wh ch he referred the parties. *A* in 1879 brought a suit against *B* to establish his title to the grain, which was finally rejected on the 21st of June, 1880, and *B* recovered

quality and value:—*Held*, that the date of the complaint was the date of the wrong, and limitation ran from that date, or, at the latest, from the date of the attachment, and that *B*'s suit was therefore barred, whether the period applicable was one year under Art 23, or two years under Art 36, of Sch II of Act XV of 1877. MUDVIRAPA KULKARNI *v.* FAKIRAPA KENARDI I. L. R. 7 Bom. 427

2. ——— *Suit to recover money paid into Court, but afterwards recovered from third person in execution of decree* A suit to recover money paid by defendant into Court which was payable to the plaintiff and which was afterwards recovered by the defendant in the execution

3. ——— *Suit to set aside sale or for compensation—Boundaries erroneously described in sale proclamation—"Falsa demonstratio."* On the 17th November 1877, a certain piece of land was sold within the boundaries of which, as described in the proclamation, another piece of land was included. The land was sold in execution of a decree obtained by the first defend-

LIMITATION ACT (XV OF 1877)—*contd.*

Schedule II—*contd.*

——— Art. 36—*contd.*

MAHOMED SAYAD PHAKI *v.* NAVROJI BALABHAI I. L. R. 10 Bom. 214

4. ——— and Art. 115—*Shipping—Collision—Suit for damages for loss of ship by collision—Limitation in action of tort.* A suit to

cular instances. ESSOO BHAYAJI *v.* STEAMSHIP "SAVITRI" . . . I. L. R. 11 Bom. 133

5. ——— *Suit for damages for misappropriation of crops—Limitation Act (XV*

suit was not barred by limitation under Art 36.

of the plaintiffs' claim from being barred by limitation. If, however, it is regarded simply as a suit for damages for carrying away and misappropriating the crops, the case would fall under Art 49. *Pandah Gazi v. Jennuddi, I. L. R. 4 Calc.* 665, dissented from. *Puddolochan*

LIMITATION ACT (XV OF 1877)—*contd.*

Schedule II—*contd.*

——— Art. 36—*contd.*

Pardan v. *Baidyanath Maity*, Rule 381 of 1894, decided, 22nd August 1894, followed. *Held*, by RAMPINI, *J.*—None of the Arts 39, 49, and 109 applied to this case, and the suit was barred by the provision o Art. 36. SURAT LALL MONDAL v. UMAR HAJI . . . I. L. R. 22 Calc. 877

6. ——— *Suit for damages for cutting and carrying away crops—Act XV of 1877, Sch. II, Arts 39, 40, 49 and 109.* In a suit for damages for cutting and carrying away crops:—*Held*, by the Full Bench (RAMPINI, *J.*, dissenting), that such suit does not come within the terms of Art. 36 of Sch II of the Limitation Act (XV of 1877). *Per* MACLEAN, *C J.* (TREVELYAN, *J*, concurring)—Assuming that the case does not come within the terms of Art. 39, the case is governed by Art 49 The crops, though immoveable in the first place, become specific moveable property when severed, and the fact that the severance was a wrongful act, does not make any difference *Per* MACPHERSON, *J.*—The case is governed by Art. 49 or 48, as the crops, after they had been cut, come under the description of specific moveable property. Possibly also the case might

tiente) —The suit as framed not being one for compensation for trespass, Art. 39 does not apply. Art 48 or 49 also does not apply, as they deal with property which is *ab initio* move-

withheld. Art 36 therefore applied to the case *Essoo Bhayaji* v. *Steamship "Savitri," I L R 11 Bom 133*, referred to. *Pandah Gazi* v. *Jennudi*, *I. L. R 4 Calc. 665*, dissented from by TREVELYAN, *J* MANGUN JHA v DOLHIN GULAB KOER

I. L. R. 25 Calc. 692
2 C. W. N 265

7. ——— *Proceeding under Companies Act (VI of 1882), s. 214— Compensation against directors* The special proceeding provided for by s 214 of Act VI of 1882 is not subject to the limitation prescribed by Art. 36 of Sch. II of the Limitation Act. CONNELL v HIMALAYA BANK

I. L. R. 18 All. 12

8 ——— *Application by liquidator for money improperly distributed to shareholders* An application was made in 1894 under the Companies Act of 1882, s. 214, by an official liquidator appointed in 1891, praying that the directors of the company in liquidation be ordered to pay over to him a sum of money which had been improperly distributed among the shareholders:—*Held*, that Art 36 of the Limitation Act was not

LIMITATION ACT (XV OF 1877)—*contd.*

Schedule II—*contd.*

——— Art 36—*contd.*

applicable, and that the application was not barred by limitation. RAMASAMI v STREERAMULU CHETTI

I. L. R. 19 Mad. 149

9. ——— *Chairman of Municipal Council—Principal and agent—Liability for embezzlement by manager.* During the tenure of his office by the Chairman of a Municipal Council the manager embezzled sums of money. On the Council, within three years, but more than two

exist, and that therefore Arts. 89 and 90 of Sch II to the Limitation Act did not apply; that the case was governed by Art. 36, and that the suit was therefore barred by limitation. SRINIVASA AYYANGAR v. MUNICIPAL COUNCIL OF KARUR

I. L. R. 22 Mad. 342

10. ——— *Fictitious landlord and tenant—Distraint—Removal of crop—Suit for damages—Trespass—Conversion* Where it was found that the defendant had set up a fictitious landlord and a fictitious tenant in respect of the plaintiff's holding, and having obtained a process for distraint from Court, caused the standing crops on the hold-

Act. *Mohesh Chandra Das* v. *Hari Kar*, 9 C. W. N. 376, followed. *Mungun Jha* v. *Dulhin Golab Koer*, 2 C. W. N. 260, s.c. I L. R. 25 Calc. 692,

HAR (1908) . . . 12 C. W. N.

11. ——— Arts. 36, 39—*Limitation Act (XV of 1877), Sch. II, Art. 11—Order dismissing claim for default not an order made after investigation and need not be set aside within one year under Art 11 of Sch II of the Limitation Act* An order dismissing a claim presented under s. 278 ... for default is not

to such suit, although he has not had the ... aside within one year *Koyyana Chittemma* v. *Dooty Gavaramma*, I. L. R 29 Mad 225, referred to. *Sarat Chandra Bisu* v. *Tarini Prosad Pal*

LIMITATION ACT (XV OF 1877)—*contd.*

Schedule II—*contd.*

——— Art. 36—*concld.*

Choudry, *11 C. W. N. 487*, approved SARALA SUBBA RAU *v.* KAMSALA TIMMAYYA (1907)
I. L. R. 31 Mad. 5

——— Art. 37 (1871, Art. 31)—

See PRESCRIPTION—EASEMENTS—RIGHTS OF WATER
I. L. R. 6 Calc. 394

The period for a suit for obstructing a water-course is changed from two to three years by the Act of 1877.

——— *Suit for obstructing water-course* Under the Act of 1859, a suit for obstructing a water-course was *held* to be governed by the general limitation of six years under s 1, cl 16, of that Act, or if the plaintiff were out of possession, by the limitation of twelve years. BUDDUN THAKOOR *v* SUNKER DOSS
W. R. 1864, 106

VISWAWMBHARA RAJENDRA DEVA GARU *v* SARADHI CHARANA SAMANTARAYA GARU
3 Mad. 111

——— Art. 39 (1871, Art. 43)—

See ante, ART 36

1. ——— *Suit for compensation for trespass to land—Right to declaratory decree.* A person whose right to land has been disputed, and who has obtained an order, under Ch 40 of the Code of Criminal Procedure, 1872, from a Magistrate, declaring him entitled to retain possession, is entitled to sue for a declaration of his

—*Held*,
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ceased, and that the defendants were liable for any loss suffered within three years preceding the date of the suit. NARASIMMA CHARYA *v* RAGUPATHI CHARYA . . I. L. R. 6 Mad. 176

2 ——— *Right of caste to exclusive worship—Infringement of right* Four persons of the Chitpavan caste brought a suit in 1876, alleging that they and the members of

declaration of their right and an injunction restrain-

LIMITATION ACT (XV OF 1877)—*contd.*

Schedule II—*contd.*

——— Art 39—*concld.*

ing the defendants from interfering with it The

ference with it was more than a stated number of years ago Such acts are not continuous like possession, and their only operation is to create,

3. ——— and Art. 143—*Suit for damages for trespass—Suit to recover immoveable property from trespasser.* The limitation of three years provided in cl 43, Sch II of the Limitation

AHMEDNAGAR . . I. L. R. 6 Bom. 000

4. ——— *Suit to have drain closed—Cause of action.* The cause of action in a suit in which the plaintiff claimed to have a drain closed on the ground that it passed through his land, was held to count from the last act of trespass, each act of trespass causing a fresh right of action, and that the suit was not barred by cl 16, s. 1, Act XIV of 1859. RAMPHUL SAHOO *v* MISREE LALL . . . . 24 W. R. 97

——— Art. 40 (1871, Art. 11: 1859, s. 1, cl. 2)—

KINMOND *v.* JACKSON , I. L. R. 3 Calc. 17

——— Art. 42. There was *no special provision* under the former Acts, 1859 and 1871, for damages caused by a wrongful injunction.

——— *Suit for damages caused by wrongful injunction.* It was under the Act of 1859 doubted whether such a suit was

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KUMAR

B. L. R. Ap. 4 : 13 W. R. 305

Under both the former Acts, therefore, the general limitation of six years would probably have been

LIMITATION ACT (XV OF 1877)—*contd.*

Schedule II—*contd.*

———— **Art. 42**—*concld.*

applicable : now under Art. 42 of the present Act, the period is three years from the cessation of the injunction

———— **Arts. 42 and 29**—*Suit for compensation for wrongful seizure of moveable property under legal process—Suit for compensation for injury caused by an injunction wrongfully obtained.* The defendant, on the 18th of February 1898, attached, in execution of his decree, certain country soap as being the property of his judgment-debtor The plaintiff intervened, claiming the soap as his, and his objection was allowed The defendant thereupon instituted a suit, under s 283 of the Code of Civil Procedure, for declaration of the title of his judgment-debtor, but was defeated, and his appeal in that suit was dismissed on the 23rd of March, 1899 At the time of the institution of this suit, the defendant applied for and obtained an injunction directing that the soap should not be made over to the plaintiff Ultimately the plaintiff, on the 17th of June, 1899, after the dismissal of the defendant's appeal, obtained possession of the soap He then sued the defendant to recover damages for the loss of part and the deterioration of the rest of the soap while under the defendant's attachment .—*Held*, that Art. 42, and Art 29, of the second Schedule to the Indian Limitation Act, 1877, applied, and that the suit was not barred by limitation IDU MIAN v. RAHMAT-ULLAH (1901) . **I. L. R. 24 All. 146**

———— **Art. 44**—*Suit for possession by a person on attaining majority of property sold by guardian* A suit by a person to recover posses-

attains majority. SATIS CHANDRA GUHA v. CHUNDER KANT PYNE . . **3 C. W. N. 278**

———— **Arts. 44, 144**—*Suits for cancellation of deed of sale and for possession* A suit for cancelling a deed of sale executed by the plaintiff's guardian on the ground of fraud and misrepresentation and for recovery of possession of the properties comprised therein, falls within Art. 44 and not within Art. 144 of Sch II of the Limitation Act. *Unni v. Kunchi Amma, I. L. R. 14 Mad. 26*, distinguished. *Kamakshi Natakan v. Ramasami Nayakan, Second Appeal No 929 of 1895, unreported*, distinguished RANGA REDDI v. NARAYANA REDDI (1905) . **I. L. R. 28 Mad. 423**

———— **Art. 45 (1871, Art. 44 ; 1859, s. 1, cl. 6)**—

1. ———— *Assessment or revenue or rent, order for—Award.* An assessment for revenue or rent by a Collector was not a judicial award within the meaning of cl. 6 of s. 1, Act XIV of 1859. The term "award" as used in that clause means an adjudication on rights as between rival claimants, made by a Revenue officer under the judicial powers conferred by the regulations mentioned in such clause. HUREE MOHUN GHOSAUL v. GOVERNMENT . . . . . **2 N. W. 226**

2. ———— *Judicial award—Proceeding of Settlement Officer as to cess. Held,*

3. ———— *Order of Revenue authorities as to registration of names. Held*, that an order passed by Revenue authorities for entry of names in a proprietary register, not being passed after a trial in a suit of the nature referred to in cl. 2, s. 23, Regulation VIII of 1822, was not an order in a suit to which the term of limitation mentioned in cl. 6, s. 1, Act XIV of 1859, applies MAHDO SINGH v. JEHANGEER . **2 Agra 229**

4. ———— *Award of Revenue Court—Judicial award—Limitation Act, 1859, s. 1, cl 6.* Cl.
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Hurree Mohan Ghosal v. Government, 2 N. W. 226 ; and *Sukhai v. Daryai, I. L. R. 1 All. 374*, referred to. KRISTO MONI GUPTA v SECRETARY OF STATE FOR INDIA . . **3 C. W. N. 99**

5. ———— *Entry made by Settlement Officer.* An entry made by a Settlement officer in the report of a co-sharer and on the strength of the report of the patwari and canoongoe in the absence of the party against whom it is made, was not an award within the provisions of s 1, cl 6, of Act XIV of 1859. KINHAR DANSHA v. GOKURUN , ... **3 Agra 318**

6. ———— *Suit to contest adjudication of boundaries by Revenue Court under Act I of 1847.* An adjudication of the boundaries

7. ———— *Order of Collector with reference to rights of parties already determined.* Where the relative rights of the parties as landlord and tenants were determined by competent authority and the matter referred for decision of the Collector was to commute the rents paid in kind into money rents, and that officer in so doing decided the rights of the parties declaring

LIMITATION ACT (XV OF 1877)—*contd.*

Schedule II—*contd*

——— Art. 45—*contd*

the tenants sub-proprietors and directing them to pay at the revenue rates with an addition of 5 per cent. allowance to the landlord :—*Held*, that the order of the Collector was not an award of the nature contemplated by cl 6, s 1, Act XIV of 1859 BUNSEE *v.* RAMSOOKH . . 3 Agra 384

8. ——— *Suit to set aside partition* A suit to avoid a batwara division by the Collector may be brought within six years, s. 1, cl 6, of Act XIV of 1859 does not apply to it. OODOY SINGH *v* PALUCK SINGH . 16 W. R. 27

9. ——— *Suit to vary boundaries in survey award* A suit substantially to vary the boundaries laid down in a survey award must be brought within three years from the date of the award JANKEERAM MOHUNT *v* HARADHAN BANERJEE W. R. 1864, 38

10. ——— *Act of 1871, Art. 44—Proceedings by Settlement officer to decide possession—Award—Beng Reg VII of 1822.* D

name was registered in the record of rights in respect of his proprietary rights in a certain village. In 1871 *G* died, and on her death *B*, *R*, and *M* preferred separate claims to have their names registered in respect of such rights The Assistant Settlement officer before whom these claims came for decision, professing himself unable to decide

disposed of the case on the evidence taken by the Assistant Settlement officer, and held that the claimants were in joint possession of such rights, and it was proper that the name of each should be registered in respect of a one-third share of such rights He at the same time intimated to the parties that, unless they settled their claims in the Civil Court or by arbitration before the khewat was framed, it would be framed as he had directed. In 1873 *R* died, and on her death *M* procured the registration of his name in respect of her one-third share. In 1879 *B* sued *M* for possession of the one-third share which he had obtained under the proceeding of the Settlement officer, and of *R*'s one-third share, claiming as heir to her deceased husband *D*, and alleging that *M* was not the legitimate son of *D*, and was therefore not entitled to succeed to such rights *M* set up as a defence that, as the proceeding of the Settlement officer was an award under Regulation VII of 1822, and the suit was one to contest such award, and it had not been brought within three years from the date of such award, the suit was barred by limitation :—*Held*, that the suit was not barred by limitation under No. 44, Sch II of Act IX of 1871, or, No. 45, Sch. II of Act XV of 1877, as the proceeding of the Settlement officer was not an award under Regulation VII of 1822 BHAONI *v.* MAHARAJ SINGH . . . I. L. R. 3 All. 738

11. ——— *Application of section* Cl 6, s 1, Act XIV of 1859, provides that possessory titles by virtue of awards under the regulations there mentioned shall become final unless questioned within three years; but that will not enable a person to come in within three years after the date of such awards and recover possession of lands in respect of which his suit has been barred by the other provisions of the law of limitation. BEER CHUNDER JOOBRAJ *v* RAMGUTTY DUTT . . . 8 W. R. 209

12. ——— *Settlement award —Beng Reg VII of 1822.* On a Collector proceeding to settle a mortgaged estate, both mortgagee and mortgagor appeared before him and contended for the right of settlement His award under Regulation VII of 1822 was in favour of the mortgagee in possession on the ground that the period of redemption had expired, and he settled the estate with him :—*Held*, that, as the mortgagor allowed that award to remain unchallenged for three years, it became binding under cl. 6, s 1, Act XIV of 1859. SREECHUND BABOO *v.* MULLICK CHOOLHUN . . . . 9 W. R. 564

13. ——— *Act XIII of 1848—Suit to contest award—Suit to amend settlement—Cause of action.* The limitation declared by Act XIII of 1848, and cl 6, s 1, Act XIV of 1859, applied only to suits for the purpose of contesting the justice of an award as between the contending parties, and not to those the object of which was to amend a settlement and establish the right of persons who were not before the Collector :—*Held*, that the cause of action to the plaintiff did not accrue from the date of the orders of Government directing to discontinue the payment of malikana, but from that of the Collector's by which it became known to the plaintiff that he would henceforth be deprived of his proprietary title. HIMMUT SINGH *v* COLLECTOR OF BIJNOUR . 2 Agra 258

14. ——— *Survey award, appeal from—Co-sharers* *A* and *B* were similarly affected by a survey award *A* appealed, but *B*

15. ——— *Survey award—Suit for reversal of, and for possession.* Where *A* sued for reversal of a survey award, and for

LIMITATION ACT (XV OF 1877)—*contd.*

Schedule II—*contd.*

——— **Art. 45**—*concld.*

recovery of possession, alleging dispossession subsequent to the date of the award:—*Held*, that his suit was not barred by reason of its being brought beyond three years from the date of the award. MOZAFFUR ALLY *v.* GIRISH CHANDRA DAS

1 B. L. R. A. C. 25 : 10 W. R. 71

16. ——— *Order of Board of Revenue under Beng. Reg. VII of 1822—Suit for possession and declaration of title.* An order of the Board of Revenue under Regulation VII of 1822, declaring a particular person entitled to a settlement of certa n lan ...

with Art. 45, Sch. II of Act XV of 1877), from bringing a suit to establish his title to, and to recover possession of, the lands after three years and within the general law of limitation. KANTO PROSAD HAZARI *v.* ASAD ALI KHAN

5 C. L. R. 452

See SHIBO DOORGA CHOWDHRAIN *v* HOSSEIN ALI CHOWDHRY . . . . **6 W. R. 218**

17. ——— *Cause of action, date of* *A* appealed from the award of a Survey officer to the Commissioner, who summarily rejected the appeal. The order of the Commissioner was confirmed by the Board of Revenue without entering into the merits:—*Held*, that, the period of limitation ran from the date of the order of the Board of Revenue KRISHNA CHANDRA DAS *v.* MAHOMED AFZAL

1 B. L. R. A. C. 11 : 10 W. R. 51

——— **Art. 46 (1871, Art. 45; 1859, s. 1, cl. 6)**—

1. ——— *Order of Settlement Officer—Award* An order of a Settlement Officer upon an enquiry made at the instance of the zamindar, and for the purpose of the preparation ...

inapplicable to a suit to assert such claim. MAHOMED ALI KHAN *v.* OMRAO SINGH . **2 N. W. 425**

2. ——— *Suit for possession—Boundaries—Partition.* In a suit by the purchaser of one estate to recover certain lands alleged to belong to his estate, which the defendants held as a part of another estate, the plaintiff needlessly prayed that a certain order passed in the cause of the batwara of the defendant's estate should be set aside. As the defendant failed to show that the Collector, in laying down the boundaries of the estate then under batwara, was proceeding under Regulation VII of 1832:—*Held*, that the map made by him in carrying out the batwara of

LIMITATION ACT (XV OF 1877)—*contd.*

Schedule II—*contd.*

——— **Art. 46**—*contd.*

another estate was not an award binding on the defendant, and that the case therefore was not barred by limitation under cl. 6, s. 1, Act XIV of 1859. RUGHOOBUR SINGH *v.* HURREE PERSHAD . . . . . **6 W. R. 75**

3. ——— *Survey award—Suit for possession—Res judicata.* In a thakbust map land was demarcated as belonging to *A*. *B* claimed that it belonged to him jointly with *A*. On 18th November 1858, the map was rectified by ...

... possession, to set aside the survey ...

in possession to have his title confirmed was not a suit to recover property within cl. 6 of s. 1, and was not barred by reason of its not being brought within three years from the date of the award. MAHIMA CHANDRA CHUCKERBUTTY *v.* RAJKUMAR CHUCKERBUTTY

1 B. L. R. A. C. 1 : 10 W. R. 23

4. ——— *Award of Settlement Officer* Where a claim to the proprietary rights was preferred by the plaintiffs at the time of settlement, and the Settlement Officer, on the objection of the defendants, ordered the plaintiffs to be recorded as hereditary cultivators, and referred them to the Civil Court to establish their right:—*Held*, that the present suit, brought to establish that right not having been instituted within three years from the date of the award of the Settlement Officer, was barred by limitation. SURDAR KHAN *v.* CHUNDOO . **1 Agra 228**

5. ——— *Award of Settlement Officer.* *Held*, that the plaintiffs' claim to lands awarded to defendant in settlement proceedings was not barred by the period of limitation provided in cl. 6, s 1, Act XIV of 1859, as they were no parties to the settlement proceedings and no judicial award or order affecting them was passed by the Settlement Officer. RAMAISHER SINGH *v.* SHAIVA ZALIM SINGH . . . . **2 Agra 8**

6. ——— *Settlement award—Beng. Reg. VII of 1822.* A Settlement Officer by a certain proceeding recognized the plaintiff's right to the property in suit, and, declaring them not to be clearly shown to be out of possession of it ordered their names to be recorded in the proprie-

LIMITATION ACT (XV OF 1877)—*contd.*

Schedule II—*contd.*

——— **Art. 46—*contd.***

tary register. The plaintiffs subsequently brought a suit for establishment and declaration of right to partition and possession of the property:—*Held*, that the proceeding of the Settlement Officer was undoubtedly an award under Reg VII of 1822, and that, as the plaintiffs sued for possession, and did not allege that they had been dispossessed since the award, thus raising the presumption that they were not in possession at the time, and as their suit was in substance and effect a suit to recover property comprised in an award the suit was barred by limitation, not having been instituted within three years GUNESHEE LALL v. TEKAM KOOER 5 N. W. 78

——— **Art. 47 (1871, Art. 46; 1859, s. 1, cl. 7—**

1. ——— *Suit for property respecting which no final award is made* A suit to recover property respecting which no final award has been passed under Act IV of 1840 was not barred by limitation, under cl. 7, s. 1, Act XIV of 1859, but might be brought within twelve years from the date of ouster DYRAM SAHOO v SOGRAH . . . . . 3 W. R 174

2. ——— *Verbal order of Magistrate under Act IV of 1840* *Held*, that a verbal order of the Magistrate under Act IV of 1840 cannot be regarded as an order or award within the meaning of the term of cl 7, Act XIV of 1859. GUNGA PERSHAD v MAHOMED KOOTOOB ALUM . . . . . . 2 Agra 27

3. ——— *Order in suit under Act IV of 1840—Benamidar.* N, in 1852, purchased from *R* a patni talukh in the name of *H* In 1854 *N* died, leaving two sons, one of whom was *K*, and a widow. The sons allowed the widow to remain in possession In December 1854 *R* made a

sold the property. On 28th December 1866 *K* and his brother sued *H R* and the purchaser to recover possession —*Held* (reversing the decision of the Courts below), that the suit was not barred by s. 1, cl. 7, of Act XIV of 1859. The mere fact that the Act IV award was passed against *H*, a benamidar of the plaintiffs, was not sufficient to show that they were bound by that award unless evidence was given that they gave authority to *H*, express or implied, to act in the matter on their behalf. KHAGENDRONATH MALIK v. RAKHAL DAS SIRKAR . . . . 2 B. L. R. S N. 1

4. ——— *Order of Magistrate for attachment.* Where a Magistrate passed an order for attachment on the finding that neither of the parties then at issue was in possession:—

LIMITATION ACT (XV OF 1877)—*contd.*

Schedule II—*contd*

——— **Art. 47—*contd.***

Held, that it was not an order respecting possession within the meaning of cl 7, s. 1, Act XIV of 1859, and therefore the limitation provided by that clause was not applicable. CHUJ MULL v KHYRATEE . . . . . . 3 Agra 65

5. ——— *Order dismissing complaint under Act IV of 1840.* A Magistrate's

11 W. R. 477

6. ——— *Order to record letter settling proceedings.* Where the result of cer-

the record:—*Held*, that such order was not an order in the sense of Act XIV of 1859, s 1, cl 7. MOSAHEB ALI v. NUND KISHORE . 20 W. R. 316

7. ——— *Act XIV of 1859, s 1, cl 7—Order as to possession under Criminal Procedure Code, 1861, s 318.* It was held under s. 1, cl 7, of the Act of 1859, that that clause did not apply to an order as to possession under the Criminal Procedure Code, s 318. DOORJUN SINGH v SHIBBA . . . . . 3 N. W. 171

GOBIND CHUNDER SHAHA v. ASHRUF ALI MEAH. GREGORY v GOURDOSS SHAHA 8 W. R. 490

UNDHOOB NARAIN v CHUTTURDHAREE SINGH 9 W. R. 480

possession under the Criminal Procedure Codes

8. ——— *Order under Criminal Procedure Code, 1861, s 319—Order of attachment* The plaintiff sued for the establish-

lower Courts being of opinion that the latter portion of the order amounted to an attachment of the property in dispute under s. 319 of Act XXV of 1861. It was held that the order to the tehsildar

LIMITATION ACT (XV OF 1877)—*contd.*

Schedule II—*contd.*

——— Art. 47—*contd.*

was not an attachment contemplated by that section. DURGA *v* MANGAL . . 7 N. W. 35

9. ——————— *Suit for possession of chur lands re-formed after diluvion—Order for possession in Criminal Court.* Certain chur lands, which had been submerged, having re-formed, were claimed by a number of parties. In a proceeding under s. 318 of Act XXV of 1861, the Magistrate in January 1871 directed possession to be given to certain persons known as the Roys. In 1872 the present appellants instituted a suit against the

[illegible]

can only apply between the parties whose posses-

[illegible]

regular suit in ousting the parties put in possession by the Magistrate *Durgaram Roy* v. *Nursing Deb, 2 B. L. R A C 254;* and *Chintamoni* v. *Iswar Chunder, 3 B L R Ap 122,* cited AUKHIL CHUNDER CHOWDHRY *v.* DELAWAR HOSSEIN

6 C. L. R. 93

10. ——————— *Order of Criminal Court as to possession—Parties bound by order—Criminal Procedure Code (1882), s. 145* The limitation of three years prescribed by Art 47, Sch. II of the Limitation Act (1877), applies to all persons bound by, or parties to, an order under s. 145 of the Criminal Procedure Code, and to any other persons who may claim the property through any such persons under a title derived subsequent to the order. *Aukhil Chunder Chowdhry* v. *Mirza Delawar Choudhry, 6 C. L. R 93,* distinguished. JOGENDRA KISHORE ROY CHOWDHRY *v.* BROJENDRA KISHORE ROY CHOWDHRY

I. L. R. 23 Calc. 731

11 ——————— *Criminal Procedure Code, 1861, Ch. XXII, s 320—Order of Criminal Court as to possession.* A dispute having arisen between plaintiff and defendant as to the ownership of certain landed property, the Magistrate, being informed of the dispute, held an inquiry under the provisions of Ch. XXII, Act XXV of 1861, and, finding himself unable to "determine who was in actual possession of the lands," placed them in charge of the Sub-Magistrate;—*Held*, that this was not an order respecting "the possession of property," but an attachment proceeding recorded because the Magistrate was unable to determine

LIMITATION ACT (XV OF 1877)—*contd.*

Schedule II—*contd.*

——— Art. 47—*contd.*

[illegible]

I. L. R. 1 Mad. 309

12. ——————— *Possession, suit for—Order of Criminal Court for possession.* In a dispute between *A* and *B* concerning the possession of a certain talukh, the Criminal Court made an order under s. 530 of the Code of Criminal Procedure retaining *B* in possession; and this

[illegible]

Court of Session Art 47 of Sch. II, Act XV of 1877, refers to immoveable as well as moveable property. KANGALI CHURN SHA *v.* ZOHURRUDONNISSA KHATOON

I. L. R. 6 Calc. 709 : 8 C. L. R. 154

See AKILANDAMMAL *v.* PERIASAMI PILLAI

I. L. R. 1 Mad. 309

13. ——————— *Criminal Procedure Code (Act X of 1882), s. 146—Suit for possession of property attached by a Magistrate under s. 146.* Art. 47 of the second Schedule to Act XV of 1877 does not apply to a suit brought by one of the two claimants against the other to recover possession of property which has been attached by a Magistrate under the provision of s. 146 of the Code of Criminal Procedure. *Chuj Mull* v. *Khyratee, 3 Agra 65,* and *Akilandammal* v. *Periasami Pillai, I. L. R. 1 Mad. 309,* referred to GOSWAMI RANCHOR LALJI *v.* GIRDHARIJI

I. L. R. 20 All. 120

14. ——————— and Art 144—*Ejectment Right to sue in—Order made in proceeding where a dispute exists concerning the possession of land—Criminal Procedure Code (Act X of 1872), s. 530—Criminal Procedure Code (Act X of 1882), s 145.*

[illegible]

zamindar having neglected to perform the agreement, the Court in December 1881 made an order for the execution of a pottah, and directed that the pottah should take effect from the date of the original agreement. The pottah was executed on the 19th December 1881. In 1880 *A* instituted a [illegible] of the Criminal Procedure [illegible] s. 145 [illegible] missed [illegible] ablish possession. *B*, having purchased the interests of two of the co-sharers, instituted a suit on the 11th May 1888 against certain persons who had been let

LIMITATION ACT (XV OF 1877)—contd.

Schedule II—*contd.*

———— Art. 47—*contd*

into possession by the zamindar, the other co-sharers being added as plaintiffs :—*Held*, that Art.

cember 1881 when the pottah was executed. *Held*, further, that the suit was not barred under Art 144, as limitation did not commence to run until the pottah had actually been executed Art. 47 of the Limitation Act contemplates a right to sue in ejectment being in existence at the time of the passing of an order under s. 145 of the Code of Criminal Procedure BOLAI CHAND GHOSAL *v.* SAMIRUDDIN MANDAL . **I. L. R. 19 Calc. 646**

15. ———————— *Khoti Act (Bom Act I of 1880), ss 20, 21, 22—Decision of Survey Officer as to nature of tenure—Date of framing botkhat.* The plaintiffs were khots and defendants were their yearly tenants in occupation of their khoti khasgi lands In 1890 the Survey Officer, purporting to act under s 20 of the Bombay Khoti Act (Bombay Act I of 1880), decided that defendants were occupancy tenants, but the plaintiffs did not come to know of this decision till 1893, when the botkhat was prepared and signed Shortly afterwards the plaintiffs took forcible possession of the lands Thereupon the defendants filed a suit in the Mamlatdar's Court to recover possession, alleging that they were owners of the land, and that they had been illegally dispossessed The Mamlatdar restored them to possession. In 1896 plaintiffs filed the present suit to eject defendants Defendants pleaded (*inter alia*) that the suit was bad for want of notice to quit, and that the claim was time-barred :—*Held*, that the suit was within time, the cause of action having accrued in 1893, when the botkhat was prepared, and not in 1890, when the Survey Officer passed his decision MAHIPAT RANE *v* LAKSHMAN . . **I. L. R. 24 Bom. 426**

16 ———————— *Limitation Act (XIV of 1859), s. 1, cl. 7—Order of Mamlatdar's Court as to possession—Bom. Reg V of 1827—Limitation Act (IX of 1871), s 29 ; (XV of 1877), s 28 —Extinction of title—Bar of remedy—Statutes of limitation—Construction of statutes* In 1864 *A* sued his co-sharer *B* in the Mamlatdar's Court for possession of certain land and obtained a decree. In 1874 *B* got possession of the land by inducing

LIMITATION ACT (XV OF 1877)—contd.

Schedule II—*contd.*

——— Art. 47—*contd.*

disallowed this contention. It also held that the Mamlatdar's decision as to possession did not affect a co-sharer's claim for partition. It therefore awarded the plaintiff *C* only the share of his

for the partition of property comprised in a Mamlatdar's order is not a suit to recover such property and therefore does not fall within cl. 7 of s 1 of Act XIV of 1859 ; and whether that property is the only one of which a partition is claimed or whether it is one of several such properties, is not material. In the Presidency of Bombay it is only in those cases in which the possession of property has been

"suits to recover the property comprised in the order" of the Mamlatdar, would have barred a suit by *B* not based on a claim to recover the property (which implies a claim to exclude the defendant

being in limitation of common right are not to be extended by construction to cases not clearly included within their terms. PARASHRAM JETHMAL *v.* RAKHMA . . **I. L. R. 15 Bom 299**

17. ———————— *Order of Mamlatdar under Bom. Act V of 1864—Act XVI of 1838.* An order of the Court of the Mamlatdar under the last clause of s 1 of Bombay Act V of 1864, recognizing the possession of a party and enjoining others *from disturbing that possession*, was not an order under Act XVI of 1838 ; and the limitation of three years, prescribed in cl 7 of s. 1 of Act XIV of 1859, did not apply to a suit brought to establish a right against the operation of such an order in the regular Civil Court. BABAJI *v.* ANNA **10 Bom. 479**

18. ———————— *Order of Mamlatdar under Bom. Act V of 1864.* *A* brought a suit

LIMITATION ACT (XV OF 1877)—*contd.*

Schedule II—*contd.*

———— **Art. 47**—*contd.*

in a Mamlatdar's Court, under Bombay Act V of 1864, to recover possession of certain land from *B. C* joined in the proceedings *proprio motu*, and the Mamlatdar, on the 1st May 1865, made an order awarding possession of the land to *C.* In an action brought by *A* against *C* in the Civil Court on the 18th October 1869, *C* pleaded limitation under *s. 1, cl. 7, Act XIV of 1859*, as the action was not filed within three years of the Mamlatdar's order:—*Held*, that the action was not barred by limitation, as *C* was not properly a defendant in the Mamlatdar's Court, and that therefore the Mamlatdar had no power to make an order regarding him VISHVANATHRAV KACHESVAR *v* NARAYAN BIN GOPAL KHAPE . **9 Bom. 424**

19. ———— *Right of possession claimed by tenant against landlord—Mortgage by landlord—Possessory suit in the Mamlatdar's Court by the tenant against the mortgagor—Decree in favour of the tenant—Assignment of mortgage by mortgagee—Purchase of the equity of redemption by the assignee—Merger—Suit brought by the assignee to recover possession—Assignee bound by Mamlatdar's order against mortgagor—Mamlatdars Act (Bom. Act V of 1864), s 15—Mamlatdars Act (Bom Act III of 1876), s. 18—Limitation Act (IX of 1871), Sch. II, Art 46* One *R*, who was the owner of the land in dispute, mortgaged it to *P* in *July 1870* In *October 1876*, *B*, a tenant of the land, obtained an injunction against *R* restraining him from interfering with his (*B*'s) possession in a possessory suit which was filed in the Mamlatdar's Court in May 1876. In July 1877, *P* obtained a decree on his mortgage, and in execution he got possession of the property from *R* (the mortgagor) in June 1879 The plaintiff who was the assignee of both *P* and *R* (mortgagee and mortgagor), sued *B* in ejectment in September 1888. Both the lower Courts allowed the claim On second appeal by *B*, the plaintiff (*inter alia*) contended that, having taken an assignment of the mortgage from the mortgagee, he was not bound by the proceedings in the Mamlatdar's Court in 1876 against the mortgagor. But held that, when the plaintiff, having previously taken an assignment of *P*'s mortgage, purchased the equity of redemption from *R*, the mortgage was extinguished, there being no circumstance from which an intention could be presumed to keep it alive. The plaintiff could not stand in a better position than *R*, and was bound by the proceedings in the Mamlatdar's Court, notwithstanding that he had taken an assignment of *P*'s mortgage In those proceedings the defendant had claimed a right of permanent possession as against *R*, and the effect of the Mamlatdar's order was to continue him in possession until ejected by the decree of a Civil Court. It was therefore incumbent upon *R* to bring a suit within three years from the Mamlatdar's order, as provided by Art 46, Sch. II of the Limitation Act (IX of 1871), and that not having been done, the plaintiff, who derived his title from *R*, could not recover possession from the defendant. BAPU BIN MAHADAJI *v.* MAHADAJI VASUDEO

I. L. R. 18 Bom. 348

20. ———— *Finding by Mamlatdar as to possession—Subsequent contrary finding by Civil Court—Effect of Mamlatdar's order—Limitation Act, s. 28—Suit by party against whom* [illegible]

In 1881, *she brought a possessory suit* against the first defendant in the Mamlatdar's Court, which suit was dismissed in January 1885, the Mamlatdar holding that she had not been in possession In a civil suit, however, which (pending the proceedings in the Mamlatdar's Court) she had filed against the first defendant in the Court of the Subordinate Judge of Haveri, the Judge found that she had been in possession since 1880, and awarded her damages against the first defendant (who was held to be her farm servant) for crops which had been taken away by him In 1887, the second defendant as mortgagee from defendant No. 1 obtained a decree against plaintiff in the Mamlatdar's Court awarding him possession of [illegible] ...00, ...and ...ant ...nd, and that the suit was barred by limitation, inasmuch as the plaintiff had not brought a suit to establish her right within three years after the Mamlatdar's order in 1885 dismissing her possessory suit *Held*, that the Mamlatdar's order of January 1885 had no conclusive effect, and was rendered ineffectual by the subsequent decree of the Civil Court; and as the plaintiff continued in possession, notwithstanding that order, down to 1887, *the present suit was not* barred by limitation, and neither her remedy nor her right to the land was extinguished KRISHNACHARYA *v.* LINGAWA

I. L. R. 20 Bom. 270

21. ———— *Non-payment of purchase-money—Suit for possession by vendee who has not paid the purchase-money—Remedy of vendor—Limitation—Limitation Act (XV of 1877), Sch. II, Art. 47—Vendor and purchaser.* The plaintiffs owned certain land on which the defendant, with the plaintiffs' leave, built a house Disputes arose between plaintiffs and defendant, and in February 1893, the defendant obtained an order from the Mamlatdar in a possessory suit against the plaintiffs directing the plaintiffs to give up possession of the property to him. In *August* 1893, an agreement was made between them, in pursuance

LIMITATION ACT (XV OF 1877)—*contd.*

Schedule II—*contd.*

———— **Art. 47—*contd.***

of which the defendant executed a rent-note to the plaintiffs promising to give up the property to the plaintiffs at the end of four months on payment by the plaintiffs of R100 On the 25th November 1896, the plaintiffs brought his suit for possession, alleging that the defendant refused to give up the property. The District Judge dismissed the suit, as barred by limitation, under Art. 47, Sch II of the Limitation Act, not having been brought within three years from the date of the Mamlatdar's order of 28th February 1893 *Held*, also, that the contract between the parties dissolved the order of the Mamlatdar in the possessory suit and rendered it unnecessary for the plaintiffs to sue to set it aside The present suit, which was based on the contract of sale, was therefore not barred by Art 47 of the Limitation Act SAGAJI *v* NAMDEV

I. L. R. 23 Bom. 525

22. ———— *Partition suit—Bom. Act V of 1864* Art 46 of Sch II of the Limitation Act IX of 1871 is not applicable to a partition suit SHIVRAM *v* NARAYAN

I. L R. 5 Bom. 27

23. ———— *Partition suit—Bom. Act I of 1864* Plaintiff in 1876 filed a suit to establish his right to, and to recover a fourth share of, certain property which he alleged to be ancestral He stated his cause of action to have accrued on the 17th May 1871, on which day he had been dispossessed by an order of the Mamlatdar, made under Bombay Act V of 1864 The District Court held that the suit was barred by Art 46, Sch II of the Limitation Act (IX of 1871) *Held* by the High Court, on special appeal, that Art 46 did not apply, and that the suit was not barred BHAGUJ *v* ANTABA. . **I. L. R. 5 Bom. 25**

24. ———— *Quære* Whether Art. 47 applies to an order under s. 146 of the Code of Criminal Procedure DEO NARAIN CHOWDHURY *v.* WEBB (1900) . **I. L. R. 28 Calc. 86**

s.c. 5 C. W. N. 160

25. ———— *Mamlatdar's Courts Act (Bom. Act III of 1876), s. 13—Possessory suit—Mamlatdar's Court* In a possessory suit instituted in a Mamlatdar's Court, neither the plaintiff nor the defendant appeared at the hearing The case was therefore disposed of by the Mamlatdar, under the first part of s 13 of the Mamlatdars' Courts Act (Bom Act III of 1876). —*Held*, that the order of the Mamlatdar was an order rejecting the plaint. A regular suit for pos- [illegible] il Court more [illegible] order of the [illegible] time-barred [illegible] mitation Act [illegible] DAYARAM *v* [illegible]

[illegible] 25 Bom. 82

LIMITATION ACT (XV OF 1877)—*contd.*

Schedule II—*contd.*

———— **Art. 47—*contd.***

26. ———— *Civil Procedure Code (Act XIV of 1882), s 13, explanation II—Math Manager—Possessory suit in Mamlatdar's Court in a personal and private capacity—Sub-* [illegible]

[illegible] 1889 dismissed the suit on the ground that by not producing a succession certificate the [illegible]

[illegible] recover possession of the house and rent or damages for use and occupation It was contended that the suit was time-barred under Art. 47, Sch II of the Limitation Act (XV of 1877), it being not brought within three years from the date of the Mamlatdar's order :—*Held*, that the suit was not time-barred under Art 47, Sch II of the Limitation Act (XV of 1877), because the first suit in the Mamlatdar's Court was brought by the plaintiff in his personal and private capacity, while the second suit was brought by him as manager and on behalf of the math In connection with the property of a math there are two distinct classes of suits, those in which the manager seeks to enforce his private and personal rights and those in which he seeks to vindicate the rights of the math A math like an idol is, in Hindu law, a judicial person capable of acquiring, holding, and vindicating legal rights [illegible]

[illegible] should be brought in that form But a person in [illegible]

[illegible] latdar's suit does not give rise to the bar to which explanation II of s 13 of the Civil Procedure Code (Act XIV of 1882) relates. BABAJIRAO *v.* LAXMANDAS (1904) . **I. L. R. 28 Bom. 215**

27. ———— *Mamlatdar's Courts Act (Bombay Act III of 1876), ss. 4, 15, 18, and 21—Possessory suit in Mamlatdar's Court—Rejection of plaint—Subsequent suit for possession on title in ordinary Court—Limitation.* A plaintiff suing in the ordinary Courts on his title for the possession of land is not bound by reason of anything in Art. 47, Sch. II of the Limitation Act (XV of 1877), or s 21 of the Mamlatdar's Courts Act (Bombay Act III of 1876) to bring his suit

LIMITATION ACT (XV OF 1877)—*contd.*

Schedule II—*contd.*

——— Art. 47—*concld.*

within three years from the previous rejection of his plaint by a Mamlatdar in a suit for the possession of that land. As a suit on title is outside the Mamlatdar's jurisdiction, a mere rejection of a plaint by him cannot be treated as an order binding the plaintiff in reference to that which is the cause of action in a suit on title. TUKARAM *v.* HARI (1904)
I. L. R. 28 Bom. 601

28. ——— *Suit to recover property, the subject of an order under s. 145 of the Criminal Procedure Code (Act V of 1898)—Limitation—Starting point—Rule issued by High Court against Magistrate's order—"Final order."* For a suit to recover property, in respect of which an order under s. 145 of the Criminal Procedure Code has been made, the period of limitation runs from the date of the order of the Magistrate and not from the date on which a rule issued by the High Court under s. 5 of the Charter Act against the Magistrate's order was finally disposed of. JAGANNATH MARWARI *v.* ONDAL COAL CO (1908)
12 C. W. N. 840

——— Art. 48 (1871, Art. 48)—

See ante, s 10 . 9 C. W. N. 443

1. ——— and Art. 36—*Standing crops—Immoveable property.* Standing crops are immoveable property within the meaning of the Limitation Act. PANDAH GAZI *v.* JENNUDDI
I. L. R. 4 Calc. 665 : 2 C. L. R. 526

2. ——— *Suit for damages for injury to crops.* Under Act XIV of 1859, it was *held* that a suit for damages for injury to standing crops was a suit for damages for injury to personal property within the meaning of s 1, cl. 2. KASHIDAS GOVINDBHAI *v.* B B AND C. I RAILWAY COMPANY . . . 6 Bom. A. C 114

Where the crops were cut and stored, they were personal property MUNNOO BEBEE *v.* JHANDAR KHAN . . . . 3 Agra 389

3. ——— *Suit for compensation for injury to land and crops.* A suit for

4. ——— *Suit to recover money deposited for a certain purpose.* R sued M

demanded the money, M denied having received the same.—*Held,* that the limitation law applicable to the suit was that provided by Art. 48, Sch. II of the Limitation Act, 1877, and the time from which the period of limitation began to run was when B first learnt that M had retained the money in his possession instead of paying it as directed. RAMESHAR CHAUBEY *v.* MATA BHIKH
I. L. R. 5 All. 341

——— Arts. 48, 49 and 145—

——— *Deposit—Suit to recover property deposited for safe custody.* In October, 1897, the plaintiff's mother deposited ornaments, clothes and money with the defendant for safe custody. In April, 1898, she demanded their return, but it was refused. Shortly afterwards she died. More than three years after the demand and refusal, the plaintiff (a minor) sued

——— Arts. 48, 90, 115—

——— *Limitation—Suit to recover money given to the defendant to be delivered to a third person.* A gave R300 to B in order that it might be delivered to C, who had, a few days previously, executed a mortgage in favour of A. B also executed a bond guaranteeing the repayment

I. L. R. 29 All. [illegible]

——— Arts. 48, 109—

See ZURPESHGI LEASE.
11 C. W. N. 862

——— Art. 49—

See ante, ART. 36

See CIVIL PROCEDURE CODE, 1882, s. 13.
9 C. W. N. 679

1. ——— *Injury to personal property—Taking away personal property.* Under the Act of 1859, taking away personal property was *held* to be not included in the words "injury to personal property" in s. 1, cl. 2 AMRITHAMAL *v.* RANGANADHA PILLAI . 3 Mad. 165

ANONYMOUS CASE . W. R. F. B. 126

AHMEDULLAH *v.* HUR CHURN PANDAH
2 W. R. 235

LIMITATION ACT (XV OF 1877)—*contd.*

Schedule II—*contd.*

——— Art. 49—*contd.*

RAMNATH ROY CHOWDRY *v* HURRI CHUNDER ROY CHOWDHRY . . . 5 W. R. 50

PRAHLAD MAHARUDRA *v* WATT 10 Bom. 346

and DHUNPUTTY KOER *v* LLOYD 17 W R. 277

Such cases were held to be governed by the general limitation of six years under cl. 16 of s. 1. Now, however, such suits would apparently be covered by this Article or perhaps by Art. 36.

2. ——— *Suit to recover ornaments taken with view of borrowing money on them.* In a suit to recover certain ornaments (or their value) which had been obtained by the defendant from the plaintiff's ancestor with a view to borrowing money on them, the cause of action was *held* to arise when the defendant set up an adverse title to them SHUMBOO CHUNDER MULLICK *v* PRANKRISTO MULLICK . . 14 W. R. 322

3. ——— *Sale of moveable and immoveable property—Refusal to execute conveyance—Suit for possession—"Unlawful possession."* *A* entered into an agreement with *B* for the purchase of moveable and immoveable property and paid a deposit Under such an agreement, by s 85 of the Contract Act, the ownership of the

A. This decree was confirmed on appeal *B* refusing to execute the conveyance to *A*, the conveyance was executed by the Court under the provisions of

of appeal in the former suit, ordering a conveyance of the property to be executed to *A*, but not within three years of the date of the agreement to purchase, and it was contended that, as to the moveable property, the suit was time-barred *Held*, that the suit for the possession of the moveable property was not time-barred, as the right to possession of both the moveable and immoveable property accrued to *A*, at the earliest, on the date of the final decree for specific performance of the agreement of sale, and it was from that time that the "detainer's possession" first became unlawful under Art. 49, Sch II of Act XV of 1877. DHONDIBA KRISHNAJI PATEL *v.* RAMCHANDRA BHAGVAT . I. L. R. 5 Bom. 554

4. ——— *Suit for specific moveable property—Suit for a legacy.* A testator bequeathed certain specific moveable property to *A*. *B* applied for and obtained a certificate under Act XXVII of 1860 on behalf of the testator's widow, and took possession of the property be-

was barred under Art. 49 of the Limitation Act.

such legacy, either because he is the executor of the will or otherwise represents the estate of the testator. ISSUR CHUNDER DOSS *v* JUGGUT CHUNDER SHAHA . . I. L. R. 9 Calc. 79

5. ——— *Cause of action—Suit by Mahomedan lady to recover property from husband after divorce* In a suit by a Mahomedan

6. ——— *Suit for compensation for attachment before judgment—Limitation Act, Sch II, Art. 36—Suit for damages* In a

MANAVIKRAMAN *v* AVISILAN KOYA I. L. R. 19 Mad. 80

7. ——— *Suit for damage to property—Property in custody of person other than owner—Damage to ship by collision* Art. 49 of Sch II of the Limitation Act (XV of 1877)

ESSUO BHAIAJI *v.* STEAMSHIP "SAVITRI" I. L. R. 11 Bom. 13

8. ——— and Art. 36—*Suit for damages for wrongful conversion—Injury to moveable property* Plaintiff was the owner of a house mort-

LIMITATION ACT (XV OF 1877)—*contd.*

Schedule II—*contd.*

——— Art. 49—*contd.*

gaged to defendants. On the 22nd August 1885, defendants sold the house by auction under a

ed the defendants had taken possession of and converted to their own use. It was proved that

DEPOSIT AND BENEFIT SOCIETY

I. L. R. 11 Mad. 333

9. ——— and Art 116—*Suit to recover title-deeds left with a mortgagee after redemption—Demand and refusal—Cause of action* After the redemption of a mortgage, the title-deeds of the mortgage premises were left with the mortgagee, who refused to return them on demand made by the mortgagor The mortgagor now sued to recover possession of them :—*Held*, that the Limitation Act, Sch. II, Art. 49, was applicable to the case, and that time began to run from the date of the mortgagee's refusal. SUBBAKKA *v.* MARUPPAKKALA . I. L. R 15 Mad. 157

10. ——— *Suit for damages for cutting and carrying away crops—Act XV of 1877, Sch II, Arts 36, 39, 48, and 109* In a suit for damages for cu

Held, by the Fu

that such suit d

Art. 36 of Sch.

1877). *Per* MACLEAN, *C J.* (TREVELYAN, *J.* concurring)—Assuming that the case does not come within the terms of Art. 39, the case is governed by Art. 49. The crops, though immoveable in the first place, become specific moveable property when severed, and the fact that the severance was a wrongful act does not make any difference *Per* MACPHERSON, *J.*—The case is governed by Art. 49 or 48, as the crops, after they had been cut, come under the description of specific moveable property. Possibly also the case might be brought under Art. 109, if it is not brought under Art 39 *Per* GHOSE, *J.*—Art. 49 applied to this case *Surat Lal Mondal* v. *Umar Haji, I L. R. 22 Calc 877*, followed. *Per* RAMPINI, *J.* (*dissentiente*) The suit as framed not being one for compensation for trespass, Art 39 does not apply Art 48 or 49 also does not apply, as they deal with property which is *ab initio* moveable,

wrong-

veable

Art.

ase in

LIMITATION ACT (XV OF 1877)—*contd.*

Schedule II—*contd.*

——— Art. 49—*contd.*

which possession of immoveable property was withheld. Art 36 therefore applied to the case. *Essoo Bhayaji* v. *Steamship "Savitri," I. L. R. 11 Bom. 133*, referred to. *Pandah Gazi* v. *Jennudi, I. L. R. 4 Calc. 665*, dissented from by TREVELYAN, J. MANGUN JHA *v.* DOLHIN GOLAB KOER . . . I. L. R. 25 Calc. 692
2 C. W. N. 265

11. ——— *Claim to recover goods in hands of third parties—Alternative claim for value as compensation.* In execution of a decree obtained by the defendants against one M in the Court of Small Causes, certain goods were attached to which plaintiff preferred a claim. That claim being disallowed, plaintiff filed in the City Civil Court, Madras, a suit for, and obtained a

1897, suing "for the recovery of the goods or their value as compensation :"—*Held*, that the suit,

as ancillary to the main relief asked for

ference to s. 208 of the Code of Civil Procedure, and did not alter the character of the suit or bring it within any other category of the Schedule MURUGESA MUDALI *v.* JOTHARAM DAVAY

I. L. R. 22 Mad. 478

12. ——— *Wrongfully removing specific property—Mortgage—Mortgage of interest in tenancy in common by one of two co-tenants—Deterioration of mortgagor's interest by act of other co-tenant—Suit for damages by mortgagee against wrong-doer—Maintainability* K who was a tenant in common with the defendant, mortgaged her interest to the plaintiff. The plaintiff instituted a suit against K for the recovery of the mortgage amount by sale of the mortgaged property. Pending the appeal in that suit, the defendant cut down all the trees on the land and appropriated the same to himself. On the sale of K's interest in the land which took place after the removal of the trees, the plaintiff realised only a portion of the decretal amount. The mortgagee now instituted the present suit against the defendant for the damage suffered by him by reason of the defendant having appropriated K's share of the wood The suit was filed within three years of the act complained of. *Held*, that the suit was maintainable. From the time of lending his money, the mortgagee, whether in or out of possession, acquires the right to have the mortgaged property secured from deterioration in the hands of the mortgagor or of any

LIMITATION ACT (XV OF 1877)—contd.

Schedule II—contd.

——— **Art. 49—concld.**

other person to whose rights those of the mortgagee are superior :—*Held,* also, that the suit was not barred by limitation It was not the

I. L R. 28 Mad 20

13 ——— *Cause of action arises when defendant's possession becomes wrongful —Possession by Magistrate is possession for rightful owner.* Under Art. 49, Sch II of the Limitation Act, time begins to run from the time when the property is wrongfully taken. Where property is seized by a Magistrate, the property passes into legal custody and such custody is for the benefit of the rightful owner Time begins to run against such owner only when by an erroneous order of the Magistrate the property is delivered to some other persons and it is so even when such other person had been in wrongful possession previous to the seizure by the Magistrate *Mudvirapa Kulkarni* v *Fakirapa Kenardi, I L R 7 Bom. 427,* distinguished. RAMASWAMY AYYAR v. MUTHUSAMY AYYAR (1906) . . **I. L R. 30 Mad 12**

14. ——— *Government promissory notes held by defendant for plaintiff—Wrongful disposal of notes—Pledge—Subsequent demand and refusal—Wrongful detention, when commences.* The defendant, who held certain Government promissory notes in trust for the plaintiff, pledged the same for his own purposes and later on, when asked by the plaintiff, refused to deliver them up :—*Held,* that a suit by the plaintiff to recover the notes or their value from the defendant was governed by Art. 49 of Sch. II of the Limitation Act and time commenced running from the date of refusal, notwithstanding that the defendant had wrongfully parted with the notes before that date The detention of the notes became wrongful from the date of refusal to deliver them up *Wilkinson* v. *Verity, L. R. 6 C P. 206,* followed. GOPAL CHANDRA BOSE v SURENDRA NATH DUTT (1908) . **12 C W. N. 1010**

——— **Art. 51 (1871, art. 50).** The suits referred to in this article were formerly governed by cl. 9 of s. 1 of the Act of 1859 : and this article seems to be founded on the cases decided on that clause.

See BOIDONATH SHAH v. LADENISSA BIBEE. **7 W. R. 164**

TRIPP v. KUBEER MUNDUL . **9 W. R. 209**

1. ——— **Art. 52 (1871, art. 51**—*Act XIV of 1859, s. 1, cl. 8—Goods sold by wholesale and retail.* Under Act XIV of 1859, there was a distinction between goods sold by retail and those sold by wholesale, the former being specially mentioned in cl 8 of s 1, and it was a question under that Act whether three years or six years' limitation applied to a sale of goods wholesale ; three years being finally *held* to be the proper period LAL MOHUN HOLDAR v MAHADEB KATEE **B. L R. Sup Vol 909**
9 W. R. 193

CHUNDEE CHURN PAUL v. RAMNARAIN SEN **Cor. 8**

2 ——— *Act XIV of 1859, s 1, cl 8—Articles sold by retail.* Goods supplied to a dealer for the purpose of retail sale by him were *held* to be not "articles sold by retail" within the meaning of cl 8, s 1, Act XIV of 1859 MOTHOORA LALL PAUL v. CHRINEBASH DUTT **3 W. R. S C. C. Ref. 24**

GOPAL CHUNDER SHAHA v SINAES **8 W. R. 4**

Cases of articles sold by retail are—

BULDEO DOSS JOHURRY v SREENATH SEIN **1 Ind Jur. O. S. 114**

SHAMA CHURN LALL v. COLLECTOR OF TIRHOOT **1 W. R 308**

BUCHA GOPE v. COLLECTOR OF TIRHOOT **7 W. R 102**

There is no distinction made in the present Act between sales by wholesale and sales by retail.

3. ——— *Goods supplied on credit and payments made on account from time to time.* When a tradesman supplies goods from time to time on credit to a customer who makes payments from time to time on account, no fixed period of credit being agreed upon, the cause of action for purpose of limitation must be taken to arise on the date when each item claimed was supplied. SATCOWREE SINGH v KRISTO BANGAL **11 W. R 529**

4 ——— *Suit on contract for the supply of pictures at various times subject to approval of each picture.* Where the plaintiff, a native artist, agreed to supply, and the defendant

AMBABAY SAHIBA . . . . **3 Mad. 6**

5. ——— **and Art. 120**—*Limitation for suit against son on original debt or on decree.* Plaintiffs, in 1896, obtained a decree against the father

LIMITATION ACT (XV OF 1877)—*contd.*

Schedule II—*contd.*

———— Art. 52—*concld.*

of the present defendants, who died in 1897.

I. L. R. 27 Mad. 243

———— Art. 53 (1871, art. 52)—

This article follows the case of SATCOWREE SINGH v. KRISTO BANGAL . . 11 W. R. 529

———— and Art. 52—*Suit for price of wood supplied under contract* A suit was brought by *P* against the Elgin Mills Company for recovery of the price of wood supplied under two contracts, each of which contained a clause by which the plaintiff contracted to indemnify the defendant

his part to
No wood
1879. The
1882. In
Elgin Mills

Company were, on their own application, brought upon the record as defendants. Defendants claimed a set-off as damages for loss incurred by the plaintiff's failure to supply all the wood contracted for, such loss having arisen on the 25th

pleted by the whole wood being supplied, or when the contract came to an end. PRAGI LAL v. MAXWELL . . . . I L R. 7 All 284

———— Art. 56 (1871, art. 55)—

1. ———— *Suit for work and labour done—Cause of action.* Where no law, special custom, or agreement is shown, making the remuneration on a joint contract for labour to be done payable in advance, the cause of action accrues from the time when the labour was performed. PERLADH SEN v. RUNJEET ROY W. R. 1864, 68

LIMITATION ACT (XV OF 1877)—*contd.*

Schedule II—*contd.*

———— Art. 56—*concld.*

2 ———— *Suit to recover*

which applied to the suit. SUNDARAM v. SANKARA I. L. R. 9 Mad. 334

1. ———— Art. 57—*Suit for money lent—Limitation for a suit to recover debt personally from the mortgagor where mortgage-deed contains no personal undertaking for repayment.* By a registered mortgage-deed dated the 11th May 1876, the defendant mortgaged certain land with possession to the plaintiff for a term of five years, the mortgage-deed stipulating that the plaintiff was to enjoy the profits, pay the assessment for it, and restore it to the defendant on repayment of the debt. But no personal undertaking to pay was given by the defendant. The land was sold by the revenue authorities for arrears of assessment due from the

the debt from the defendant personally. plaintiff appealed to the District Judge, who referred the case to the High Court:—*Held*, that the mortgage consideration for the debt having failed, the debt was recoverable within three years —the registered mortgage-deed containing no personal undertaking by the defendant (mortgagor) to pay the loan. SAWABA KHANDAPA v. ABAJI JOTIRAV . . . I. L. R. 11 Bom. 475

2. ———— and Art. 120—*Suit on pledge of moveable property—Prayers in plaint both for personal decree and for right to enforce charge against property pledged.* A suit on a pledge of certain moveable property, made in respect of a

plaint
inst the
charge
ledged.
decree
Art. 57
arred;
rce his

charge against the property pledged, the suit fell not within that Article, but within Art. 120 of the same Schedule, and was therefore not barred. NIM CHAND BABOO v. JAGABUNDHU GHOSE I. L. R. 22 Calc. 21

LIMITATION ACT (XV OF 1877)—*contd.*

Schedule II—*contd.*

——— Art. 57—*contd.*

3. ——— and Art. 120—*Loan on security of moveable property—Suit to recover money by sale of property pledged and also from the defendant personally* Where a plaintiff who had lent money on the security of moveable property sued to recover the money both by sale of the property pledged, and also asked for a decree personally against the defendant, should the amount realized by the sale prove insufficient, it was *held* that, so far as the

property pledged was governed by Art. 120, and the claim to proceed against the debtor personally was governed by Art. 57 of Sch. II of the Limitation Act *Per* DAVIES, J —That the claim to proceed against the debtor personally was governed by Art. 57 and was barred, but that in so far as the suit was for a sale of the pledged property that was merely an incident in the nature of an accessory to the right to recover the debt, which became barred with the right of suit for that debt. The right of sale, however, remained *Vitla Kamti* v. *Kalckara, I. L. R 11 Mad. 153,* commented on MAHALINGA NADAR *v* GANAPATHI SUBBIEN (1904)

I. L R. 27 Mad 528

4 ——— *Indian Contract Act (IX of 1872), s. 176—Pawnor and pawnee—Suit to recover balance of debt after sale of articles pawned—Limitation Held,* that the limitation applicable to a suit brought by a pawnee to recover the balance of his debt after accounting for the proceeds of the sale of the articles pledged is that prescribed by Art 57 of the second Schedule

5. ——— ——— *Arts 57, 62, 89 and 120—Limitation—Liability of agent's sons and grandsons—Compromise—Permission of Court—Code of Civil Procedure (XIV of 1882), s 373—Principal and agent—Accounts—Cause of action* Where an agent from time to time withdrew money from the chest of his principal's estate and placed it in the chest of his own estate, doing so up to the day of his death, and there was no adjustment or settlement of accounts; *Held,* in a suit brought by the principal against the sons and grandsons of the agent, after his death, to recover the money so withdrawn, that the cause of

I. L. R. 31 All. 429

LIMITATION ACT (XV OF 1877)—*contd.*

Schedule II—*contd.*

——— Art. 57—*concld.*

6 ——— and Art. 120—*Contract Act (IX of 1872), s 176—Suit for sale of property pledged—Pledgor's right to sue for sale.* Plaintiff

——— Art 58—*Suit to recover the value of hundies given as a loan—Limitation—Terminus a quo Held,* that the mere transfer of hundis for the purpose of making a loan of their value, when realized, does not amount to a loan, until money has been realized by the transferee *Garden* v. *Bruce, L. R 3 C. P. 300,* referred to. KOMAL PRASAD *v* SAVITRY BIBI (1905)

I. L R. 28 All. 54

——— Art. 59 (1871, art. 58)—

See DEKKHAN AGRICULTURISTS' ACT, 1879, s. 72 . . . . I. L R. 5 Bom. 647

Under Act XIV of 1859, cases of money lent or deposited to be repaid on demand were governed by cl 9 or cl. 16 of s. 1 of that Act, and the decision as to whether the cause of action arose at the date of the loan or from the date of the demand were conflicting

See BRAMMAMAYI DASI *v* ABHAI CHARAN CHOWDHRY . 7 B L R. 489: 16 W. R. 164

POORNO CHUNDER DUTT *v.* GOPAL CHUNDER DOSS . . . . . . 17 W. R. 87

TARINI PRASAD GHOSE *v* RAM KRISHNA BANERJEE . . 6 B. L R. 160: 14 W. R. 224

NASIR BIN ABDUL HABIB FAZAL *v.* DAYABHAI ITCHACHAND . . . . 10 Bom. 300

JAFFREE BEGUM *v.* MAHOMED ZAHOOR AHSUN KHAN . . . . . . 2 N. W. 409

HEERUN *v.* MARIUN . . . 14 W. R. 87

deciding that it arose on demand.

LIMITATION ACT (XV OF 1877)—contd

Schedule II—contd.

——— Art. 59—contd.

And PARBATI CHARAN MOOKERJEE v. RAMNARAYAN MATILAL
5 B. L. R. 396 : 16 W. R. 164 note

ABDUL ALI v. TARACHAND GHOSE
6 B. L. R. 292

s c. on appeal TARACHAND GHOSE v. ABDUL ALI . **8 B. L. R. 24 : 16 W R. O. C. 1**

HINGUN LALL v DEBEE PERSHAD
24 W. R. 42

deciding that it arose on the date of the loan or deposit.

Under Art. 58 of the Act of 1871, the cause of action in cases of money lent on demand arose from the date of the demand, cases of money deposited on demand not being separately provided for. Under Art. 59 of the present Act, the cause of action in cases money lent on demand arises from the date of the loan; in the case of money deposited on demand, from the date of the demand (Art. 60).

1. ——— **and Arts 60 and 132**—*Claim against insolvent estate subject to mortgage—Suit for money—Demand* On the 25th June 1874, *A*, the father of *B*, having mortgaged the factory X to *S & Co.* to secure repayment of R12,000 advanced, died on the 7th September 1874, leaving a will whereby he appointed his wife *C* sole executrix, and devised to her factory X On the 16th September 1876, another mortgage was executed, whereby

balance due in excess of R12,000 *B* became insolvent in July 1882. No demand was made. On the 5th January 1877, a balance of R27,552 remained due which with interest up to July 1882 was increased to R42,564 The liquidators of *S & Co.*, who had in the meantime dissolved part-

of money charged on immoveable property under Art 132, Act XV of 1877, nor was it within Art 60, but it was a suit for money, and was governed by Art. 59 of the Act *In the matter of* AGABEG . . . **12 C L. R 165**

2 ——— *Native banker and customer—Deposit—Loan—Suit to recover money lodged with a native banker more than three years after lodgment* The relationship between a native banker and the person depositing money with him in the ordinary way of business is that of borrower and lender, and the money lodged can be recovered as money lent. Art. 59 of the Limitation Act (XV of 1877) applies to such a transaction. The plaintiffs, who were members of the Dalvadi community, sued in 1883 to recover from the defendants the sum of R2,611-3-6 as found credited to their account in 1880 by the defendants' father, with whom the community had lodged a sum of R2,320 in 1874. They alleged that the sum was lodged on the condition that it was to be returned with interest on demand It appeared that small sums were paid by *K* to the plaintiffs from time to time, and no demand had ever been made during the lifetime of *K* for repayment. The defendants denied the alleged condition, and contended that the suit was barred. The Court of first instance awarded the plaintiffs' claim. The defendants appealed to the Assistant Judge, who reversed the decree, being of opinion that the transaction was a loan and not a deposit, and that the suit was barred. On appeal by the plaintiffs to the High Court:—*Held*, confirming the decree of

was lodged as a deposit and not as a loan, and that Art. 60 of Sch. II of the Limitation Act applied. They relied upon the following circumstances as showing the nature of the transac- . the money opportunity ... olding of a dharmshala; (ii) that interest was to be paid upon it, (iii) that the account was to be annually settled; (iv) that it was to be withdrawn in one sum—*Held*, that these circumstances, if proved, did not necessarily deprive the transaction of the character of a loan by creating a fiduciary relationship between the parties (which is essential to a deposit in its technical sense), and thus distinguishing it from the ordinary dealings between native bankers and their customers ICHHA DHANJI v. NATHA
I. L. R. 13 Bom. 338

——— Arts 59 and 60—

See post, ART. 145 . **7 C. W. N. 476**

——— Art. 60—

See the Note and the cases referred to under Art. 59.

This Article (60) is not in accordance with the cases of PARBATI CHARAN MOOKERJEE v. RAMNARAYAN MOTILAL
5 B L. R 396 : 16 W. R. 164 note

and HINGUN LAL v. DEBEE PERSHAD
24 W. R. 42

which were decided under Act XIV of 1859.

1. ——— *Cause of action—Deposit—Demand.* Where money has been deposited by *A* at interest with *B*, repayable on de- ... the cause of ... out on ... ise v.

... **224**

LIMITATION ACT (XV OF 1877)—*contd*

Schedule II—*contd*.

——— Art. 60—*contd*.

2. ——— *Banker and customer—Principal and agent—Cause of action—Demand.* *A* deposited certain moneys with *B*, a banker, and drew against them, but not to the full extent; the residue was employed on *A's* account by *B* according to an agreement between them :—*Held*, that, besides the ordinary relation of banker and customer, there subsisted also between them that of principal and agent, that therefore the right of action arose at the time of demand NASIR BIN ABDUL HABIB FAZAL *v* DAYABHAI ITCHACHAND 10 Bom 300

3. ——— *Money deposited—Demand—Cause of action* Where a mortgagor allows the amount of his loan to remain in the hands of the mortgagee, taking a receipt for it :—*Held*, that the transaction should be regarded as a deposit of money with a banker or agent, repayable on demand without interest, and the suit is not barred if brought within three years after demand A suit to recover the balance of such moneys is in the nature of a suit to recover the amount of deposit. JAFFREE BEGUM *v* MAHOMED ZAHOOR AHSUN KHAN . . . 2 N. W 409

4. ——— *Cause of action—Demand* Plaintiff, having received from her brothers a sum as an equivalent for her share in her father's estate, made over the money to one of the brothers (*E*), to be invested in the common stock for the purposes of trade, it being agreed that she was to receive her proportion of the profits A few years after this *E* died, and then, a disagreement occurring in the family, resort was had to arbitration The arbitrators found that certain sums were due to plaintiff and her sisters by the three brothers, but they were unable to settle how much Plaintiff, being unable to recover her due, brought this suit for principal and profits :—*Held*, that plaintiff's cause of action arose when she made her demand for the money after the arbitration award, and that limitation would run from no earlier date HEERUN *v* MARIUN . 14 W. R 87

5. ——— *Deposit—Loan*

6. ——— *Money deposited—Banker and customer—Money lent—"Deposit"—"Trust"—Cause of action—Demand* The plaintiff deposited from time to time with the firm of the defendant, who carried on a banking business, various sums of money, the amounts deposited bearing interest, and at times certain sums being withdrawn by the plaintiff, and an account of the balance of principal and interest being struck at the end of each year and presented to the plaintiff. The date of the first deposit was not known, but it was some time previous to 1282 (1875) A demand was made for the whole amount of the principal

of the Limitation Act was applicable to the case; the cause of action therefore arose at the date of the demand, and the suit was not barred. The *dictum* of WHITE, *J*, in the case of *Ram Sukh Bhunjo* v. *Brohmoyi Dasi, 6 C L. R 470*, that the "word 'deposit' in the Limitation Act as distinct from 'loan' points to cases where money is lodged with another under an express trust or under circumstances from which a trust may be implied," dissented from ISHUR CHUNDER BHADURI *v.* JIBUN KUMARI BIBI . I. L. R. 16 Calc. 25

7. ——— and Art. 59—*Money deposited—Banker and customer—Money lent—Deposit—Cause of action—Demand.* *A* at the suggestion of *B*, a shopkeeper, deposited with him certain sums of money on the terms that the money should be repaid with interest on demand It appeared

amount deposited, the money having been demanded within three years of the date of the suit:

8. ——— *Deposit—Loan—Demand* The plaintiff claimed to recover from the defendant, who was his grandfather, the sum of

credited to the same account. The plaintiff alleged, and the Court found, that these sums were presents which had been made to him on his birthday and other auspicious occasions The said sums had been carried over from year to year in the firm's books, the interest being added each year, but no payment had ever been made to the plaintiff, or on his behalf, out of the sum so standing to his credit. Compound interest had been allowed in the account, and, on the 9th November 1893, the amount standing to the credit of the plaintiff was R4,917 The plaintiff contended that the money had been paid to, and accepted by, the defendant

LIMITATION ACT (XV OF 1877)—*contd.*

Schedule II—*contd.*

——— Art. 60—*concld.*

as a deposit to be held in trust for him. The defendant alleged that the money in question had been lent to him by the plaintiff's mother, and contended that the plaintiff's claim was barred by limitation :—*Held,* that the plaintiff's claim was not barred. The defendant stood in a fiduciary position to the plaintiff, and therefore there was a deposit within the meaning of Art. 60 of the Limitation Act (XV of 1877), and limitation did not commence to run until demand DORABJI JEHANGIR RANDIVA *v.* MUNCHERJI BOMANJI PANTHAKI

I. L. R. 19 Bom. 352

Held, in the same case on appeal, affirming the decision of the Court below, that the defendant had held the money not as a loan, but as a deposit; that Art. 60 of the Sch. II of the Limitation Act (XV of 1877) applied ; and that the plaintiff's claim was not barred. MUNCHERJI BOMANJI PANTHAKI *v.* DORABJI JEHANGIR RANDIVA

I L. R. 19 Bom. 775

——— Arts. 60 and 64—*Money payable on demand—Deposit as a trustee—Money found due on account stated.* A suit was brought by the plaintiff on the 28th June, 1897, to recover a certain sum of money from the defendant, on the allegation that there was a registered agreement between the parties, whereby it was agreed that the plaintiff was to use a godown belonging to the defendant for the purpose of storing jute purchased by him, the defendant being promised a certain commission in return There was also a verbal agreement to the effect that sums of money would be sent by the plaintiff to the defendant,

April, 1894, the defendant submitted an account, which showed that a certain sum of money remained surplus in his hands. The defendant, not having

was not, on the facts stated in the plaint, an agent of the plaintiff, and that Art. 60, Sch. II, of the Limitation Act might apply to the case *Ishur Chunder Bhaduri v. Jibun Kumari Bibi, I. L R. 16 Calc 25,* referred to. LAZARUS *v.* KRISHNA CHUNDER DE (1900) I. L. R. 28 Calc. 393

——— Art. 61 (1871, art. 59)—

See CONTRIBUTION, SUIT FOR—PAYMENT OF JOINT DEBT BY ONE DEBTOR.

I. L. R. 26 Mad 686

1. ——— *Money paid at defendant's request—Hindu family—Debts of manager.* In the year 1867 the plaintiff, who was then living jointly with the defendant, who was his brother, executed a bond to secure the repayment of

three years from the date of the fresh bond), the

fore the suit was barred by limitation under Act IX of 1871, Sch II, Art. 59. *Ramkristo Roy v. Muddun Gopal Roy, 12 W R 194,* followed. SUNKUR PERSHAD *v.* GOURY PERSHAD

I. L. R. 5 Calc. 321

2. ——— *Suit to recover balance of payments made on behalf of defendant—Appropriation of payments* In a suit to recover a balance with reference to payments made by plaintiff on account of defendant, where no mutual account or reciprocal demands existed :—*Held,* that plaintiff could not recover any items due more than three years prior to the date on which the suit was instituted, but that he was entitled to apply all payments, even those subsequently made, in reduction of so much of his claim as was barred THAKOOR PERSHAD SINGH *v* MOHESH LALL

24 W. R. 390

3. ——— *Suit for money payable to the plaintiff for money paid for the defendant—Suit for account—Limitation Act, Sch. II, Art. 120.* Under an award two persons were made liable each for the payment of a moiety of the expenses of certain temples which were held jointly. One of the persons so made liable, alleging that he had paid more than his share of the expenses, sued the other for the balance in excess of the moiety which he was bound to pay under the award. *Held,* that the suit was governed by Art 61 of the second Schedule to the Indian Limitation Act, 1877, and that, although the taking of accounts might be necessary, the suit was not a suit for an account to which Art. 120 of the same Schedule might apply. *Rohan v. Jwala Prasad, I. L. R. 16 All 333,* referred to RAMAN LALJI MAHARAJ *v.* GOPAL LALJI MAHARAJ . . I. L. R. 19 All. 244

——— Arts. 61, 83—

See SURETY . I. L. R. 29 All 637

——— Art 62 (1871, art 60)—

See CIVIL PROCEDURE CODE, 1882 s. 315.

13 C. W. N 1080

LIMITATION ACT (XV OF 1877)—*contd.*

Schedule II—*contd.*

——— **Art. 62—*contd.***

Cases now provided for by this article were formerly *held* to be governed by the general period of limitation for suits not otherwise provided for, which period was six years under cl. 16 of s 1 of the Act of 1859.

It was so *held* in the case of a servant to whom money had been entrusted for a particular purpose, and who did not make the payment he was directed to make. AMJUD ALI *v* ALI BUKSH **2 W. R. 122**

AHMEDOOLLAH *v.* HUR CHURN PANDAH **2 W R. 235**

1. ——— *Suit for recovery of salary—Money had and received* The defendant who was a batwara ameen employed by the Collector, drew from the public treasury at Backergunge a sum of money to pay the establishment, but failed to pay the plaintiff who was a mohurir under him In a suit against the ameen for recovery of his salary after a lapse of three years from the time when the salary became due: *Held*, that the plaintiff's claim was for money had and received on his account, and therefore he might bring his suit within six years from the date of such receipt ABHAYA CHARAN DUTT *v* HARO CHANDRA DAS BANIK . . . . **4 B. L. R. Ap. 68**

s.c OBHOY CHURN DUTT *v.* HURO CHUNDER DOSS BUKEE . . . . **13 W. R 150**

2. ——— *Suit for share of money had and received* A, B, and C being joint creditors of D, A and B received in 1856 a payment on account in respect of their share in the debt. D having made default in payment of the balance, separate suits were brought against him by A, B,

AFZALUNISSA BEGUM . . . **9 B L R 348**
16 W. R P. C. 20

reversing case of LOTF ALI KHAN *v.* AFZULOONISSA BEGUM . . . . . **3 W. R. 113**

3. ——— *Suit for money*

action against C, it would be for money had and received to A's use; and the suit would be governed, as to limitation, by Act IX of 1871, Sch II, cl. 60. But *held*, that A had no cause of action against C, but only against B WEBOR ALI *v.* GADDAI BEHARI **2 C. L. R. 165**

4. ——— *Suit to recover money obtained by collusion and fraud.* A suit for the recovery of money obtained by fraud and collusion is a suit for money received by a defendant for the plaintiff's use, and therefore, under Art. 60 of the second Schedule of Act IX of 1871, is barred unless brought within three years of the date when the money was received. RAGHUMONI AUDHICARY *v.* NILMONI SINGH DEO . **I. L. R. 2 Calc. 393**

5. ——— **and Art. 147**—*Suit for overpayments under agreement—Deposit.* Where there was a contract between plaintiff and defendant that defendant should purchase a dwelling-house benami on account of plaintiff, and reconvey it to plaintiff on his paying up in instalments a certain sum of money with interest, and plaintiff, seven

were deposits, and fell within Art. 147 of the Schedule of the law of limitation:—*Held*, by the High Court that Art. 147 applies to deposits recoverable in specie, that plaintiff's payment in this case was a simple overpayment; and that the recovery of it was barred by limitation under Art. 60. RADHA NATH BOSE *v* BAMA CHURN MOOKERJEE **25 W. R. 415**

6. ——— **and Art. 118**—*Suit for money received by defendant to plaintiff's use.* Certain immoveable property was attached in execu-

directed that the proceeds of the sale should be paid to B A, who claimed them on the ground that he had first attached the property, appealed against

LIMITATION ACT (XV OF 1877)—*contd*

Schedule II—*contd.*

———— Art. 62—*contd.*

and SPANKIE, J.—That the suit was not such a suit, but was one for which no period of limitation was provided elsewhere than in cl 118 of the Schedule, and that it was governed by that clause. RAMKISHAN *v.* BHAWANI DAS I. L. R. 1 All. 333

7. ———— *Suit for damages—Suit for money received to plaintiff's use.* The holder of a decree for money, which had been sold in the execution of a decree against him, sued the auction-purchaser, the sale having been set aside, for the money he had recovered under the decree. *Held*, that the suit was not one for damages, but for money payable by the defendant to the plaintiff for money received by the defendant for the plaintiff's use, to which the period of limitation applicable was three years. BHAWANI KUAR *v* RIKHI RAM . . . I. L. R. 2 All. 354

See also RAMKISHEN *v.* BHAWANI

I. L. R. 1 All. 333

8. ———— and Art. 120—*Suit for money, received by the defendant for the plaintiff's use—Fraud* The plaintiff ...

... such banker. *Held*, that the suit was one for money received by the defendant for the plaintiff's use, to which the limitation provided in Art 62, Sch II of Act XV of 1877, applied, and not one to which the limitation provided in Art 120 applied. KUNDUN LAL *v.* BANSI DHAR . . I. L. R. 3 All. 170

9. ———— *Failure of con-* ...

... September 1879 it was arranged that *D* should execute a sale-deed conveying to *B* certain immove- ... B should pay ... extent of the ... In August ... ance of the contract, which, alleged, he had been settled and executed for the sale of the property ...

... pared to complete the transaction, and that, as they had been omitted from the document executed by *D* on the 1st September 1879, he had never accepted that document. In March 1884, the High Court on appeal dismissed the suit, holding that the parties had never been *ad idem* with reference to the contract alleged by *D*, and that the document of the 1st September 1879 had never been

LIMITATION ACT (XV OF 1877)—*contd.*

Schedule II—*contd.*

———— Art. 62—*contd.*

finally ... by law. ... of the s ... that, ur ... the 1st ... owing to him changed its character; that it was no longer merely the old balance due by the defendant, but having been credited in the latter's books, should be treated as a payment by him (the plaintiff) as a deposit on account of the sale; that the suit was therefore one for money had and received by the defendant to the use of the plaintiff; and that the cause of action did not arise until the contract failed, by reason of the decree of the High Court on 14th March 1884, dismissing the suit for specific performance *Held*, that this contention must fail, and the debt must be treated as the old balance due by the defendant to the plaintiff, inasmuch as by the terms of the agreement itself ...

... which the debt could be said to have become due, and that, inasmuch as the present suit was not brought until the 8th September 1884, it was barred by limitation. DHUM SINGH *v* GANGA RAM

I. L. R. 8 All. 214

10. ———— *Money paid—Money had and received—Goods paid for before delivery—Short delivery—Failure of consideration.* Money paid as the price of goods to be delivered hereafter is money received for the use of the seller and it is only upon failure of consideration that the money so paid becomes money received for the use of the buyer When goods which have already been paid for are afterwards found to be short delivered, the failure of consideration takes place on the date of delivery, and limitation in respect of a suit to recover back the sum overpaid will be reckoned from that date. ATUL KRISTO BOSE *v.* LYON & CO. . . I. L. R. 14 Calc. 457

11. ———— *Suit to recover purchase-money—Failure of consideration—Cause of action, accrual of.* Purchase-money paid for a consideration which has wholly failed is money received for the use of the buyer, and a suit to recover back the money is thus governed by Art. 62 of Sch. II of the Limitation Act. *A* purchased a share of joint property from a member of a Mitakshara family, but his suit to recover possession of it was ...

LIMITATION ACT (XV OF 1877)—*contd.*

Schedule II—*contd.*

——— **Art. 62**—*contd.*

ure of consideration *Held*, that the failure of consideration, although it did not become apparent until the former suit was brought and failed, was a failure from the beginning, and time ran from the date when the purchase-money was paid. HANUMAN KAMUT *v* HANUMAN MANDUR

I. L. R. 15 Calc. 51

12. ——— *Act XI of 1859, s 31—Suit to recover surplus sale-proceeds of a sale for arrears of Government revenue* Where *A* instituted a suit in November 1889 to recover from the Secretary of State for India in Council the surplus sale-proceeds of three talukhs sold for arrears of Government revenue on the 3rd of October 1877 and which were in the hands of the Collector :—*Held*, that the suit was governed by Art 62, Sch II of the Limitation Act, and was therefore barred SECRETARY OF STATE FOR INDIA *v* FAZAL ALI

I. L. R. 18 Calc. 234

See SECRETARY OF STATE FOR INDIA *v* GURU PROSHAD DHUR . . **I. L. R. 20 Calc. 51**

13. ——— **and Arts. 97, 120**—*Suit for money paid by a pre-emptor under a decree for pre-emption which has become void—Suit for money had and received for plaintiff's use—Suit for money paid upon an existing consideration which afterwards fails* Pending an appeal from a [illegible]

[illegible] mately struck off In April 1881, judgment was given in the appeal, increasing the amount to be paid by the decree-holder to R1,994, which was to be deposited in Court within a certain time The decree-holder, did not deposit the balance thus [illegible] ssession of [illegible] 1882 the [illegible] to recover [illegible] f R1,595 which he had paid to them in August 1880 In December 1883, *K* sued the judgment-debtors for recovery of the R1,595 with interest —*Held*, that Art. 62 of the Limitation Act did not govern the suit, but that Art. 97, and, if not Art. 120, would apply, and the suit was therefore not barred by limitation. KOJI RAM *v* ISHAR DAS

I. L. R. 8 All. 273

14. ——— **and Art. 132**—*Suit to establish right to hereditary allowance* The parties, who were desais of Mohudha in addition to their "desaigiri" allowance, enjoyed an allowance, called "amin sukhdi" In 1847 the plaintiff sued the defendant's father and the Collector of Kaira for a share of the allowance; but as the whole of it had been reserved by the Collector to the defendant's

LIMITATION ACT (XV OF 1877)—*contd.*

Schedule II—*contd.*

——— **Art. 62**—*contd.*

father as the officiating desai, the suit was rejected under Act XI of 1843 In 1866 an arrangement was come to under which a sum of R40-2 was to be annually available over and above the remuneration of the officiator On the 9th July 1867, the defendant received this sum for the first time. In 1873 a new arrangement was effected, under which the service was abolished, the Government resuming half of the allowance and giving up the other half freed from service unconditionally to the desais. On 4th October 1878, the plaintiff brought this suit [illegible]

able to a claim by one sharer against another to [illegible]

15. ——— *Suit by sharer of hak against another sharer—Desaigiri allowance.* A [illegible]

16. ——— *Suit to recover arrears—Suit for money had and received—Deshpande vatan—Suit by one sharer against other.* [illegible]

17. ——— [illegible] *cedure—Vatan—Cash allowance—Suit for arrears of share.* The plaintiff in this suit [illegible] eleven years' arrears of his share in a [illegible]

LIMITATION ACT (XV OF 1877)—*contd.*

Schedule II—*contd.*

———— Art. 62—*contd.*

[illegible]

tion Act (XV of 1877) only three years' arrears [illegible]

held that this decision continued to bind the parties, and that therefore the present claim should be allowed. It accordingly passed a decree for the plaintiff for the amount claimed, and also directed that the defendants should pay to the plaintiff and his heirs for the future his share in the allowance:—*Held* (varying the decree), that the plaintiff under the Limitation Act (XV of 1877) was only entitled to recover arrears for three years. CHAMANLAL *v* BAPUBHAI

I. L. R. 22 Bom. 669

18. ———— *Money received—Trust for specific purpose.* *R* sued his father and brother *A* for partition of the family estate and obtained a decree by which he was entitled to recover, *inter alia*, one-third of a debt due to the family. In May 1878, the debtor, having received [illegible]

money received by the father was not held in trust for a specific purpose, and that the suit was barred by Art. 62 of Sch. II of the Limitation Act. ARUNACHALA PILLAI *v.* RAMASAMIYA PILLAI

I. L. R. 6 Mad. 402

19. ———— *Separation in joint Hindu family—Suit for share in joint property—Limitation Act, Sch. II, Art. 127.* At the separation of members of a joint family governed by the Benares school of Hindu law in 1885, the unrealized debts of the family were left undivided. The debts were subsequently realized by some of the members of the separated family. In a suit brought by the other members in 1893 (*inter alia*) to recover their shares in the debts so realized:—*Held*, that the claim of the plaintiffs could only be treated as coming under Art. 62, Sch. II of the Indian Limitation Act (XV of 1877), and the claim in respect of such of the debts as were realized more than three years before the institution of the suit was barred by limitation. Art. 127 of the same Schedule would not apply to such a case. *Thakur Prasad* v. *Partab, I L R. 6 All 442*, referred to. BANOO TEWARY *v.* DOONA TEWARY

I. L. R. 24 Calc. 309

20. ———— and Art. 127—*Joint Hindu family—Separation—Joint property.* After the separation of *P* and *T*, two members of a joint Hindu family, certain bonds continued to be held by them jointly. Four years after the separation, *P* obtained a decree in respect of one of these bonds (which had been obtained in his name alone), and realized the amount decreed in the same year. Eight years afterwards, *T* brought a suit against *P* claiming to be entitled to a share in the money realized. *Held*, that Art. 62, and not Art. 127, of Sch. II of the Limitation Act was applicable to the suit. THAKUR PRASAD *v.* PARTAB

I. L. R. 6 All. 442

21. ———— and Art. 109—*Suit for money received by defendant to plaintiff's use—Vatandars Act, III of 1874, s 8.* Under s 8 of the Vatandars (Bombay) Act, III of 1874, the Collector passed an order that a contribution should be paid by the holders of a part of the shetsandi vatan towards the annual emolument of the office-holder. As payment was not made, he caused the defaulters' moveable property to be sold on the 18th May 1881 as for an arrear of land revenue, and part of the sale-proceeds to be paid over to the office-holder. The defaulters had, in the meantime, appealed to the Revenue Commissioner, who eventually on the 17th December 1881, amended the Collector's order by reducing very considerably the amount of contribution to be paid to the office-holder. Thereupon the defaulters filed a suit on the 9th April 1884 to recover from the office-holder the difference between what he had received under the Collector's order and what he ought to have received according to the Revenue Commissioner's order *Held*, that the suit was one for money had and received by the defendant to the plaintiff's use, and as such governed by Art. 62 of Sch. II of the Limitation Act (XV of 1877). LADJI NAIK *v* MUSABI

I. L. R. 10 Bom 665

22. ———— *Suit by deshmukh for deductions by Collector from watan.* Where a Collector in the year 1854 employed certain karkuns to assist a deshmukh in the performance of his duty deducting the amount of their pay from the deshmukhi watan, but failed to show that the employment of such karkuns was necessary, it was *held* that the deshmukh was entitled to recover the amount [illegible] by [illegible]

cause of action in respect of such deductions accrued each year in which the deduction was made, and that six years' arrears of such deduction could be recovered under s. 1, cl. 16, of Act XIV of 1859. RANGOBA NAIK *v.* COLLECTOR OF RATNAGIRI . . . . **8 Bom. A. C. 107**

23. ———— and Art. 132—*Suit for money value of fixed quantities of grain payable by tenant to landlord—Nature of such claim for purposes of limitation—Suit to enforce payment of*

money charged on land—Immoveable property—Nibandha—Money value of goods. An inamdar, in a suit against his tenant, established his right to the money value of a fixed quantity of grain to be paid to him yearly by his tenant, and subsequently brought this suit to recover from his tenant the arrears of such payments for ten years at the market rate prevailing in the last month of each of those years. The defendants contended that arrears for only three years were recoverable under the Limitation Act (XV of 1877), and that the rates applicable to ascertain the amount were the Government auction rates.—*Held,* that the plaintiff's right would, under the Hindu law, be "nibandha," and would under the law rank for many purposes as immoveable property, but that a different principle applied to sums realized and become payable in the hands of him who realized them to the intended recipient. The interest or jural relation of right of such recipient was nibandha, but the particular sum due

realization of the money. It being thus distin-

BHAT PUROHIT *v.* GANGADHAR KARKARE
I. L. R. 8 Bom. 234

24. ——— *Money deposited for repayment on a contingency.* The period of limitation for a suit to recover money deposited by the plaintiff with the defendant, upon the understanding that it will be returned in a certain event, should be calculated not under Art. 115, but under Art. 62 of Sch. II of Act XV of 1877. Such period begins to run on the happening of the event. JOHI BI MAHTON *v.* THAKOOR NATH LUKEE
I. L. R. 5 Calc. 830: 6 C. L. R. 355

25. ——— *Suit for money received by defendant for plaintiff's use.* B received from C money due from him on two deeds of mortgage. A, who was entitled to a share of the money, instituted a suit for recovering his share

Act (XV of 1877), and not by Art. 120. Nand Lall Bose v. Meer Aboo Mahomed, I. L. R. 5 Calc. 597, and Gurudas Pyne v. Ram Narain Shaw, I. L. R. 10 Calc. 860, distinguished. MAHOMED WAHIB *v.* MAHOMED AMEER (1905)
I. L. R. 32 Calc. 527

26. ——— **and Arts. 95, 97**—*Suit to recover money obtained by deceitful misrepresentation does not fall within Art. 62 or 97, but within Art. 95—Starting point of limitation.* A, by fraudulently representing to B, to whom he was indebted, that a sum of money was due to A from C, induced B to take an assignment of the alleged debt due from C in satisfaction of the debt due from A to B. In a suit by B as assignee, against C, the latter in his written statement denied the existence of any debt due to A and B's suit was dismissed after trial on the ground that C owed nothing to

but within Art. 95, and that the fraud must be held to have been discovered only when the Court found that no debt was due from C to A and not when C in the written statement denied the existence of any such debt. When it is uncertain when the fraud was discovered, the onus is on the defendant to show that the suit is out of time. PUNNAYIL KUTTU *v.* RAMAN NAIR (1907)
I. L. R. 31 Mad. 230

——— **Arts. 62 and 97**—

1. ——— *Contract—Failure of consideration—Vendor and purchaser—No title in vendor to part of land sold—Failure to give possession to vendee—Suit by vendee for refund of purchase-money compensation—Damages.* On the 25th August, 1891, A sold certain property, consisting of forty-two separate plots of land, to the plaintiff, by a sale-deed which contained the usual covenant for quiet enjoyment. The plaintiff obtained possession of thirty-six of the plots, but not of the remaining six. The occupants of the latter had been in possession for many years, and claimed to be owners of them. On 6th September, 1897, the plaintiff brought this suit for possession against A (his vendor) and the occupant of one of the six plots, and in the alternative he claimed compensation from A. Both the lower Courts found that A's title to the plot in question had been extinguished at the date of the conveyance to the plaintiff in 1891, and they held that the plaintiff's claim for compensation was barred by limitation under Art. 62 of Sch. II to the Limitation Act (XV of 1877). On second appeal it was contended that the plaintiff's right to

date of conveyance, the contract of sale ...

LIMITATION ACT (XV OF 1877)—*contd.*

Schedule II—*contd.*

——— Art. 62—*contd.*

2. ——————— *Assignment of mortgage over immoveable property by unregistered document—Receipt by assignor of mortgage-amount in fraud of assignee—Suit by assignee against assignor within three years of receipt of mortgage money* By an agreement in writing, but not registered, bearing date 21st August 1895, defendant assigned a mortgage over certain lands to plaintiff, for a consideration which was duly paid. In 1898, the mortgagor brought a suit against plaintiff and defendant to redeem the mortgage and to recover possession of the property, and a decree was passed on 5th October of that year, in which the Court refused to

receipt by defendant of the mortgage-amount, plaintiff brought this suit to recover from defendant the sum paid as consideration for the transfer of

and was not barred, inasmuch as it had been instituted within three years of the receipt of the money by defendant Moreover, as possession of the mortgaged land had been given, under the document of 1895, the plaintiff, and held by him until its redemption by the mortgagor, there was consideration at the time when the assignment was made, and that consideration afterwards failed.

(1901) . . . . I L. R. 25 Mad 396

3. ——— and Arts 97, 116—*Transfer of Property Act (IV of 1882), ss. 55 (2) and 108 (c)—Art 116, Sch II of the Limitation Act will apply only when the transaction is one to which s 55 (2) or 108 (c) of the Transfer of Property Act will apply and a covenant for title or quiet enjoyment can be implied* The first defendant, in September 1897, granted, in consideration of an advance, a registered karar to *P*, the predecessor in title of the present plaintiff, in the following terms : "Deed of consent or permission granted to . . . . . by . . . . . In consideration of this amount, the trees standing . . . . . shall be cut down at your expense during a period of 6 years, from this date, with the exception of teak and black-wood. For every cart-load of timber so removed . . . . you are to pay a kuttikanam of R2-4-0 and on those timber, the seal of the Etam shall be impressed without delay . . . . . during the period of 6 years, the Etam shall not grant any permission to others to cut trees . . . . . you have

recover personally from the first defendant and from the Tarwad properties the amount advanced with interest as damages :—*Held*, that the suit so far as the Tarwad properties were concerned was *res judicata* by reason of the decision in the previous suit. *Held*, also, that the suit as against the first defendant was barred by limitation. The article applicable to the suit is either Art. 62 or Art 97 of Sch. II of the Limitation Act. The document is not a sale or lease of immoveable property within the definition of those terms in the Transfer of Property Act and a covenant for title or for quiet enjoyment cannot be implied under s. 55 (2) or s. 108 (c) of the Act. Art 116 of Sch II of the Limitation Act does not apply to the case. The document did not create a mortgage or charge on immoveable property. It is no more than an exclu-

——— Art. 62, 120—

1. ——————— *Suit against Benamidar—Art. 62 applies to suits against benamidar by real owner to recover money received by the former.* The period of limitation for an action by the real owner against a benamidar to recover money received by the latter for the use of the former, is that prescribed in Sch II, Art. 62 of the Limitation Act. Art. 120 does not apply to such a case. *Mahabala Bhatta v. Kunhunna Bhatta, I L R 21 Mad 373,* followed. SUBBANNA BHATTA *v* KUNHANNA BANTA (1907)

I. L. R. 30 Mad. 298

2. ——————— *Suit to recover money received under a transaction which is an absolute nullity governed by Art. 62 and not 120, and cause of action arises on the date of payment.* A suit by *A* to recover from *B* money which under to *B* ist be the ation V and Calc. omed

LIMITATION ACT (XV OF 1877)—*contd.*

Schedule II—*contd.*

——— **Art. 62—*concld.***

Ameer I. L. R. 32 Calc. 532, followed. SHANMUGA PILLAI *v.* MINOR GOVINDASAMI (1907). **I. L. R. 30 Mad. 459**

——— **Arts. 62, 120, 132—**

See MORTGAGE . **I. L. R. 33 Calc. 92**

——— **Arts. 62, 127—**

See HINDU LAW—JOINT FAMILY **I. L. R. 32 Mad. 191**

——— **Art. 63 (1871, art. 61; 1859, s. 1, cl. 9)—**

——— *Suit for interest—Suit for money payable on demand—Suit for money deposited payable on demand.* The plaintiff in this suit deposited certain money with the defendants, a firm of bankers, on the 30th August 1863. On the 2nd January 1867, an account was stated and a balance found to be due to the plaintiff consisting of the original deposit, and interest on the same calculated at six per cent. per annum on the 11th [illegible]

four per cent. per annum, plaintiffs demanded that she should be paid such interest at the rate of six per cent. per annum. The defendants refused to accede to this demand on the 11th February 1876 and on the 17th of the same month they paid the plaintiff such balance with such interest calculated at the rate they proposed, *viz.*, four per cent. On the 11th February 1879, the plaintiff brought the present suit against the defendants in which she claimed the sum representing the difference between such interest calculated at four per cent. and six per cent., alleging that her cause of action arose on the 14th February 1876:—*Held*, that the suit could not be regarded as either one for money lent under an agreement that it should be payable on demand, or one for money deposited under an agreement that it should be payable on demand, but must be regarded as one for a balance of money payable [illegible]

I. L. R. 3 All. 328

——— **Art. 64 (1871, art. 62)—**

See ante, ARTS. 60 AND 64.

See GUARDIAN—DUTIES AND POWERS OF GUARDIANS . . **13 C. L. R. 112**

1. ——— *Account stated,* [illegible]

LIMITATION ACT (XV OF 1877)—*contd.*

Schedule II—*contd.*

——— **Art. 64—*contd.***

2. ——— *Account stated—Simultaneous verbal agreement—Simultaneous written agreement.* A simultaneous verbal agreement cannot extend the ordinary period of limitation for a suit on an account stated. An agreement to extend the period must be in writing and signed by the defendant or his agent. DAGDUSA *v.* SHAMAD **I. L. R. 8 Bom. 542**

3. ——— *Suit on account stated—Acknowledgment in writing.* It is not necessary, in a suit on an account stated, to entitle the plaintiff to recover items of the debt which became due three years before suit, that the defendant should have acknowledged the accounts in writing. NAND LAL *v.* NAIT RAM . . **7 N. W. 105**

4. ——— *Suit on account stated orally or in writing.* The period of limitation [illegible]

Under Act XIV of 1859, it was *held* that, unless the original right had been kept alive by a written acknowledgment, or the transaction of adjustment of account amounted to a new and distinct contract, limitation ran from the date of the original debt for the balance of which the suit was brought. KUNHYA LALL *v.* BUNSEE **Agra F. B. 94: Ed. 1874, 71**

5. ——— *Verbal admission of correctness of account.* A mere verbal admission of the correctness of an account, the items of which were barred by the Act, was not sufficient to create a new starting-point. SUBBARAMA *v.* EASTULU MUTTUSAMI . . . . . **3 Mad. 378**

6. ——— *Signing and adjustment of account. Semble*: That the adjustment and signing of an account by the defendant was *held* to be a sufficient contract in writing to satisfy the requirements of cl. 9 of s. 1 of the Act of 1859. UMEDCHAND HUKAMCHAND *v.* BULAKIDAS LALCHAND . . . . . **5 Bom. O. C. 16**

See BROOKE *v.* GIBBON . . **19 W. R. 244**

7. ——— *Settlement of accounts—Admission of balance—New contract.* [illegible]

[illegible] SHAL CHAND *v.* PALMER . **2 Agra, Pt. II, 170**

8. ——— *Suit for balance of account on allegation of account stated—Fresh*

LIMITATION ACT (XV OF 1877)—*contd.*

Schedule II—*contd.*

——— Art. 64—*contd.*

contract to pay. To render an agreement, come to orally for the payment of the balance of an antecedent debt on a settlement of accounts, available in support of a suit brought after the expiration of the period of limitation applicable to such debt, it must be clearly shown to have amounted to a new valid contract to pay the balance, which extinguished the original cause of action. HIRADA KARIBASAPPAH *v.* GADIGI MUDAPPA . . . . 6 Mad. 197

See RAMKRISTO PAUL COHWDHRY *v* HURRY DASS KOONDOO . . Marsh. 219 : 1 Hay 569

MARIMUTHU *v.* SAMINATHA PILLAI
I L R 21 Mad. 366

9. ——— *Account settled and balance struck—New contract* Where an endorsement on a bond showed that an account was made up, a balance struck, and that it was agreed to be paid at a future day with interest .—*Held*, in a

for payment. BISSUMBHUR SHI *v* BUKTO BEDARUL HOSSEIN . . . . . . 17 W. R. 406

10. ——— *Adjustment of accounts—Demand* In order that an unsigned adjustment and settlement of accounts may operate to give a fresh starting point from which limitation commences to run, there must be cross-demands, the striking of the balance between which constitutes a new consideration for the promise on the part of the person against whom the balance is found to pay the balance so settled. *Mulchand Gulabchand* v. *Girdhar Madhab, 8 Bom A. C. 6*, followed. HARGOPAL PREMSUKHDAS *v.* ABDUL KHAN HAJI MUHAMMAD . . 9 Bom 429

In the case there followed it was *held* that, where there had been a running account between the plaintiff and the defendant consisting of advances made by the former, and part payments by the latter, the plaintiff was entitled to recover only in respect of advances made by him within three years preceding the institution of his suit, but he had a

HAV . . . . . . 8 Bom A. C. 6

11. ——— *Account stated—Signed balance of account—Acknowledgment.* A sum of money was deposited with the defendant's firm in 1857. Three years afterwards interest was paid by the firm, which was debited in the ledger to the creditor against a credit of a like amount. In 1875 a balance was struck, and carried to another account signed by the defendant, and acknowledging the same to be "due for balance of old account." In 1878 the account was again balanced, and the balance again transferred to a fresh account similarly signed :—*Held*, that the transaction did not amount to an account stated within the meaning of Art. 62, Sch II of Act IX of 1871, or Art 64 of Sch. II of Act XV of 1877, and was no more than a mere acknowledgment, which, as the suit had then long been barred by limitation, was of no avail An account stated, in the true sense of the term, and in the sense employed in the abovementioned sections of the Limitation Acts of 1871 and 1877, is where several items of claim are brought into account on either side, and being set against one another, a balance is struck, and the consideration for the payment of the balance is the discharge on each side, each party resigning his own rights on the sums he can claim, in consideration of a similar ... ement ... alance

I. L. R. 7 Bom. 414

12. ——— *Account stated—Acknowledgment of debt.* The striking of a balance in an account the items of which are all on one side does not amount to an "account stated" in the proper sense of the term. Hence the signature of the debtor to such balance amounts to no more than an acknowledgment of a debt, and, if the debt is barred at the time of signature, will not give rise to any fresh period of limitation in favour of the creditor. *Nahanibai* v. *Nathu Bhau, I. L R 7 Bom. 414*, followed JAMUN *v.* NAND LAL
I. L R. 15 All. 1

13. ——— and s. 19—*Account settled, but not signed—Oral promise by debtor to pay balance—Commencement of limitation.* The plaintiff and the defendant, who was his agent, examined

I. L. R. 18 Mad ...

14. ——— *Khata, suit on a—Limitation—Acknowledgment—Construction* A khata consisting of one item only on the debit side, and bearing the mark of the debtor, *held* to be a mere acknowledgment, and not an account stated. TRIBHOVAN GANGARAM *v.* AMINA
I. L. R. 9 Bom. 516

15. ——— *Suit for money on account stated.* On the 9th October 1875, the book containing the accounts between the plaintiff and the defendant, kept by the plaintiff, was examined by the parties, and a balance was struck in the plaintiff's favour, which was orally approved and admitted by the defendant. On the 2nd April 1877 the plaintiff sued the defendant for the

LIMITATION ACT (XV OF 1877)—*contd.*

Schedule II—*contd.*

——— **Art. 64—*contd.***

amount of this balance "on the basis of the account book" *Held*, that the suit was in effect one on accounts stated falling within Art 62, Sch II of Act IX of 1871, and could be brought within three years from the 9th October 1875 for the total balance struck, and being so brought was within time. NAND RAM *v* RAM PRASAD **I L R 2 All 641**

16. ——— *Suit for money due on accounts stated—"Title" acquired under Act IX of 1871—Suit for money lent* The plaintiff sued the defendant for money due upon accounts stated between them in December 1874, when Act IX of 1871 was in force. Such accounts were not signed by the defendant The suit was instituted after Act XV of 1877, which repealed Act IX of 1871, had come into force. *Held*, that the plaintiff's right to sue upon such accounts within three [illegible]

[illegible]

governed by the provisions of Act IX of 1871 but by those of Act XV of 1877, and that therefore, the accounts not being signed by the defendant, the plaintiff could not claim the benefit of Art 64 of Sch. II of the latter Act, but must be regarded as suing merely for money lent THAKURYAL *v.* SHEO SINGH RAI . . . . **I L R 2 All. 872**

17 ——— *Statement of account unsigned—Cause of action.* The plaintiffs claimed on a statement of account in writing, dated the 18th October 1877, this statement of account

[illegible]

date did not constitute an implied contract, and that therefore these contentions were not open to the plaintiffs, but the Court referred the question whether the plaintiffs' claim, so far as it was based on the statement of account on the 18th October 1877, fell within Art. 64 of Sch II of Act XV of 1877. *Held*, by MITTER, PRINSEP, and McDONELL, JJ.—That the question referred was a matter of limitation arising in the case which had not been decided in the order of reference, and without such a decision the case could not be disposed of, and as to that point, that the statement of account [illegible]

LIMITATION ACT (XV OF 1877)—*contd.*

Schedule II—*contd.*

——— **Art 64—*contd.***

18. ——— *Account stated—* [illegible]

[illegible]

debt due under the decree:—*Held*, that, inasmuch as no appeal had been preferred against the order disallowing execution, *A* was bound by that decision, but that the suit might be taken to be one for an account stated in writing with an agreement for payment at a certain stated period of time [illegible]

barred by Art. 64 of the Limitation Act. BHEKHAN DOBEY *v* RAJROOP KOOER . **I. L. R. 8 Calc. 912**

19. ——— *Account stated—Evidence of existing debt—Fresh Contract Law in India—English Law—Acknowledgment of debt—Limitation Act, 1877, s. 19.* In June 1883, the plaintiff's father advanced a loan to the defendant at compound interest. The account of this debt,

[illegible]

in Bombay (as shown by the earlier cases) where the account was signed If, however, it was not signed, it could not be sued on as a new contract. The Indian Limitation Act required an acknowledgment or admission of a debt to be signed; and an admission not made in the manner prescribed by law (*i.e.*, signed) for the purpose of preventing a debt from becoming barred does not imply a promise to pay it if it should become barred. According, however, to the later authorities, an account stated or adjusted ruzukhata cannot be sued on as a fresh contract. The suit must be brought in respect of the original transaction, and the subsequent stated or adjusted accounts ruzukhata are only evidence of the debt arising from

LIMITATION ACT (XV OF 1877)—*contd.*

Schedule II—*contd.*

——— Art. 64—*contd.*

them, and serve to prevent the operation of the Act of Limitation. SHANKAR v. MUKTA

I L R 22 Bom. 513

20. ——— *Suit on adjustment of account between landlord and tenant on default in payment of rent—Beng. Act VIII of 1869.*

but a suit for the recovery of money on account governed by the provisions of the Limitation Law, 1871, Sch. II, Art. 62. DOLEE CHAND v. GOOR DYAL SINGH . . . . 24 W. R. 218

21. ——— *Suit on account stated by guardian as agent of minor* A suit on

22. ——— *Suit for balance of account—Evidence—Account stated—Acknowledgment.* A mere acknowledgment, signed by a debtor in the account book of his creditor, showing a balance standing against the debtor on an account, which is not a mutual account, is neither an account stated, to which Art. 64 of the second Schedule to the Indian Limitation Act, 1877, applies, nor is it evidence of a new contract which can be the basis of a suit. *Jamun v. Nand Lal, I. L. R 15 All. 1,* and *Shankar v. Mukta, I. L. R. 22 Bom. 513,* followed. *Nand Ram v. Ram Prasad, I. L R 2 All. 641; Thakurya v. Sheo Singh Rai, I. L. R. 2 All 872, Zulfikar Husain v. Munna Lal, I. L. R. 3 All. 148; Sital Prasad v. Imam Bakhsh, All. Weekly Notes (1883) 47, Kanhaya Lal v. Stowell, I. L. R. 3 All. 581; Ghasita v. Ranchore, All. Weekly Notes (1881) 65; Kunhaya Lall v Bunsee, Agra F. B., p. 94; Hirada v. Gadigi, 6 Mad. H. C Rep. 197,* and *Dukhi Sahu v. Mahomed Bikhu, I. L. R. 10 Calc 284,* referred to. GANGA PRASAD v RAM DAYAL (1901) . . . I. L. R. 23 All. 502

23. ——— *Accounts stated—Acknowledgment of indebtedness without reciprocal demands.* The defendant in a suit had, within three years of the date on which the plaint was filed, signed a written acknowledgment that a sum of money was due by himself and his partner to plaintiff. Upon this being relied on as saving the suit from being barred by limitation, it was pleaded that the document was not an account stated, as there were no reciprocal demands between plaintiff and defendants:—*Held,* that the document was an account stated, within the meaning of Art. 64 of Sch. II to the Limitation Act,

LIMITATION ACT (XV OF 1877)—*contd.*

Schedule II—*contd.*

——— Art. 64—*concld.*

and that the suit was not barred. It is not neces-

24. ——— *Arts 64, 120—Suit against heirs of deceased debtor—Hindu law—Joint Hindu family* The plaintiff, on the 29th of August, 1898, sued to recover a sum alleged to be due on an account stated between himself and one Kashi Nath, since deceased on the 15th of November, 1893 The contesting defendants were two sons of Kashi Nath, and were sued as members of a joint Hindu family and as partners in the business carried on by Kashi Nath and his third son, who did not defend the suit. It was found however, that these defendants had separated from their father and brother before the date

R. 8 Bom. 542, referred to. FAKIR CHAND v. DAYA RAM (1902) . . I. L. R. 25 All. 67

——— Art. 65 (1871, art. 63)—

——— *Surety on bond undertaking to pay "eventually."* A verbally became surety upon a bond executed by *B* for repayment, in May 1872, to the plaintiff, of certain advances, promising, "if *B* does not pay

UMBER DEY PODDAR v. HUNOSHESHUR MOOKERJEE

4 C. L. R. 34

——— Art. 66 (1871, art. 65)—

1. ——— *Claim not based on single bond.* The limitation provided in Art. 66 of Act XV of 1877 is not applicable to a suit in which the claim is not based on a single bond, i.e., a bond

LIMITATION ACT (XV OF 1877)—*contd.*

Schedule II—*contd.*

———— **Art. 66**—*concld.*

or written engagement for the payment of money, without a penalty LACHMAN SINGH *v.* KESRI
I. L. R. 4 All. 3

2. ———— *Bond—Interest payable monthly—Payment at a specified date—Limitation Act, 1871, Art 75.* The defendant executed a bond, which provided that interest should be payable monthly, and that the principal should become due within six months from the date of execution, the bond contained a clause to the effect that, if the interest should not be paid

Held, that a suit on the bond brought within three

BABU *v* GOURI PERSHAD BIAS
I. L. R. 5 Calc. 21

3. ———— **and Art. 116**—*Bond stipulating for recovery of loan from moveable and immoveable property* To a bond containing a stipulation that "if the principal and interest is

Act is applicable, such bond not creating a mort-

———— **Art. 67 (1871, art. 66)**—
See DEKKHAN AGRICULTURISTS' RELIEF ACT, 1879, s 72. . I. L. R. 9 Bom. 461

———— **Art. 69 (1871, art 68)**—*Bill of exchange—Dishonour of bill—Suit against acceptor.* *M*, on the 12th October 1855, drew a

the bill with *G*, who presented it at maturity to *J*, who dishonoured it *G* thereupon sued *M L*

(confirming the decision of NORMAN, J.), that the suit was barred by limitation, the plaintiff's cause of action having accrued when the bill became pay-

LIMITATION ACT (XV OF 1877)—*contd.*

Schedule II—*contd.*

———— **Art. 69**—*concld.*

able and the acceptor refused to pay. MOHENDRO LALL BOSE *v* JADUB KISSEN SINGH
14 W. R. O. C. 5

s c. in the Court below . Bourke O. C. 157

———— **Art. 72 (1871, art. 71)**—*Promissory note "after six months when demand was made"—Necessity of demand* Where a promissory note was made payable "after six months, whenever the payee should demand the same," with interest, it was held that the law of limitation began to run upon the expiration of six months from the date of the note JEAUNISSA LADLI BEGAM SAHEB *v.* MANEKJI KHARSETJI . . 7 Bom. O. C. 36

See MADHAVBHAI SHIVBHAN *v.* FATTESING NUTHABHAI . . . . 10 Bom. 487

———— **Art. 73 (1871, art. 72)**—

1. ———— *Promissory note payable on demand* Under Act XIV of 1859, the period of limitation on a promissory note payable on demand commenced to run from the date of the note, and not from the date of demand VINAYAK GOVIND *v* BABAJI . . I. L. R. 4 Bom. 230

HEMPANMAL *v.* HANUMAN . 2 Mad. 472

TARACHAND GHOSE *v* ABDUL ALI
8 B. L. R. 24 : 16 W. R. O. C. 1

s c in Court below ABDUL AI *v* TARACHAND GHOSE . . . . B. L. R. 292

2. ———— *Promissory note payable on demand—Cause of action* The defendant gave the plaintiff a promissory note on the 5th

mand ;—*Held*, that the cause of action arose at the

I. L. R. 1 Calc. 328

See VENKATA CHELLA MUDALI *v.* SASHAGHERRY RAU . . . . . 7 Mad. 283

LIMITATION ACT (XV OF 1877)—*contd.*

Schedule II—*contd.*

——— Art. 73—*contd.*

and MOLAKATALLA NAGANNA *v.* PEDDA NARAPPA
7 Mad. 288

3. ——— *Act XIV of 1859—Act IX of 1871—Promissory note payable on demand* On the 12th December 1864 the plaintiff sold seven bars of gold to the defendants, and deposited with them the value thereof, to run at interest and payable on demand. The defendants entered the amount in their own books, and furnished the plaintiff with a pass-book, which contained this entry: "The account of the amount deposited by *B* (the plaintiff) with *V* (the defendants), of the city of Poona The details of it are as follows: We have debited the amount to ourselves, and will return it whenever you demand it Shake 1876 (A D. 1864)" The defendants adjusted the account in the plaintiff's pass-book in July 1865 in these words. "Balance this day, the 1st Jyest vadya, Shake 1787, R1,159-2-0 Interest on this sum will run from 1st Jyest vadya, Shake 1787 (A D 1865)" This entry was signed by the defend-

[illegible]

book as a promissory note, the suit was barred by the law of limitation. VINAYAK GOVIND *v.* BABAJI
I. L. R. 4 Bom. 230

These are cases where the suit was, when Act IX of 1871 came into force, already barred under Act XIV of 1859. But in Madras case the principle was *held* to be the same where the suit was not barred under that Act at the time Act IX of 1871 came into force.

4. ——— *Suit on promissory note executed while Act XIV of 1859 was in force, but not barred under that Act—Cause of action* In a suit brought after the 1st April 1873 on a promissory note for a sum payable on demand, executed while the old Limitation Act (XIV of 1859) was in force, but not barred under that Act at the time the new Limitation Act (IX of 1878) came into forces the period of limitation ought to be computed from the date of the note, and not from that of the demand The new Act merely alters the point of time as to notes executed after its enactment, from which the period is to be reckoned,

[illegible]

5. ——— *Promissory note—Novation.* The holder of a promissory note payable on demand, dated 14th April 1870, demanded payment on 8th December 1872. The maker then paid interest in advance up to 1st April 1873, upon the condition that the holder should make no demand until that date:—*Held*, that this transaction amounted to the substitution of a new contract for that contained in the promissory note; that the period of limitation must be reckoned from 1st April 1873; and that consequently a suit to recover the balance due on the note, instituted on 27th March 1876, was not barred. NATA HIRA *v.* JANARDAN RAMACHANDRA
I. L. R. 1 Bom. 503

The question was raised under the Act of 1871, whether the bringing of an action to recover the amount due on the note could be regarded as a sufficient demand, but was undecided.

See MADHAVBHAI SHIVBHAI *v.* FATTESING NATHUBHAI . . . . 10 Bom. 487

6. ——— *Promissory note payable on demand—Cause of action.* The suit was

[illegible]

which gives three years from date of demand.

[illegible]

——— Art. 74 (1871, art. 74)—

Under Act XIV of 1859, the decisions seem to have been in accordance with this article.

See MUNNA JHUNNA KOONWAR *v* LALJEE ROY
1 W. R. 121

ULTAF ALI KHAN *v* RAM LALL
Agra F. B. 83: Ed. 1874, 83

——— Art. 75 (1871, art 75—

See BOND . I. L. R. 4 Bom. 96
I. L. R. 3 Mad. 61
11 C. W. N. 903

See RIGHT OF SUIT . I. L. R. 32 Mad. 284

1. ——— *Promissory note* ... promissory note, dated

[illegible]

whole amount was to become payable ... Default was made in payment of the first instalment, which fell due on 2nd October 1868 In an action brought on 19th October 1871 for the recovery

LIMITATION ACT (XV OF 1877)—*contd.*

Schedule II—*contd.*

——— Art. 75—*contd.*

of the whole amount :—*Held*, that the right to bring the suit under Act XIV of 1859, s 1, cl 10 accrued to the plaintiff on 2nd October 1868, and that having omitted to bring it for more than three

subsequent payment, and that no such subsequent payment (assuming it to have been made) could, in the absence of any fresh agreement, supersede or suspend such right. The proposition laid down in *Ramkrishna Mahadev v Bayaji Santaji, 5 Bom A. C. 35*,—that "although the instalments were not paid by the defendants at the times fixed for payment, yet the defendants having paid the money on account of them, and the plaintiff having accepted it, the payments must be considered, as regards both parties, as if made at the times fixed and the plaintiff cannot take advantage of the stipulation that the sum should become due on failure to pay any instalment, or the defendants rely upon it as making the whole debt due, and fixing the period from which the time of limitation ran,"—overruled, as there was nothing in Act XIV of 1859 to give any such effect to an acceptance of part-payment after the whole debt has become due GUMNA DAMBERSHET *v* BHIKU HARIBA . . . . I. L. R. 1 Bom. 125

2. ——— *Money payable by instalments.* In a suit for recovery of a certain sum of money, the present defendant intervened by a

the claim was barred. GAUR HARI DAS *v* MADAN MOHAN BISWAS

3 B. L. R. A. C. 16 : 11 W. R. 330

3. ——— *Promissory note payable by instalments—Non-payment of instalment—Payment of subsequent instalments* In August 1856 *G H B*, *B B*, and *J W* (the two latter being sureties, and having been treated as such by the plaintiff) jointly and severally executed a promis-

On *B B's* moving for a new trial, the Judges differed on the questions of limitation and laches of the plaintiff, and the case was referred for the opinion of the High Court, which was in favour of the defendant on the point of limitation .—*Held*, that a cause of action at once arises on, and limitation runs from, the non-payment of an instalment ;

LIMITATION ACT (XV OF 1877)—*contd.*

Schedule II—*contd.*

——— Art. 75—*contd.*

and that acceptance of subsequent instalments on a note so payable is not a waiver of the limitation which has so commenced to run against a surety. BREEN *v* BALFOUR . . Bourke O. C. 120

NARAYANAPPA *v* BHASKAR PARMAYA

7 Bom. A. C. 125

RAM KRISHNA MAHADEV *v.* BAYAJI SANTAJI

5 Bom. A. C. 35

But *see* GUMNA DAMBERSHET *v* BHIKU HARIBA

I. L. R. 1 Bom. 125

4. ——— *Bond payable by instalments—Stipulation to recover by execution—Cause of action.* Where a certain amount of money

on default of payment occurring at any one of the stipulated periods for the payment of an instalment : —*Held*, that, as a separate suit could not be brought

occasion of any such default JUGGUT MOHINEE DOSSEE *v.* MONOHUR KOONWAR . 25 W. R. 278

5. ——— *Act, 1871, Art. 75—Bond payable by instalments—Waiver of default—Cause of action.* A suit was brought upon an instalment bond conditioned upon default in payment of any one or more instalments that the whole sum should be exigible Default was made in payment of several instalments, but subsequently payments were made and accepted by the plaintiff on account of the unpaid instalments. This suit was instituted more than three years after the first de-

an instalment, in respect of which default the benefit of the provision in the 75th clause of second Schedule of Act IX of 1871 was not waived. UNCOVENANTED SERVICE BANK *v* KHETTERMOHUN GHOSE

6 N. W. 88

6. ——— *Bond payable by instalments—Waiver of default* A bond, dated the

per mensem till the whole amount was

LIMITATION ACT (XV OF 1877)—*contd.*

Schedule II—*contd.*

——— Art. 75—*contd.*

claim was wholly barred, as the first condition amounted only to a proviso that the obligee might exercise a right of waiver and accept payment by instalments instead of suing for the whole and there was nothing to show that he had exercised such right of waiver NAVALMAL GAMBHIRMAL *v.* DHONDIBA BIN BHAGVANTRAM

11 Bom. 155

7. ——— *Bond payable by instalments—Waiver* On the 24th May 1866, *H* gave *A* a bond payable by instalments, which pro-

bond, that limitation began to run when the first default was made, and no waiver, before Act IX of 1871 came into force, could affect it AHMAD ALI *v.* HAFIZA BIBI . I. L. R. 3 All. 514

See RADHA PRASAD SINGH *v.* BHAGWAN RAI

I. L. R. 5 All. 289

8. ——— *Waiver—Proof—* ... Mere abstinence from suit is

9. ——— *Debt payable by instalments—Waiver—Proof.* Where a bond for the payment of money by instalments contains a condition that the whole sum then remaining due shall become payable on failure to pay any one instalment, the creditor, who seeks to recover instalments which in due course would have been due subsequently to the date on which the recovery of the debt in full has become barred, must prove a waiver of his right to enforce the condition. Waiver is not to be inferred from mere abstinence to enforce the condition. GOPALA *v.* PARAMMA

I. L. R. 7 Mad. 583

10. ——— *Bond—Waiver—Cause of action.* The mere acceptance of instalments after default, by the obligee of a bond payable by instalments, which provides that, in case of failure to pay one or more instalments, the whole amount of the bond due shall become payable does not constitute a "waiver," within the meaning of Art 75, Sch. II of Act IX of 1871, of the obligee's right to enforce such provision. In the case of such a bond, the cause of action arises on the first default, and limitation runs from the date of such default. MUMFORD *v.* PEAL I. L. R. 2 All. 857

11. ——— *Contract to pay by instalments—Default in paying an instalment of a debt payable by instalments* When a debt is made payable by instalments, with a proviso that, on default of payment of any one instalment, the whole debt, or so much of it as may then remain unpaid, shall become due, limitation runs, under

merely allowing the default to pass unnoticed does not. *In the matter of* CHENI BASH SAHA *v.* KADUM MUNDUL . . . I. L. R. 5 Calc. 97

12. ——— *Decree payable by instalments—Default—Waiver—Estoppel—Application for execution as provided for in case of default—Application to recover instalments* A decree for

full all the instalments which ... cepting the instalment falling due in the previous September, that is, September 1876, of which he had received only a part The application of the 7th May 1787 was struck off the file. The decree-holder subsequently accepted the remaining instalments, which were paid on due dates. On the 28th August 1878, the decree-holder applied for ... had been paid

fault, with reference to the ... instalment for September 1876. The Court refused to allow execution to issue for such amount, but allowed it to issue for the balance of the instalment for September 1876 *Per* OLDFIELD, J.—That the acceptance by the decree-holder of the instalments falling due after September 1876, notwithstanding default had been made in respect of the instalment for September 1876, amounted to a waiver of his right to execute the decree for the larger amount payable thereunder in case of default, and by such waiver he was estopped from recovering such larger amount in execution of the decree. *Mumford v. Peal, I L. R. 2 All 857,* and *Gyan Chand v. Jawahur, 2 N. W. 63,* referred to RADHA PRASAD SINGH *v.* BHAGWAN RAI

I. L. R. 5 All. 289

13. ——— *Construction of decree—Decree payable by instalments—Execution of decree.* A consent decree for R350 directed payment of the money by fourteen half-yearly instalments of R25 each, in Cheyt and Assin of each year,

the first instalment to be paid in the month of Cheyt 1283 (March-April 1877). The decree contained a provision that on default of payment of any one instalment, the execution-creditor should have the option of executing the decree for the whole amount remaining unpaid. Default was made in payment of the first instalment, but the judgment-debtor paid up (not on due date) the instalment which fell due up to and including Assin 1285 (October-November 1878), when he stopped making any payments. On the 26th of November 1881 the decree-holder applied for execution in respect of all sums then remaining unpaid under the decree The District Judge allowed execution to issue for all sums which had fallen due within three years previously to date of the application for execution, but refused to allow execution to issue in respect of the instalments not then due:—*Held*, that the execution-creditor must be considered to have waived his right to execute the decree for the whole amount but was entitled under the decree to realize any instalments which were still due NIL MADHUB CHUCKERBUTTY *v* RAMSODOY GHOSE

I. L. R. 9 Calc. 857

14. ——— *Verbal contract—Debt payable by instalments* *A* entered into a verbal agreement with *B* to pay a debt due in monthly instalments, *B* reserving to himself the right to claim payment of the whole sum due on default of three successive instalments *A* failed to pay any instalment Four years after the first instalment was due *B* sued *A* to recover the sum due on the various instalments not barred by limitation:—*Held*, that *B* was not bound to sue for the whole amount due directly on *A's* failure to pay the three successive instalments *Semble* Art 75, Sch II of Act XV of 1877, does not apply according to its strict terms to a suit brought upon a verbal contract KOYLASH CHUNDER DASS *v* BOYKOONTO NATH CHANDRA

I. L. R. 3 Calc 619: 2 C. L. R. 167

15. ——— *Cause of action —Bond—Payment by instalments—Liability for*

any one of such instalments, or in the event of default being made by him in payment of the

these presents without deduction, then the above-written bond or obligation shall be of no effect; otherwise the same shall be and remain in full force and virtue." The defendant paid three of the said monthly instalments, the last of which was paid on the 2nd December 1879, being that which had fallen due on the 4th November 1879. No further instalments were paid, but no demand for payment of the entire sum secured by the bond was made by the plaintiff until the 30th January 1884 The plaintiff filed this suit on the 28th April 1884. The defendant contended that the plaintiff's cause of action arose on the 4th December 1879, when he (the defendant) failed to pay the instalment then due and pleaded limitation. The plaintiff contended that under the bond the cause of action did not arise until the date of his demand, *viz*, on the 30th January 1884:—*Held*, that the suit was not barred The language of the bond showed that it was the intention of the parties that, in case default being made in payment of one instalment, the whole amount should become due only if a demand for such amount were made The cause of action did not arise against the defendant until the date of demand, *viz*, the 30th January 1884 HANMANTRAM SADHURAM *v* BOWLES

I. L. R. 8 Bom. 561

16. ——— *Bond payable by instalments—Cause of action Limitation Act, 1877, Arts 67, 68, and 80* *B* and *S* executed a bond, dated the 15th August 1874, in favour of plaintiff in consideration of a loan of R15,000, agreeing to repay the same within three years from the above date and covenanting to pay every half-year interest on the same, at the rate of 8 per cent per annum; and also to pay the premia on certain policies of insurance made over to plaintiff by way of collateral

necessary, to sue for the full amount of the bond on the failure of any one or more stipulated payment, or on the full expiry of the period of three years:

Held by SPANKIE, J., that Art 80, Sch. II of Act XV of 1877, applies to the suit, and limitation would run from the date when the bond became due; that according to the stipulation in the bond it would become due on failure in payment on due date of both the interest and premia, and not on failure in payment of either of them only. *Held*, further, that Arts 67 and 68, Sch. II of Act XV of 1877, were not applicable to the suit. BALL *v* STOWELL

I. L. R. 2 All. 322

17. ——— *Decree payable by instalments—Instalment, failure of, whole sum*

LIMITATION ACT (XV OF 1877)—*contd.*

Schedule II—*contd.*

——— Art. 75—*contd.*

decreed to fall due—Right of decree-holder to waive his right to execute the whole decree—Waiver. A proviso in a decree made payable by instalments, by which the whole amount of the decree is to become due upon default in payment of any instalment, is a proviso enuring for the benefit of the decree-holder alone, and he is at liberty to take advantage of it or to waive it as he thinks fit. In this case it was *held* that he did waive his right, and therefore his right to recover the amount by instalments subsequently was not barred, limitation not running against him from the original default. RAM CULPO BHATTACHARJI *v.* RAM CHUNDER SHOME

I. L. R. 14 Calc. 352

18. ——— *Instalment bond—Default in one instalment, the whole amount to fall due—Waiver.* The mere fact that a creditor has done nothing to enforce a condition in an instrument, under which the whole debt became due on failure in the payment of one instalment, is no evidence of waiver within the meaning of Art. 75 of the Limitation Act. NOBODIP CHUNDER SAHA *v* RAM KRISHNA ROY CHOWDHRY

I. L. R. 14 Calc. 397

19. ——— *Bond payable by instalments—Default in payment of an instalment—Waiver of a condition of forfeiture on default in payment of one instalment—Acceptance of an instalment overdue* A bond payable by instalments provided that, if default was made in paying one instalment, the whole debt should become due. The amount of the third instalment was paid five days after it became due The lower Court found that this payment was accepted by the obligee as a payment made on account or in satisfaction of the third instalment, and not as a mere part payment on reduction of the whole debt, and that the circumstances indicated an intention to waive the forfeiture, though there was no express waiver:—*Held*, that the acceptance of the amount of the third instalment constituted a waiver within the meaning of Art 75 of Sch II of the Limitation Act, 1877. NAGAPPA *v.* ISMAIL . I L R 12 Mad. 192

20. ——— *Execution of decree—Decree payable by instalments—Default—Waiver.* A decree was made for payment of the decretal amount by monthly instalments running over a period of twelve years; and it was provided that on default the decree-holder might execute the decree as a whole for the balance then due In 1883, a default was made, and in 1884 the decree-holder filed an application for execution in respect thereof, but did not proceed with it, and continued to receive the monthly instalments. In 1887, he made another application for execution, in which he relied on the same default:—*Held*, that the default if it was one, had been waived by the decree-holder and that such waiver was a good defence to the present application. *Mumford v. Peal, I. L. R. 2 All. 857*, and *Asmutullah Dalal v. Kally Churn Mitter, I. L. R. 7 Calc. 56*, distinguished. BUDDHU LAL *v* REKKHAB DAS . I. L R. 11 All. 482

21. ——— *Payment of bond-debt by instalments—Right to sue for whole debt on default of payment of any instalment—Waiver of right to sue, nature of proof of.* On the 15th August 1891, the defendant executed a document

whole amount with interest at eight annas per cent. per annum" The defendant failed to pay the first instalment, which the plaintiffs admitted was now barred, but on the 10th June 1895 the plaintiffs filed this suit to recover the remainder of the debt and interest. The defendant pleaded that under the above clause the whole sum became due on the failure to pay the first instalment; that the right to sue which then accrued was never waived, and that the suit was now barred by limitation.—*Held*,

itself afford clear evidence of a legal waiver. KANKUCHAND SHIVCHAND *v.* RUSTOMJI HORMUSJI

I. L R 20 Bom. 109

22. ——— *Bond—Instalments—Waiver of right to recover whole amount on non-payment of instalment—Limitation.* Where money secured by a bond is payable by instalments, with a condition that the whole amount secured will become due upon non-payment of any instalment, the creditor is not bound to enforce this condition, but he may accept payment of instalments after due date—thereby impliedly waiving his right to sue for the whole amount due—and may sue upon a subsequent default in payment of any future instalment. *Basant Lal v. Gopal Pershad, All Weekly Notes (1906) 193*, distinguished. MAHARAJA OF BENARES *v.* NAND RAM (1907) . I. L. R. 29 All. 431

23. ——— *Limitation—Bond—Instalments—Power to sue for whole amount on default of payment.* A bond payable by instalments

creditor should be comp

LIMITATION ACT (XV OF 1877)—*contd*
Schedule II—*contd*
——— Art. 75—*concld.*

on default of payment of one instalment nor did limitation in respect of the whole debt commence to run from the date of the first default. *Jadab Chandra Bakshi v. Bhairab Chandra Chuckerbutty, I. L. R 31 Calc. 297*, and *Hurry Pershad Choudhry v Nasib Singh, I L. R 21 Calc. 542*, dissented from *Shankar Prasad v. Jalpa Prasad, I L R. 16 All 371*, and *Maharaja of Benares v. Nand Ram, I. L R 29 All 431*, referred to AJUDHIA v. KUNJAL (1908) . I L R 30 All 123

24. ——— *Instalment bond, registered—Cause of action—Default—Waiver—Limitation—Limitation Act (IX of 1908), Sch 1, Arts 75 and 115* Where in an instalment bond it was stipulated that in default of payment of one instalment the whole amount of the bond shall fall due —*Held* that mere omission to sue is not such a waiver as is contemplated by Art 75 of Sch. I of the Limitation Act *Monmohan Roy v. Durga Churn Gooee, I L R 15 Calc 502*, followed *Rup Narain Bhuttacharya v. Gopi Nath Mandol, 11 C W. N 903*, dissented from Such a waiver is not limited to the case of a subsequent acceptance of an overdue instalment, but may be affected in a variety of ways and may be inferred from various circumstances It must however depend on some definite act or forbearance *Jadab Chandra v Bhairab Chandra, I L R 31 Calc 297*, referred to ABINASH CHANDRA BOSE v BAMA BEWA (1909) . . 13 C W N. 1010

25. ——— *Instalment bond —Whole amount to become due on non-payment of two instalments—Default—Omission to sue—Waiver, what constitutes—Limitation—Limitation Act (XV of 1877), Sch. II. Art 75* Where an instalment bond provided that on non payment of two consecutive instalments, the whole amount of the bond shall fall due —*Held*, that limitation ran from the date of non-payment of the second instalment, unless there was a waiver by the creditor by the acceptance of an overdue instalment Mere abstinence on the part of the creditor from bringing a suit for the recovery of the whole amount due on the failure of the payment of the first two instalments did not amount to waiver *Rup Narain v. Gopi Nath Mandol, 11 C W N 903*, not followed *Chunder Komal Das v Bisassuree Dassia, 13 C. L R 243, Nobo Coomer Mukhopadhya v Siru Mullick, I L R 6 Calc 94 ; Nilmadhab Chakrabutty v Ramsoday Ghose, I L. R 9 Calc. 857*, referred to *Hurro Nauth Roy v. Maheroollah Moollah, 7 W. R 21*, *Chenibash Shaha v Kadum*

LIMITATION ACT (XV OF 1877)—*contd.*
Schedule II—*contd*
——— Art 79, cl (6)—

See FUTURE MAINTENANCE, DECREE FOR I. L R 30 Mad 504

——— Art 80 (1871, art 80)—*Suit on unregistered bond pledging moveable property for repayment* In a suit on an unregistered bond, whereby certain moveable property in the debtor's possession was pledged as security for the repayment of principal and interest —*Held*, that the suit was governed by Art 80, Sch II of the Limitation Act, 1877. VITLA KAMTI v KALEKARA I L R 11 Mad. 153

——— Art 81 (1871, art 82)—*Suit by surety of lessee for refund of rent paid to wrongful heir of deceased lessor.* In a suit by the surety of a lessee for the refund of rent paid to the wrongful heir of the deceased lessor, the cause of action as

——— Art. 82 (1871, art. 83)—*Suit for contribution—Cause of action* A surety who had dis-

TINE v DREW
1 N. W Pt II. 42: Ed. 1873, 100

——— Art 83 (1871, art. 84)—

See post, ARTS 97 AND 83.

1 ——— *Contract of indemnity* In 1864 a lease of a house was granted to *A* for a term of ten years The lease contained a covenant to repair *A* died, and *B*, his administrator, assigned the lease to another, and it ulti- In 1872 the defendants nts" therein repair, and after the term had expired, *C*, the representative of the lessor, sued *B* for arrears of rent and damages for non-repair. *B* defended the suit, but C obtained a decree against him for R6,167-3 and costs, amounting in all to R8,328-3 His own costs amounted to R1,491-1. In 1876 *B* paid *C* the R8,328-6. In 1877 *B* sued the plaintiff for the amount which he had been compelled to pay *C* and for the amount of his own costs. The plaintiff gave notice to the

recover from the defendants the sum recovered from him by *B* together with his own costs of defence ;

LIMITATION ACT (XV OF 1877)—*contd.*

Schedule II—*contd.*

——— Art. 83—*contd.*

—*Held*, that the suit was not barred under Act XV of 1877, Sch. II, Art. 83—which provides a period of three years' limitation for a suit upon any contract of indemnity other than those specifically provided for from the time "when the plaintiff is actually damnified"—as the time when the plaintiff was actually damnified was when *B* recovered against him. PEPIN *v.* CHUNDER SEEKUR MOOKERJEE

I. L. R. 5 Calc 811: 6 C. L. R 167

2. ——— *Contract of in-*

the 10th October 1882. Defendants claimed a set-off as damages for loss incurred by the plaintiff's failure to supply all the wood contracted for, such loss having arisen on the 25th October 1879 and subsequently :—*Held*, that the law of limitation applicable to the set-off was Art. 83, Sch II of the Limitation Act ; that limitation would run from the time when the plaintiff was actually damnified, and should be reckoned to the date of the institution of the suit, and not to that of claiming the set-off, which was after the defendants' names were brought on the record . and that the set-off was therefore in time. *Walker* v. *Clements, 15 Q B. 1046*, referred to PRAGI LAL *v* MAXWELL

I. L. R. 7 All 284

——— Arts 83, 113, 166—*Suit to recover money on a covenant in a registered document not a suit for specific performance, but for damages, and falls within Art. 116 and not Art 113 of the Limitation Act* *A* and *B* exchanged lands under a registered deed, which contained the following clause : "There is no dispute in respect of the said lands. If disputes should so arise, the respective party should be answerable to the extent of his private property " *A* was deprived of some of the lands he got by the exchange and he sued *B* on the above covenant for the value of the lands, of which he was dispossessed The suit was brought more than six years after the exchange and more than three, but less than six years, after the date of deprivation —*Held*, that the suit was not a suit for specific performance but a suit for compensation for breach of a contract in writing registered and for purposes of limitation, fell within Art. 116 and not 113 of Sch II of the Limitation Act. The rule that in actions for damages for breach of covenant of title in a sale, the breach must be held to have occurred as and from the date of sale, does not apply, when there is a special contract. The provision in the deed above stated was a special contract to indemnify, when deprivation took place, and the period of limitation ought to be computed

LIMITATION ACT (XV OF 1877)—*contd.*

Schedule II—*contd.*

——— Art. 83—*concld.*

from such date. As the suit was brought within six years of such date, it was not barred by limitation. SINIVASAR RAGHAVA DIKSHADER *v.* RENGASAMI AIYANGAR (1908) I L. R. 31 Mad. 452

——— Art. 84 (1871, art. 85)—

See ATTORNEY AND CLIENT.

I. L R. 35 Calc. 171

1. ——— *Act XIV of 1859, s 1, cl 9—Beng. Reg. XX of 1812, s. 5—Suit for fees due to pleader.* A suit brought to recover fees due to plaintiff as pleader in three suits was held to be barred by limitation as instituted after three years, that being the period of limitation in one case in which the defendants had agreed to pay the fees according to law such agreement being a *obligation* for the payment of money within the meaning of s. 5, Regulation XX of 1812, and that being also the limitation applicable under cl. 9, s 1, Act XIV of 1859, in the other cases in which there was no written engagement to pay the fees. RASH MOHUN GOSWAMY *v.* ISSUR CHUNDER MOOKERJEE

9 W. R. 113

2. ——— *Suit for pleader's fees not under written contract.* A suit for pleader's fees upon a vakalatnama which is in the form of a mere power of attorney, and is not a written contract, is barred by limitation if not brought within three years. In the absence of

DWARKANATH MOITRO *v.* KENNY

5 W. R. S. C. C. Ref. 1

CARRUTHERS *v.* MENZIES . . . Cor. 40

3. ——— *Act XIV of 1859.*

The plaintiff

the present suit, having been brought within three years from that date, was not barred. BUCKAPATNAM THATHACHARLU *v.* KAJAMIYA . 6 Mad. 263

4. ——— *"Suit"—Attorney and client—Taxation of bill of costs—Application*

LIMITATION ACT (XV OF 1877)—*contd.*

Schedule II—*contd.*

——— Art. 84—*contd.*

by attorney for payment or attachment—Rule 149 Com. Law Rules of Bombay Supreme Court An application (under Rule 149 of the Common Law Rules of the Supreme Court of Bombay) by an attorney that his client should show cause why he should not pay the balance shown by the Taxing Master's *allocatur* to be due in respect of his bill of costs, and why, in default of such payment, attachment should not issue against the person and property of the client, is not a "suit" within the meaning of the Limitation Act (IX of 1871). Such an application as the above is not barred by any law of limitation now in force in British India. ABBA HAJI ISHMAIL *v* ABBA THARA

I. L. R. 1 Bom 253

5. ——— *Attorney and client—Bill of costs—Civil Procedure Code, s 206—Compromise of suit without knowledge of attorney* A solicitor was retained in July 1871, to execute a decree In November 1871 a prohibitory order was made in the cause, after which the solicitor did nothing more in the matter In June 1872 the [illegible]

amount of his bill of costs:—*Held*, that the plaintiff's claim was not barred by Art 85 of Sch. II to Act IX of 1871 HEARN *v* BAPU SAJU NAIKIN

I L R 1 Bom. 505

6 ——— *Suit by vakil—Termination of suit* The termination of the suit mentioned in Art 84 of Sch. II of the Limitation Act (XV of 1877) means the date when judgment is given BALKRISHNA PANDURANG *v* GOVIND SAIVAJI . . . . I L R 7 Bom. 578

7. ——— *Solicitor and client—Termination of suit—Decree—Taxation of costs.* A solicitor for a party to an appeal received a notice after the date of the decree that the costs [illegible]

I. L. R. [illegible] Mad. [illegible]

8 ——— *Taxed costs of an attorney, suit for—Suit or particular business, meaning of—Attorney and client* Subsequent [illegible]

judgment in the application. *Balkrishna Pandurang* v. *Govind Shivaji, I. L R 7 Bom. 578,* and *Rothery* v. *Munnings, 1 B. & Ad. 5,* approved. Items of an attorney's bill for work done, subsequently to the judgment, in opposing the taxation of the opponent's costs, although done on his client's instructions, will not take the matter out of the Limitation Act Such items do not form part of the costs of the original application. WATKINS *v* FOX . . . . . I. L R. 22 Calc. 943

ADMINISTRATOR-GENERAL OF BENGAL *v* CHUNDER CANT MOOKERJEE . I. L R 22 Calc 952 note

——— Art 85 (1871, art 87; 1859, s. 8)—

Under s 8 of Act XIV of 1859, it was necessary that the persons who had the mutual dealings mentioned in the section should be "merchants or traders" The following cases were held not to be within the section:—

Repaying a debt contractor. PEARY MOHUN BOSE *v*. GOBIND CHUNDER ADDY . 10 W. R 56

[illegible]

COOMAREE DABEE

10 B. L. R 15 : 16 W. R. P. C. 35
14 Moo I. A. 134

Affirming the decision of the Court below in PHOOL KOOMAREE BEEBEE *v* OONKUR PERSHAD ROOSTOBEE . . 2 Ind. Jur. N S. 50
7 W. R. 67

Suit for balance of arutdari account and for commission and interest MEHER CHAND SAHOO *v.* MORCOLYRAM . . . 14 W. R. O. C. 7

Suit for balance of accounts between raiyats and an indigo factory. DOYLE *v*. EDOO GAZEE
3 W. R. S C. C Ref. 13

DOYLE *v* KHOOSEEAL KHAN
3 W. R S C C. Ref 1

DOYLE *v*. ALLUM BISWAS 4 W. R. S C. C Ref. 1

NOBIN CHUNDER SHAHOO *v*. SUROOP CHUNDER DOSS . . . . . . 6 W. R. 328

Suit for balance of account framed as if in the nature of a partnership demand MCCORKINDALE *v*. YOUNG . . . . . 18 W. R. 466

YOUNG *v* MCCORKINDALE . 19 W. R. 159

[illegible]

Suit by commission agent against his principal. BISSESSUR GIR *v*. SREEKRISHEN SHAHA CHOWDHRY
24 W. R. 440

LIMITATION ACT (XV OF 1877)—*contd.*

Schedule II—*contd.*

——— Art. 85—*contd.*

The following decisions were given under the Act of 1859 :—

1. ——————— *Mutual dealings—Balance of accounts.* The test of whether dealings are mutual within s. 8 of Act XIV of 1859 or not seems to be were they such that the balance was sometimes in favour of one party and sometimes of the other. It is not necessary that there should have been such a buying or selling by each of the parties, so as to constitute him a trader within the strict meaning of the term GHASSEERAM *v.* MONOHUR DOSS . 2 Ind. Jur. N. S. 241

2 ——————— *Mutual dealings—Mutual payment and receipt of money* Where each party paid money to the other, and received from the other an equivalent in bills, they were held to have had mutual dealings LUCHMEE NARAIN *v.* CHOOMUN MEAH . . 14 W R 184

3. ——————— *Mutual dealings—Balance of account, suit for* In a suit for the balance of an account with interest the Court was [illegible]

3 Bom A C 82

4. ——————— *Mutual dealings—Co-sharers accounting for rents.* The rule that mutual accounts, if they contain some item or items within twelve years, will not be barred by limitation, though the rest of the items be beyond time is confined to accounts between two parties which show a reciprocity of dealings , or, in other words to transactions in which there is a mutual credit founded on a subsisting debt, or an express or implied agreement for a set-off of mutual debts. AHMED REZA *v.* ENAYET HOSSEIN

W. R. 1864, 235

5. ——————— *Account between principal and agent—Mutual accounts* An agreement [illegible]

[illegible]

down the mutual dealings to March 1868. The agent sued in February 1871 to recover the balance due to him on the account. *Held*, that the case within s. 8 of Act XIV of 1859, and was not barred by limitation even as to the items which were dated more than three years before the institution of the suit. WATSON *v.* AGA MEHEDEE SHERAZEE

L. R. 1 I. A. 346

6. ——————— *Mutual dealing—Item showing continuance of account.* The effect of s. 8, Act XIV of 1859, is that nothing in an account of mutual dealings between merchants and traders is to be barred, provided that there is an item indicating the continuance of such dealings proved to have occurred within the period of limitation. HIRADA BASAPPA *v.* GADIGI MUDDAPA 6 Mad. 142

7. ——————— *Mutual accounts.* To constitute a mutual account there must be transactions on each side creating independent obligations on the other, and not merely transactions which create obligations on the one side, those on the other being merely complete or partial discharges of such obligations. Thus an account consisting of entries of payments made by one party in reduction of his debt to the other, and of payments made by the latter on behalf of the former party for the same purpose, is not a mutual account within the meaning of Art. 85 of Sch. II of the Limitation Act. *Hirada Basappa* v. *Gadigi Muddapa*, [illegible] balance [illegible]

. 293

[illegible]

transactions several of the acceptances were dishonoured by the defendant, and the plaintiffs, at his request, allowed him to renew the bills. Some renewals took place in August and September 1866. In March, May, and July 1866, the defendant made purchases from the plaintiffs, and the plaintiffs made purchases from the defendant. The plaintiffs were in the habit of closing their accounts on 30th June in each year. In an action for balance of account brought on 24th February 1870—*Held*, that the parties were merchants and traders having mutual dealings under s 8 of Act XIV of 1859. The year mentioned in s. 8 of Act XIV of 1859 is intended to be reckoned from the time when the balance of accounts is struck. In this case that was the 30th June 1867 ; the suit, therefore, was not barred. *Quære :* What would be the operation of the section in those cases in which the merchant or trader balances his accounts at the lapse of a period of less than one year? SRINATH DAS *v.* PARK PITTAR

5 B. L. R. 550 : 14 W. R. O. C. 41

9. ——————— *Mutual accounts—Suit for balance of account.* Art. 85, Sch. II, of Act XV of 1877, is intended to apply to cases where an account has been going on between two parties

LIMITATION ACT (XV OF 1877)—*contd.*

Schedule II—*contd.*

——— Art. 85—*contd.*

and balances have been struck from time to time showing the amount due from one of such parties to the other, and the suit to which that article is intended to apply is a suit brought by one of those parties against the other for the balance found to be due on that account. LALJEE SAHOO *v* ROGHOONUNDUN LALL . I. L. R. 6 Calc 447

10. ——— *Balance of account—Mutual dealings* Plaintiff had an account with a banking firm of which the defendant was a member. On the dissolution of this firm, plaintiff made up his accounts debiting the defendant with a share of the amount due to him from the firm and afterwards he carried on business with the plaintiff separately It did not appear that any settlement had been made between the parties from the time of the dissolution of the firm down to the filing of the plaint, or that the defendant had assented to portion of the firm's debt being carried to his separate account *Held*, that the plaintiff could not recover this sum with interest, as an item of a mutual, open, and current account where there had been cross-demands between the parties. (*See* Limitation Act, XV of 1877, Sch II, Art 85) *ROY DHUNPUT SING BAHADOOR v LEKRAJ ROY* 1 C. L. R. 525

11 ——— *Mutual accounts—Adjustment—Admitted item within period of limitation* A mutual, open, and current account, which was kept according to the Sumbut year, having

[illegible]

1931 S., *i e*, the 20th April 1875. *GONESH LALL v SHEO GOLAM SINGH* . . 5 C. L. R. 211

12 ——— *Mutual current accounts—Limitation Act, 1871, Art. 62.* The manager of *A*, the proprietress of an indigo factory, on the 20th December 1869, paid into the kothi or bank of *B*, a banker, the sum of R1,200 to the credit of *A*, and from that time onwards sums of money were drawn by *A's* manager out of *B's* bank, and ap-

[illegible]

was the last occasion that any balance was due from *B* to *A*. Payments continued to be made on behalf of *A* into *B's* bank up to the 12th of June 1873, when a sum of R1,083-8 was paid into her account; but, notwithstanding this payment, the balance of account was on that date against her. After the 12th of June 1873, *B* continued to make payments on behalf of *A*, and also to render monthly accounts in which he charged *A* with such payments, and also with the principal of, and interest upon, the balance due on previously-rendered accounts This continued till the month of January 1874, when *B* for the last time rendered a monthly account to *A*, the last item in which was a payment made on the 6th January 1874 On the 23rd December 1876, *B* instituted a suit against *A* to recover the balance of principal and interest due to him on the footing of the last account rendered by him to *A*: —*Held*, that the account between *A* and *B* was not, and never had been, a mutual, open, and current account, and that the suit was therefore barred

[illegible]

that there had been at any time a mutual, open, and current account between them, that mutual relation terminated on the 2nd July 1872, or if not, then on the 12th June 1873, when the last payment was made on *A's* account into *B's* bank MAHOMED *v* ASHRUFUNNISSA . I. L. R. 5 Calc. 759

s c ASKERY KHAN *v* ASHRUFUNNISSA 6 C. L. R. 112

13. ——— *Mutual accounts*

[illegible]

plaintiffs at Bombay, which the plaintiffs duly

[illegible]

hundis the plaintiffs realized from time to time at Bombay. Until the 8th January 1874 the balance of the account was sometimes in favour of the plaintiffs and sometimes in favour of the defendant. After that date, the balance of the account was always in favour of the plaintiffs, who continued to make advances up to the 10th May 1874. The last payment made by the defendant was on the 27th April 1874 The last advance made by the plaintiffs was on the 10th May 1874 On the 10th

[illegible]

tion The plaintiffs contended that the account between them and the defendant was a mutual account and that, under Art. 87 of Sch. II of the Limitation Act (IX of 1871), the period of limitation

LIMITATION ACT (XV OF 1877)—*contd.*

Schedule II—*contd.*

——— Art. 85—*contd.*

dated from the day of the last advance made by them to the defendant,—*viz.*, 10th May 1874 *Held*, on the authority of *Ghaseeram* v. *Munohur Doss*, 2 *Ind. Jur. N. S* 241, that the account between the plaintiffs and the defendant was a mutual, current, and open account within the meaning of Art. 87, and that the suit was not barred. Literally construed, Art. 87 would apply only to those cases in which both parties have in the course of their dealings made actual demands on one another. The more reasonable and more probable intention of

sometimes of the other NARRANDAS HEMRAJ v. VISSANDAS HEMRAJ . I. L. R. 6 Bom. 134

14. ——— *Limitation Act, 1887, s 19—Acknowledgment of debt contained in unregistered document—Admissibility of document as evidence of acknowledgment* The nature of the pecuniary transactions between *B* and *G* were such that sometimes a balance was due to the one and sometimes to the other. On the 1st October 1875 there was a balance due to *B* During the ensuing year, as computed in the account, *G* made payments to *B* exceeding such balance On the 19th November 1876 a balance of R3,600 was found to be due from *G* to *B*. On the 11th December 1876, *G* executed a conveyance of certain land to *B*, for which such debt was partly the consideration In such conveyance *G* acknowledged his liability in respect of such debt. He died before such conveyance was registered and it did not operate. On the 18th November 1879, *B* sued *G's* widow for such debt:—*Held*, that such conveyance was admissible as evidence of the acknowledgment by *G* of his liability for such debt notwithstanding such conveyance was not registered; that applying *Art. 85, Sch. II of Act XV of 1877*, such debt was not barred by limitation when such acknowledgment was made; and that, if that article was not applicable, but the period of limitation began to run from the time each item composing such debt became a debt, still such debt would not have been barred when such acknowledgment was made as the debt with which the year computed from the 1st October 1875 opened was extinguished by payments made by *G* in the course of that year. KRISHALO v BEHARI LAL . I. L. R. 3 All. 523

15. ——— *Mutual current accounts—Reciprocal demands. A* employed *B* as his agent. *B* alone kept written debit and credit accounts. *A* sued *B* for a balance due on the account between them —*Held*, that the debit and credit account showed reciprocal demands between plaintiff and defendants, and that the account was a mutual, open and current account within the

LIMITATION ACT (XV OF 1877)—*contd.*

Schedule II—*contd.*

——— Art. 85—*concld.*

meaning of Limitation Act, 1877, Sch. II, Art. 85. LAKSHMAYYA v. JAGANNATHAM

I. L. R. 10 Mad. 199

16. ——— *Mutual, open and current accounts A* sued as commission agent for *B* and *C*. *A* furnished a debit and credit account in February 1878. The account was disputed, and the matter was referred to arbitration; for which purpose in March 1880 a "memorandum of items to be settled" was drawn up and signed by *B* and *C*, in which they denied that any balance would be found due to *A*, but acknowledged that accounts must be taken, and that they would be liable if any balance were found due to *A*. In June 1880 *B* signed and supplied to the arbitrator an account on behalf of himself and *C*. The arbitrator made an award which was set aside. *A* filed a suit against *B* and *C* in September 1882 for the balance due to him:—*Held*, that the accounts were mutual, open and current accounts, and that the suit was not barred by limitation. SITAYYA v. RANGAREDDI

I. L. R. 10 Mad. 259

17. ——— *Mutual account—Test of mutuality—Shifting balance.* The dealings between the plaintiff and defendant consisted of

and credited in their accounts. The dealings from 1884 to 1890 In 1892 the plaintiff sued to recover the balance due to him in respect of all these dealings. The defendants pleaded (*inter alia*) that the suit was barred by limitation:—*Held*, that the account was a mutual, open and current account within the meaning of Art. 85 of the Limitation Act (XV of 1877), and that the suit was not barred by limitation. The fact that

be mutual must be transactions and the

——— Art. 86 (1871, art. 88)—*Suit to recover amount due on policy of insurance—Cause of action—Notice of loss.* A suit for the recovery of the amount due on a policy of marine insurance fell under cl. 10 of s. 1 of Act XIV of 1859. In such cases the limitation (in the absence of a custom allowing a certain time of grace) begins to run from the date when the defendant has notice of the loss, and refuses or neglects to pay. NAROTAMDAS BHAGTANDAS v. DAYABHAI ICHHACHAND

6 Bom. A. C. 34

LIMITATION ACT (XV OF 1877)—*contd.*

Schedule II—*contd*

——— Art. 89 (1871, art. 90)—

See ACCOUNT . I. L. R. 35 Calc. 298

1. ——— *Cause of action—Balance of account* The representatives of a gomasta,

KALIKRISHNA PAUL CHOWDHRY *v* JAGATTARA 2 B. L. R. A. C. 139: 11 W. R. 76

Reversing, on appeal, KALEE KISHEN PAUL CHOWDHRY *v* JUGUT TARA 9 W. R. 334

See RADHANATH DUTT *v.* GOBIND CHUNDER CHATTERJEE . 4 W. R. S. C. C. Ref. 19

2 ——— *Suit against agent for an account—Mooktear* An account of his receipts and disbursements having been demanded from a mooktear, he, on the 3rd of August 1872, wrote a letter in which he promised to render full accounts during the ensuing vacation. This he neglected, though he did not refuse to do:—*Held*, that the limitation for a suit to compel an adjustment of account ran from the time when the defendant's promise to render accounts was broken, and was governed by Act IX of 1871, Sch II, Art 90. (See Act XV of 1877, Sch II, Art. 89) HORI NARAIN GHOSE *v* ADMINISTRATOR-GENERAL OF BENGAL . 3 C. L. R. 446

3 ——— *Suit for an*

recovery of such sum or any larger sum that might be pro

essent

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4 ——— *Principal and agent—Suit by principal for an account—Object of a decree for an account, as distinguished from a decree made upon the hearing* A continued agency, or

LIMITATION ACT (XV OF 1877)—*contd.*

Schedule II—*contd.*

Art 89—*contd*

5 ——— *Suit by principal against agent to recover money received and not*

to recover the price is therefore within time if brought within three years from the date of such demand. The agency does not terminate immediately on the sale of the goods. It does not terminate at the time when the plaintiff obtained knowledge of the defendant's breach of duty. BABU RAM *v* RAM DAYAL I. L. R. 12 All. 541

6 ——— *Suit by principal against agent for money received and unaccounted for—Termination of agency* In a suit, brought in

until they had accounted to him, and therefore his claim as to the piece-goods was not barred. *Babu Ram v Ram Dayal, I. L R 12 All. 541*, followed. FINK *v.* BULDEO DASS . I. L. R. 26 Calc. 715
3 C. W. N. 524

7. ——— *Suit for account*

brought by the respondent against the appellant

persons apparently of good repute, but which the

LIMITATION ACT (XV OF 1877)—*contd.*

Schedule II—*contd.*

——— Art. 89—*concld.*

with the existence of the alleged settlement. ASGHAR ALI KHAN *v.* KHURSHED ALI KHAN (1901) I. L. R 24 All. 27
s c. L. R 28 I. A. 227

8 ——— *Suit for account*

agent in respect of money alleged to have been improperly advanced by him to counsel for purposes of litigation under a power which authorised him "to appoint, retain and engage counsel," is governed by Art. 89 of the second Schedule of the Limitation Act (XV of 1877) *Harender Kishore Singh* v. *The Administrator-General of Bengal, I. L R. 12 Calc 357, Ranga Reddi* v. *Chinna Reddi, I. L. R 14 Mad. 465, Hurrinath Rai* v. *Krishna Kumar Bakshi, I. L. R 14 Calc 147*, distinguished. When an agent's account is being taken items of payment alleged to have been made by him cannot be passed without a voucher or a clear

——— Arts. 89, 116, 132—

See PRINCIPAL AND AGENT
I. L. R. 35 Calc. 298

——— Arts. 89, 120—

See PRINCIPAL AND AGENT.
I L R 32 Calc. 719

——— *Limitation Act (XV of 1877), s 19, Sch II, Arts 89 and 120—Suit for accounts by zamindar against naib—Principal and agent—Limitation.* A suit by a principal against his agent for an account and for money that may be found due upon such account being taken is governed by Art. 89 of Sch. II of the Limitation Act. JOGENDRA NATH ROY *v* DEB NATH CHATTERJEE (1904) . . . 8 C W. N. 113

——— Art. 90 (1871, art. 91)—*Suits governed by* What suits are governed by Art 91 of the Limitation Act, 1871, pointed out TORAB ALI *v* MAHOMED AMEER HOSSEIN . 3 C. L. R. 105

——— Art. 91 [(1871, art. 92)—

See ARBITRATION—DUTIES AND POWERS OF ARBITRATORS . 5 C. W. N. 585

See post, ART 141 8 C. W. N. 535, 802

See BENAMI TRANSFER.
I. L. R. 35 Calc. 551

See DECLARATORY DECREE, SUIT FOR—SUITS CONCERNING DOCUMENTS.
L. R. 29 I. A. 203

See DOCUMENT . I. L. R. 30 Calc. 433

LIMITATION ACT (XV OF 1877)—*contd.*

Schedule II—*contd.*

——— Art. 91—*contd.*

See FIDUCIARY RELATIONSHIP.
I. L. R. 30 Mad. 169

See HINDU LAW—ALIENATION.
9 C. W. N. 636

See HINDU LAW—WIDOW—POWER OF WIDOW—POWER OF DISPOSITION OR ALIENATION I. L. R. 30 Calc. 990
I. L. R. 34 Calc. 329

See LIMITATION . I. L. R. 31 Bom. 1

See MADRAS RENT RECOVERY ACT, s. 18
I. L. R. 30 Mad. 248

See MALABAR LAW—JOINT FAMILY.
I. L. R. 15 Mad. 6

1. ——— *Suit to set aside sale-deed.* A suit of the kind mentioned in this article was under Act XIV of 1859 governed by the six years' limitation. THAKOOR PATTUCK *v* RAM SOOMRUN LAL . . . 2 N. W. 433

2 ——— *Application of*

Chaodhri, I. L. R. 13 Calc. 308 : L R. 13 I A. 84 : Janki Kunwar v. *Ajit Singh, I. L. R 15 Calc. 58 : L. R. 14 I. A 148 ; Raghubar Dyal Sahu* v. *Bhikya Lal Misser, I. L. R. 12 Calc. 69 ;* and *Mahabir Pershad Singh* v. *Hurihur Pershad Narain Singh, I L. R 19 Calc. 629*, distinguished. SHAM LALL MITRA *v.* AMARENDRO NATH BOSE
I. L. R. 23 Calc. 460

3 ——— *Grant by zamindar of estate for maintenance—Lease by grantee in excess of his estate—Suit for possession after death of grantee.* A grant of a village for maintenance was made by a zamindar to his nephew operating only

already executed a pottah described therein as permanent to a lessee. The latter obtained possession, and from him after the death of the original grantee for life the zamindars who succeeded the grant or accepted rent at the rate stipulated in the pottah and did not disturb his possession In a suit after the death of the lessee claiming the village as part of the inherited zamindari the defence was that the lease was perpetual, but it was held that it was void as against the successor of the grantor and not merely voidable after the grantee's death :—*Held*, that the suit for possession was not barred under Art 91 of the Limitation Act (XV of 1877) on the ground that a decree declaratory of title to have the pottah cancelled might have been sued for in the

LIMITATION ACT (XV OF 1877)—*contd.*

Schedule II—*contd.*

———— Art. 91—*contd.*

lessee's lifetime under s 39 of the Specific Relief Act, 1877. BENI PERSHAD KOERI *v* DUDNATH ROY
I. L. R. 27 Calc. 156
L. R. 26 I. A. 216
4 C. W. N. 274

4. ———————— *Suit to cancel*

was instituted on the 22nd November 1875 On the 25th of the same month, *K*, learning that *B* was about to dispose of his property, caused a notice to issue to him directing him not to transfer any of his property This notice was served on *B* on the 29th November On the 1st December 1875 *B* transferred certain land to *T* by way of sale. *K's* suit was dismissed by the lower Courts, but the High Court, on the 7th August 1876, gave him a decree :—Certain property belonging to *B* was sold in execution of this decree, but the sale-proceeds were not sufficient to satisfy the amount due on the decree. *K* thereupon, on the 1st July 1879, sued *T* to cancel the conveyance to him by *B* on the ground that it was fraudulent and without consideration *Held*, that the words in Art 91, Sch II, Act XV of 1877, "when the facts entitling the plaintiff to have the instrument cancelled or set aside became known to him," must be construed to mean "when, having knowledge of such facts, a cause of action has accrued to him, and he is in a position to maintain a suit" and consequently the

I. L. R. 3 All. 394

5. ———— and Art. 114—*Suit to cancel instrument—Suit for the rescission of a contract—Time from which limitation runs—Equitable estoppel* *B*, *P*, and *G* sued to cancel a lease of certain land on the ground that the lessor was not competent to grant the same, the defendants being the lessor and the lessee. The lessee's defence to the suit was that the lease had been executed with *B's* knowledge, who caused it to be attested and registered ; that it was recognized and adopted by *P* and *G*, who allowed the lessee to take possession of such land and accepted rent from him in respect thereof ; that under these circumstances the plaint-

LIMITATION ACT (XV OF 1877)—*contd.*

Schedule II—*contd*

———— Art. 91—*contd*

that the lessee was aware that the lessor was not

misors and promisees, and not to suits by third parties to have an instrument cancelled or set aside ;

as between *P* and *G* and the lessee were framed and remitted for trial BHAWANI PRASAD SINGH *v.* BISHESHAR PRASAD MISR . I. L. R. 3 All. 846

6 ———————— *Suit for cancella-*

deceased, and to set aside a gift of his estate by the deceased as invalid under that law, by reason that possession of the property transferred by the gift [illegible] the donee. [illegible] ht within [illegible] did not [illegible] rred by

7. ———————— *Suit for cancella-*

of the foreclosure proceedings *Held*, that the suit was not strictly one for the cancelment or setting aside of an instrument to which the limitation in Art 91, Sch II of the Limitation Act, 1877, would

8. ———— and Art. 144—*Suit to cancel instrument—Champerty* The plaintiff sued [illegible] "by [illegible] ed by [illegible] *Per* [illegible] d by Art. 144, and not Art 91, Sch. II of the Limitation Act, 1877. *Per* STUART, *C J.*—That the suit was governed by Art. 91 and not Art. 144, Sch. II of that Act. *Sikher Chand* v. *Dulputty Singh, I. L.*

LIMITATION ACT (XV OF 1877)—*contd.*

Schedule II—*contd.*

——— Art. 91—*contd.*

R. 5 Calc. 363, distinguished HAZARI LAL *v.* JADAUN SINGH . . . I. L. R. 5 All. 76

9. ——— *Suit to set aside fraudulent deed—Minority—Fraud.* Where a deed of sale is found to be a forgery executed in fraud of a person during his minority, the date from which to compute his knowledge of the fraud practised on him in the absence of proof that he had before majority the knowledge required is the date on which he attained majority. KULYAN CHURN MOOKERJEE *v* BIPRO CHURN PURAIL . . . 6 W. R. 321

10. ——— and Art. 95—*Suit to set aside deed of partition on ground of fraud—Suit by minor on attaining majority—Limitation Act (XV of 1877, s. 7).* A suit to set aside a deed of partition on the ground of fraud is governed by Art. 91 or Art. 95, Sch. II of the Limitation Act (XV of 1887), and must be brought within three years after the minor plaintiff has attained majority according to s. 7 of the Act CHANVIRAPA *v* DANAVA I. L. R. 19 Bom. 593

11. ——— *Suit to set aside an instrument creating a charge on immoveable property and to recover possession* Art. 92, Sch. II of Act IX of 1871, has no application to a suit to set aside a mortgage-bond on the ground of fraud, and to recover possession of the immoveable property therein referred to The article in question applies only where a bare declaration is sought regarding the cancellation of a bond or other instrument *Sikher Chand v Dulputty Singh, I. L. R 5. Calc 363,* followed. BOO JINATBOO *v* SHANAGARVALAB KANJI . . . . I. L. R. 11 Bom. 78

12 ——— *Suit to set aside deed—Fraud* In a suit instituted in 1884 by a husband and wife to have a deed, granting land, which was executed by the husband in 1872, set

influenced, he was not at the time of the previous transaction, nor for some years after it, mentally incompetent or unable to allow that knowledge to

13 ——— *Mahomedan law —Gift—Suit by heir for share of donor's property by declaration of invalidity of gift.* A Mahomedan, who in October 1875 executed a deed of gift of his property, under which possession was taken by the donees, died in June 1885, never having taken any steps to have the deed of gift set aside. In February 1886, a suit was brought by his nephew claiming a share in the donor's estate by right of inheritance, and by having it declared that the deed was procured from the donor by fraud and undue influence. It was found that the plaintiff was aware of the existence of the deed soon after its execution, and that, if there were any facts entitling him to have it cancelled, those facts were known to him more than three years before the institution of the suit.—*Held,* that the plaintiff had, during the donor's lifetime, no reversionary or vested interest in the estate, but a mere possibility of inheritance, and consequently the donor, when he executed the deed, had full disposing power over his property, and the right which at his death, accrued to the plaintiff came to the latter affected by the donor's acts and dispositions and that as a suit by the donor to set aside the deed would at the time of his death be barred by Art. 91 of the Limitation Act (XV of 1877), such a suit was also barred against the

Jagadamba Chaodhrain v Dakhina [illegible] — *13 I. A. 84,* referred to HASAN ALI *v.* NAZO I. L. R. 11 All. 456

14. ——— and Art. 120—*Suit for declaration of title—Incidental relief—Setting aside instrument.* The period of limitation for suits to declare title is six years from the date when the right accrued, under the Limitation Act, 1877, [illegible] is not affected by

15. ——— *Will—Suit to contest validity of will.* Art. 91 of Sch. II of Limitation Act of 1877 is not applicable to wills. SAJID ALI *v.* IBAD ALI . . I. L. R. 23 Calc. 1 L. R. 23 I. A. 171

16 ——— *Suit to declare document of no effect* A suit for a declaration that a document "was executed for nominal purposes and was not intended to take effect" is not a suit to cancel a document within the meaning of Art 91 of Sch. II of the Limitation Act NAGATHAL *v.* PONNUSAMI . . . I. L. R. 13 Mad. 44

17. ——— and Arts. 92, 93—*Suit where the cancellation of a fraudulent instrument is ancillary to the main relief.* Arts. 91, 92, and 93 of Sch II of the Limitation Act (XV of 1877) apply only to suits brought expressly to cancel, set aside, or declare the forgery of an instrument; but they do not apply to suits where substantial relief is prayed, and where the cancellation or declaration

LIMITATION ACT (XV OF 1877)—*contd.*

Schedule II—*contd.*

———— Art. 91—*contd.*

is merely ancillary and not necessary to the granting of such relief ABDUL RAHIM v. KIRPARAM DAJI I. L. R. 16 Bom. 186

18. ———— and Arts. 92, 93, 144—*Instrument, suit to set aside or declare the forgery of—Immoveable property, suit for possession of*

D after the death of the surviving widow, instituted a suit to recover possession of the property of *D* from the defendants, who claimed to have come into possession thereof under the ikrarnamah upon the death of the widow :—*Held*, that the suit was governed by the limitation of three years for a suit to set aside an instrument, and not by the general limitation prescribed for suits to recover immoveable property, as after the widow's death the parties in possession

phu- *12* *v* *'alc.* *Apt* *148*, referred to. MAHABIR PERSHAD SINGH v HURRIHUR PERSHAD NARAIN SINGH I. L. R. 19 Calc. 629

19. ———— and Art. 144—*Cancellation of instrument.* A suit was filed in 1888 on behalf of a Malabar tarwad by two of its members to recover property improperly alienated in 1879 under a kanom instrument by the karnavan, who had since been removed from office :—*Held*, that since a prayer for the cancellation of the kanom instrument was not an essential part of the plaintiff's relief, the suit was not barred by the three years' rule in Limitation Act, 1877, Sch. II, Art 91. UNNI v KUNCHI AMMAL . I. L. R. 14 Mad. 26

20 ———————— *Suit to set aside alienation by de facto manager of Hindu endowment.*

Dulputty Singh, I. L. R. 5 Calc 363, cited SHEO SHANKAR GIR v. RAM SHEWAK CHOWDHRI I. L. R. 24 Calc. 77

21. ———— and Art. 144—*Suit by junior members of a tarwad—Suit for declaration of invalidity of kanom and for possession of property.* The junior members of a Malabar tarwad brought a suit against their karnavan and senior

nearly twelve years after the execution of the kanom :—*Held*, (i) that the suit was maintainable by the plaintiffs, (ii) that the suit was not barred by limitation. ANANTAN v. SANKARAN I. L. R. 14 Mad. 101

22. ———— and Art. 144—*Suit for land—Cancellation of instrument affecting the land by plaintiff.* In a suit brought in 1889 to recover land, it appeared that the defendant had been in possession since 1885, having obtained in 1883 a

barred by limitation SUNDARAM v. SITHAMMAL I. L. R. 16 Mad. 311

23 ———— and Art. 144—*Suit to recover lands of which defendant had been in possession as manager during plaintiff's minority—Defendant setting up deed of sale—Adverse possession* The plaintiffs sued to recover lands which

limitation, and pleaded adverse possession :—*Held*,

I. L. R. 17 Bom. 755

LIMITATION ACT (XV OF 1877)—*contd.*

Schedule II—*contd.*

——— Art. 91—*contd.*

24. ——— *Suit to cancel a document—Cause of action* Where a plaintiff *sought for the cancellation of a mortgage-bond and* for possession of the mortgaged property, alleging that the mortgage was a sham transaction and that she, the plaintiff, had subsequently remained in possession and had only been dispossessed within three years before suit : *Held*, that, it the plaintiff's allegations as to remaining in possession were true, the period of limitation for the suit could not be computed from the date of the mortgage-bond as provided in Art 91 of Sch. II to the Limitation Act (XV of 1877). *Janki Kunwar* v. *Ajit Singh, I. L R. 15 Calc. 58*, distinguished VITHAI *v.* HARI (1900) . **I. L. R. 25 Bom. 78**

25 ——— *Suit to recover possession—Kobala, setting aside of, if necessary.* Where it was alleged that defendant was in unlawful possession by virtue of a *kobala* executed by plaintiff's father, and a suit was brought to recover possession of the land : *Held*, that the suit was governed by Art 91 of Sch. II to the Limitation Act, inasmuch as plaintiff could not succeed *unless he obtained a declaration that the kobala* was not a valid one CHUNDER NATH BOSE *v* RAM NIDHI PAL (1902) . **6 C. W. N. 863**

26 ——— *Bond—Suit to have the bond adjudged void—Specific Relief Act (I of 1877), s. 39—Limitation* Art 91, Sch. II of the Limitation Act (XV of 1877), applies to a suit brought under s 39 of the Specific Relief Act (I of 1877) to have a bond adjudged void and to have it delivered up and cancelled BAKATRAM NANURAM *v.* KHARSETJI JIVAJISHET (1903)
I. L. R. 27 Bom. 560

27. ——— *Suit to set aside an instrument—Collusive sale-deed not intended to be acted upon—Specific Relief Act (I of 1877), s 39.* A suit to cancel or set aside an instrument must, under Art. 91 of the Limitation Act, be brought within three years from the date when the facts en- [illegible] years from the date when the plaintiff apprehended that the defendants had set up a title under the instrument The facts, which would entitle a person to bring such a suit, are stated in s 39 of the Specific Relief Act (I of 1877). SINGARAPPA *v.* TALARI SANJIVAPPA (1905)
I. L. R. 28 Mad. 249

LIMITATION ACT (XV OF 1877)—*contd.*

Schedule II—*contd.*

——— Art. 91—*contd.*

28. ——— *Art 91 does not apply to defendants in possession—Madras Rent Recovery Act (VIII of 1865), s. 18—Seven days required by the section means seven clear days.* A defendant in possession is not precluded from setting up the invalidity of a sale, because his right to have it set aside was barred at the date of suit by Art. 91 of Sch II to the Limitation Act. The seven days which, in fixing the day of sale under s. 18 of the Rent Recovery Act, must be allowed from the time of notice, are seven whole days, and not seven periods of 24 hours calculated from the hour of the day on which the notice was issued. *McQueen* v. *Jackson, [1903] 2 K B. 163*, referred to. RAMANASARI *v* MUTHUSAWMI NAIK (1906)
I. L. R. 30 Mad. 248

29. ——— *Limitation—Suit for cancellation of a deed—Suit for a declaration that the transaction evidenced by the deed was fictitious.* A suit for a declaration that a transaction embodied in a particular deed was from its very inception a sham transaction is to be distinguished from a suit for cancellation of the deed. The former kind of suit does not fall within the purview of Art 91 of the second Schedule to the Limitation Act *Sham Lall Mitra* v. *Amarendra Nath Bose, I L. R. 23 Calc. 460*, and *Petherpermal Chetty* v. *Muniandy Servay, 12 C. W N. 562*, referred to. JAGARDEO SINGH *v.* PHULJHARI (1908)
I. L. R. 30 All. 375

30. ——— *Where sale tainted by fraud, property not recoverable if sale not avoided within period—Such sale, if intended to be operative, not void ab initio* A sale of property for consideration, intended to be operative between the parties, is not void *ab initio*, even though the transaction is brought about by fraud Subsequent failure of consideration, in consequence of the purchaser refusing to perform his part of the promise, will only make the sale voidable. The title passes to the purchaser by such sale and the vendor of those claiming to recover on his *title* must get the sale avoided within the period prescribed by Art. 91, Sch. II of the Limitation Act, [illegible] *Sundaram* v. *Sithammal,* [illegible] *nki Kunwar* [illegible] *85, followed.* [illegible] *Khan, I L* [illegible] SAMI PILLAI [illegible] **32 Mad. 72**

31 ——— and Arts. 136, 141—*Suit by an assignee of a reversioner to recover possession of immoveable property to which the reversioner became entitled on the death of a Hindu widow—Alienation by Hindu widow—Suit to set aside, limitation applicable to.* A suit by an assignee of a reversioner to recover possession of the immoveable property to which the reversioner became entitled on the death of a Hindu widow, is governed by Art 141

LIMITATION ACT (XV OF 1877)—*contd.*

Schedule II—*contd.*

——— Art. 91—*concld*

read with Art 136 of Sch. II of the Limitation Act, and not by Art. 91 of that Act *Bijoy Gopal Mukerjee v Nilratan Mukerjee, 7 C. W N 864: s c. I. L R. 30 Calc 990*, distinguished NARMADA DEBI v. SHOSHIBHUSAN BIT (1904)
8 C. W. N. 802

——— and Art. 141—

See HINDU LAW—ALIENATION.
I L R. 33 Calc. 257

——— and Arts. 142, 144—

See HINDU LAW—ALIENATION
13 C. W. N. 815

——— and Art 144—

See BENAMIDAR . **I. L. R. 35 Calc. 551**

——— Art. 92 (1871, Art. 93)—

1 ——— *Suit to set aside will—Fraud—Cause of action* Where no fraud is alleged, the three years' limitation in cl 93 of the second schedule to the Limitation Act of 1871 will run from any attempt to enforce the instrument,

of the claim being for a declaration of ...

ANUNDMOYE DASSEE . . **2 C. L. R. 561**

2. ——— *Attempt to enforce deed.* In a suit in which the plaintiff had

by registered deed, the plaintiff had conveyed to him a share of the property decreed The defendant objected that the deed was a forgery; but an order was made that the applicant should be joined as a respondent, without deciding whether the deed was or was not genuine, and "without prejudice," in the words of the order, "to any action or proceeding by the defendant":—*Held*, that the setting up the deed and insisting upon

LIMITATION ACT (XV OF 1877—*contd.*

Schedule II—*contd.*

——— Art. 92—*concld.*

Sch. II, cl 93. FAKHARUDDIN MAHOMED AHSAN *v.* OFFICIAL TRUSTEE OF BENGAL **I. L. R. 8 Calc. 178**
10 C. L. R. 176
L. R. 8 I. A. 197

Affirming on appeal the decision of the High Court, where it was held that a suit to declare the forgery of an instrument issued or registered or attempted to be enforced is required by Art 93 of Sch. II, Act IX of 1871, to be brought within

use, bring a suit to have it declared a forgery by reason of any further attempt to make use of it. FAKHAROODDEEN MAHOMED AHSAN *v.* POGOSE
I. L. R. 4 Calc. 209
2 C. L. R. 573

3. ——— and Arts. 93 and 118— *Suit to set aside adoption—Deed of permission to*

reversionary heirs of her husband brought this suit, in 1888, to have set aside:—*Held*, that neither Art. 92, nor Art 93, of Sch. II of the Limitation Act (XV of 1877) was applicable to bar the suit. There had been no "issue" of the instrument, the anumati-patro, within the meaning of the former article, the term "issue" having no application to such a document There had not, within the meaning of Art 93 before this suit, been any attempt to enforce the instrument against the plaintiffs Art. 118, as the suit had been brought within due time after the adoption, did not bar it. HURRI BHUSAN MUKERJEE *v* UPENDRA LALL MUKERJI . . **I. L. R. 24 Calc. 1**
L. R. 23 I. A. 97

——— Art. 93—

See FRAUD—EFFECT OF FRAUD
I. L R. 11 Bom. 708

——— Art. 95 (1871, Art. 95; 1859, s. 10)

See DEBTOR AND CREDITOR.
I. L. R. 18 Bom. 1

See LIMITATION . **I. L. R. 34 Calc. 711**

See REVENUE SALE LAW, s. 33.
13 C. W. N. 518

Suits to set aside decrees obtained by fraud were under Act XIV of 1859, governed by cl. 16 of s. 1. AMEEN CHAND *v.* OOMEID SINGH . **1 Agra 114**

1. ——— *Fraud. A* sold a decree obtained by him under Regulation VII of

LIMITATION ACT (XV OF 1877)—*contd.*

Schedule II—*contd.*

——— Art. 95—*contd.*

1799 to *B*, but after the sale realized the decree from the judgment-debtor. On application by *B* for execution, on 2nd January 1862, the fraud was discovered, and *B* was referred by the Collector to the Civil Court. On 2nd October 1866, *B* brought his suit for recovery of the purchase-money from *A* :—*Held*, that the period of limitation ran from the discovery of the fraud The suit was not barred. GOPAL CHANDRA DEY *v.* PEMU BIBI

1 B. L. R. A. C. 77 : 10 W. R. 104

See RADHANATH DAS *v.* ELLIOTT

6 B. L. R. 530
14 Moo. I. A. 1

s.c. RADHANATH DOSS *v.* GISBORNE & Co.

15 W. R. P. C. 24

2. ——— *Fraud—Suit to recover purchase-money and costs* In a suit to recover from the defendant the amount of purchase-money paid by the plaintiff upon a sale to him of certain lands by the defendant's father and the costs incurred by the plaintiff in defending his title to the property against a prior purchaser for the same land from the defendant's father : *Held*, that the cause of action arose on the discovery of the fraud upon the plaintiff, and that there was knowledge of the fraud at all events in October 1859, the date of the judgment of the Civil Court affirming the title of the

until 1861. The present suit, having been brought more than six years after the judgment of the Civil Court, was held to be barred. RAMASWAMY MUDALI *v.* VALAYUDA MUDALI *alias* AIYATHORAY MUDALI . . . . **4 Mad. 266**

3. ——— *Act XIV of 1859, s. 10—Fraud by failure to pay share of revenue.* S. 10 of the Act of 1859 was held not to apply to a case where one of two co-owners of a patni fraudulently failed to pay his share of the rent and permitted the patni to be sold by the zamindar for arrears, but the cause of action in a suit against him by the other sharer was held to have accrued at the date of the sale. BHUGWAN CHUNDER ROY *v.* RAJ CHUNDER ROY . . . **9 W. R. 553**

4. ——— *Extension of time on account of fraud* Art. 95, Sch. II of the Limitation Law, provides a period of limitation in extension of the period which, in the absence of fraudulent concealment would, under some other article, apply to a suit, and not a period less than that which under ordinary circumstances would be allowed for a suit of the same nature. OPENDER NARAIN MOOKERJEE *v.* GUDADHUR DEY

25 W. R. 476

5. ——— *Fraud—Suit for possession of immoveable property.* Art. 95 of the second Schedule to Act IX of 1871 was not intended to apply to suits for possession of immoveable property when fraud is merely a part of the machinery by which the defendant has kept the plaintiff out of possession. That article has reference to cases where a party has been fraudulently induced to enter into some transaction, execute some deed, or do some other act, and desires to be relieved from the consequence of such act. CHUNDER NATH CHOWDHRY *v.* TIRTHANUND THAKOOR

I. L. R. 3 Calc. 504 : 2 C. L. R. 147

6. ——— *Suit to set aside decree obtained by fraud—Suit against express*

a compromise, which made certain arrangements for the management of the property, and a decree was made in accordance with the compromise The grantees who were not parties to this suit then sued to set aside the compromise and decree on the ground of fraud:—*Held*, that the suit fell within the terms of No 95, Sch. II of the Limitation Act, 1877, and there was nothing about it which made the exemption of s. 10 of that Act applicable to it. MUHAMMAD BAKHSH *v.* MUHAMMAD ALI . . . **I. L. R. 5 All. 294**

7. ——— *Suit to set aside sale on the ground of fraud.* A suit to set aside an execution-sale on the ground that the decree was obtained by fraud is maintainable and is governed by Art. 95 of the Limitation Act. MOTI LAL CHAKERBUTTY *v.* RUSSICK CHANDRA BAIRAGI

I. L. R. 26 Calc. 326 note
3 C. W. N. 395

See BHOBON MOHUN PAL *v.* NUNDA LAL DEY

I. L. R. 26 Calc. 324 : 3 C. W. N. 399

which places such an application under Art. 178 of the Limitation Act.

8. ——— and Arts. 12 and 144—*Suit for relief on the ground of fraud—Suit to set aside execution-sale—Suit for possession of immoveable property.* *Z* and his three minor sons were joint owners of a village. This *Z* hypothecated by deed of simple mortgage to *J*. Subsequently *Z* executed another deed of mortgage to *J*, part of

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LIMITATION ACT (XV OF 1877)—*contd.*

Schedule II—*contd.*

——— Art. 95—*contd.*

the property first mortgaged In regard to three-fourths of this property, they prayed that "possession might be awarded to them by establishment

[illegible]

sale and of the fraudulent decree They further alleged that they had first become aware of fraud upon the day when they obtained from the registration office a copy of the novating instrument in which the fraudulent entries were contained —*Held*, that the law of limitation applicable to the case was not that contained in Art 12, nor in Art. 144, but that contained in Art 95 of Sch. II of the Limitation Act, inasmuch as fraud vitiates all things, and prevents the application of any other law of limitation than that specially provided for relief from its consequences *Held*, further, that the knowledge predicated by the terms of Art 95 of Sch II of the Limitation Act is not mere suspicion, but such definite knowledge as enables the person defrauded to seek his remedy in Court *Held*, under the circumstances of the present case, that the burden of proving such knowledge on the part of the plaintiffs, prior to the date alleged by them, lay upon the defendants NATHA SINGH v. JODHA SINGH

I. L. R. 6 All. 406

9 ——— and Art. 12—*Suit by reversioner to establish his title to property sold in execution of decree obtained against a widow as representative of her deceased husband's estate—Fraud—Collusion.* The plaintiff as the nearest heir of one *O T*, who died intestate in 1873, sued to set aside a sale of certain immoveable property belonging to the estate of the deceased, which had been sold on the 3rd November 1875, in execution of a money-decree obtained by the defendant *J* against *B V*, the widow of *O T*. *B V* had married

[illegible]

but in order to obtain a declaration that he was not bound by it, the decree under which the sale was held having been fraudulent and collusive; so

LIMITATION ACT (XV OF 1877)—*contd.*

Schedule II—*contd*

——— Art. 95—*contd.*

that the cause of action could only have arisen when he became aware of the fraud. Art. 95 of Sch. II of Act XV of 1877 applied to the present suit, which was therefore in time. PAREKH RANCHOR v. BAI VAKHAT I. L. R. 11 Bom. 119

10. ——— and Arts. 63 and 84—*Suit on indemnity bond—Fraud—Cause of action.* On

[illegible]

ted an act of embezzlement. In an action brought by plaintiff on the 28th July 1873 on the indemnity bond, the first Court held the claim barred under cls 63 and 84 of Sch II, Act IX of 1871. On appeal that decree was

[illegible]

TENDENT OF THE POONA CITY JAIL

12 Bom. 238

11. ——— *Fraud—Sale for arrears of revenue—Act XI of 1859, s. 33—Act IX of 1871, Sch. II, Art. 14.* When one of several co-sharers fraudulently contrived to have an estate brought to sale for arrears under Act XI of 1859, and purchased it in the benami of his son:—

[illegible]

SEN v. RAM SOONDER SURMA MOZOOMDAR

I. L. R. 3 Calc. 300

12 ——— *Suit to set aside*

[illegible]

13. ——— *Revenue Recovery Act (Madras)—Mad. Act II of 1864, s. 59—Suit to set aside a sale for arrears of revenue—Fraud.*

[illegible]

LIMITATION ACT (XV OF 1877)—*contd.*

Schedule II—*contd.*

——— Art. 95—*contd.*

and not s. 95 of the Limitation Act, and that the suit was therefore barred. *Venkatapathi* v. *Subramanya, I. L. R. 9 Mad. 457*, explained. *Baij Nath Sahu* v. *Lala Sital Prasad, 2 B. L. R. F. B. 1*, and *Lala Mobarak Lal* v. *Secretary of State for India, I. L. R. 11 Calc. 200*, considered. VENKATA v. CHENGADU . . . I. L. R. 12 Mad. 168

14. ——— and Arts. 12 and 144—*Sale for arrears of revenue—Suit for possession of land—Fraud.* The plaintiff's land was sold by the

1879. The auction-purchaser was thereupon put in possession. In 1886 the plaintiff sued to recover

—*Held*, that the
than one year
rred by Art. 12,
Limitation Act

The sale was one in pursuance of an order of the Collector or other officer of revenue, and, if not for arrears of Government revenue, was at any rate a sale for arrears of rent recoverable as arrears of revenue. The plaintiff as occupant of the land was bound by the sale, unless and until it was reversed, and the title of the purchaser at the sale was a perfectly good title until the sale was set aside in due course of law. *Held*, also, that the plaintiff's allegation, that the sale took place in consequence of the fraud of the mamdar, would make not Art. 144, but Art. 95, applicable to the case. BALAJI KRISHNA v. PIRCHAND BUDHARAM . I. L. R. 13 Bom. 221

15. ——— and Art. 96—*Suit for money paid under Land Acquisition Act—Fraud or mistake, knowledge of* In 1876 *K* sued *M* on a bond, dated 25th December 1869, for R5,000, by which certain land in the district of South Tanjore was hypothecated as security for the debt, and obtained a decree on the 6th of April 1876 for the sale

been acquired by a railway company under the Land Acquisition Act in 1874, and that the compensation, R460 (claimed by *M's* mother, who sold the land to the company), was lodged in the treasury of Kumbakonam in the name of *M's* mother. *K* having applied to the subordinate Court for an order for payment out of this sum, the Court, by order

LIMITATION ACT (XV OF 1877)—*contd.*

Schedule II—*contd*

——— Art. 95—*contd.*

barred by limitation, inasmuch as more than three years had elapsed since the money was paid by the railway company :—*Held*, that the suit was not barred by limitation, as the compensation was awarded to *M's* mother either through fraud on her part or mistake on the part of the Collector,

16. ——— and Art. 98—*Partition to detriment of minor—Suit by minor on attaining*

than the share to which he was entitled The minor was represented in the partition by his uncle, though the uncle was not the natural guardian of the minor, nor in any other way entitled to deal with the minor's property. The minor on attaining

cumstances affect in any way the rights of the

498

17. ——— "*Other relief*"

three years after the fraud

stored. This deceived the plaintiff, also a judgment-creditor, who was thus prevented from obtaining the goods and selling them. The goods

LIMITATION ACT (XV OF 1877)—*contd.*

Schedule II—*contd.*

———— **Art. 95**—*contd.*

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OF MADRAS

I. L. R. 27 Mad. 343

18. ———————— *Limitation Act (XV of 1877), Sch II, Art 95—Fraud—Suit to recover possession of dar-patni tenure purchased benami—Fraudulent arrangement between patnidar and benamidar by which decree was obtained under which the tenure was sold to patnidar—Real pur-*

purchaser and beneficial owner of the dar-patni, admittedly became aware of the fraud on or before the 29th July 1892 In a suit brought on 25th

by the sale ANNADA PERSHAD PANJA *v.* PRASANNAMOYI DASI (1907)

I. L. R. 34 Calc. 711 . L. R. 34 I. A. 138

reversioner brings a declaratory suit to set aside the decree or other transaction brought about by the fraud of the qualified owner, the suit must be

LIMITATION ACT (XV OF 1877)—*contd.*

Schedule II—*contd.*

———— **Art. 95**—*concld.*

if brought within six years of the attachment, which is the cause of action. *Parekh Ranchor v. Bai Vakhat, I. L. R. 13 Bom 119*, not followed. An objection by the reversioner in execution to the

———— **Art. 96 (1871, Art. 97)**—*Beng Act VIII of 1869, s. 27—Suit for money paid in excess of road cess* In a suit to recover money alleged to have been paid by the plaintiffs to the defendants in excess of the sum demandable by the latter from the former on account of road cess:—*Held* (reversing the decisions of the Courts below), that the suit was governed not by the special law of limitation contained in s 27, Beng Act VIII of 1869, but by Art 96, Sch II of the Limitation Act (XV of 1877) MATHURA NATH KUNDU *v.* STEEL

I. L. R. 12 Calc. 533

———— **Art. 97 (1871, Art. 98)**—

See ante, ARTS. 62 AND 97.

1. ———————— *Accrual of cause of action* In a suit brought on the 29th July 1867 to recover back a deposit of purchase-money paid in September 1863, it appeared that the vendor had re-sold the estate, and that the plaintiff thereupon sued for and obtained a decree for specific performance against the vendor and the purchaser at the re-sale. On appeal by the purchaser at the re sale, this decree was reversed on the 29th August 1865:—*Held*, that the suit to recover back the deposit was not barred, since the cause of action for its recovery did not accrue till 29th August 1865 RAMJAY DEY *v.* SRINATH SINGH . 2 B. L. R. A. C. 170: 11 W. R. 24

2. ———————— *Suit to recover money paid on consideration which has failed.* R had entered into a contract with S to grant him a "zur-i-peshgi" lease, and in consideration of an advance of R400 agreed to execute the same

LIMITATION ACT (XV OF 1877)—*contd.*

Schedule II—*contd.*

——— Art. 97—*contd.*

ation for the lease. On the 30th of July 1874, *S instituted a suit to recover the R400 advanced* to *R*. It was held that the suit was barred by limitation under the provisions of Act IX of 1871, second Schedule, Art. 98 RAMPHAL LAL *v* JAFIR ALI . . . . . 7 N. W. 199

3. ——— and Art. 62—*Suit to recover purchase-money where purchaser was unable to obtain possession—Failure of consideration-money paid—Money had and received* A sale which a member of a joint family (Mithila) had attempted to make went off upon the objection made by other co-sharers, but not before the purchase-money had been paid It might have been that the agreement for sale was not void from the beginning, but was only void upon objection being made; and if it was only voidable, the consideration did not fail at once at the time of the receipt of the purchase-money, so as to render it money had and received to the use of the payer within the meaning of Art 62 of Sch. II of Act XV of 1877 But it failed at all events, when the purchaser being opposed found himself unable to obtain possession He would have had a right to sue at that time to recover his purchase-money upon a failure of consideration. And, therefore, the case appeared to fall within Art. 97. It must fall either within that article or within Art. 62 HANUMAN KAMAT *v* HANUMAN MANDUR I. L. R. 19 Calc. 123 L. R. 18 I. A. 158

4. ——— and Art. 62—*Suit to recover purchase-money paid on a void sale—Failure of consideration—Money had and received.* In 1885 the plaintiff obtained from the defendant a sale-deed

obtained a decree in the High Court, under which the plaintiff was ejected. The plaintiff now sued in 1892, less than three years from the date of the last-mentioned decree, to recover the sum paid by him to the defendant as above mentioned:—*Held*, that the suit was not barred by limitation. VENKATANARASIMHULU *v* PERAMMA

I. L. R. 18 Mad. 173

5. ——— and Art. 64—*Retention of debt by debtor as part of consideration of another contract.* Money due on an account stated which would as such have been barred in three years from the statement, under Act XV of 1877, Sch. II, Art. 64, becomes, for purposes of limitation, a debt of another character, when, it having been the subject of an arrangement whereby it was to be retained by

debtor to the creditor, it was agreed that the book-

LIMITATION ACT (XV OF 1877)—*contd.*

Schedule II—*contd.*

——— Art. 97—*contd.*

debt should be retained by the former in satisfaction

I. L. R. 11 All. 47

6. ——— Civil Procedure Code (Act XIV of 1882), s. 43—*Suit for specific performance—Subsequent suit for money paid on a consideration that failed.* Defendant having failed to convey certain property belonging to himself and his son to plaintiff as agreed, plaintiff obtained a decree for specific performance, in pursuance of which the price was paid and a conveyance executed. Plaintiff was then obliged to sue for possession, when it was found that the sale did not bind the son's interest, and on grounds of convenience plaintiff was awarded the value of defendant's share instead of a decree for partition. He now sued to recover the balance of the price paid, and it was contended that the suit was, in fact, one for damages for breach of the contract to convey, and as such was barred under s 43 of the Code of Civil Procedure, inasmuch as the damages claimed could have been sued for in the alternative in the previous suit for specific performance:—*Held*, that the suit was not barred: it being, in fact, for the recovery of money paid on a consideration that had failed, and the cause of action being different from that in the suit for specific performance. *Held*, also, that the suit was not barred by limitation, inasmuch as the failure of consideration must be taken to have occurred

applicable VENKATARAMA AYYAR *v.* VENKATA SUBRAHMANIAN (1900) . I. L. R. 24 Mad. 27

7. ——— Contract Act (IX of 1872), s. 65—*Agreement to sell—Suit for specific performance—Agreement declared unenforceable—Alternative claim for refund of consideration paid thereunder—Limitation.* The defendants, against whom a decree for foreclosure was outstanding,

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fendants neither executed a conveyance of the

LIMITATION ACT (XV OF 1877)—*contd.*

Schedule II—*contd.*

———— **Art. 97**—*contd.*

property which they had agreed to sell, nor did they return to the plaintiff the money which he had paid on their behalf The plaintiff thereupon sued the defendants, claiming in the alternative either a decree for specific performance of the agreement to sell, or a refund of the money paid by him as part of the consideration for the sale agreed upon The Court of first instance gave the plaintiff a decree for specific performance On appeal by the defendants it was held by the High Court, (i) that the terms of the agreement to sell not being satisfactorily proved, no decree for specific performance could be made; (ii) that the plaintiff was therefore entitled to get back the money which he had pa'd under the agreement; and (iii) that the plaintiff's alternative claim for a refund on failure of consideration was governed as to limitation by Art. 97 of the second Schedule to the Indian Limitation Act, 1877, and was not barred by limitation, inasmuch as limitation only began to run from the date of th High Court's decree declaring the

8. ———————— *Limitation—Suit on covenant in sale deed for repayment of consideration money in event of vendee being dispossessed—Terminus a quo* The plaintiffs, vendees of im-

in the plaint the suit was within time. *Bul Chand v. Parmanand, All Weekly Notes (1901) 24,* distinguished. RAM CHANDAR SINGH *v.* TOHFAH BHARTI . . . . I. L. R. 26 All. 519

9. ———————— *Agreement to sell—Rescission of contract—Contract Act (IX of 1872), ss 55, 65,—Suit to recover money paid as part of purchase money when consideration failed—Suit for specific performance and in alternative for refund of money paid—Accrual of cause of action.* The defendants against whom a decree for foreclosure was outstanding agreed to sell certain immoveable property to the plaintiff, and the plaintiff paid into Court as a part of the consideration the amount due by the defendants under the foreclosure decree. The defendants neither executed a conveyance of the property which they had agreed to sell, nor did they return to the plaintiff the money which he had paid on their behalf. On 10th December 1896 the plaintiff instituted a suit against the defendants for a refund of the money so paid by him alleging that the defendants had failed to fulfil their part of the

LIMITATION ACT (XV OF 1877)—*contd.*

Schedule II—*contd.*

———— **Art. 97**—*contd.*

for the execution of the deed of sale, held on the evidence that time was not of the essence of the contract, and that the plaintiff could not (as he claimed) rescind the contract under s 55 of the Contract Act and recover the money he had paid: and this decision was on appeal affirmed by the High Court on 18th January 1900. On 16th

agreed upon. The first Court gave the plaintiff a decree for specific performance On appeal by the defendants:—*Held* by the High Court on 30th April 1903, (i) that the terms of the agreement to sell not being satisfactorily proved, no decree for specific performance could be made; (ii) that the plaintiff was therefore entitled to recover the money which he had paid under the agreement; and (iii) that, following the case of *Bassu Kuar v. Dhum Singh, I L. R. 11 All. 47; L R. 15 I. A. 211,* the plaintiff's alternative claim for a refund on failure of consideration was governed as to limitation by Art. 97 of Sch. II of the Limitation Act, 1877, and was not barred by lapse of time, inasmuch as limitation only began to run from

10. ———— **and Art. 83**—*Vendor and purchaser—Sale of property—No title in vendor to part of property sold—Suit by purchaser for damages—Failure of consideration—Cause of action—Covenant for quiet enjoyment.* On the 22nd November, 1880,

of the house. Both the lower Courts awarded the claim, but on the 26th August, 1896, the High

the house, of which he was put in possession. On

LIMITATION ACT (XV OF 1877)—*contd.*

Schedule II—*contd.*

——— Art. 97—*concld*

the 24th August, 1899, the plaintiff brought the present suit, claiming, *inter alia*, from defendants 1 and 2 to recover R225 as damages sustained by him by reason of his being deprived of the one-third share of the house:—*Held*, that the claim for damages was a claim to recover money upon

in the sale-deed was not a contract of indemnity. It was at most a covenant for title and quiet enjoyment. The failure of consideration took place when the plaintiff endeavoured to obtain possession of the property and, being opposed, found himself unable to obtain it *Bassu Kuar* v *Dhum Singh, I L R 11 All 47*, distinguished. TULSI RAM *v* MURLIDHAR CHATURBHUJ MARWADI (1902)
I. L. R. 26 Bom. 750

——— Art. 98 (1871, Art. 99)—*Suit to recover money paid for tenure cancelled by sale for arrears of rent.* A suit to recover consideration-money paid for a dar-patni cancelled by the sale of the patni for arrears of rent was governed by the general rules of limitation under Act XIV of 1859 JUDOONATH BHUTTACHARJEE *v* NOBO KRISTO MOOKERJEE . . 3 W. R. S. C. C. Ref. 2

——— Art. 99 (1871, Art. 100)—

See CONTRIBUTION, SUIT FOR—PAYMENT OF JOINT DEBT BY ONE DEBTOR
I. L. R. 26 Mad. 686

Under Act XIV of 1859, the period of limitation was six years for the suits mentioned in the first part of this article,—*viz.*, suits by one who had paid the whole amount of a joint decree. JUMEELUN *v* WALLEE AHMED . . . . 10 W. R. 31

DOORGAMONEE DOSSEE *v* DOORGA BHUNJ
2 W. R. 266

NOBO KRISTO BHUNJ *v.* RAJBULLUB BHUNJ
3 W. R. 134

1. ——— *Suit for contribution—Cause of action.* Under Art 100 in Sch II of Act IX of 1871, when a person has paid more than his own share of a joint decree, limitation runs against a suit for contribution from the time that the excess payment is actually made to the decree holder RADHA KRISTO BALO *v* RUP CHUNDER NUNDY . . . 3 C. L. R. 480

2. ——— *Suit for contribution—Joint liability under decree. Quære* Whether in a suit for contribution on the ground that the plaintiff and defendants were jointly liable under a

that prescribed by Art 118, Sch. II of the same

LIMITATION ACT (XV OF 1877)—*contd.*

Schedule II—*contd.*

——— Art. 99—*contd.*

Act. FUCKORUDDEEN MAHOMED AHSAN *v.* MOHIMA CHUNDER CHOWDHRY I. L. R. 4 Calc. 529

The period of limitation for suits mentioned in the second part of this article,—*viz.*, suit by a sharer in a joint estate who has paid the whole revenue, was also six years under the Act of 1859 SHADEE LAL *v.* BHAWANEE . . . 2 N. W. 52

CHOHAGUR *v.* THAKOOREE SINGH . 1 Agra 123

And the cause of action in such a suit was held to arise from the same time as is now expressly enacted. BUNWAREE MOHUN SAHA *v* PRANNATH SAHA
2 W. R. 159

KALLY SUNKUR SUNDYAL *v.* HURO SUNKUR SUNDYAL . . . . . 7 W. R. 29

3. ——— and Art. 132—*Payment of entire rent by a co-tenant—Suit for contribution.* One of two persons having a joint holding from a mittadar paid the whole of the mittadar's dues for one year, and more than three years after the date of payment he sued the other for contribution:—*Held*, that the payment did not create a charge on the land, and Art. 132 of the Limitation Act was therefore not applicable, and the suit was consequently barred by limitation under Art 99. THANIKACHELLA *v.* SHUDACHELLA
I. L. R. 15 Mad. 258

4. ——— and Art. 132—*Suit to recover assessment paid by a co-owner of property from other co-owners—Charge on share of co-sharer.* In 1868, the uncle of the plaintiff brought a suit (No 176 of 1868) against five members of the

certain land, in which all the members of the ants' family were interested At the sale he pur-

between him and the defendants' family, pending which the plaintiff separated from his uncle, and obtained the property in question as his share. The result of that litigation was a decree by the

Courts held that the payment create a charge on the property, and that the plaintiff having omitted to sue within three years from the date of the payments made by him, the present

LIMITATION ACT (XV OF 1877)—*contd.*

Schedule II—*contd*

———— Art 99—*contd.*

suit was barred. On appeal by the plaintiff to the High Court:—*Held*, confirming the lower Court's decree, that the suit was barred. The plaintiff paid the assessment as full owner of the property, and it was entirely by his own action that the defendants had been excluded from the property, and did not pay their quotas of the assessment. Under those

I. L. R. 11 Bom. 313

5 ———— and Art. 132—*Government revenue, suit to recover money paid on account of—Charge on immoveable property—Co-sharer, payment of arrears of revenue by.* The plaintiffs and defendants were the proprietors of two separate plots of lands, separately assessed with Government revenue, but covered by the same towzi number. Plaintiffs paid the Government revenue due from the defendants in respect of their plot from September 1873 to June 1885 in order to prevent the two plots being brought to sale, and on the 28th September 1885 instituted a suit to recover the amount. It was contended on behalf of the plaintiff that Art 132 of Sch II of Act XV of 1877 applied to the facts of the case, and that the plaintiffs were therefore entitled to recover all amounts so paid within twelve years of date of suit:—*Held*, that, as on the authority of *Kinu Ram Doss* v. *Muzaffer Hosain Shaha, I. L R. 14 Calc. 809*,

made more than three years before suit was barred. KHUB LAL SAHU *v.* PUDMANUND SINGH

I. L. R. 15 Calc. 542

6. ———— Arts. 99 and 132—*Suit for contribution—Annuity charged on land—Adverse possession.* Where several properties are liable for the payment of an annuity, which has been discharged by the owner of one of such properties, a suit for contribution, being a suit to enforce pay-

LIMITATION ACT (XV OF 1877)—*contd.*

Schedule II—*contd.*

———— Art. 99—*concld.*

and entered into possession in 1878 Subsequently

(1906) . . . I. L R. 28 All. 743

———— Art. 102—

Suits for wages other than those specified in cl 2 of s 1 of Act XIV of 1859 were governed by cl. 9 or 10 of that Act. JUMNA PERSHAD *v* BHEEM SEIN

1 Agra Mis. 8

NITTO GOPAL GHOSE *v* MACKINTOSH

6 W. R. Civ. Ref. 11

———— *Suit for wages—Cause of action, accrual of.* Wages due to an employé leaving his employer's service would be due on the date when he *left the service*, and any suit for those wages must, in the absence of any subsequent account stated and settled between the parties, be brought within three years from such date YOUNG *v.* MACCORKINDALE

19 W. R. 159

Upholding on review, MACCORKINDALE *v.* YOUNG

18 W. R. 466

———— Arts. 103, 104 (1871, Arts. 103 104)—

MULLEEKA *v.* JUMEELA . 11 B. L. R. 375
L. R. I. A. Sup. Vol. 135

KHAJURANNISSA *v.* SAIFOOLLA KHAN

15 B. L. R. 306

NATHU *v.* DAUD . 2 Bom. 309 : 2nd Ed. 292

S C. DAUD *v.* NATHU . 1 Ind. Jur. N. S. 113

1. ———— *Demand of portion of dower—Cause of action* Where a wife demanded only a portion of her *denmohr* or dower from her husband, limitation as to her claim to the remainder will count from the date of her husband's death, and not from the date of her former demand. BEGOO JAUN *v* GASHEE BEBEE

6 W. R. Civ. Ref. 19

As to deferred dower (Art. 104) MAHAR ALI *v.* AMANI . . . 2 B. L. R. A. C. 306

MEHRAN *v.* KUBIRAN . 6 B. L. R. 60 note

LIMITATION ACT (XV OF 1877)—*contd.*

Schedule II—*contd.*

——— Arts. 103, 104—*concld.*

KHAJARANNISSA *v.* RISANNISSA BEGUM
5 B. L. R. 84 : 13 W. R. 371

2.——— *Suit for dower—Wrongful possession.* In a suit to recover the balance or dower-money, it appeared that the plaintiff's husband died in 1845, and the suit was instituted in 1867 ; and that the plaintiff had been in possession of her husband's estate in lieu of dower up to 1861, and had continued in possession, under a compromise with the heirs, till 1866. It appeared, however, that in another suit she had been declared not entitled to possession :—*Held*, that her suit was barred KALSUMNISSA *v.* WAHIDUNNISSA . 3 B. L. R. A. C. 176 note

MAHOMED FAEZ *v.* OOMDAH BEGUM
6 W. R. 111

Under the Act of 1859, the six and not the twelve years' period of limitation was held to apply to suits for dower, as the right was held not to constitute an interest in immoveable property. MAHABU *v.* AMNIA . . . 10 Bom. 430

WAFEAH *v.* SAHEEBA . . 8 W. R. 307

Unless it was sought to charge it on immoveable property by establishing a lien thereon. JANEE KHANUM *v.* AMATOOL FATIMA KHATOON
8 W. R. 51

s.c on appeal, WOOMATOOL FATIMA BEGUM *v.* MEERUNMUNNISSA KHANUM . 9 W. R. 318

WAFEAH *v.* SAHEEBA . . 8 W. R. 307

In the latter case,—that is, where it is sought to make the dower a charge on immoveable property,—the suit would now probably come under Art. 132 of the Limitation Act

3.——— *Contract to hold money on loan—Repayment to be made by husband in case of divorce—Dower.* In the case of an advance of money on a contract that it should be held on loan by the husband (a Mopla following the Mahomedan law) without liability to interest, the repayment to be made by the husband in the event of divorce taking place, or out of his effects at his death :—*Held*, that the Mahomedan law of dower was not applicable to the suit, and that the period of limitation was three years from the date of the divorce or the death of the husband. ANONYMOUS CASE . . . . 5 Mad. 280

——— Art. 105—

See CIVIL PROCEDURE CODE (ACT XIV OF 1882), s. 43 . I. L. R. 30 All. 225

Under the Act of 1859, the six years' period of [illegible]

——— Art. 106 (1871, Art. 106)—

See ante, ss. 7 AND 8 AND SCH. II, ART. 106.

See post, ART. 120 . I. L. R. 4 All. 437

See CIVIL PROCEDURE CODE (ACT XIV OF 1882), ss 43, 373.
I. L. R. 30 All. 279

See PARTNERSHIP 12 C. W. N. 455

1. To suits of the nature described in Art. 106 (*suits for an account and share of the profits of a dissolved partnership*), the six years' period of limitation applied under the Act of 1859 JWALA PERSHAD *v.* KEDAR NATH . . 3 Agra 175

NURSINGH DOSS *v* NARAIN DOSS 3 N. W. 217

BHUTOO RAM *v.* PUHUL CHOWDHRY 7 W. R. 38

KALEE KRISTO CHOWDHRY *v.* HARAN CHANDRA DEY . . . . . 19 W. R. 217

2 ——— *Suit in nature* [illegible]

engineers. During such service, plaintiff, [illegible] third party entered into a joint adventure or part- [illegible] employment [illegible] loss to be [illegible] C should [illegible] salary and [illegible] necessary to plaintiff's share of the expenses. *After sale* of the tug, the account was made up, showing a separate loss to each partner of R2,341, and allowed and approved by each some time prior to 29th July 1868. On the date last mentioned plaintiff signed an account between himself and *C*, [illegible] deduct board and lodging expenses, and [illegible] balance had been struck, all partnership [illegible] tions had ceased between the parties, and that he was entitled to sue for the balance of all salary and moneys in *C*'s hands ; but that his claim was not a partnership demand. MACCORKINDALE *v.* YOUNG
18 W. R. 466

s.c. affirmed on review. YOUNG *v.* MACCORKINDALE . . . . . . 19 W. R. 159

3 ——— *Hindu Law—Mitakshara doctrine of joint family property—Partnership.* V and his five sons constituted

LIMITATION ACT (XV OF 1877)—*contd.*

Schedule II—*contd.*

——— Art. 106—*concld*

an undivided Hindu family V and his three elder sons lived apart from the two younger sons, and were in possession of some ancestral property The two younger sons were plaintiff and [illegible]

had been carried on jointly by him and first defendant until 1894, and continued by the first defendant until the institution of the suit It was alleged that, although there had not been an express agreement of partnership, in the circumstances of the case an agreement under which plaintiff had become jointly interested in the business ought to be inferred —*Held*, that plaintiff had not a joint interest in the contract business and was not entitled to claim a share in it, *Held*, also, that, even if such an interest had existed, plaintiff's claim was barred by limitation. *Moung Tha Hnyin* v *Mah Thein Myah, L. R 27 I A 189*, distinguished. SUDARSANAM MAISTRI *v.* NARASIMHLU MAISTRI (1901) . . . . I L. R. 25 Mad. 149

——— Art. 107 (1871, Art. 107)—

Under Act XIV of 1859, six years was the period of limitation for the suits mentioned in this article (suits by the manager of a joint estate of an undivided family for contribution in respect of a payment made by him on account of the estate) As to the cause of action, the decisions were in accordance with this article.

See RAM KRISHNA ROY *v.* MADAN GOPAL ROY. 6 B. L. R. Ap. 103 : 12 W. R. 194

BIMALA DEBI *v.* TARASUNDARI DEBI 6 B L R. Ap. 101 : 14 W. R. 480

——— *Joint Hindu family —Debts of manager—Contribution, limitation in respect of, suit for.* Where money is borrowed by the manager of a joint Hindu family on his [illegible]

DHYA *v* GRISH CHUNDER MUKHOPADHYA I. L. R. 20 Calc. 18

——— Art. 108—*Hindu Law—Partnership with manager of joint family— Death of manager, effect of—Joint family and joint family business, nature of—Partner, right of, to sue* [illegible]

LIMITATION ACT (XV OF 1877)—*contd.*

Schedule II—*contd*

——— Art. 108—*concld.*

fit with *S*, a stranger to the family, the partnership is dissolved on the death of *K*, in the absence of any agreement with the survivors. How far a joint Hindu family resembles a corporation sole and how far a joint family business resembles a partnership considered *Samalbhai Nathubai* v. [illegible]

suit will lie for recovering a share of any particular [illegible]

DAR ROW *v* SOKKANADHA VANNIMUNDAR (1905) I. L. R. 28 Mad. 344

——— Art. 109 (1871, Art. 109)—

1. ——— *Act XIV of 1859 s 1, cl. 16—Suits for mesne profits.* Six years was the period of limitation for suits for mesne profits under cl 16, s. 1 of Act XIV of 1859. LALLA GOBIND SUHAYE *v.* MUNOHUR MISSER 1 W. R. 65

RAM SURUN SINGH *v.* GOOROO DYAL SINGH 1 W. R. 83

PRATAP CHANDRA BURUA *v.* SWARNAMAYI 3 B. L. R. Ap. 81

ISSUREENUND DUTT JHA *v.* PARBUTTY CHURN JHA . . . . . . 3 W. R. 13

RAMAPUT SINGH *v.* FURLONG . 3 W. R. 38

LUCHMAN SINGH *v.* MIRIAM . 5 W. R. 219

MUNEERAM ACHARJEE *v.* TURUNGO 7 W. R. 173

BALUM BHUTT *alias* RAM BHUTH *v* BHOOBUN LALL . . . . . . 6 W. R. 78

NAWAB NAZIM OF BENGAL *v.* RAJ COOMAREE DEBEE 6 W. R. 113

KATTAMA NACHIAR *v.* SUBRARAMA AIYAN. ZAMINDAR OF SHIVAGUNGA *v* SUBRARAMA AIYAN 4 Mad. 302

HUREEHUR MOOKERJEE *v.* MOLLAH ABDOOLBUR 17 W. R. 209

JUGGUT CHUNDER BHADOORY *v.* SHIB CHUNDER BHADOORY . . . . . 22 W. R. 255

See, also, MODHOOSOODUN SANDYAL *v.* SUROOP CHUNDER SIRCAR CHOWDHRY 7 W. R. P. C. 73 : 4 Moo. I. A. 431

2. ——— *Cause of action —Suit for mesne profits.* In calculating the six years' mesne profits which the decree-holder was

LIMITATION ACT (XV OF 1877)—*contd.*

Schedule II—*contd.*

——— Art. 109—*contd.*

entitled to recover in this case, the cause of action was *held* to have arisen at the end of the year in which the ouster took place. THAKOOR DOSS ACHARJEE CHUCKERBUTTY *v.* SOSHEE BHOOSUN CHATTERJEE . . . 17 W. R. 208

RAM CHUNDRA ROY *v.* AMBICA DOSSEA 7 W. R. 161

3. ——— *Cause of action—Date of ascertainment of amount.* Where the amount of mesne profits cannot be ascertained till after the end of the year, the cause of action was held not to arise until the end of the year. BYJNATH PERSHAD *v.* BADHOO SINGH 10 W. R. 486

THAKOOR DASS ROY CHOWDHRY *v.* NOBIN KRISTO GHOSE . . . . . . 22 W. R. 126

Or in cases of dispossession, the date of dispossession is the date when the cause of action arises in suits for mesne profits. EKBAL ALI KHAN *v.* KALEE PERSHAD . . . 3 W. R. 68

4. ——— *Mesne profits—Wrong-doers independent of the defendant—Civil Procedure Code, 1882, s 211.* In a suit brought on the 26th September 1893 for mesne profits of land, for the possession of which a decree had been pre-

alid) that the claim in respect of the period beyond three years before the date of suit was barred by limitation, and that she was not liable for profits of the lands from which she had been dispossessed by others:—*Held*, (1) under Art. 109, Sch II of the Limitation Act, the defendant was liable for the mesne profits received by her or which she might have with due diligence received during the three years before the date of suit, and not before The

of mesne profits in s. 211 of the Civil Procedure

I. L. R. 24 Calc. 413

LIMITATION ACT (XV OF 1877)—*contd.*

Schedule II—*contd.*

——— Art. 109—*contd.*

5. ——— *Dispossession under decree subsequently reversed by Privy Council.* Where plaintiff had been dispossessed of lands under a decree of the Sudder Court, subsequently reversed by the Privy Council on appeal, limitation as to his right to mesne profits during his dispossession ran from the date of the decree of the Privy Council. MASHOOK ALI KHAN *v.* JOWALA BUKSH 2 N. W. 290

JOYKURUN LALL *v.* ASMUDH KOOER 5 W. R. 125

6. ——— *Cause of action—Dispossession.* The cause of action in respect to mesne profits accrues on the date on which, but for the fact of dispossession, the plaintiff would have been entitled to receive them. LAKHI KANT DAS CHOWDHRY *v.* RAM DAYAL DAS 5 B. L. R. Ap. 61

S. C. LUCKHEE KANT DOSS *v.* DEEN DYAL DOSS 14 W. R. 82

7. ——— *Default caused by act of another party—Assam—Suit for partition.*

fits during the period of his non-possession, subject to any grounds which the defendant could show which would entitle a Court of equity to deprive the plaintiff of his rights. In a suit brought in January 1862, respecting property situated in Assam, mesne profits for twenty-eight years prior to 1854 were decreed, subject to any equitable claims for deducting any portion, Act XIV of 1859 not applying to Assam previous to July 1862. NILKAMAL LAHURI *v.* GUNOMANI DEBI . 7 B. L. R. 113 : 15 W. R. P. C. 38

8. ——— *Period when due—Time for making up accounts.* Where the accounts of an estate are made up at the end of the

LIMITATION ACT (XV OF 1877)—*contd.*

Schedule II—*contd.*

——— Art. 109—*contd.*

ordinary year, mesne profits are rightly treated as due at the end of each year, and interest may be added by way of damages. CHOWDHRY WAHED ALI *v.* JUMAYE . . 19 W. R. 87

9. ——— *Suit for, by person restored to possession under decree of Privy Council.*

[illegible]

LALL JOYKURUN LALL *v.* ASMUDH KOOER 5 W. R. 125

10. ——— *Suit for possession.* In a suit instituted after Act XIV of 1859 came into force, mesne profits can only be recovered for the six years next preceding the institution of the suit. A regular suit for mesne profits will lie after a suit for possession, if in the latter suit no question of mesne profits was raised or decided. PRATAP CHANDRA BURUA *v.* SWARNAMAYI 3 B. L. R. Ap. 81 : 12 W. R. 5

11. ——— *Suit for mesne profits.* A claim for mesne profits during a period preceding the three years next before the filing of the plaint is barred by Act XV of 1877, Sch. II, Art. 109. KRISHNANAND *v.* PARTAB NARAIN SINGH I. L. R. 10 Calc. 792 : L. R. 11 I. A. 88

12. ——— *Mesne profits—Patni.* A *patni mahal* was sold under Regulation VII of 1819 for arrears of rent on the 18th May

[illegible]

decree and took possession on the 11th September 1901. The plaintiff then instituted the present suit on the 6th April 1904 for *mesne* profits for the period the defendant was in possession, *viz.*, from 18th May 1900 to 11th September 1901 :—*Held*, that the defendants wrongfully received profits, which were receivable by the plaintiff, Art. 109 and

[illegible]

I. L. R. 35 Calc. 996

13. ——— *Mesne profits, suit to recover—Patni sale, illegal, set aside—Limit-*

[illegible]

LIMITATION ACT (XV OF 1877)—*contd.*

Schedule II—*contd.*

——— Art. 109—*concld.*

and subsequently on obtaining possession brought a suit for recovery of mesne profits : *Held*, that Art. 109 of Sch. II of the Limitation Act applied to the case, and limitation ran from the time the profits were actually received and not from the time when the *patnidar* recovered possession. *Dhanput Singh* v *Saraswati Misrani, I. L. R. 19 Calc. 267*, distinguished. PEARY MOHUN ROY *v.* KHELARAM SARKAR (1908) . . . 13 C. W. N. 15

14. ——— and Art. 40—*Mesne profits*

[illegible]

within the meaning of Art. 36 of the same Act. SHURNOMOYEE *v.* PATTARRI SIRKAR I. L. R. 4 Calc. 625

15. ——— *Suit for damages to personal property.* Plaintiff brought a suit to establish his right to a fishery, which was finally decided in his favour. After the final determination of the suit in which his title to the fishery was tried

[illegible]

——— Art. 110 (1871, Art. 110 : 1859, s. 1, cl. 8)—

See post, ARTS. 116, 120 AND 110 I. L. R. 25 Bom. 556

See CO-SHARER LANDLORDS. I. L. R. 35 Calc. 744

See LAND-REVENUE. I. L. R. 26 Mad. 730

1. ——— *Suits for arrears of rent.* Suits for arrears of rent were under Act XIV of 1859 to be instituted within three years from the last day of the Bengal (or other) year in which the arrears claimed shall have become due. GOBIND KUMAR CHOWDHRY *v.* HARGOPAL NAG 3 B. L. R. Ap. 72 : 11 W. R. 537

LIMITATION ACT (XV OF 1877)—*contd.*

Schedule II—*contd.*

——— Art. 110—*contd.*

2. ——— *Suit for arrears of rent.* Where a part-proprietor of a certain talukh who was also a co-sharer in a fractional portion

CHOWDHRY v. MANSON
10 B. L. R. 56 : 23 W. R. 152

3. ——— *Suit for compen-*

16 W. R. 287

4. ——— *Suit for compensation for use and occupation of land* Where a

As to s. 1, cl. 8, of the Act of 1859, *see* POULSON v. CHOWDHRY . . . . . 2 W. R. 21

UNNODA PERSAUD MOOKERJEE v. KRISTO COOMAR MOITRO . 15 B. L. R. 60 note : 19 W. R. 5

and HUREE KISHORE ROY v. HUR KISHORE ADHIKAREE . . . . 23 W. R. 134

5. ——— *Act XIV of 1859, s. 1, cl. 8—Suit for rent under benami lease—Use and occupation* Plaintiff, who was the zamindar, having obtained a decree against the auction-purchaser of a patni tenure held under his zamindari for the rents of the years 1279, 1280, and 1281, and being unable to realise the whole amount due under the same, subsequently learned that *A*, who had purchased a share in the patni from *B*, who derived his title from the original defendant, had been in possession during these years. He then sued *A* for the balance due under the first decree. The suit was filed on the 21st Baisack 1285:—*Held*, that the second suit, whether it was governed by Bengal Act VIII of 1869 or by the general law of limitation, was barred, inasmuch as it was a suit for rent and brought more than three years after the arrears became due. *Pitambar Sen v. Debnath Roy Chowdhry, 18 W. R. 132,* cited and distinguished. RAM RUNJUN CHUCKERBUTTY v. RAM LALL MUKHOPADHYA . 5 C. L. R. 62

6. ——— *Madras Rent Recovery Act (Mad. Act VIII of 1865), s. 10—Suit for arrears of rent—Date from which limitation runs.* In

APPA RAU v. CHALAMANNA
I. L. R. 17 Mad. 225

7. ——— *Madras Rent Recovery Act (Mad. Act VIII of 1865), s. 10—Suit to recover arrears of rent—Proceedings in Revenue*

appeared that proceedings had taken place in a Revenue Court under the Rent Recovery Act (Madras), 1865, to enforce acceptance by the defendant of the pottah tendered by the landlord. These proceedings had terminated on appeal in favour of the landlord less than three years before

Appa Rau v. Chalamanna, I. L. R. 17 overruled. SRIRAMULU v. SOBHANADRI APPA RAU
I. L. R. 19 Mad. 21

8. ——— *Madras Rent Recovery Act (Mad. Act VIII of 1865), s. 10—Suit to*

248

RANGAYYA APPA RAU v. VENKATA REDDI
I. L. R. 22 Mad. 249 note

PARAMASIVA GOUNDAN v. KANDAPPA GOUNDAN
I. L. R. 22 Mad. 250 note

9. ——— *Suit for arrears of rent by assignee of landlord—Bengal Tenancy Act, Sch. III, Art. 2.* Art. 2 of Part I of Sch. III of the Bengal Tenancy Act does not apply to a suit brought

LIMITATION ACT (XV OF 1877)—*contd*

Schedule II—*contd*

———— Art. 110—*contd*

by an assignee of the arrears from the landlord, but Art 110 of the second Schedule to the Limitation Act is applicable to such a case MOHENDRA NATH KALAMAREE v KOILASH CHANDRA DOGRA
4 C. W. N. 605

10. ———— *Enforcement of vendor's lien* In 1887 the plaintiff sold land to defendant No 1, who, in 1894, while part of the purchase-money remained unpaid, sold it to the defendants Nos. 2 to 4, who had notice of this fact The plaintiff now in 1895 sued to enforce his vendor's lien —*Held*, that the suit was barred by Limitation Act, 1877, Sch II, Art 111. NATESAN CHETTI v SOUNDARARAJA AYYANGAR
I. L. R. 21 Mad. 141

See CHUNILAL v BAI JETEH
I. L. R. 22 Bom. 846

11. ———— *Suit for arrears of rent—Madras Rent Recovery Act (Mad Act VIII*

of arrears of rent apply to ascertained rents, not to rents at rates which have yet to be ascertained In Art 110 of Sch II of the Limitation Act (XV of 1877), "arrears of rent" means arrears of ascertained rent, which the tenant is under an obligation to pay, and which the landlord can claim, and, if necessary, sue for :—*Held*, therefore (reversing the decisions of the Courts in India), that where it is necessary for the landlord to take proceedings under the Madras Act VIII of 1865 to have the proper rate of rent ascertained, the period of limitation in a suit for arrears of rent runs from the

between cases in which, in the proceedings to ascertain the rent, the Courts have approved of the patta tendered by the landlord and those in which they have modified it. RANGAYYA APPA RAO v. BOBBA SRIRAMULU (1904)
I. L. R. 27 Mad. 143
s c. L. R. 31 I. A. 17

12. ———— *Rent in arrear from date on which it is due by contract or custom, when such rent ascertained and not in dispute* Rent, when the amount is ascertained, is in arrear, within the meaning of Art. 110 of Schedule II of the Limitation Act from the date on which it is due by express contract or custom irrespective of the end of the fasli or of the exchange of pottah and muchilika. Where the melawaram share due to the landlord is payable by custom as soon as the harvest is over, the rent is ascertained and payable at the end of the

LIMITATION ACT (XV OF 1877)—*contd.*

Schedule II—*contd.*

———— Art. 110—*concld.*

harvest and a suit for rent will be barred, if not brought within three years of such date *Rangayya Appa Rao* v *Bobba Sriramulu, I. L. R 27 Mad 143,* distinguished. Although tender of a pottah is a condition precedent to proceedings for the recovery of rent, there is nothing in the Rent Recovery Act or the Limitation Act to make the date of such tender the starting point of limitation in such cases. ARUNACHELLAM CHETTIAR v KADIR ROWTHEN (1905) . . I. L. R. 29 Mad. 556

———— and 116—*Suit to recover rent on a registered lease—Limitation. Held*, that a suit for the recovery of rent based upon a registered lease is governed as to limitation, not by Art. 116, but by Art 110 of the Indian Limitation Act, 1877. *Umesh Chunder Mundal* v. *Adarmoni Dasi, I. L. R. 15 Calc. 221,* dissented from RAM NARAIN v KAMTA SINGH . . I. L. R. 26 All. 138

———— Art. 111—

1. ———— *Arts. 111 and 116 —Suit to recover unpaid purchase-money, and to enforce vendor's lien* A suit to recover unpaid

followed *Har Lal Muhamdi, I. L R 21 All. 454,* discussed. AVUTHALA v. DAYUMMA (1900)
I. L. R. 24 Mad. 233

2. ———— and 132—*Art 132*

Soundararaja Ayyangar, I. L. R. 21 Mad. 141, Avuthala v *Dayumma, I. L. R. 24 Mad 233, and Subramani Ayyar* v. *Poovan, I L R. 27 Mad. 28,* overruled RAMAKRISHNA AYYAR v. SUBRAHMANIA AYYAN (1905) . I. L. R. 29 Mad. 305

3. ———— and 132—*Limitation—Transfer of Property Act (IV of 1882), ss 55 (4) (b)—Suit by vendor to enforce charge for unpaid balance of purchase money. Held*, that suit for the enforcement of the payment of purchase money by sale of the purchased property is a suit to enforce a statutory charge differing from the lien, which an unpaid vendor in equity possesses for the

LIMITATION ACT (XV OF 1877)—*contd.*

Schedule II—*concld.*

——— Art. 111—*contd.*

L R. 21 All. 454, and *Ram Krishna Ayyar* v.

——— Art. 113 (1871, Art. 113)—

See ARBITRATION—AWARDS—ENFORCING AWARDS . I. L. R. 23 All. 285

See SPECIFIC PERFORMANCE—SPECIAL CASES . . I. L. R 3 Mad. 87

1. ——— *Sale at fair valuation. Ascertainment of price.* In a suit for the

mance :—*Held*, that they were not barred by limitation, as under Act IX of 1871, Sch II, Art 113, they had three years within which to bring their suit from the time when they had notice that their right was denied NEW BEERBHOOM COAL COMPANY *v* BULORAM MAHATA

I. L. R. 5 Calc. 175 : 2 C. L. R 268

s c on appeal to Privy Council, where, however, this point was not dealt with

I L. R. 5 Calc 932 : L. R. 7 I A. 107

2. ——— *Specific performance—Trust—Laches.* In 1860 certain shares in a company then formed were allotted to *S* on the understanding, as the plaintiffs alleged, that 120 of such shares should, on the amount thereof being paid to *S*, be transferred to and registered in the books of the company in the names of the plaintiffs. In 1862 the plaintiffs completed the payment to *S* in respect of the shares, and during his lifetime received dividends in respect of the said shares *S* died in 1870, leaving a will, probate of which was granted to the defendant as his executor. In a suit, brought by the plaintiffs, after demand of the shares from the defendant, and refusal by him to deliver them, to compel the defendant to transfer the shares to the plaintiffs, and register the same in their names, the plaintiffs' case was that the shares had been held in trust for them, and that consequently their suit was not barred by lapse of time —*Held*, that the transaction between *S* and the plaintiffs did not amount to "a trust for any specific purpose" within the meaning of s. 10 of the Limitation Act, or to a trust at all, but to an agreement of which the plaintiffs were entitled to specific performance ; and the limitation applicable was that provided by Art. 113 of Sch. II, Act IX of 1871, and therefore the suit was not barred. Nor were the plaintiffs disentitled to relief by reason of any laches or delay in bringing the suit. AHMED MAHOMED PATTEL *v* ADJEIN DOOPLY

I. L. R. 2 Calc. 323

LIMITATION ACT (XV OF 1877)—*contd.*

Schedule II—*contd.*

——— Art. 113—*contd.*

3 ——— and Art. 144—*Suit on an award —Meaning of "contract" in Art 113—Specific Relief Act (I of 1877), s. 30.* By an award bearing date 7th July 1893 plaintiffs were held to be entitled to certain immoveable property. On 15th November 1897, they filed a suit to enforce the

to enforce an award cannot be treated as a suit to enforce a contract within the meaning of Art. 113, the word "contract" in that article being used in its ordinary sense *Sukho Bibi* v. *Ram Sukh Das, I L. R 5 All 263*, and *Raghubar Dial* v. *Madan Mohan Lal, I. L. R 16 All. 3*, referred to. SORNAVALLI AMMAL *v.* MUTHAYYA SASTRIGAL

I. L. R. 23 Mad. 593

4. ——— *Suit for specific performance of contract—Suit on award—Specific Relief Act (I of 1877), s. 30.* A suit for money based on an award, which directs its payment

to such a suit. SUKHO BIBI *v.* RAM SUKH DAS

I. L. R. 5 All. 263

5. ——— *Specific Relief Act (I of 1877), s. 30—Suit for balance due under an award* A suit for the recovery of a balance of money

subject to the limitation prescribed by ... of Sch. II of the Limitation Act, 1877. *Sukho Bibi* v. *Ram Sukh Das, I. L. R. 5 All. 263*, followed. RAGHUBAR DIAL *v.* MADAN MOHAN LAL

I. L. R. 16 All. 3

6. ——— and Art. 144—*Vendor and purchaser—Contract of sale—Suit for specific performance of contract—Suit for possession of immoveable property.* A contract was made for the sale of certain immoveable property, in the event of the vendor obtaining a decree establishing his title to

1877, and not Art. 113 :—*Held*, the ... essentially one for specific performance of contract, and the limitation applicable was Art. 113 The contention that, so far as the suit was for possession of immoveable property, it should be governed by Art. 144, was invalid. The right to possession

LIMITATION ACT (XV OF 1877)—*contd.*

Schedule II—*contd.*

———— **Art. 113**—*contd.*

right to possession was dependent on the contract of sale, if the suit could not be maintained for specific performance of the contract, it could not be maintained for possession of the property sold under the contract MUHI-UDDIN AHMAD KHAN *v* MAJLIS RAI . **I. L. R. 6 All. 213**

7. ———————— *Breach of contract—Suit for specific performance.* In a suit to enforce the performance of an agreement alleged to have been entered into between the plaintiffs and the principal defendants whereby the latter, in consideration of an undertaking subsequently carried out, was to admit the former, who were his uterine brothers, to a share of the property of his adopting father, which included an interest in land: —*Held*, that the defendant was in a position to fulfil that contract on the deaths of his adoptive parents, respectively, and that plaintiffs' suit not having been brought within three years of the dates of those deaths, was barred by limitation MOHADEO LALL *v* NUNDUN LALL . . **12 W. R 22**

8 ———————— *Exchange—Agreement that if either party were deprived of land received he should receive other land* In 1871 the plaintiffs and the defendants executed a deed whereby they effected an exchange of certain lands, and each party agreed to resist by legal process or by

brought an action against a third party who claimed

from the time the defendants refused to give them other land) they sued on the deed of 1871 to have the exchange therein provided for carried out ;—*Held*,

9. ———————— *Suit for recovery of immoveable property based upon a compromise—*

LIMITATION ACT (XV OF 1877)—*contd.*

Schedule II—*contd.*

———— **Art. 113**—*contd.*

Compromise not itself a document of title—Limitation. Certain Revenue Court suits were referred to arbitration and an award was made to the effect that the "plaintiff's claim in all the suits be dismissed with costs and that the defendant bear his own costs" The award, however, went on to declare that, according to the terms of a compromise arranged between the parties, the parties should

that the limitation applicable was that prescribed by s. 113 of the second Schedule to the Indian Limit-

10. ———————— *Chaukidari chakran lands—Resumption by Government—Putni lease —Suit by putnidar for possession of the chakran lands* By virtue of a putni lease granted by the defendant-landlord in 1854, the plaintiff was en-

———— **Arts. 113, 120, 144, 178**—*Suit for* ... *award—Award* ... *to sue to* ... *Code (Act* ... *in award.*

A suit for recovery of possession of land on declaration of the plaintiff's right thereto on the basis of an award made by arbitrators appointed by

of the Limitation Act can apply to it. A valid award is operative even though neither party has

LIMITATION ACT (XV OF 1877)—*contd.*

Schedule II—*contd.*

——— Art. 113—*concld*

sought to enforce it by suit or by application under s. 525 of the Code of Civil Procedure. *Per* MOOKERJEE, *J.* :—As the ordinary rule, a valid award operates to merge and extinguish all claims embraced in the submission, and after it has made the submission and award furnish the only basis by which the

All. 3 ; Wood v. *Griffith, 1 Swanst. 438 . 18 R R 18 ; Commings* v. *Heard, L. R. 4 Q B. 669 ; Clegg* v *Dearden, 12 Q. B. 576 . 76 R. R. 360 ; Jafri Begam* v *Syed Ali Raza, I. L R. 23 All 383 · L. R. 28 I. A. 111,* and *Rani Bhagote* v. *Rani Chandan, I L. R. 11 Calc. 386 L R 12 I. A. 67,* referred to. BHAJAHARI BANIKYA v. BEHARY LAL BASAK (1906)
I. L. R. 33 Calc. 881

——— Art. 114 (1871, Art. 114)—*Suit by company for price of shares allotted—Right of defendant to rescind contract—Laches of defendant.* In a suit by a company for the price of shares allotted to the defendant in which the defence was that there had been misstatements and misrepresentations which entitled him to rescind the contract. *Quære*. Whether, if Art 114 of Sch. II of the Limitation Act was applicable to the case and the defendant was entitled to bring an action for the rescission of the contract within three years from the time when the facts entitling him to rescind the contract first became known to him, the principle laid down in *Peel's case, L. R. 2 Ch. Ap. 674,* and *Laurence's case, L. R. 2 Ch. App. 412,* under which the defendant would be barred by his laches from rescinding the contract, applies to the case. *Tennent* v. *City of Glasgow Bank, L. R. 4 Ap. Cas. 615,* referred to MOHUN LALL v. SRI GANGAJI COTTON MILLS Co. . **4 C. W. N. 369**

1. ——— Art. 115 (1871, Art. 115)—*Suit for breach of contract.* In a suit to recover a sum of money (principal and interest) on account of rent paid for a certain mouzah which had been farmed out to the plaintiff by defendant No. 1, but of which the plaintiff could not get possession :—*Held,* that the cause of action, as laid in the plaint, was a breach of contract on the part of

was one

XIV of

contract

it was in writing The case was not that of a suit for breach of an implied contract as distinguished from a contract of actual agreement, and the obligation of the defendant to make good the loss caused

LIMITATION ACT (XV OF 1877)—*contd.*

Schedule II—*contd.*

——— Art. 115—*contd.*

to the plaintiff was not one merely which the law raises upon a state of circumstances independently of any actual agreement. BROOKE v. GIBBON
19 W. R. 244

Upheld on review . . . **21 W. R. 47**

2. ——— *Implied contract —Contract to do repairs.* Where the defendant em-

was six years, as ruled in *Umedchand Hulamchand* v. *Bulakidas Lalchand, 5 Bom. O. C. 16.* NARO GANESH DATAR v. MUHAMMAD KHAN
9 Bom. 280

3. ——— *Contract between doctor and patient as to fees.* Where a doctor is engaged to treat a patient without any arrangement being made at the time as to his fees, there is an implied contract, an action for breach of which was governed by the three years' limitation under s. 1, cl. 9, of Act XIV of 1859 HURISH CHUNDER SURMAH v. BROJONATH CHUCKERBUTTY
13 W. R. 96

4. ——— *Suit for money received by vakil and paid to agents of client—Cause of action* A vakil received money for his clients

v. BHIMARAJU RAMAYA

LIMITATION ACT (XV OF 1877)—*contd*

Schedule II—*contd.*

——————*Art* 115—*contd.*

when the defendant failed to pay, on presentation of the chittis, the amount then due and payable RAM DOYAL KOONDOO v. GOOROO DASS SEN
18 W. R. 450

6. ————————— *Breach of contract*

6 N. W. 95

7. ————————— *Suit for trees on land after ejectment—Cause of action* A, having been in possession of garden land from 1850 as tenant of B under a two years' lease, continued to occupy as yearly tenant till 1860, when he was ejected in a suit brought against him by B In 1864 A sued on a clause in the lease which he contended

cl. 10, s. 1 of Act XIV of 1859. SAYAJI v. UMAJI
3 Bom. A. C. 27

8. ————————— *Suit on agreement to pay rent to creditor—Cause of action.* Plaintiff executed a zur-i-peshgi lease to defendant for a term of years, and arranged with him contemporaneously that he (the lessee) was to make an annual payment (out of the rents payable to plaintiff) to a creditor of the plaintiff, with a view to clear off a debt. These payments, though made

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ZOOLFEE
W. R. 180

9. ————————— *Suit for abatement of rent founded on agreement for measurement—Payment of same rent—Abandonment.* In a suit for abatement of rent founded on an agreement that at a certain time the land should be measured, and if found less than the quantity named in the agreement, there should be an abatement of the rent, it was found that the plaintiff had never required abatement, but had continued to pay the rent six years:—*Held*, that the suit was barred by limitation, the cause of action having arisen when the zamindar continued to take rent according to the quantity of land named in the agreement. *Semble*: There might be ground for saying that the agreement was abandoned by the parties PROSUNNO MOYEE DOSSEE v DOYA MOYEE DOSSEE
22 W. R. 275

LIMITATION ACT (XV OF 1877,—*contd.*

Schedule II—*contd.*

——————*Art* 115—*contd.*

10. ————————— *Sale of goods on credit—Breach of contract.* Where there was a clause in a partnership agreement by which the

KRISTO ROY CHOWDHRY v. HARAN CHUNDER DEY
19 W. R. 277

11. ————————— *Contract for manufactured indigo—Breach of contract.* Certain factories, already sown with indigo, were given in lease by the Court of Wards; and the lessees agreed to take over all contracts and pay all expenses which had been incurred for that season's cultivation, depositing the amount of outlay incurred.

was one for breach of contract and governed by cl 9, s 1, Act XIV of 1859 BAMA SOONDURY DEBIA v JARDINE, SKINNER & Co. 9 W. R. 367

12. ————————— *Suit for breach of contract to deliver goods.* The defendants were owners of a fleet of steamers plying periodically along the coast of British India, by which they undertook to convey for freight parcels of goods indifferently from and to specified ports. In a suit for compensation for value of goods short delivered:—*Held*, that the suit was one for breach of contract to deliver, and was governed by Art. 115 of the Limitation Act, 1877. BRITISH INDIA STEAM NAVIGATION Co. v. MAHOMED ESACK & Co.
I. L. R. 3 Mad. 107

13. ———— and s. 61—*Agent for purchase of stores for Government, suit by—Cause of action—Suit against Secretary of State—Acknowledgment—Act XV of 1877, ss 19 and 20* The plaintiff, a

LIMITATION ACT (XV OF 1877)—*contd.*

Schedule II—*contd.*

——— Art. 115—*contd.*

was barred by Art. 115. DOYA NARAIN TEWARY *v.* SECRETARY OF STATE FOR INDIA

I. L. R. 14 Calc. 256

14. ——— and Art. 120—*Remarriage of Hindu widow—Custom—Breach of contract.* —The plaintiff sued the defendant, who had married the plaintiff's deceased brother's widow to recover, by way of compensation, the money expended by his deceased brother's family on his marriage, founding his claim upon a custom prevailing among the Jats of Ajmere, whereby a member of that community marrying a widow was bound to recoup the expenses incurred by her deceased husband's family on his marriage. *Held,*

SHEO BAKSH . . . I. L. R. 3 All. 385

delivery to the company. HASSAJI EAST INDIAN RAILWAY COMPANY . I. L. R. 5 Mad. 388

16. ——— and Art. 30—*Bill of lading—Contract, breach of, for delivery of goods—Onus of proof of loss of goods.* Where a plaintiff brings a

Where a plaintiff sues for breach of contract and proves his case, the three years' limitation would be applicable, although the defendants were to prove

107, approved DANMULL *v.* BRITISH INDIA STEAM NAVIGATION COMPANY

I. L. R. 12 Calc. 477

17. ——— *Loan on verbal agreement to repay on a specified date.* A suit to recover money lent with interest upon a verbal agreement that the loan should be repaid with interest one year from the date of the loan, is governed by Art. 115 of Sch. II of Act XV of 1877, which virtually provides for all contracts, which are

LIMITATION ACT (XV OF 1877)—*contd.*

Schedule II—*contd.*

——— Art. 115—*contd.*

not in writing, registered, and not otherwise specifically provided for. RAMESHWAR MANDAL *v.* RAM CHAND ROY . . I. L. R. 10 Calc. 1033

18. ——— and Art. 57—*Debt contracted to be payable on a future date.* In a suit against the legal representative of a deceased debtor to recover the amount of the debt it appeared that the debt was contracted on 30th September 1885, and was to be repayable a month after that date In a suit

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19. ——— *Suit on contract unregistered—Money due under unregistered contract payable on demand—Money to be paid for particular purpose—Construction of agreement.* The plaintiffs were husband and wife, and they were married on the 14th March 1888. On the day of

three, years from this day." The first plaintiff took this note to the defendant's firm, and in return received the following document addressed to himself: "You sent one chithi (note) for R7,000, namely seven thousand, on me. The sum which your father caused to be paid to you in respect of the ornaments appertaining to your marriage has been credited to your account, bearing interest at 4, namely four, per cent. For the same this 'receipt' has been given in writing. "No money was actually paid by the defendant to the plaintiffs, and none was lodged with the defendant's firm by the plaintiffs, but subsequently to the above transaction an account was kept in the defendant's books, in which the first plaintiff was duly credited with interest every year In March 1894, the first plaintiff demanded from the defendant the amount standing to his credit out of his account. The defendant pleaded limitation :—*Held,* that the purpose for

for which it was destined, and demanded

LIMITATION ACT (XV OF 1877)—*contd.*

Schedule II—*contd.*

——— Art 115—*contd.*

contract was not broken until the plaintiffs demanded the money, which they did in March 1894. Art. 115 of Sch. II of the Limitation Act (XV of 1877) applied to the case; and the suit was not barred. MANCHERJI BOMANJI *v* NUSSERWANJI MANCHERJI . . I. L. R. 20 Bom. 8

20. ——— *Breach of contract—Cause of action—Damages.* In a suit for breach of a contract to be performed at different times, the period of limitation must be calculated from each breach of contract as it arises. Where there is a contract for performing certain duties in each of several years, each breach of the contract is a complete cause of action, and damages are recoverable for each breach separately. MATI SAHU *v* FORBES

B. L. R. Sup. Vol. 500 : 6 W. R., Act X, 61

See the decision of the case by the Division Bench after the ruling of the Full Bench MOTEE SAHOO *v* FORBES . . . 6 W. R. 278

On this clause *see*, also, LUKHINARAIN MITTER *v*. KHETTRO PAL SING ROY

13 B. L. R. P. C. 146 : 20 W. R. 380

21. ——— *Continuing breach—Contract* *A* agreed with *B* to refund to *N* the price of certain property sold by *A* to *N*, and of which a share belonged to *B* *A* having died without fulfilling the agreement, *N* obtained against *B* a decree for possession of part of the property Five years subsequent to *N*'s suit, *B*'s heirs sued *A*'s heirs for damages for breach of the agreement :—*Held*, that such breach of the agreement was a continuing breach, and had not even yet ceased, and that therefore the present suit was not barred by Art 115, Sch II of the Limitation Act IMDAD ALI *v* NIJABAT ALI . . . I. L. R. 6 All. 457

22. ——— and s. 23—*Bond—Interest post diem—Non-payment of principal and interest on agreed date—Continuing breach—Successive breaches.* Upon failure to pay the principal and interest secured [illegible]

Act (XV of 1877). MANSAB ALI *v* GULAB CHAND I. L. R. 10 All. 85

23. ——— *Breach of contract—Refusal to perform contract of sale—Cause of action—Suit for refund of money—Continuing breach* *T*, who was the uncle of the first defendant and the [illegible]

one *M* who rejected *C* —*Held*, that the breach did not occur prior to November 1890, and that the suit was not barred. CHINNATAMBI GOUNDEN *v*. CHINNANA GOUNDEN . . I. L. R. 19 Mad. 391

——— Art. 116—

See ACCOUNT . I. L. R. 35 Calc. 298

See CIVIL PROCEDURE CODE, 1882, s. 13. 9 C. W. N. 679

See CONTRACT . I. L. R. 35 Calc. 683

See DEKKHAN AGRICULTURISTS' RELIEF ACT, 1879, s. 72. I. L. R. 9 Bom. 320

See LIMITATION . 11 C. W. N. 674 I. L. R. 34 Calc. 672

See TRANSFER OF PROPERTY ACT, 1882, s. 41 . . . I. L. R. 30 All. 388

1. ——— *Contract or engagement in* [illegible] defendant [illegible] holds R47. [illegible] plaintiff)" [illegible] considered a written contract or engagement LAKSHMANAIYAN *v* SIVASAMY ROW . 4 Mad. 216

2. ——— *Contract or engagement in writing—Suit on promissory note by endorsee against payee.* The defendant, the payee of a promissory note, endorsed it to the plaintiff The endorsement was, " Pay to *K M* (plaintiff) or his order " The promissory note had been registered previous to the endorsement to plaintiff A [illegible]

4 Mad. 366

See SHUMBO CHUNDER SHAHA *v*. BARODA SOONDUREE DEBIA . . . 5 W. R. 45

3 ——— *Mode of registration—Registration before cazee.* The registration [illegible]

1 W. R. 89

4 ——— *Registered bond.* *Held*, that Art. 116, Sch. II of Act XV of 1877, is applicable to a suit on a registered bond for the payment of money. HUSAIN ALI KHAN *v*. HAFIZ ALI KHAN . . . I. L. R. 3 All. 600

5. ——— *Registered instalment bond, suit on—Contract in writing registered.* [illegible]

registered, whether there is or is not an express

LIMITATION ACT (XV OF 1877)—*contd.*

Schedule II—*contd.*

——— Art. 116—*contd.*

provision in the Limitation Act for similar contracts not registered. DIN DOYAL SINGH *v* GOPAL SARUN NARAIN SINGH . L. R. 18 Calc. 506

6. ——— *Registered bond—*

7. ——— *Registered bond for the payment of money—Suit for compensation for the breach of a contract in writing registered* The defendant, having borrowed money from the plaintiff, gave him a bond, dated 4th July 1872, for the

1874; that on that day he had demanded payment; that the cause of action arose on that

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which Art 116 of that Schedule was applicable, and it might proceed on the plaint without any amendment thereof GAURI SHANKAR *v* SURJU
I. L. R. 3 All. 276

8. ——— *Suit to recover money due on registered bond—Compensation for breach of contract.* A suit to recover money due upon a registered bond is a suit for compensation for

SIRU MULLICK . . . I. L. R. 6 Calc. 94

9. ——— *Registered bond for the payment of money. Held*, following *Husain Ali Khan v. Hafiz Ali Khan, I. L. R. 3 All 600*, that a suit on a registered bond for the payment of money, which has not been paid on the due date,

LIMITATION ACT (XV OF 1877)—*contd.*

Schedule II—*contd.*

——— Art 116—*contd.*

coomar Mookhopadhaya v. *Siru Mullick, I. L. R. 6 Calc. 94*, referred to KHUNNI *v* NASIR-UD-DIN AHMAD . . . . I. L. R. 4 All. 255

10. ——— *Suit for money due on registered bond.* A suit to recover money due upon a registered bond is a suit for compensation for breach of contract within the meaning of Art. 116, Sch II of Act XV of 1877. *Nobo Coomar*

11. ——— *Registered bond*

the fact of its being registered could not help the plaintiff, and consequently the suit was barred by limitation, being brought more than three years after the advance was made:—*Held*, that in such a case the bond could not be ignored and treated as non-existent, being the basis of the suit, and that,

PAHRAJ . . . I. L. R. 21 Calc.

12. ——— *Suit on a registered bond, and for misappropriation by executor de son tort* In a suit on a registered bond payable in eleven yearly instalments to recover instalments 5 to 10 from the representatives of two deceased co-debtors (who as managing members of an undivided Hindu family had contracted the debt for family

selves of substantially the whole property ... family of the deceased co-debtor. The bond was dated 26th March 1870. The earliest instalment sued for fell due on 13th March 1874:—*Held*, that, as the bond was a registered bond and the property had been misappropriated within three years of the date of the suit, the suit was not barred by limitation. MAGALURI GURUDIAH *v.* NARAYANA RUNGIAH . . . I. L. R. 3 Mad. 359

13. ——— *Suit to recover arrears of rent on registered contract—Compensation—Contract Act, s. 73.* A suit to recover arrears of rent upon a registered contract is governed by Art.

LIMITATION ACT (XV OF 1877)—*contd.*

Schedule II—*contd*

————Art. 116—*contd*

116, Sch. II, Act XV of 1877 Compensation is used in the same sense in that article as is the Contract Act, s. 73 VYTHILINGA PILLAI *v* THETCHANAMURTI PILLAI . **I. L. R. 3 Mad. 76**

14. ———— **and Art 113**—*Suit by mortgagor to recover money due on a registered mortgage-deed.* A suit by a mortgagor to recover money due on a registered mortgage-deed, together with damages for non-payment, is not a suit to which the period of limitation prescribed by the Limitation Act (XV of 1877), Sch II, Art. 113 (for specific performance of a contract) is applicable The period of limitation applicable to such a suit is that prescribed by Art 116 of Sch II of the said Act (for compensation for the breach [illegible]

[illegible] *R. 3 All 276, Husain Ali Khan* v *Hafiz Ali Khan, I L. R. 3 All. 600, Nobocoomar Mookhopadhaya* v. *Siru Mullick, I L R 6 Calc 94, Vythilinga Pillai* v *Thetchnamurti Pillai, I. L R. 3 Mad. 76*; and *Ganesh Krishna* v *Madhavrav Ravji, I L. R. 6 Bom 75*, referred to NAUBAT SINGH *v* INDAR SINGH . . . **I. L. R. 13 All 200**

15. ———— **and Art. 65**—*Vendor and purchaser—Agreement by purchaser to refund purchase-money in case land sold proved deficient in quantity—Suit for refund—Suit for compensation for breach of contract.* The vendor of certain land agreed in the conveyance, which was registered that in case the land actually conveyed proved to be less than that purporting to be conveyed, he should make a refund to the purchaser of the purchase- [illegible]

[illegible] by [illegible] of [illegible] v. KINLOCK . . . **I. L. R. 3 All. 712**

16. ———— *Suit for breach of contract in writing registered—Stipulation as to amount of profits of property sold.* The plaintiffs purchased certain immoveable property from the [illegible]

The vendees sued upon this contract on the 19th of September 1892, alleging that the profits amounted to only R177-1-0 :—*Held*, that the suit as regards limitation was governed by Art 116 of the second Schedule of Act XV of 1877, and not by Art 65. *Kishan Lal* v *Kinlock, I L. R. 3 All 712*, referred to. AMANAT BIBI *v.* AJUDHIA

I. L. R. 18 All. 160

17. ———— *Suit for arrears of maintenance—Suit on ekrar executed by priest of Hindu idol creating charge on offerings to idol—Right of priest to charao (offerings to idol).* In a suit upon an ekrar executed by the priest of an idol for recovery of arrears of maintenance, and for a declaration that the money due was realizable from the surplus of the charao (offerings to the idol) and recoverable from the defendant's successors in office :—*Held*, that the limitation applicable to the case was that prescribed by Art. 116, Sch. II of the Limitation Act (XV of 1877). Arts. 128 and 129 do not govern the case, as they relate to cases in which the right of maintenance is based on the Hindu law. *Nobocoomar Mookhopadhaya v. Siru Mullick, I. L. R. 6 Calc 94*, referred to GIRIJANUND DATTA JHA *v* SAILAJANUND DATTA JHA

I. L. R. 23 Calc. 645

18 ———— *Suit for rent—Registered contract signed by lessee only* In a suit for rent accrued due more than three years before the date of the plaint, it appeared that the contract between the landlord and tenant was comprised in a registered document which was signed only by the latter :—*Held*, that the suit was not barred by limitation AMBALAVANA PANDARAM *v* VAGURAM

I. L. R. 19 Mad. 52

19 ———— *Covenant implied in registered sale-deed—Transfer of Property Act (IV of 1882), s. 55—Implied covenant for title—Suit for damages for breach.* On 8th February 1889 the defendant sold to the plaintiff, under a registered conveyance containing no express covenant for title, land of which he was not in possession, and the purchase-money was paid. The plaintiff and the defendant sued to recover possession, but failed on the ground that the vendor had no title The plaintiff now sued on 7th February 1895 to recover with interest the purchase-money and the amount of costs incurred by him in the previous litigation :— [illegible]

I. L. R. 21 Mad. 8

20. ———— **and Art. 120**—*Transfer of Property Act (IV of 1882), s 66—Suit for mortgage money by mortgagee on disturbance of possession.* The

LIMITATION ACT (XV OF 1877)—*contd.*

Schedule II—*contd.*

———— Art. 116—*contd.*

defendants demised certain land to the plaintiff under a registered kanom deed in 1888. The plaintiff was evicted in February 1893 He now sued in 1896 to recover the amount of the kanom :—*Held*, that the period of limitation applicable to the suit was six years and the suit was not barred by limitation. UNICHAMAN *v.* AHMED KUTTI KAYI I. L. R. 21 Mad. 242

21. ———— and Arts. 89 and 90—*Principal and agent—Breach of contract—Account—Registered agreement—Contract Act, s. 73—Compensation.* A suit to recover from he representatives of a deceased agent certain sums of money which had been received by such agent in the course of his duties and misappropriated by him, will be governed by the limitation prescribed by Art 116, Sch II, Act XV of 1877, when the contract under [illegible]

sense in which it appears in s 73 of the Contract Act (IX of 1872) In April 1875, *A* entered into an agreement in writing with *B*, whereby he agreed to act as the manager of *B*'s zamindaris and other landed properties for three years, on certain terms therein mentioned The agreement was duly registered. On the 15th of June 1882, *B* sued the Administrator-General of Bengal, as administrator of *A*'s estate to recover certain sums of money, set forth in detail in the plaint, as having been received by *A*, and not accounted for, stating that they had been misappropriated by *A*:—*Held*, that in respect of such sums as were received by *A*, in virtue of his position as manager under the registered agreement, the limitation of six years applied ; but that in respect of the sums received by him in the course of transactions which did not come within the scope [illegible]

I. L. R. 12 Calc. 357

22. ———— *Suit for arrears of rent—Registered contract.* A suit to recover ar- [illegible]

I. L. R. 10 Calc. 221

23. ———— *Suit on bond. A* [illegible]

between the same parties after the 1st July 1882, for R4,500. *B* had previously purchased the two bonds at a sale in execution of the decree of a mofussil Court for R5 each. *A*'s assignment from *B* purported to be made to *A* in payment of certain debts owed to him by *B*. No interest had been paid on the bond, and no tender had been made to the plaintiff :—*Held*, in a suit brought is 1884, that the creditor's personal remedy was barred by Art 116 of the Limitation Act. RATHNASAMI *v.* SUBRAMANYA . . . I. L. R. 11 Mad. 56

24. ———— *Damages for non-payment on due date—Charge on hypothecated property—Successive or continuing breaches of contract.* Damages given after the due date of a mortgage for non-payment of the principal money upon the due [illegible]

are, from the date when the contract was broken, and even before they have been ascertained or de- [illegible] hypothecated, so [illegible] *v. Great* [illegible] *Morgan* [illegible] *equelin*, [illegible] *L. R* [illegible] *R 14 Eq* [illegible] *I. Ap 27;* [illegible] *L R. 8 All.* 450, distinguished in such cases there is one [illegible] ment bre[illegible] on [illegible] of [illegible] v[illegible]

BHAGWANT SINGH *v* DARYAO SINGH I. L. R. 11 All. 416

25 ———— *Interest on deed of conditional sale—Interest after date fixed for payment of principal and interest—Absence of agreement* [illegible] *for breach* [illegible]

[illegible] for interest after the date is a claim for com[illegible] for the [illegible] rought [illegible] *Jug-* [illegible] *I. A.* [illegible] *I, I L.* [illegible] *Daryao* [illegible] *Bhug-* [illegible] *I,* and *Golam Abas* v. *Mohamed Jaffer*, *I. L. R. 19 Calc. 23 note*, followed. GUDRI KOER *v* BHUBANSEWARI COOMAR SINGH . I. L. R. 19 Calc. 19

GOLAM ABAS *v.* MAHOMED JAFFER I. L. R. 19 Calc. 23 note

LIMITATION ACT (XV OF 1877)—*contd.*

Schedule II—*contd.*

——— Art. 116—*contd.*

26. ——— *Mortgage by conditional sale—Interest after due date—Interest Act (XXXII of 1839)—Limitation Act, Art 132—Transfer of Property Act, s 86* *Held*, by a majority of the Full Bench (MACLEAN, *C J*, O'KINEALY, *J*, and MACPHERSON, *J*), that, when a mortgage-bond contains no stipulation for the payment of interest after the due date, interest is payable by virtue of the Interest Act (XXXII of 1839) Art 116 of Sch II to the Limitation Act prescribes the period of limitation in such a case, and therefore only six years' interest after the due date at 6 per cent. per annum is recoverable The mortgagor cannot redeem until he has repaid the principal sum with such interest and costs *Gudri Koer v. Bhubaneswari Coomar Singh, I L R. 19 Calc 19*, approved. *Mathura Das v. Naraindar Bahadur Pal, I L R. 19 All 39 L. R 23 I A 138; Cook v Fowler, L R 7 H. L. 27*, and *Bikramjit Tewari v Durga Dyal Tewari, I. L R. 21 Calc 274*, referred to. *Held* (by TREVELYAN and BANERJEE, *JJ*), that the interest after due date should be regarded as interest due on the mortgage within the meaning of s 86 of the Transfer of Property Act (IV of 1882), and that being so, that it becomes a charge on the mortgaged property, and the period of limitation applicable to the claim for such interest is twelve years under Art 132 of Sch II to the Limitation Act (XV of 1877) MOTI SINGH v RAMOHARI SINGH . . I. L R 24 Calc. 699
1 C. W. N. 437

27. ——— *Suit on mortgage—Claim for interest post diem in absence of covenant—Claim in nature of damages.* The defendants hypothecated to the plaintiff, to secure repayment of a debt, their interest in certain lands The hypothecation-deed was executed in 1875 and registered, and it contained the following terms with regard to interest and the repayment of the debt: " We (the

the above instrument and their heirs and representatives to recover the principal together with interest up to date The Court of first instance

by way of damages only, and was not a charge on the land; and treating the claim as one for damages for failure to pay the principal on the 30th October 1878, such claim was barred by limitation under Art. 116, Sch II of the Limitation Act. BADI BIBI SAHIBAL v SAMI PILLAI . I. L R. 18 Mad. 257

But *see* RAMA REDDI v APPAJI REDDI
I. L. R. 18 Mad. 248

where interest *post diem* was allowed, though barred.

28. ——— *Suit for interest post diem in absence of covenant—Suit on mortgage.* The plaintiff sued in 1893 to recover principal to-

limitation THAYAR AMMAL v LAKSHMI AMMAL
I. L. R. 18 Mad. 331

29. ——— *Claim for interest on money due under registered mortgage-deed—Interest Act (XXXII of 1839)* Art. 116 of Sch II of Act XV of 1877 applies to a claim to have interest allowed under Act XXXII of 1839, in respect of the non-payment on the due date of the

But *see* MATHURA DAS v. NARINDAR BAHADUR
I. L. R. 19 All. 39
L. R. 23 I. A. 138
1 C. W. N. 52

in which this decision was not approved of by the Privy Council.

30. ——— *Building lease—*

for the rent reserved in such a lease is that prescribed by Art 116 of the Limitation Act, and not that provided by Sch. III, Art. 2, of the Bengal Tenancy Act. RANIGANJ COAL ASSOCIATION v. JUDOONATH GHOSE . I. L. R. 19 Calc. 489

31. ——— *Suit between partners—Registered partnership deed.* The plaintiffs and the defendants entered into a partnership

LIMITATION ACT (XV OF 1877)—*contd.*

Schedule II—*contd.*

——— Art. 118—*contd.*

by Art. 118 of Sch. II to the Limitation Act (XV of 1877). BAROT NARAN *v.* BAROT JESANG (1900) I. L. R. 25 Bom. 26

2. ——— *Adoption—Declaration that the adoption is invalid—Knowledge—Death of adopter—Date from which limitation runs.* *B* adopted *N* on the 17th March, 1891. On the 30th March, 1897, *B* died The plaintiffs filed this suit on the 14th April 1899 for a declaration that the adoption of *N* was invalid :—*Held*, that the suit, not having been brought within six years from the *17th March, 1891, the date on which the plaintiffs* came to know of the adoption, was barred under Art 118 of Sch. II to the Limitation Act (XV of 1877); and that the fact that *B* died within six years of the date of the suit could not prevent the bar of limitation. RAMCHANDRA VINAYAK KULKARNI *v.* NARAYAN BAJAJI (1903) I. L. R. 27 Bom. 614

3. ——— *Limitation Act (XV of 1877), Arts. 118, 141 —When suit is for possession, Art. 141 and not Art. 118 applies.* Art. 118 of Sch. II of the Limitation Act applies only to

Limitation Act. *Thakur Tribhuwan Bahadur Singh,* v *Raja Rameshar Bakhsh Singh, L. R. 33 I. A. 156*, followed. VELAGA MANGAMMA *v.* BANDLAMUDI VEERAYYA (1907) . I. L. R. 30 Mad. 308

——— Arts. 118, 119 (1871, Art. 129)—

See DECLARATORY DECREE, SUIT FOR—ADOPTIONS . I. L. R. 1 Bom 248

See MRINMOYEE DABEE *v* BHOOBUNMOYEE DABEE . 15 B L. R. 1 : 23 W. R 43 and KALOVA KOM BHUJANGRAV *v.* PADAPA WALAD BHUJANGRAV . . . I. L R. 1 Bom 248

In another case, the cause of action was held to accrue on the death of the adoptive mother, and not at the date of the adoption. TARINI CHURN CHOWDHRY *v.* SARODA SUNDARI DASI 3 B L. R. A. C. 145 : 11 W. R. 468

Where the suit was combined with one for possession of property, the suit was governed by cl. 12 of s 1, and a period of twelve years' limitation was allowed. TARINI CHARAN CHOWDHRY *v.* SARODA SUNDARI DASI 3 B L R A C. 145 : 11 W. R. 468

ISWAR CHANDRA MITTER *v.* SHAMA SUNDARI DASI 3 B L R A. C. 150 note

RADHA KISSOREE DOSSEE *v.* GUTHEE KISSEN SIRCAR . . . W. R 1864, 272

LIMITATION ACT (XV OF 1877)—*contd.*

Schedule II—*contd.*

——— Arts. 118, 119—*contd*

In HURONATH CHOWDHRY *v.* HURRE LALL SHAHA . . . . . 11 W. R. 477

Act.

1. ——— *Suit to set aside adoption—Ignorance of adoption or its validity—Cause of action.* In a suit to set aside an adoption,

DOBEY . . Marsh 221 : 1 Hay 497

See (*contra*), RADHAKISSEN MAHAPATTER *v.* SREEKISSEN MAHAPATTER . . 1 W. R. 62

2. ——— *Act IX of 1871, Sch. II, Art. 129—Suit to establish or set aside adop-*

from the time when the right accrued. BAHADUR SINGH *v.* ACHUMBIT LAL L. R. 6 I A. 110 : 6 C. L R 12

3. ——— *Suit to set aside adoption.* Plaintiff sued in 1877 to set aside an adoption which was alleged to have taken place twenty years before, and, as heir of the husband of the last Adhikar, who died in 1282, to obtain pos

C. L. R. 12, that the suit was not barred by Art 129, Sch. II of Act IX of 1871. PURNA NARAIN AUDHIKAR *v.* HEMOKANT AUDHIKAR 6 C L R. 46

4. ——— *Suit to obtain a declaration that an alleged adoption is invalid or*

LIMITATION ACT (XV OF 1877)—*contd.*

Schedule II—*contd*

———— **Arts 118, 119**—*contd*

of the validity of an adoption, but is separately provided for by Art. 141 It is discretionary in a Court to grant relief by a declaration of a right, and consequently the fact that a person has not sued for a declaration should not be a bar to a suit for possession of property on any ground of limitation prescribed for the former BASDEO v. GOPAL I L R 8 All 644

5. ———————— *Art IX of 1871, Art 129—Meaning of "suit to set aside adoption"* Art 129 of Sch II of Act IX of 1871, the Indian Limitation Act of that year, using the expression "suit to set aside an adoption," denoted a suit [illegible]

possession. The plaintiffs, as collateral heirs of a childless Hindu, questioned the adoptions purport- [illegible]

Held, on the ground that the adoptions were brought into question more than twelve years after their date, though less than twelve years after the plaintiffs' titles, if any, had accrued at the death of the surviving widow, that the suits were barred under Art 129 of Sch II of Act IX of 1871 Part of the language of the judgment in *Raja Bahadur Singh v. Achumbit Lall, L R. 6 I A 110*, referred to; and that case, in which the plaintiffs' claim was not affected by the widow's adoption, distinguished from the present JAGADAMBA CHAODHRANI v. [illegible]

6. ———————— *Suit questioning an adoption—Invalidity, by Hindu law, of second adoption* An adopted son, proprietor in possession of half of the estate of his adoptive father, deceased, sued to obtain the other half which was in the defendant's possession. The defence was that the latter was entitled to the half share in dispute, having been adopted to the deceased under a power [illegible]

LIMITATION ACT (XV OF 1877)—*contd.*

Schedule II—*contd.*

———— **Arts. 118, 119**—*contd.*

Appasami Odayar v. Subramanya Odayar, I. L. R. 12 Mad. 26 L. R. 15 I. A 167, referred to. It [illegible]

made during the life of a son previously adopted. *Rangama v Atchama, 4 Moo I. A. 1*, referred to MOHESH NARAIN MUNSHI v. TARUCK NATH MOITRA . . . I. L. R 20 Calc 487 L R 20 I A. 30

7. ———— **and Art. 125**—*Suit by reversioner to declare adoption invalid and set aside alienation.* [illegible]

suit, being substantially brought to declare the invalidity of the sale so as to enable plaintiff to recover as reversioner on the death of the widow and adopted son, and the declaration as to the adoption being ancillary to that claim, was not barred by limitation SRINIVASA v VENKATRAMANA . . . I L R 5 Mad. 121

8. ———————— *Suit for declaration that alleged adoption is invalid* Where, in a suit [illegible]

[illegible]

9. ———————— *Suit for possession where adoption is set up—Hindu law, adoption.* [illegible]

10. ———————— *Suit for possession* [illegible]

invalid or in fact never took place; it does not

LIMITATION ACT (XV OF 1877)—*contd.*

Schedule II—*contd.*

——— Arts. 118, 119—*contd.*

apply to a suit for possession of property merely

at a given

L. R. 8

Singh, I.

, I. L R.

ylne, I. L.

SINGH *v.*

. All. 167

11. ——— *Suit for possession*

claimed as an adopted son to be entitled to the estate of which the plaintiff never enjoyed possession She now sued in 1893 for possession with mesne profits, alleging in the plaint that the adoption had been falsely set up, but seeking no declaration with regard to it :—*Held*, that the suit was barred by limitation. PARVATHI AMMAL *v.* SAMINATHA GURUKAL . . . . I. L. R. 20 Mad. 40

12. ——— *Suit for possession*

only to a suit for a declaratory decree as to the validity of an adoption, and that the present suit, which was one for possession of immoveable property, was not barred under that article, notwithstanding that the plaintiff had to establish the validity of an adoption as the basis of his title *Parvathi* v. *Saminatha, I L. R. 20 Mad. 40,* dissented from *Lala Parbhu Lal* v. *Mylne, I. L. R 14 Calc. 401; Basdeo* v *Gopal, I. L. R. 8 All 644, Ganga Sahai* v. *Lakhraj Singh, I. L R. 9 All. 253; Natthu Singh* v. *Golap Sing, I. L. R. 17 All. 167; Padajirav* v. *Ramrav, I. L R 13 Bom. 160; Fannyama* v *Manjaya Hebbar, I. L. R 21 Bom 159;* and *Hari Lal Pranlal* v. *Bai Rewa, I L R 21 Bom. 367,* referred to. JAGANNATH PRASAD GUPTA *v* RUNJIT SINGH I. L R 25 Calc 354

13. ——— *Suit for possession of immoveable property on a declaration that an adoption is invalid* Art 118, Sch. II of the Limitation

on of im-

essary for

adoption

I. L. R.

LIMITATION ACT (XV OF 1877)—*contd.*

Schedule II—*contd.*

——— Arts. 118, 119—*contd.*

25 Calc. 354, referred to. RAM CHANDRA MUKERJEE *v.* RANJIT SINGH . I. L R 27 Calc. 242
4 C. W. N. 405

14. ——— *Suit to recover possession of immoveable property by setting aside adoption* An adoption was made by *M*, a Hindu widow, to her husband *J* in 1854, when the plaintiff's father, the then nearest reversionary heir to *J*, was alive and the adopted son *B* got actual possession of the property left by *J*, on the 14th April, 1877, under a deed of gift executed by *M*. *M* died on the 6th February 1883, and *B* was succeeded by his son, the present defendant. The plaintiff's father died on the 15th October 1875, and the plaintiff attained his majority on the 28th July 1894, having been born on the 29th July 1873. The plaintiff brought the present suit against the defendant, on the 28th January 1895, for the recovery of the properties left by *J* as being nearest reversionary heir. *Held*, that the suit was barred under Art. 129 of the Limitation Act (IX of 1871), as it involved the

I. L. R. 27 Calc. 67

15. ——— and Arts 119 and 141—*Suit*

leaving two sons

adoption to *S*. *T* died leaving a widow and three daughters. In 1872 *T*'s widow *G* adopted defend- In 1894

deprive each claim

, but if

am to

our pre-

leged to

in whose

death you claim possession," then the case is governed by Art. 118. *Per* TYABJI, *J.*—(i) Art. 118 of Sch. II of the Limitation Act applies to every suit where validity of the defendant's adoption is the substantial question in dispute,

LIMITATION ACT (XV OF 1877)—*contd.*

Schedule II—*contd.*

——— Arts. 118, 119—*concld.*

whether such question is raised by the plaintiff in the first instance or arises in consequence of defendant setting up his own adoption as a bar to the plaintiff's success (ii) Art. 141 applies to the ordinary simple case of a reversioner where the validity of the adoption is not the substantial point in dispute, or where the plaintiff can succeed with out impugning the validity of the defendant's adoption. *Fannyamma* v. *Manjaya Hebdar, I L. R 21 Bom. 159*, overruled SHRINIVAS MURAR *v.* HANMANT CHAVDO DESHPANDE

I. L R 24 Bom 260

——— Arts 118, 141—

See LIMITATION I L. R. 30 Mad. 308

——— *Suit to recover immoveable property on the death of Hindu widow—Adoption, validity of, collaterally involved—Limitation—Conflict of decisions.* A suit by reversioners for the recovery of immoveable property on the death of a Hindu widow is governed by Art 141 and not by Art. 118 of Sch. II of the Limitation Act,

matter of DINENDRA NATH MULLICK (1905)

9 C W. N. 222

——— Art. 119—

1. ——— *Adoption—Suit for possession of immoveable property, plaintiff*

male owner of the property and in which the plaintiff's adoption was denied by the defendant, and the plaintiff himself alleged that his right as adopted son had been interfered with more than six years before the institution of his suit *Basdeo* v. *Gopal, I. L R. 8 All 644; Ganga Sahai* v *Lekhraj Singh, I. L R. 9 All 253; Ghandharap Singh* v. *Lachman Singh, I. L. R. 10 All. 485; Natthu Singh* v. *Gulab Singh, I L. R. 17 All. 167; Lala Parbhu Lal* v. *Mylne, I. L. R 14 Calc 401; Jagannath Prasad Gupta* v *Runjit Singh, I. L. R. 25 Calc 354; Padajirav* v *Ramrav, I. L. R. 13 Bom.*

Roy Chaodhri, I. L. R 13 Calc. 308; Mohesh Narain Munshi v. *Taruck Nath Moitra, I. L R. 20 Calc. 487*, and *Lachman Lal Choudhri* v. *Kanhaya Lal Mowar, I L. R 22 Calc. 609*, distinguished LALI *v.* MURLIDHAR (1901)

I. L R 24 All. 195

2. ——— *Adoption—Invalidity of adoption—Limitation* Art. 119 of Sch. II to the Limitation Act (XV of 1877) applies to a

clearly entitled to recover on that other ground, and his suit cannot be rejected merely because it ... option ... Bom.

I. L. R. 26 Bom. 720

3. ——— *No adverse interest as between the parties—Adoption—Suit to declare validity of adoption—Interference with adopted son, nature of*—Art. 119 of Sch. II of the Limi-

the validity of an adoption. The interference

plaintiff and an unconditional exclusion of him from the enjoyment of his rights in virtue of that status The article can have no application to a case where the facts suggest that the interference, such as it was, was intended to have no greater effect than that of postponing the right of the adopted son to succeed as heir to the property of his adoptive father. NINGAWA *v.* RAMAPPA (1904)

I L R 28 Bom 94

4. ——— *Adoption—Period of limitation applicable to suits where factum and also validity of adoption is denied.* Suits in which either the *factum* or validity of an adoption is denied are governed by the provisions of Article

Krishnabai, I. L. R 31 Bom. 80, dissented from. *Shrinivas* v. *Hanmant, I. L. R. 24 Bom 260*, followed and applied. LAXMANA *v.* RAMAPPA (1903)

I. L. R. 32 Bom 7

——— Ats 119, 118 and 144—

——— *Suit by an adopted son more than six years after interference with plaintiff's rights—Claim for declaration as to*

LIMITATION ACT (XV OF 1877)—*contd.*

Schedule II—*contd.*

——— Art. 119—*contd.*

adoption, and to recover possession of property due to plaintiff as adopted son—Maintainability. Plaintiff's rights, as the adopted son of *A*, were interfered with, in connection with certain immoveable property, in 1889 In 1897 plaintiff sued for a declaration that he was the adopted son of *A*, and sought to recover the property :—*Held* (BHASHYAM AYYANGAR, *J.*, dissenting), that the suit was barred under Art. 119 of Sch. II to the Limitation Act. *Jagadamba Chaodhrani* v. *Dakhina Mohun, L R 13 I. A 84*, followed *Parvati Ammal* v *Saminatha Gurukal, I. L. R 20 Mad 40*, and *Shrinivasa* v. *Hanmant, I L. R 24 Bom 260*, approved. *Per* MOORE, *J* —Where a plaintiff cannot obtain a decree for possession without a decision that an adoption is invalid or never in fact took place, or that an adoption is valid, the question whether his claim is barred by limitation must be decided with reference to the provisions of Arts 118 and 119 of Sch II to the Limitation Act *Per* BHASHYAM AYYANGAR, *J* —The suit was governed by Art 144 Art. 119 is [illegible]

having been out of, and the defendant having been in, possession since 1889, plaintiff could not maintain a suit for a mere declaration of title, and the only suit he could maintain was the present, which was governed by Art 144, and was, in consequence, not barred. RATNAMASARI *v* AKILANDAMMAL (1902) . . . . . I L R 26 Mad 291

——— Arts. 119 and 144—*Hindu law—Adoption—Suit by adopted son to recover possession of property of adoptive father after death of the latter—Interference with rights of adopted son—Limitation* The plaintiff claimed as an adopted son to recover from a person alleged by him to be wrongfully in possession thereof moveable and immoveable property, which had belonged to his adoptive father. For the defendant it was asserted that the rights of the plaintiff as an adopted son had been interfered with by his adoptive father more than six years before suit, and that the suit was in consequence barred by limitation, applying Art. 119 of the second Schedule to the Indian Limitation Act, 1877 :—*Held*, by STANLEY, C.J , that to such a suit Art. 144, and not Art 119 of the second Schedule to the Indian Limitation Act, 1877, applied, the suit being one for possession on title and not merely for a declaration as to the validity of an adoption, and the suit was within time. *Held*, also, that the interference alluded to *in Art 119 must be an interference caused* by the defendant to such a suit as the article contemplates, and not an interference caused by some third person *Nathu Singh* v. *Gulab Singh, I. L. R. 17 All. 167* ; *Basdeo* v *Gopal, I. L. R. 8 All. 644* ; *Ghandharap Singh* v *Lachman Singh, I. L R. 10 All 485* ; *Padajirav* v. *Ramrav, I. L R. 13 Bom. 160* ; *Lala Parbhu Lal* v *Mylne, I. L. R. 14 Calc. 401* ; *Lali* v. *Murlidhar, I. L. R. 24 All 195*, and the dissentient judgment of BHASHYAM AYYANGAR, *J*, in *Ratnamasari* v. *Akilandammal, I. L R. 26 Mad 291*, followed. *Shrinivas Murar* v. *Hanmant Chavdo, I. L. R. 21 Bom. 260*, and the judgments of the majority in *Ratnamasari* v. *Akilandammal* dissented from. *Jagadamba Choudhrani* v. *Dakhina Mohun, L. R. 13 I. A. 84*, distinguished *Per* BURKITT, *J.*—Even if Art 119 of the second Schedule to the Indian Limitation Act, 1877, was applicable to the suit, the only interference with the rights of the plaintiff as an adopted son, which could avail the defendant, was the interference caused by the defendant herself, and that was well within the period of limitation mentioned in Art 119. But Art 119 did not apply to the present suit which was governed in respect of limitation by Art. [illegible]

I. A. 30, and *Luchman Lal Choudhry* v *Kanhya Lal Mowar, L. R. 22 I. A. 51*, distinguished *Jagan-* [illegible] *R 25 Calc.* [illegible] *L. R. 26* [illegible] *nt Chavdo,* [illegible] NDANIA *v.* [illegible] SALIG RAM (1904) . . . 6 All. 40

——— Art. 120 (1871, Art. 118 : 1859, s. 1, cl. 16)—

See ante, SS 23 AND 28 AND SCH. II, ARTS 120, 142 AND 144

See ante, SCH. II, ART 10
I. L. R. 24 All. 17

See BENGAL TENANCY ACT, S 107.
I. L. R. 28 Calc. 678

See BOMBAY REVENUE JURISDICTION ACT, S. 4 . . . I. L. R. 16 Bom. 455

See CONTRIBUTION, SUIT FOR—PAYMENT OF JOINT DEBT BY ONE DEBTOR
I. L. R. 26 Mad. 686

See DECLARATORY DECREE, SUIT FOR—SUITS CONCERNING DOCUMENTS.
L. R. 29 I. A 203

See EXECUTOR . . 7 C. W. N 478
13 C. W. N. 557

See HINDU LAW—ENDOWMENT—DEALING WITH, AND MANAGEMENT OF, ENDOWMENT . . . . 5 C. W. N. 273

See LAND REGISTRATION
11 C. W. N. 186

See LAND-REVENUE.
I. L. R. 26 Mad. 730

See LANDLORD AND TENANT—NATURE OF TENANCY . I. L. R 27 Bom. 515

See MAHOMEDAN LAW—ENDOWMENT
I. L. R. 18 Bom. 401

LIMITATION ACT (XV OF 1877)—*contd.*

Schedule II—*contd.*

——— Art. 120—*contd.*

See MALABAR LAW—JOINT FAMILY. I. L. R. 15 Mad. 6

See PARTNERSHIP . 12 C. W. N. 455

See TRUST . I. L. R. 18 Bom. 551

The general period of limitation of six years under cl. 16 of s. 1 of the Act of 1859 was necessarily much wider in its application than is Art. 120 of the present Act, so many more suits being now specially provided for. There was under the Act of 1859 a difference of three years in the period of limitation applicable to contracts registered and that applicable to unregistered contracts which could have been registered, the period being six years for the former, and three years for the latter. Suits on contracts which could not have been registered were considered as cases not specially provided for, and held to be governed by the general limitation of six years.

See ALI SAIB *v* SANIYASIRAZ PEDDA BALAIYA RASIMHULU . . . . . 2 Mad. 401

VELLIAPPEN CHETTY *v* NOOTOO THEEVAN 2 Ind. Jur. O. S. 11

GURIVI CHETTY *v.* AIYAPPA NAIDU 2 Mad. 329

BOISTUB CHURN DOSS *v.* PREM CHAND MITTER 4 W. R. 98

CHUNDER SEIN *v* GUJADHUR LALL 1 N. W. 148 : Ed. 1873, 230

LESLIE *v.* PANCHANAN MITTER 6 B. L. R. 668 : 15 W. R. O. C. 1

PYARI CHAND MITTER *v.* FRAZER 6 B. L. R. Ap. 60

s. c. OFFICIAL ASSIGNEE *v.* FRAZER 14 W. R. O. C. 51

In the present Act the distinction is between "contracts not in writing registered" (Art. 115) and "contracts in writing registered" (Art. 116).

1. ——— *Contract to cultivate indigo, suit for damages for breach of—Act X of 1836, s. 3.* A contract to sow and cultivate ind- [illegible]

FORBES . . . . . 5 W. R. 277

MAHOMED KAZEM *v* FORBES . 8 W. R. 257

FORBES *v* PARTAB SINGH DOOGUR 7 W. R. 401

2. ——— *Suit for declaratory decrees* The general period of six years extended to suits in which a declaratory decree and nothing more was sought. *Per* MELVILL, J.—MORU BIN PATLAJI *v* GOPAL BIN SATU. I. L. R. 2 Bom. 120

NANABAI HARIDAS, J., in the same case decided, however, that it would not apply where the declaration sought was of a right in immoveable property.

See, also, DOLHUN JANKEE KOER *v.* LALL BEHAREE ROY . . . . 19 W. R. 32

UNDHOOB SINGH *v* CHUTTERDHAREE SINGH 9 W. R. 480

4. ——— *Suit for declaration of title to, and possession in, immoveable property—Limitation—Limitation Act (XV of 1877), Sch II, Arts 120, 144.* A suit for a declaration [illegible]

The general limitation of six years was held under the Act of 1859 not to apply to divorce suits HAY *v* GORDON . 10 B. L. R. 301 : 18 W. R. 480

allotted to the defendant was ascertained The rent [illegible]

LIMITATION ACT (XV OF 1877)—*contd.*

Schedule II—*contd.*

———— **Art. 119—*contd.***

adoption, and to recover possession of property due to plaintiff as adopted son—Maintainability. Plaintiff's rights, as the adopted son of *A*, were interfered with, in connection with certain immoveable property, in 1889 In 1897 plaintiff sued for a declara-

followed *Pa*, *L. R. 20 M* *I. L R 24* *J.*—Where a

Limitation Act. *Per* BHASHYAM AYYANGAR, *J* — The suit was governed by Art. 144. Art 119 is applicable only to a suit of the character defined by s 42 of the Specific Relief Act, for a declaration that the plaintiff is entitled to a status or legal character as adopted son In the present case, the plaintiff having been out of, and the defendant having been in, possession since 1889, plaintiff could not maintain a suit for a mere declaration of title, and the *only suit he could maintain was the present, which* was governed by Art 144, and was, in consequence, not barred. RATNAMASARI *v* AKILANDAMMAL (1902) . . . . **I L R 26 Mad. 291**

———— **Arts. 119 and 144**—*Hindu law—Adoption—Suit by adopted son to recover possession of property of adoptive father after death of the latter —Interference with rights of adopted son—Limitation.* The plaintiff claimed as an adopted son to recover from a person alleged by him to be wrongfully in possession thereof moveable and immoveable property, which had belonged to his adoptive father. For the defendant it was asserted that the rights of the plaintiff as an adopted son had been interfered with by his adoptive father more than six years before suit, and that the suit was in consequence ... second —*Held*, ...144, and ... Indian Limitation Act, 1877, applied, the suit being one for possession on title and not merely for a declaration as to the validity of an adoption, and the suit was within time. *Held*, also, that the interference alluded to in Art 119 must be an interference caused by the defendant to such a suit as the article contemplates, and not an interference caused by some third person *Nathu Singh* v. *Gulab Singh, I. L. R. 17 All 167*, *Basdeo* v *Gopal, I. L. R 8 All 644*; *Ghandharap Singh* v *Lachman Singh, I. L. R. 10 All 485*; *Padajirav* v *Ramrav, I. L R 13 Bom 160*; *Lala Parbhu Lal v. Mylne, I. L R. 14 Calc.*

LIMITATION ACT (XV OF 1877)—*contd.*

Schedule II—*contd.*

———— **Art. 119—*concld.***

401; *Lali* v. *Murlidhar, I. L. R. 24 All. 195*, and the dissentient judgment of BHASHYAM AYYANGAR, *J*, in *Ratnamasari* v. *Akilandammal, I. L. R 26 Mad 291*, followed. *Shrinivas Murar* v. *Hanmant Chavdo, I. L R. 24 Bom. 260*, and the judgments

plicable to the suit, the only interference with the rights of the plaintiff as an adopted son, which could avail the defendant, was the interference caused by the defendant herself, and that was well within the period of limitation mentioned in Art 119 But Art. 119 did not apply to the present suit which was governed in respect of limitation by Art

SALIG RAM (1904) . . **I. L. R. 26 All. 40**

———— **Art 120 (1871, Art. 118: 1859, s. 1, cl. 16)—**

See ante, SS. 23 AND 28 AND SCH II, ARTS 120, 142 AND 144.

See ante, SCH II, ART. 10 **I. L. R. 24 All. 17**

See BENGAL TENANCY ACT, s. 107. **I. L. R. 28 Calc. 676**

See BOMBAY REVENUE JURISDICTION ACT, s. 4 . . **I. L. R. 16 Bom. 455**

See CONTRIBUTION, SUIT FOR—PAYMENT OF JOINT DEBT BY ONE DEBTOR **I. L. R. 26 Mad. 686**

See DECLARATORY DECREE, SUIT FOR—SUITS CONCERNING DOCUMENTS **L. R. 29 I A. 203**

See EXECUTOR . **7 C. W. N. 478** **13 C. W. N. 557**

See HINDU LAW—ENDOWMENT—DEALING WITH, AND MANAGEMENT OF, ENDOWMENT . . . **5 C. W. N. 273**

See LAND REGISTRATION. **11 C. W. N. 186**

See LAND-REVENUE **I. L. R. 26 Mad. 730**

See LANDLORD AND TENANT—NATURE OF TENANCY . **I. L. R 27 Bom. 515**

See MAHOMEDAN LAW—ENDOWMENT. **I. L. R. 18 Bom. 401**

LIMITATION ACT (XV OF 1877)—*contd.*

Schedule II—*contd*

———— Art. 120—*contd.*

See MALABAR LAW—JOINT FAMILY I. L. R. 15 Mad. 6

See PARTNERSHIP . 12 C. W. N. 455

See TRUST . I. L. R. 18 Bom. 551

applicable to contracts registered and that applicable to unregistered contracts which could have been registered, the period being six years for the former, and three years for the latter Suits on contracts which could not have been registered were considered as cases not specially provided for, and held to be governed by the general limitation of six years

See ALI SAIB *v* SANIYASIRAZ PEDDA BALAIYA RASIMHULU . . . 2 Mad. 401

VELLIAPPEN CHETTY *v* NOOTOO TIIEEVAN 2 Ind Jur. O S 11

GURIVI CHETTY *v* AIYAPPA NAIDU 2 Mad 329

BOISTUB CHURN DOSS *v* PREM CHAND MITTER 4 W. R. 98

CHUNDER SEIN *v* GUJADHUR LALL 1 N W 148 : Ed 1873, 230

LESLIE *v.* PANCHANAN MITTER 6 B L R. 668 : 15 W R O C. 1

PYARI CHAND MITTER *v* FRAZER 6 B L R Ap. 60

s c OFFICIAL ASSIGNEE *v* FRAZER 14 W R O C 51

In the present Act the distinction is between "contracts not in writing registered" (Art 115) and "contracts in writing registered" (Art 116)

1. ———————— *Contract to cultivate indigo, suit for damages for breach of—Act X of*

Act X of 1836, against a party for prevailing upon raiyats who had entered into a lawful contract with the plaintiff, to break that contract, was governed by the six years' limitation provided by cl. 16, s. 1, Act XIV of 1859 MAHOMED KAZEM CHOWDHRY *v* FORBES . . . . . 5 W. R 277

MAHOMED KAZEM *v.* FORBES . 8 W. R 257

FORBES *v* PARTAB SINGH DOOGUR 7 W. R. 401

2. ———————— *Suit for declaratory decrees* The general period of six years extended to suits in which a declaratory decree and nothing more was sought. *Per* MELVILL, J.—MORU BIN PATLAJI *v.* GOPAL BIN SATU. I. L R. 2 Bom 120

NANABAI HARIDAS, J, in the same case decided, however, that it would not apply where the declaration sought was of a right in immoveable property.

See, also, DOLHUN JANKEE KOER *v.* LALL BEHAREE ROY . 19 W R 32

It was also held not to apply to a suit for a declaratory decree as to the erroneousness of a Magistrate's order as to possession under the Criminal Procedure Code MEGHRAJ SINGH *v* RASHDHAREE SINGH . . . 17 W. R. 281

UNDHOOB SINGH *v* CHUTTERDHAREE SINGH 9 W. R 480

3. ———————— *Suit for declaration of title—Possession.* Limitation will not apply to a claim for a declaration of title, where the plaintiff is in possession of the land regarding which the declaration is required PUREE JAN KHATOON *v* BYKUNT CHUNDER CHUCKERBUTTY . 7 W. R. 96

4. ———————— *Suit for declaration of title to, and possession in, immoveable property—Limitation—Limitation Act (XV of 1877), Sch. II, Arts 120, 144.* A suit for a declaration

The general limitation of six years was held under the Act of 1859 not to apply to divorce suits HAY *v* GORDON . 10 B. L. R. 301 : 18 W. R. 480

5. ———————— *Suit for abatement of rent—Suit for apportionment of rent—Beng Act VIII of 1869, s 19* In 1877 certain batwara proceedings were terminated, and the amount of land held by the plaintiff in the portion of the estate

rent upon the ground that the defendants were seeking to charge him rent upon a larger amount of land than he actually held The defendants pleaded that the suit was barred by limitation as being brought more than one year after the cause of action

LIMITATION ACT (XV OF 1877)—*contd*

Schedule II—*contd.*

——— Art. 120—*contd.*

accrued The Court found that the amount of land held by the plaint...

...not one for abatement of rent, and that it was not barred by limitation, inasmuch as the period allowed for such suit must be taken to be six years, and not one year DOORGA PERSHAD *v.* GHOSITA GORIA . . I. L. R. 11 Calc. 284

6. ——— *Suit for the ap-*...

a suit. ANANDA RAZU *v* VIYYANNA

I. L. R. 15 Mad. 492

7. ——— *Breach of covenant in lease* The defendant took certain land from the plaintiff under a registered lease, which contained a clause prohibiting the defendant from digging a tank on the land without the plaintiff's permission The defendant having nevertheless constructed a tank without such permission, the plaintiff brought a suit...

...PAUL SRITIRUTHO

I. L. R. 6 Calc. 34 : 6 C. L R. 569

8. ——— *Suit to recover compensation-money wrongfully drawn out of Collectorate* A, a Hindu widow, granted, without legal necessity, a mokurari lease of certain mouzahs, ...

...cover possession of the mouzahs, but not being aware of the facts, did not in that suit claim the compensation-money lying in the Collectorate. While this suit was still pending, B in March, 1872, drew the compensation-money out of the Collectorate The heirs after obtain...

B for ...
tember ...
recover ...
out b...

...out by B,—Art. 118, and not Art. 60, of Sch II of the Limitation Act (IX of 1871) applying to the case. NUND LALL BOSE, *v.* ABOO MAHOMED

I. L. R. 5 Calc. 597 : 5 C. L R. 45

9. ——— and Art. 62—*Suit for compensation for land wrongfully withdrawn by person representing himself as owner.* Where the compensation-money awarded by Government for land acquired by them had been withdrawn by a tenant repre-...

...36. KHETTER KRISTO MITTER *v.* DIVENDRA NARAIN ROY . . . . . 3 C. W. N. 202

10. ——— *Recovery of money deposited in Government treasury.* The period of limitation for recovery of moneys deposited in a Government treasury, the equivalent whereof was to be returned, does not exceed six years SHEORAJ SINGH *v.* COLLECTOR OF MORADABAD 2 N. W. 379

11. ——— *Suit to recover deposit.* Where A made a deposit as security for the discharge of his duties as manager of an estate under the Court of Wards, which deposit was liable for all sums not accounted for by A ; and a suit was, after his dismissal from his appointment, brought for the recovery of the deposit :—*Held*, that the period of limitation allowed was certainly not less than six years, and began to run not from the date of his dismissal, but from the time when the account of charges due against the deposit was made and sent in to him UPENDRA LAL MUKHOPADHYA *v.* COLLECTOR OF RAJSHAHYE

I. L. R. 12 Calc. 113

12. ——— *Suit to recover deductions from deposit of revenue to prevent sale* The six years' period of limitation applies to a suit to recover deductions made on account of revenue ...

4 W. R. ...

...February, 1875), it was provided that, ... secured thereby ...

LIMITATION ACT (XV OF 1877)—contd

Schedule II—*contd.*

———— Art 120—*contd.*

second suit being instituted to recover the balance from the persons of the mortgagors in the event of the first remedy against the mortgaged property proving insufficient to pay the debt in full, and consequently that the cause of action against the persons of the mortgagors accrued upon the date

gagors was concerned MILLER v. RUNGA NATH MOULICK . . . I. L. R. 12 Calc. 389

See CHATTER MAL v. THAKURI I. L. R. 20 All. 512

and KAMALA KANT SEN v. ABUL BASKAT I. L. R. 27 Calc. 180

14. ———— *Suit to recover non-hereditary office—Karnam* The plaintiff's adoptive father was dismissed from the office of karnam on the 4th of April, 1862, and the plaintiff was appointed in his stead on the 2nth April, 1865 On the 25th September, 1865, the plaintiff was dismissed and the second defendant appointed. The present suit for recovery of the office and land attached was filed on 21st September, 1877:—*Held*, on the authority of *Tammirazu*

15. ———— *Suit to oust a shebait from office, the appointment to which is made by nomination.* A suit to oust a shebait from his

I. L. R. 19 Calc. 776

16. ———— *Time from which period of limitation begins to run—Mortgage by conditional sale.* A mortgagee under a deed of mortgage by conditional sale obtained a final order for foreclosure under Regulation XVII of 1806 in December, 1875. He then sued to have the conditional sale declared absolute and for possession of the mortgaged property, obtaining a decree for the relief sought in April 1881. In a suit for pre-emption in respect of the mortgage:—*Held*, with reference to Art. 120, Sch. II, of the Limitation Act, which was applicable to the case, that the pre-emptor's full right to impeach the sale had not accrued until the mortgagee had obtained the decree of April, 1881, declaring the conditional sale absolute and giving him possession *Rasik Lal* v. *Gajraj Singh, I. L. R. 4 All 414*, and *Prag Chaubey* v *Bhajan Chaudhri, I L. R 4 All 291*, referred to. UDIT SINGH v PADARATH SINGH . . I L R. 8 All. 54

17. ———— *Share of undivided mehal—Conditional sale.* The limitation

ASHIK ALI v. MATHURA KANDU I L R. 5 All. 187

18. ———— *Mortgage by conditional sale—Right to sue.* The limitation for a suit to enforce a right of pre-emption in respect of a mortgage by conditional sale is that provided by Art 120, Sch II of Act XV of 1877,—that is to say, six years *Nath Prasad* v. *Ram Paltan Ram, I L. R. 4 All. 218*, followed; and where the mortgagee by conditional sale is not in possession under the mortgage, and after foreclosure has to sue for possession, the right to sue to enforce a right of pre-emption accrues when he obtains a decree for possession. RASIK LAL v GAJRAJ SINGH . . I. L. R. 4 All. 414

19. ———— *Suit for pre- ... defendant. ... emption in ... instituted, ... was added* as a defendant to the other.—*Held*, that, as regards him the second suit constituted a claim by one pre-emptor against another for determination of the question whether the plaintiff or the defendant had the better right to pre-empt the property, which was a claim essentially declaratory in its

20. ———— *Beng. Reg. No. XVII of 1806, ss. 7, 8—Mortgage by conditional sale—Foreclosure—Pre-emption, suit for.* Where a mortgage by conditional sale had been duly foreclosed, in accordance with the procedure laid down in ss. 7 and 8 of Regulation XVII of 1806, and at the expiration of the year of grace a portion of the mortgage-money remained unpaid —*Held*, in a suit for pre-emption of the mortgage property, that the title of the conditional vendee became absolute on the expiration of the year of grace, and that the plaintiff's right of pre-emption

LIMITATION ACT (XV OF 1877)—*contd.*

Schedule II—*contd.*

——— Art. 120—*contd.*

accrued and limitation began to run against him from the expiration of such year of grace. *Forbes* v. *Ameeroonissa Begum, 10 Moo. I. A. 340,* distinguished *Raisuddin Chowdhry* v. *Khodu Newaz Choudhry, 12 C. L. R. 479; Jaikaran Rai* v. *Ganga Dhari Rai, I. L. R. 3 All. 175; Ameer Ali* v. *Bhabo Soonduree Debia, 6 W. R. 116; Ajoodhya Pooree* v. *Sohun Lal, 7 W. R. 428; Jeorakhun Singh* v. *Hookum Singh, 3 Agra 358; Budree Doss* v. *Durga Prashad, 2 N. W. 284; Tara Kunwar* v. *Mangri Meeah, 7 B. L. R. Ap. 114; Hazari Ram* v. *Shankar Dial, I. L. R. 3 All. 770; Tawakkul Rai* v. *Lachman Rai, I. L. R. 6 All. 344;* and *Ajaib Nath* v. *Mathura Prasad, I. L. R. 11 All. 164*, referred to *Prag Chaubey* v. *Bhajan Chaudhri, I. L. R. 4 All. 291, Rasik Lal* v. *Gajraj Singh, I. L. R. 4 All. 414*, and *Udit Singh* v. *Padaroth Singh, I. L. R. 8 All. 54,* overruled. ALI ABBAS *v.* KALKA PRASAD

I. L. R. 14 All. 405

21. ——— *Suit for pre-emption—Mortgage by conditional sale—Transfer of Property Act (IV of 1882), ss. 86 and 87.* A plaintiff sued for pre-emption, his claim arising [illegible]

run from the date when the mortgagee obtained an order absolute for foreclosure under s. 87 of Act IV of 1882. *Betul Begum* v. *Mansur Ali Khan, I. L. R. 20 All. 315; Poresh Nath Mojumdar* v. *Ramjodu Mojumdar, I. L. R. 16 Calc. 246;* and *Anwarul Haq* v. *Juala Prasad, I. L. R. 20 All. 358,* referred to RAHAM ILAHI KHAN *v.* GHASITA . . . . I. L. R. 20 All. 375

22. ——— and Art. 73—*Promissory note—Special agreement. Held,* that a suit brought in March, 1881, upon a promissory note, dated the 12th of September, 1875, payable at any time within six years upon demand, was not barred by limitation, being governed, not by Art. 73, but by Art. 120 of Sch. II of the Limitation Act, 1877. SANJIVI *v.* ERRAPA . . . . I. L. R. 6 Mad. 290

23. ——— *Suit for refund of money paid on decree afterwards reversed.* A [illegible]

1873 Between the two dates just mentioned *A* got [illegible]

a suit must be brought within six years under Act IX of 1871, Sch. II, Art. 118 (Act XV of 1877, Sch. II, Art. 120) KALI CHURUN DUTT *v.* JOGESH CHUNDER DUTT . . 2. C. L. R. 354

LIMITATION ACT (XV OF 1877)—*contd.*

Schedule II—*contd.*

——— Art. 120—*contd.*

24. ——— *Suit for money paid under a decree on reversal of the decree.* In a suit of 1867 the present defendant obtained a decree for possession of a certain village and mesne profits for one year. Pending an appeal against that decree execution was stayed on the present plaintiff depositing a note for R15,000 as security. The decree was affirmed on appeal, and the present defendant had the note sold in execution and drew out of the proceeds a sum for mesne profits for subsequent years; but an appeal was preferred in the execution proceedings to the High Court, which set aside the execution so far as concerned the mesne profits for the years subsequent to that to which the original decree related. The present plaintiff thereupon attached and sold the village to recover the balance; before that amount was paid to the present plaintiff, the present defendant brought a suit against him in the District Court and there obtained a decree for mesne profits for the subsequent years, and in the execution drew the amount of the decree out of Court. In second appeal, however, the High Court, on 26th September, 1881, reversed the decree of the District Court, whereupon the present plaintiff applied [illegible] Code s. 583, ... The ... nount ... that ... pplic-

able to the suit, which, having been filed on 9th August, 1887, was accordingly not barred by limitation NARAYANA *v.* NARAYANA

I. L. R. 13 Mad. 437

25. ——— *Contribution, suit for—Liability created by ikrarnama—Suit upon* [illegible]

a debt which had been [illegible] property mortgaged by the father of the plaintiffs. The defence mainly was that the suit was barred by limitation inasmuch as it was not brought within six years from the date when the ikrarnama was executed, or from the date when the mortgage-debt became repayable upon the mortgage-bond;— [illegible] the case arose ... when they ... the suit was ... ate it was not ... NATH BHUTTACHARJEE

I. L. R. 26 Calc. 241

26. ——— *Suit for recovery of instalment of professional tax—Towns Improvement Act, Madras (III of 1871).* A suit for re-

LIMITATION ACT (XV OF 1877)—*contd.*

Schedule II—*contd*

———— **Art 120—*contd.***

covery of instalments of profession tax under the provisions of the Madras Towns Improvement Act, 1871, is governed by Art 120, Sch II of the Limitation Act PRESIDENT OF THE MUNICIPAL COMMISSION, GUNTUR *v* SRIKAKULAPU PADMARAZU **I. L. R. 3 Mad. 124**

27. ———— *Claim to compel tenant to remove trees* Art. 120, Act XV of 1877, applies to an alternative claim put forward in a suit for ejectment to compel the defendant to remove trees from lands leased to him for agricultural purposes GONESH DOSS *v* GONDOUR KOORMI **I. L. R 9 Calc. 147 : 12 C. L. R. 418**

28. ———— *Suit for exclusive right to worship* A suit for an exclusive right to worship an idol is governed by Art 118 of Act IX of 1871 ESHAN CHUNDER ROY *v* MONMOHINI DASSI . **I. L. R. 4 Calc. 683**

29. ———— **and Art 11**—*Order disallowing claim—Civil Procedure Codes (Act VIII of 1859) s 246, and (Act X of 1877) ss 97-371* The defendants attached certain property, which the plaintiffs alleged belonged to them The

sion Pending this suit, the principal defendant died, and the plaintiffs applied for an order to substitute certain persons as defendants The Court thereupon directed the issue of a summons on

suit was dismissed on the 14th March, 187[illegible] On the 4th March, 1880, the plaintiffs again brought a suit to establish their title to the same property and for confirmation of possession :—*Held*, that the order of the 15th August, 1877, not being an order passed under s 283 of Act X of 1877, Art 11 of Sch II of Act XV of 1877 did not apply, but that Art. 120 of Sch. II was applicable BISSESSUR BHUGUT *v*. MURLI SAHU

I. L. R. 9 Calc. 163 : 11 C. L. R. 409

See GOPAL CHUNDER MITTER *v*. MOHESH CHUNDER BORAL

I. L. R. 9 Calc. 230 : 12 C. L. R. 139

30. ———— *Suit after release from attachment* *A* and *B*, in execution of a decree obtained on the 16th January, 1877, by them against *C* for rent, obtained possession of certain property. *D*, whose husband was originally tenant of the property, had sold her interest in it,

LIMITATION ACT (XV OF 1877)—*contd.*

Schedule II—*contd*

———— **Art. 120—*contd.***

upon transferred her decree to the plaintiff, who again attached the property, but the attachment was again refused The plaintiff then sued on the 18th March, 1880, to have it declared that the decree of the 14th January, 1877, was collusive, and that he was entitled to sell the property under the mortgage decree of 12th January, 1877 :—*Held*, that the suit was governed not by Art. 11, but by Art 120, of Sch II of the Limitation Act, and that the suit was not barred BROJO MOHUN BHUTTO *v*. RADHIKA PROSUNNO CHUNDER **13 C. L. R. 139**

31 ———— **and Art. 61**—*Money which plaintiff was obliged to pay in consequence of acts of defendants* On the 20th May, 1873, one *T* drew from the hands of a shroff a sum of money which had been deposited by him in the name and to the credit of a third person. On the death of such third person his heirs sued the shroff to recover the sum deposited, and on the 30th January, 1878, obtained a decree, in satisfaction of which the shroff paid the decretal money into Court on the 15th January, 1883 On the 5th February, 1884, the shroff sued *T*, the heirs of the third party and another

when he actually paid down the money on the 15th January, 1883, and that the suit therefore was not barred by limitation TORAB ALI KHAN *v* NIL RUTTUN LAL . **I. L. R 13 Calc. 155**

32 ———— *Express trust—Administration suit—Executors—Suit for an account against an executor or his representative* *R* died

in the same manner as I used to maintain the family in my house." After the death of both the executors, the residue was to be apportioned among the children of his nephews in equal shares. On the death of the testator, *P* took possession of the estate, and died on the 10th

LIMITATION ACT (XV OF 1877)—*contd.*

Schedule II—*contd.*

——— Art. 120—*contd.*

of the will, and she contended that the suit was barred by limitation:—*Held*, that the suit was barred by Art. 120 of Sch. II of the Limitation Act (XV of 1877), being primarily not a suit to follow trust property in the hands of a representative of a trustee, but really to ascertain whether any trust remained to be administered after the testator's debts and funeral expenses had been paid. No breach of trust was alleged. The suit was merely for an account against the executor or his representative. To such a suit s 10 of the Limitation Act does not apply. SHAPURJI NOWROJI POCHAJI *v.* BHIKAIJI . . I. L. R. 10 Bom. 242

33. ——————— *Company, winding up—Liquidator—Suit by liquidator for calls—* ... *by liquidator* ... *suit by company* ... mpany made a call of R100 per share upon its shareholders on the 1st October 1882. On the 8th March 1886, the ...

MANEK HAJI . . I. L. R. 10 Bom. 483

34. ——— and Arts 48 and 60—*Suit for right to follow goods in hands of agent made liable for conversion.* The defendant as an agent ...

... the plaintiff's use," were applicable to the present suit; but that, as a suit for which no period of limitation was provided elsewhere, it fell within Art. 118 of the same Schedule, fixing for such suits the limitation of six years. GURUDAS PYNE *v* RAM NARAIN SAHU

I. L. R. 10 Calc. 860 L. R. 11 I. A. 59

35. ——— and Arts 62 and 89—*Suit against trustee for possession of share, and for account and recovery of profits* M and S purchased certain property jointly in 1865, and had equal interest in it till 1868, when M's interest was reduced to one-third. S paid the entire pur- ...

the profits from that date. M did not pay any part of the money up to 1870, and it was not till 1871 that the whole of his share of it was subscribed, and he paid little or nothing towards the expenses. Subsequently he sued S for possession of his share to have an account taken of the profits, and to reco ...

equitable claim against a trustee liable to account, in which the relief sought was to have an account taken of the trust property and to recover what might be due *Guru Das Pyne v Ram Narain Sahu L. R. 11 I. A. 59: I. L R. 10 Calc. 860*, referred ...

SAFDAR HUSAIN KHAN . I. L. R. ...

36. ——— and s. 14 and Art 127—*Dismissal of former suit on substantive ground of failure to establish cause of action—Claim by contributors to a common fund* An agreement was entered into between an uncle and his nephews in 1879 that their earning should be put into a common fund which fund should be utilized for family requirements No provision was, however, ...

... partners for an account ... said ... share ... cem- ... the ... ion).

The partners in defence alleged that the present plaintiffs were entitled to share equally in the ... held the fund as stake- ...

claimed for himself alone and had ... proper parties before the Court. In plaintiff's suit, ...

... late Court on ...

LIMITATION ACT (XV OF 1877)—*contd.*

Schedule II—*contd.*

——— Art. 120—*contd.*

which first defendant was plaintiff, the plaint was allowed to be amended, and a decree was passed for

tion in a suit so framed as to embrace all the parties interested and all the property in which they were interested. On 30th January 1899, plaintiffs filed the present suit in which they claimed that their shares in the said fund of R37,723-8-0 should be determined and paid.—*Held* (affirming BODDAM, *J.*), that plaintiffs were entitled to recover:—*Held*, also, that the time occupied in prosecuting the former suit could not be excluded when computing the period of limitation. *Held*, further, that the claim was not barred by limitation. The title of the nephews was not based on contract, express or implied, but arose out of the fact that they were contributors to a common fund, which the Court was now asked to distribute. The claim was one which the Court must deal with on equitable principles, and apart from any question or partnership or of contract and was consequently one to which Art. 120 of the Limitation Act applied. *Held*, also, that the question was not one relating to joint family property within the meaning of Art. 127. *Rani Mewa Kuwar* v. *Rani Hulas Kuwar, 13 B. L. R. 312*, referred to. COMMERCIAL BANK OF INDIA *v.* ALLAVOODEEN SAHEB . I. L. R. 23 Mad. 583

37. ——— and Art. 62 and 132—*Suits for*

the purchase-money of a house situated therein, whether sold privately or in the execution of a

GANESH PRASAD . . I. L. R. 2 All. 500

38. ——— and Art. 106—*Suit to wind up partnership.* *T*, *B*, *R*, and *W*, the owners of a certain estate in equal shares, in 1863 entered

LIMITATION ACT (XV OF 1877)—*contd.*

Schedule II—*contd.*

——— Art. 120—*contd.*

wards obtained a decree against him personally, in execution of which his right and interest in the estate were put up for sale on 20th June 1877, and purchased by the Bank, who obtained possession

but in August 1877, when the defendant Bank took possession of the partnership property. HARRISON *v.* DELHI AND LONDON BANK

I. L. R. 4 All. 437

39. ——— and Arts. 131, 144—*Adverse possession—Suit for declaration of right to malikana and to set aside order refusing to register names.* Previous to 1825, dearah X accreted to mouzah Y, and some time before 1860 the malik of Y executed two conveyances in favour of *A* and *B* respectively. In 1860 *A* sued *B* in the Munsif's

was one for possession of an interest in immoveable property, Art. 144 would apply; (ii) if it were contended that the suit was for the purpose of establish-

LIMITATION ACT (XV OF 1877)—*contd.*

Schedule II—*contd*

——— *Art. 120*—*contd.*

ing a periodically recurring right, pure and simple, Art. 131 would apply and the period must be reckoned from 1866, when the plaintiff was first

settlement when the time for concluding the next temporary or permanent settlement came, Art 120

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guished GOPINATH CHOWDHARY *v* BHUGWAT PERSHAD . . . I. L. R. 10 Calc. 697

40. ——— *Suit for declaration that the defendant is a mere benamidar*

of *D*, had really been purchased by the plaintiff for his own benefit, the cause of action alleged being the wrongful execution of the decree by *D*, is not a suit for relief on the ground of fraud within Art. 95 of Sch. II of the Limitation Act, but it is governed by Art. 120 of that Schedule. Under the circumstances, the suit was held not to be barred by limitation GOUR MOHUN GOULI *v.* DINONATH KARMOKAR I. L. R. 25 Calc. 49
2 C. W. N. 76

41. ——— *Suit on written instrument which could not have been registered—Limitation Act, 1859, s 1, cls. 9, 10, 16* The

VENKATACHALAM *v* VENKATAYYA
I. L. R. 11 Mad. 207

42. ——— *Act XIII of 1859, s 2—Claim to recover an advance.* Act XIII of 1859 being a penal enactment, the Limitation Act (Sch. II, Art 120) is no bar to a claim under s. 2 to recover an advance made to a labourer. *In re* KITTU . . I. L. R. 11 Mad. 332

LIMITATION ACT (XV OF 1877)—*contd.*

Schedule II—*contd.*

——— *Art. 120*—*contd.*

43. ——— *Suit for removal of trees* A suit by a zamindar for removal of trees planted in certain waste land of his village by persons who have no right to plant them is governed by Art 120, Sch. II of the Limitation Act, and not by Art. 32, Sch. II of the Act. Where a defendant having a right to use property for a specified purpose perverts it to other purposes and a suit has to be instituted for any relief in respect of any injurious consequences arising from such perversion, such a suit will be governed by Art 32, Sch II of the Limitation Act. *Gangadhar v. Zahurriya, I. L R. 8 All 416,* distinguished MUSHARAF ALI *v.* IFTKHAR HUSAIN
I. L. R. 10 All. 634

44 ——— and Art 10—*Mahomedan law—Pre-emption—Conditional sale—Right of pre-emption among co-parceners—Private partition of pattidari estate.* *A* and *B* had certain proprietary rights in an 8-anna patti of a certain mehal. *C* and *D* had no rights in that patti, but *D* had a small share in the remaining 8-annas patti A private partition between the pattis having taken place, *C* and *D*'s brother lent to *B* two sums of R200 and R199 by deeds of bai-bil-wufa dated the 12th and 21st June 1876 *C* and *D* subsequently instituted foreclosure proceedings and on the 5th

ee

A

of the

are the

date on

, or by

Art. 120, under which his right to sue accrued upon the expiry of the six months' grace allowed to the mortgagor after the decree for foreclosure, and there would be six years allowed from that time. DIGAMBAR MISSER *v.* RAM LAL ROY
I. L. R. 14 Calc. 761

45. ——— and Art. 91—*Suit for declaration of title—Incidental relief—Setting aside* for suits to

aside an instrument as against the
PACHAMUTHU *v* CHINNAPPAN
I. L. R. 10 Mad. 213

46. ——— *Khoti Act (Bom. Act I of 1880), s. 16—Settlement—Register, preparation of—Entry in the register.* On 28th April 1888, the Survey officer, after determining the co-sharers in a khoti village, prepared the settlement register under s 16 of Bombay Act I of 1880, in which he entered the names of defendants

LIMITATION ACT (XV OF 1877)—*contd*

Schedule II—*contd*

——— Art 120—*contd*

as mortgagees of a certain share in the khotki In 1891 plaintiffs, who claimed to be entitled to the said share, on becoming aware of the entry, petitioned the Collector for a removal of the names of the defendants from the register on the ground that their mortgage had been redeemed This petition was opposed on 15th October 1892 by defendants, who denied plaintiffs' title, and was finally rejected by the Collector on 25th November 1892 In 1896 plaintiffs filed the present suit to cancel the entry in the register and for a declaration of their own title —*Held*, that the suit was not time-barred The cause of action accrued on 15th October 1892, when defendants denied plaintiffs' title, and not on 29th April 1888, when defendants' names were entered in the register as mortgagees DATTATRAYA GOPAL *v* RAMCHANDRA VISHNU I. L. R. 24 Bom. 533

47. ——— and Art 127—*Suit for partition and account of joint property* In a suit commenced in 1865 by a member of a joint family for the declaration of his rights, partition not being claimed, the order of Her Majesty in Council [illegible]

members of the family The plaintiff in that suit afterwards obtained entry of his name as a co-sharer in the villages in the register kept under Act XVII of 1876, s 56, and then on 14th December 1880 [illegible]

Art 120, and must be decreed PIRTHI PAL *v* JOWAHIR SINGH . I. L. R. 14 Calc. 493 L. R. 14 I. A. 37

48. ——— *Suit for perpetual injunction* In a suit for a perpetual injunction to restrain the defendant from preventing the plaintiff from entering a certain house it was alleged that the defendant had been in exclusive [illegible]

I. L. R. 13 Mad. 445

49. ——— *Suit for mutation* [illegible]

LIMITATION ACT (XV OF 1877)—*contd.*

Schedule II—*contd.*

——— Art. 120—*contd.*

50. ——— *Suit by a reversioner for a declaration of his title to property* [illegible]

widow, and in execution put up *D*'s property to sale. Defendants 3, 4, and 5 purchased the property and took possession in 1869 In 1883 the plaintiff sued as *D*'s reversionary heirs for a declaration that they were entitled to the property in dispute on the widow's death, alleging that the decree, in execution of which the property was sold, was a collusive and fraudulent decree, and that they were not bound by the sale in execution They further alleged that the cause of action arose in 1879 when their mother [illegible]

51. ——— *Suit by reversioners to set aside alienation by Hindu widow—Similar suit barred by limitation as against a prior reversioner, effect of, on suit by subsequent reversioner* [illegible]

derive his title from another, even if that other happens to be his father, but he derives his title from the last full owner. If therefore the right of the nearest reversioner for the time being to contest an alienation or an adoption by the Hindu widow is allowed to become barred by limitation as against him, this will not bar the similar rights of [illegible]

[illegible] I. L. R. 14 Bom. 312, and *Pershad Singh* v. *Chedee Lall, 15 W. R. 1,* dissented from. BHAGWANTA *v.* SUKHI . I. L. R. 22 All. 33

52. ——— *Suit for a declaration of heirship—Accrual of the cause of action—Denial of title.* *A* sued for a declaration that she was the daughter of *B*, who died in 1870. On *B*'s death his kulkarni vatan was attached and C was appointed to officiate on behalf of Government. In 1892 *A* applied for a certificate of heirship to *B*, with a view to get her name

LIMITATION ACT (XV OF 1877)—*contd.*

Schedule II—*contd.*

——— Art. 120—*contd.*

entered as a vatandar in place of her deceased father's. *C* opposed her application denying that she was the daughter and heiress of *B*. Her application being rejected, *A* filed the present suit against *C* in 1877, to obtain a declaration that

The Court
n sought,
as barred
of 1877)
from the
date of *B*'s death.
accrued *not*
status by *C* in
having been

53. ——— *Suit by a decree holder against the sons of a deceased judgment debtor whose property had passed to them.* A decree was passed against a Hindu for money dishonestly retained by him from the plaintiff's family to which he was accountable in respect of it.

I. L. R. 10 Mad. 89

54. ——— *Suit by the purchaser in execution-sale to recover the purchase money.* The plaintiff purchased land sold in execution of a decree in favour of the defendant, but was subsequently evicted by the son of the judgment debtor. He now sued in 1889 to recover the purchase-money paid by him on ground that the judgment-debtor possessed no saleable interest in the property in question. It appeared that in 1888 the son of the judgment-debtor had obtained a decree against the plaintiff and others declaring that she (the judgment-debtor) had no saleable interest in the property :—*Held*, that Limitation Act, Sch. II, Art. 120, contained the rule of
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55. ——— *Right of suit—Continuing right—Suit for construction of will—Suit for declaratory decree.* In a suit by reversioners after the death of the widow of a testator for the construction of his will and codicil, and for a declaration of the plaintiff's rights :—*Held*, that the suit was not barred by lapse of time. A suit for declaratory relief of such a

LIMITATION ACT (XV OF 1877)—*contd.*

Schedule II—*contd.*

——— Art. 120—*contd.*

nature cannot be held to be barred so long as the right to the property in respect of which the

widow, was within time. CHUKKUN LAL ROY *v.* LOLIT MOHAN ROY . I. L. R. 20 Calc. 906

56. ——— and s. 10 and Art. 62—*Act XI of 1859, s. 31—Suit to recover surplus sale-proceeds of a sale for arrears of Government revenue.* In a suit brought for the residue of the

vested in the defendant in trust for a specific purpose within the meaning of s. 10 of the Limitation Act and that therefore the Limitation Act had no
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ARY
OF STATE FOR INDIA *v.* GURU PRASHAD DHUR. ABDUL BARI *v.* SECRETARY OF STATE FOR INDIA. SECRETARY OF STATE FOR INDIA *v.* RAMBULLUB DAS CHOWDHARY . . I. L. R. 20 Calc. 51

See SECRETARY OF STATE FOR INDIA *v.* FAZAL ALI I. L. R. 18 Calc. 234

57. ——— and s. 10, Arts. 124 and 144—*Suit by a uralan against an agent of a devasom—Repudiation of agency.* In 1873 a pro-

alleged. Issues as to both of these matters decided in favour of the defendant, and the suit was dismissed in 1874. A suit was now brought in 1890 for declaration of the plaintiff's title as *uralan* and to recover from the defendant as such agent property of a value which exceeded the pecuniary

limitation. SANKARAN *v.* KRISHNA I. L. R. 16 Mad. 456

58. ——— and s. 23 and Arts. 34, 35—*Suit for restitution of conjugal rights.* It is

LIMITATION ACT (XV OF 1877)—*contd.*

Schedule II—*contd.*

——— Art. 120—*contd*

suit for
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provisions of Arts 34 and 35 of Sch II of the Limitation Act cannot be taken as applicable to suits of this description To hold that they did apply would be to introduce serious innovations into the personal law of the Hindus (and of the Mahomedans) which could not have been contemplated by a statute of the nature and scope of the Limitation Act The Limitation applicable to suits of the present nature is that of Art 120 of Sch. II read with s. 23 of the Limitation Act BINDA *v* KAUNSILIA . I. L. R. 13 All. 126

59. ——— *Suit for nullity of Parsi marriage* A suit by a Parsi girl for a declara-

VANJI MASALAVALA . I. L. R. 22 Bom. 450

60. ——— and Arts. 49 and 123—*Suit by Mahomedan widow to have declared her right by local custom to life-interest in estate of her husband—Suit for distributive share of property—Suit for moveable property wrongly taken* To a suit by a Mahomedan widow against the brother of her deceased husband to have declared her

I. L. R. 20 I. A. 155

61. ——— *Suit to recover from the widow of a deceased Mahomedan money realized by her on account of a debt due to the deceased* *Held*, that a suit brought by the other heirs to recover from the widow of a deceased Mahomedan a sum of money said to have been realized by her on

62. ——— and Art. 62—*Suit by purchaser of decree to recover money of deceased judgment-debtor in the hands of his agent.* One *A P*, having certain moneys lying at his credit in Calcutta, empowered *A L* to receive the same and hold them on his behalf. *A P* died at Moradabad, and subsequently to his death the said moneys, which remained in the hands of *A L*, were attached by one of the creditors of *A P* in execution of a decree The decree-holder sold his rights under the decree in respect of the moneys in the hands of *A L* to the plaintiffs, who sued to obtain the same from *A L* :—*Held*, that the period of limitation applicable to such a suit was that prescribed by Art 120 of

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I. L. R. 15 All. 368

63. ——— and Art 62—*Money received for plaintiff's use—Suit for which no period prescribed—Transfer of Property Act (IV of 1882),*

the land was taken up by Government under the Land Acquisition Act, and the compensation-money was paid to *C* *A* attached this sum as a debt due to *B* and sold it in execution and it was purchased by the plaintiff The plaintiff now sued *C* to recover the amount of the debt :—

64. ——— and Art. 91—*Suit for declaration of right by setting aside kanom mortgage.* The reversionary heirs to a stanom in Malabar sued in 1889 for a declaration that a kanom executed in 1881 by the first defendant, the present holder of the stanom, in favour of the second defendant, *was not binding on them or on the stanom* :—*Held*, that the suit was barred under Limitation Act, 1877, Sch. II, Art 120 PURAKEN *v.* PARVATI . . I. L. R. 16 Mad. 138

65. ——— and Art. 110—*Suit to recover customary dues payable on account of a chattram —Suit for rent.* In a suit by the District Board in charge of a chattram to recover a certain sum as the arrears of various merais, being customary dues payable by the defendants for the benefit of the chattram on account of lands held by them, the defendants among other defences relied upon a plea of limitation :—*Held* that the suit was governed by Limitation Act, Sch. II, Art. 120, and not by Art 110 as a suit for rent. VENKATAVARAGA *v.* DISTRICT BOARD OF TANJORE

I L. R. 16 Mad. 305

66. ——— and s. 131—*Periodically recurring right—Denial of right.* In a suit brought in 1889 by a landholder against the Secretary of State

LIMITATION ACT (XV OF 1877)—*contd.*

Schedule II—*contd.*

——— Art. 120—*contd.*

for a declaration of his right against Government to have certain remissions made in the sum to which he was annually assessed, no consequential

Art. 131, applied to the case, and the suit was barred by limitation. BALAKRISHNA *v.* SECRETARY OF STATE FOR INDIA . I. L. R. 16 Mad. 294

67. ——— and Art. 144—*Emoluments of hereditary office—Interest in immoveable property* A suit to recover a sum of money due by custom as an emolument of an hereditary office is not one for the possession of an interest in immoveable property. In 1888 a sum of money became payable, as marriage dues, to the holder of certain

such a claim is governed by Art 120 of Sch. II to the Limitation Act, and must, in consequence, be enforced within six years of the accrual of the right RATHNA MUDALLIAR *v* TIRUVENKATA CHARIAR . . . I. L. R. 22 Mad 351

68. ——— *Liability of son for father's debts—Suit for money against sons of a deceased judgment-debtor—Decree for money against father to be discharged by instalments—Previous execution proceedings—Form of decree* A personal decree on a mortgage was passed against a Hindu (the mortgagor) and his two sons on the 19th October 1877. The decree provided for payment of the secured debt in various instalments by May 1895 The mortgagor died in 1883, having discharged part of the debt. The decree-holder having attached certain family property in execution, the mortgagor's two younger sons, who had not been born at the date of the above decree, objected that their shares were not liable to attachment This objection prevailed, the Court expressing the opinion that the matter in controversy should be determined in a regular suit. The other defendants in the suit of 1877 had both died in the interval, one of them leaving infant sons The decree-holder (in whose sole name the mortgage stood) now sued the sons of the mortgagor and their infant nephews in 1891 for the payment out of the family property of all the unpaid instalments —*Held*, that the period of limitation applicable to the suit was six years, and that time began to run for the purposes of limitation from the date when each instalment would have become due from the deceased judgment-debtor, and that the plaintiff was entitled to a decree for payment out of the family property of all such instalments as would have so become due at the date of the suit, and for a declaration only as to the subsequent instalments. RAMAYYA *v* VENKATARATNAM . . . I. L. R. 17 Mad. 122

LIMITATION ACT (XV OF 1877)—*contd.*

Schedule II—*contd.*

——— Art. 120—*contd.*

69. ——— *Suit to set aside*

ment, so far as his interest was concerned, of a certain deed of sale by which another co-parcener in the same property had purported to convey the whole to a stranger:—*Held*, that the limitation applicable to such a suit was that prescribed by Art 120 of Sch. II of the Limitation Act, 1877, and not that prescribed by Art 91. *Sobha Pandey* v *Sahodra Bibi*, *I L. R 5 All. 322*, referred to *Janki Kunwar* v. *Ajit Singh*, *I. L R 15 Calc. 58*, distinguished DIN DIAL *v.* HAR NARAIN I. L. R. 16 All 73

70. ——— and Arts. 91, 95—*Suit by auction-purchaser of mortgaged property to cancel a perpetual lease granted by the mortgagor in contravention of a covenant in the mortgage* During the continuance of a mortgage which contained a covenant against alienation of the mortgaged property, the mortgagor made a perpetual lease of that property. The mortgagee brought a suit on his mortgage, and, having obtained a decree, put the mortgaged property up to sale. The auction-purchaser of the mortgaged property, on becoming aware of the existence of the perpetual lease, sued for its cancellation and for a declara-

The main prayer of the plaint was for a decree declaring and establishing the plaintiff's title, and the prayer for cancellation of the lease could be treated as merely subsidiary to the main relief asked *Pachamuthu* v. *Chinnappan*, *I. L R. 10 Mad 213*, and *Uma Shankar* v. *Kalka Prasad*, *I. L. R. 6 All. 75*, referred to *Din Dial* v. *Har Narain I. L. R. 16 All. 73*, followed. MUHAMMAD BAQAR *v* MANGO LAL . . . I. L. R. 22 All. 90

71. ——— *Suit to set aside invalid trust—Conveyance to trustees.* Under Art 120, Sch. II of the Limitation Act (XV of 1877), the right to recover property settled on invalid trusts accrues directly the property is conveyed to the trustees. COWASJI NOWROJI POCHKHANAWALLA *v* RUSTOMJI DOSSABHOY SETNA I. L. R. 20 Bom. 511

72. ——— *Exclusive occupation of joint lands by some of the co-owners—Suit by the other joint tenants for compensation.* Some of the joint tenants of certain lands took the use of the joint lands to the afterwards ch use and limitation occupation:—*Held*, that the

LIMITATION ACT (XV OF 1877)—*contd*

Schedule II—*contd.*

——— Art. 120—*contd.*

for such a suit was governed by Art. 120 of the Limitation Act, and that therefore the plaintiffs were entitled to recover compensation for six years. WATSON & CO *v.* RAM CHAND DUTT

I. L. R. 23 Calc. 799

73. ——————— *Suit to recover*

[illegible]

on the sale of a house, was that prescribed by Art 120 of the second Schedule of the Indian Limitation Act, 1877, and not that prescribed by Art 62 *Kirath Chand* v *Ganesh Prasad, I L R 2 All 358*, approved *Nanku* v *Board of Revenue for the N.-W. P, I L R 1 All 444*, referred to *Raghu Nath Prasad* v. *Girdhari Das, All Weekly Notes (1893) 65*, dissented from SHAM CHAND *v.* BAHADUR UPADHIA . . I. L. R. 18 All. 430

74. ——————— *Decree for rent against tenants jointly—Execution against one defendant—Suit by him for contribution—Limitation Act, Arts 61 and 99* The holder of a zamindari

[illegible]

75. ——————— *Suit to set aside sale in execution of*

[illegible]

76. ——————— *Damages.* Under Art. 120 of Sch. II to the Limitation Act, damages for more than six years previous to the institution of the suit cannot be awarded. JOOGESHUR BHAGAT *v.* GHANASHAM DASS (1901)

5. C. W. N. 356

77. ——————— *Limitation Act (XV of 1877), Sch. II, Arts. 120, 127—Mahomedan family—Suit to recover share in joint-family property* Where, on the death of a Mahomedan, the plaintiff, his daughter, claimed her share by inheritance in properties alleged to be the properties of the joint family of the plaintiff and her brothers, and it was found that she had ceased to be a member of the family since her marriage:—*Held*, that Art. 120, and not Art. 127, of Sch II to the Limitation Act applied *Bavasha* v *Masummasha, I. L R. 14 Bom 70*, dissented from *Mullakke* v. *Thimmappa, I L R 15 Mad 186*, *Amme Raham* v *Zia Ahmed, I L R 13 All 282*, *Mahomed Akram Saha* v. *Anarbi Choudhrani, I L. R 22 Calc. 954*; and *Kartick Chunder Ghattuck* v. *Saroda Sundari Debi, I L R 18 Calc 642*, approved POYRAN BIBI *v.* LAKHU KHAN BEPARI (1901) 7 C. W. N. 155

78. ——————— *Hindu Law—Joint Hindu family—Liability of sons to pay their father's debts—Limitation.* The father of a joint Hindu family executed on the 23rd June, 1888, a simple money bond, payable on the 18th June, 1894 The money not being paid on due date the creditor sued the father alone, and obtained a decree against him on the 17th June, 1897. The father died in 1899, and after his death the creditor attached certain joint family property in the hands of the sons The sons objected to the attachment and their objection was allowed Thereupon the creditor, on the 22nd January, 1900, filed a suit against the sons, claiming payment from them of the father's debt —*Held*, (i) that the liability of the sons to pay their father's debt accrued on the 18th June, 1894, the date when the bond became payable, and (ii) that the suit was one to which Art 120 of the second Schedule to the Indian Limitation Act, 1877, applied, and was therefore not barred by limitation *Badri Prasad* v *Madan Lal, I. L R 15 All 75*, followed *Mallesam Naidu* v. *Jugala Panda, I. L. R. 23 Mad 292*,

[illegible]

I. L. R. 23 All. 206

79. ——————— *Alienation by widow—Subsequent suit to set it aside—Withdrawal of suit without permission to bring a fresh suit—Confirmation of original alienation—Fresh cause of*

[illegible]

suit should be effective as against them. On the plea of limitation being raised:—*Held*, that the with-

LIMITATION ACT (XV OF 1877)—*contd.*

Schedule II—*contd*

——— Art. 120—*contd.*

drawal of the suit of 1892 on the ground that the alienation was valid, without permission to bring a fresh suit, was a confirmation of the alienation of 1874, and gave a fresh cause of action, and that the suit was not barred. MULLAPUDI RATNAM *v.* MULLAPUDI RAMAYYA (1902)

I. L. R. 25 Mad. 731

80. ——— *Suit for declaration of title—Cause of action—Limitation.* The plaintiffs sued in 1904 asking for a declaration that they were entitled to certain property mentioned in the plaint. Their cause of action was that the name of the defendant had in the year 1895 been entered in the revenue papers in respect of the property in suit.—*Held,* that the suit was barred by limitation, and that the fact that the defendant b [illegible]

o [illegible]

p [illegible]

Baran Singh, I. L. R. 20 All. [illegible], followed [illegible] *Bakhsh* v *Harnam Singh, All. Weekly Notes 1895 215,* distinguished. AKBAR KHAN *v.* TURABAN (1908) . . . . I. L. R 31 All. 9

81. ——— A suit to recover compensation for land acquired, instituted on the refusal of the Collector to award compensation under the Land Acquisition Act, is governed by Art. 120, Sch. II of the Limitation Act. The right to sue accruing either from the date of the acquisition or the refusal by the Collector to award compensation RAMESWAR SINGH *v* SECRETARY OF STATE FOR INDIA (1907) I. L. R. 34 Calc. 470

82. ——— *Limitation—Suit against representative of deceased pleader to recover money received by the pleader in his professional capacity on behalf of a client* *Held,* that a suit to recover from the son of a deceased pleader, as representative of his father, money which had been received by the pleader in his professional capacity on behalf of a client, was governed, as regards limitation, by Art. 120 of the second Schedule to the Indian Limitation Act, 1877. BINDRABAN BEHARI *v.* JAMUNA KUNWAR (1902)

I. L. R. 25 All. 55

83. ——— *Limitation—Injunction—Suit for injunction to restrain interference with plaintiff's rights under a covenant in a lease given by him* The plaintiff lessor sued for an injunction restraining the defendant's lessees from interfering with the plaintiff's right reserved by the lease, to enter upon the land demised and cut and take away certain trees:—*Held,* that such a suit was governed as to limitation by Art. 120 of the second Schedule to the Indian Limitation Act, 1877. *Kanakasabai* v. *Muttu, I. L. R 13 Mad. 445,* followed. WAZIRAN *v.* BABU LAL (1904)

I. L. R. 26 All. 391

84. ——— *Limitation Act (XV of 1877), Sch II, Art. 120—Suit by Dharmakarta to recover possession of a temple and of the properties belonging to it—Claim based on prescription, and not on hereditary right—Right to the properties secondary to, and dependent on, the right to the office.* Plaintiff, who was found to have been in adverse possession of a temple and its properties for at least six years (after which he was dispossessed by certain magisterial proceedings), sued to recover possessions, as *Dharmakarta,* basing his claim on prescription and not on an hereditary title. On the defence being raised that plaintiff's possession had been adverse for a period less than twelve years, and that, in consequence, his title was not complete under Art. 144 of Sch. II to the Limitation Act: *Held,* that the suit for the possession of the office was governed by Art. 120, and that plaintiff, by his adverse possession of more than six years, had obtained a title to it by prescription *Jagan Nath Das* v. *Birbhadra Das, I. L. R 19 Calc 776,* followed. *Held,* also, that the suit was not for possession of immoveable property, within the meaning of Art. 144, the right to the land being only secondary to, and dependent on, the right to the office. *Tammirazu Ramazogi* v. *Pantina Narsiah, 6 Mad. H. C. 301,* followed KIDAMBI RAGAVA CHARIAR *v.* TIRUMALAI ASARI NALLUR RAGAVACHARIAR (1902) . . I. L. R. 26 Mad. 113

85. ——— *Assessment—Land-revenue—Suit for arrears of assessment.* The term "rent" is used in the Land-revenue Code (Bombay Act V of 1879) only with reference to those superior and inferior holders between whom the relationship of landlord and tenant subsists. Plaintiff was the *inamdar* of a certain village. Defendant held certain lands in the said village but he was not placed in possession thereof, either by the plaintiff or his predecessor in title, under any agreement. Plaintiff sued to recover from the defendant five years' arrears of assessment. Defendant contended that plaintiff was not entitled to claim arrears for more than three years:—*Held,* [illegible]

I. [illegible]

86. ——— *Hindu law—Suit by presumptive reversionary heirs for decree declaring alienations by Hindu widow not binding except for life interest—Maintainability.* Assuming that a [illegible] a de- [illegible] the [illegible] part [illegible] the [illegible] own. [illegible] ich a [illegible] period [illegible] ation [illegible]

LIMITATION ACT (XV OF 1877)—*contd.*

Schedule II—*contd.*

——— Art. 120—*concld.*

Act. Art. 125 does not apply to such a suit. RAMASWAMI NAIK v. THAYAMMAL (1902)
I. L. R 26 Mad. 488

——— Arts. 120, 142—

See SUIT . . I. L. R. 31 Calc 617

——— Art. 121 (1871, Art. 119; 1859, s. 7).—

See REVENUE SALE LAW.
12 C. W. N. 1029

1. ——— *Sale for arrears of rent of patni tenure.* Upon the sale of a patni talukh for arrears of the landlord's rent, the purchaser acquires it free of all incumbrances created by the outgoing patnidar; and according to Act XIV of 1859, s. 7, the purchaser's cause of action arises from the date of sale BROJO SOONDUR MITTER v. FUTICK CHUNDER ROY . . 17 W. R. 407

2. ——— *Encroachment by a trespasser—Incumbrance—Adverse possession—Purchaser at sale of talukh for arrears of rent* Adverse possession is an incumbrance within the meaning of Art. 121, Sch. II of the L... Act...

Karmi Khan v. Brojo Nath Dass, I L. R. 22 Calc 244, referred to. An auction-purchaser of a patni talukh in its entirety gets the talukh free of all incumbrances, therefore in a suit brought by the auction-purchaser to recover possession of land situated within the talukh against a trespasser who was alleged to have held the disputed land ad-...

3. ——— *Act IX of 1871, Art. 120—Suit to cancel under-tenures—"Avoid"*...

... L. R. ...

——— Art. 122 (1871, art. 121; 1859, s. 1, cl. 11)—

See INSOLVENCY . 9 C. W. N. 952

1. ——— *Execution of decree against Sirdar's heir who is not a Sirdar—Suit on decree—Decree payable by instalments* The plaintiff's father obtained a decree in the Court of the Agent for Sirdars in 1848 against the defendant's grandfather, a third class Sirdar. ...

LIMITATION ACT (XV OF 1877)—*contd.*

Schedule II—*contd.*

——— Art. 122—*contd.*

proceeded accordingly on that footing till his death in 1862. His son survived him and died in 1867, when the defendant, who was not himself a Sirdar, succeeded. The Subordinate Judge of Khed—to whom, on the cessation of the Sirdarship in the defendant's family, the Agent referred the decree for further execution—proceeded with the execution up to the year 1876, when these proceedings were ...

Sch II, Art 121), but that the decree should be ...

Judge prescribes a term for the performance of the several parts of his order, it is to be construed as becoming a judgment for purposes of limitation as to each instalment only on the day when payment is to be made. SAKHARAM DIKSHIT v GANESH SATHE . . . I. L R 3 Bom 193

2. ——— *Suit on barred judgment debt—Suit for administration—Mortgage decree—Transfer to High Court for execution—Application for execution by sale—Civil Procedure Code 1882, ss. 227, 230, and 244—Transfer of Property Act (IV of 1882), ss. 67, 89, and 99—Limitation Act (XV of 1877), Sch. II, Arts. 179 and 180.* On the 29th September 1882, a decree was obtained against the defendant's husband in a suit on a mortgage by the latter dated the 6th April 1880. ...

LIMITATION ACT, (XV of 1877)—*contd.*

Schedule II—*contd.*

———— Art. 122—*concld.*

questions arising in the suit being such as should have been determined in execution of the decree, and not by a separate suit. JOGEMAYA DASSI *v.* THACKOMONI DASSI . I. L. R. 24 Calc. 473

———— Art. 123 (1871, Art. 122; 1859, s. 1, cl. 11)—

1. ———— *Suit under will for sum as legacy.* Where a sum assigned to sons was, by the terms of the will, to be regarded as a legacy, and not as a charge on the estate for their maintenance:—*Held*, that cl. 11, s. 1, Act XIV of 1859, was the limitation applicable to suits under the will for recovery of the sum due as a legacy. NANA NARAIN RAO *v.* RAMA NUND 2 Agra 171

2. ———— *Suit for legacy.* *R* by his will gave the whole of his property to his brothers, making a specific provision of R4,000 for one of his daughters (the mother of the plaintiffs), which was to remain as amount in the family treasury, yielding her interest if and till she gave birth to a male child, when she should also have 200 bighas of land. Shortly after this, the testator died and the elder of the plaintiffs was born. The mother having since died without drawing the principal or taken the allotment of land, and the manager of the family estate having refused to give the plaintiffs their due, they sued to recover what was left to their mother: ...

3. ———— *Will—Suit for share of testator's moveable property.* Art. 122 of Act IX of 1871 applies to a suit for a share of the residue of a testator's moveable property disposed of by his will. TREEPOORASOONDERY DOSSEE *v.* DEBENDRONATH TAGORE I. L. R. 2 Calc. 45

4. ———— *Suit for legacy against representative of testator.* Art. 123 of the Limitation Act only applies to cases in which the property sought to be recovered is not only a legacy, but is also sought to be recovered as such from a person who is bound by law to pay such legacy, either because he is the executor of the will or otherwise represent the estate of the testator. ISSUR CHUNDER DOSS *v.* JUGGOU CHUNDER SHAHA . . . . . I. L. R. 9 Calc. 79

5. ———— and Art. 120—*Executor de son tort—Suit for a share of Government promissory notes by an heir against one falsely professing to hold them under a will.* Suit in 1887 by a daughter

LIMITATION ACT (XV OF 1877)—*contd.*

Schedule II—*contd.*

———— Art. 123—*contd.*

to recover her share of Government promissory notes being stridhanam of her mother who died in 1880. The property in question had been in the ...

6. ———— *Suit for legacy under a will—Cause of action—Amendment of plaint.* A suit was brought in May 1894 by a legatee claiming under the will of a testator, who died on the 8th December 1881, against the executors of the will. The plaint did not specifically ask for payment of the legacy or for ascertainment of the share in the residue due to the plaintiff, but set forth certain al...

and dismissed it as being barred. On appeal to the High Court:—*Held*, that the plaint should have been amended in order to show clearly that the plaintiff really was trying to recover his legacy from the defendants personally and that therefore the suit fell within Art 123, ...

DADABHAI EDULJEE . I. L. R. ...

7. ———— *Non-claim of share under an intestacy.* One *M N W* died intestate in 1837, leaving a widow (*M*) and two sons. *M* obtained letters of administration, and until her death in 1897 remained in sole possession and enjoyment of her husband's estate although by law entitled only to a widow's share, the two sons being entitled to the ...

BAI . . . . I. L. R. ...

8. ———— *Suit by a Mapilla widow for her share in her husband's property.* The widow of a Mapilla, who had died intestate more than fourteen years before suit, sued to recover a

LIMITATION ACT (XV OF 1877)—*contd.*

Schedule II—*contd.*

——— Art. 123—*contd.*

one-sixteenth share of the property left by him and his brother :—*Held*, that, although the parties were Mapillas, the suit was governed by Art. 123 of the Limitation Act, and was accordingly barred KASMI *v.* AYISHAMMA . I. L. R. 15 Mad 60

9. ——— *Suit to recover vatan allowance* In 1864 *N B*, the owner of a share in a deshpande vatan, died childless and intestate A certificate of administration under Regulation VII of 1827 was granted to one *G*, a distant relation, who received *N B*'s share in the vatan up to and including the year 1871 In the meantime, *viz*, on the 19th November 1870, two nearer relations, *D* and *B*, succeeded in getting *G*'s certificate cancelled, and obtained a certificate to themselves jointly In 1876 the Collector recognized *D* alone as the heir of *N B*, and paid *D*'s son *S* the share of the deceased *N B* with arrears from 1872 After *S*'s death, his son *N* (defendant No 1) received it down to the year 1884 In 1883 *K* (father of plaintiff No 1) got the certificate of 1870 cancelled and obtained a certificate to himself jointly with defendant No 1 *K* died, and the plaintiffs (his son and nephew) brought this suit claiming to be co-sharers in the one anna and four pies share of *N B* The defendants contended *inter alia* that the suit was barred The Court of first instance awarded the plaintiffs' claim for the three years previous to the suit, and rejected the rest of the claim. The defendants appealed to the District Judge, who held that the plaintiffs' claim was totally barred under Art 123 [illegible]

no cause of action until *N B* and his successors in title *D* and *S* were recognized by the Collector and paid the arrears of the hak *G* was quite independent of them, and this recognition did not take place until 1876—less than twelve years before the institution of the plaintiffs' suit KESHAV JAGANNATH *v* NARAYAN SAKHARAM
I. L. R. 14 Bom 236

10. ——— *Legacy in satis-* [illegible]

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either a loan by plaintiff to the deceased or a deposit payable on demand, and that in either case it was barred by limitation :—*Held*, that the bequest was a legacy in satisfaction of the indebtedness of the testator to plaintiff. *Held*, also, that, although plaintiff prayed for an administration of the estate, that prayer was only ancillary to his claim for the [illegible]

no estoppel, and plaintiff's right to the legacy was not affected by that claim RAJAMANNAR *v.* VENKATAKRISHNAYYA (1902) . I. L R 25 Mad 361

——— Arts. 123, 144—

See MAHOMEDAN LAW —INHERITANCE
I. L. R 31 All. 557

——— Art. 124 (1871, Art. 123)—

Suits of the nature described in this article were under Act XIV of 1859, held to be governed by cl 12 of s 1, the general limitation of twelve years

1. ——— *Office of hereditary priest—Immoveable property.* In a suit between [illegible]

BALVANTRAV *alias* TATIAJI BAPAJI *v* PURSOTAM SIDHESHVAR . . . . . 9 Bom. 99

In a Madras case, however, the six years' period was held to apply.

The Court of first instance decreed for plaintiff The Civil Court reversed this decision on the ground that title to the office was the principal matter of the plaintiff's claim and the right to possession of the land merely an incident dependent upon that title; that therefore as the period of limitation applicable to the former claim (six years) had elapsed before the institution of the suit, it was not maintainable for the

LIMITATION ACT (XV OF 1877)—*contd.*

Schedule II—*contd.*

——— Art. 124—*contd.*

land. Upon special appeal, the decree of the Civil Court was affirmed on the grounds that it was conclusively found that the land was inseparably attached to the office as a source of endowment for the services of the holder of it for the time being, and that, as against the plaintiff, the defendant was protected in the possession of the office by cl 16, s. 1, Act XIV of 1859. TAMMIRAZU RAMZOGI *v.* PANTINA NARSIAH . . . . . 6 Mad. 301

3. ——— *Suit for possession of hereditary office and for account—Adverse possession.*

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leaving two sons, of whom one, who died in 18..., was the father of the plaintiff. The founder's elder son, *C*, died in 1816, leaving two sons (*M*, who died in 1840, and *L*, who died in 1847) and two daughters (*A* and the defendant's mother) The office of dharmakarta descended from the founder to *C*. After his death a manager was appointed by the Collector, and *C*'s son *M* was dispossessed by his uncle *T*, and in 1834 *M* brought a suit in equity against *T* and his sons. Pending the final decree, *M* was appointed by the Supreme Court to act as dharmakarta A decree was never passed, and the suit abated on *M*'s death in 1840 *M* was succeeded in the office of dharmakarta by his brother *L*, who held it till 1847, when he died, leaving it by will to his sister *A* and her husband *R* jointly. *R* died soon after, and *A* in 1872, leaving the office by will to her sister's son, the defendant. In a suit by plaintiff, as eldest sur-

bequeathing the office to his sister *A* and her husband *R* was an act unequivocally hostile to the rights of the male members of the family; and as the will was at once acted upon, they must have had notice of this invasion of their rights. MAMALLY CHENNA KESHAVARAYA *v.* VAIDELINGA

I. L. R. 1 Mad. 343

4. ——— *Suit for possession of hereditary office—Watan, alienation of.* Adverse possession, in the case of an alienation of a watan, only begins to run against the heir from the time when he is entitled to succeed to the possession of the watan property, *i.e.*, from the date of the death of the watandar. RAVLOJIRAV BIN TAMAJIRAV *v.* BALVANTRAV VENKATESH

I. L. R. 5 Bom. 437

LIMITATION ACT (XV OF 1877)—*contd.*

Schedule II—*contd.*

——— Art. 124—*contd.*

5. ——— *Suit to have the appointment of a karnam declared void—Suit for hereditary office* A suit by existing karnams, to have the appointment of another person as a karnam jointly with themselves declared void, does not fall within the provision of Art. 124 of the Limitation Act. LAKSHMINARAYANPPA *v.* VENKATARATNAM . . . I. L. R 17 Mad. 395

6. ——— *Suit for declaration of right as khadims of temple and for turn of worship—Suit for hereditary office* The plaintiff sued for a declaration that they were khadims of a certain Mahomedan durga and as such entitled to perform the duties attached to that office for twenty-one days in each month, and during that period to receive the offerings made by the worshippers at the durga —*Held*, that the suit, being a claim to an hereditary office, fell under Art. 124 of the Limitation Act, and was not barred by limitation. SARKUM ABU TORAB ABDUL WAHEB *v.* RAHAMAN BUKSH . I. L R. 24 Calc. 83

7. ——— *Suit by reversionary heir for office of shebait—Hindu law—Endowment—Succession in management.* Where a shebait does not appoint his or her successor as provided in the will of the founder and where there is no other pro-

Art. 124, and not six years under Art. 120 of the Limitation Act. *Jai Bansi Kunwar* v. *Chattardhari Singh, 5 B. L R. 181 : 13 W. R 396*, and *Gossamee Sree Greedhareejee* v. *Ruman Lollje, I L. R. 17 Calc 3 . L. R. 16 I. A. 137*, referred to. JAGANNATH PRASHAD GUPTA *v.* RANJIT SINGH

I L. R. 25 Calc. 354

8. ——— and s. 28—*Right to a temple office and its endowments—Adverse possession* Certain offices in a temple and the endowments attached thereto were held jointly by the members of two branches of a family, represented respectively by the plaintiff and the defendant. Long previously to 1872, the defendant's branch

suit to recover a moiety of that village but it was dismissed on the ground that the offices and emoluments were indivisible and went by right to the older, branch of the family. The plaintiff now sued in 1895 to establish his right to the entire offices and to recover possession of the other village :—*Held*, that the defendant had acquired a divisible right to a moiety by twelve years'

LIMITATION ACT (XV OF 1877)—*contd.*

Schedule II—*contd.*

——— Art. 124—*concld.*

adverse possession, and that the suit should to that extent be dismissed ALAGIRISAMI NAICKAR *v* SUNDARESWARA AYYAR . I. L. R. 21 Mad. 278

——— and Art 141—*Claim for the recovery of an hereditary office—Succession by Hindu widow to trusteeship of temple—Alienation by widow of temple property—Suit to declare alienation invalid and not binding on those entitled to succeed the widow as trustee after her death—Bar by limitation* A temple was built and dedicated to the public by one Jagayya, who acted as trustee of it during his lifetime He died childless and his widow succeeded him as trustee. She continued to manage the affairs of the temple until October 1885, when she transferred the right of trusteeship together with certain temple properties to the first defendant In 1897 the widow died The plaintiffs as the persons entitled to be trustees in succession to her brought this suit in December 1900, to establish their rights as trustees and to have the transfer in favour of the first defendant declared invalid :—*Held*, that the suit was barred under Art. 124 of the Limitation Act The property transferred with the trusteeship was only recover-

referred to. The possession by the defendants during the lifetime of the widow was adverse to the plaintiffs, who derived their title "from and through" th

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——— Art. 125 (1871, Art. 124)—

See ante, ARTS 120 AND 125.

See HINDU LAW—ALIENATION 12 C. W. N. 857

See HINDU LAW—WIDOW—POWER OF WIDOW—POWER OF DISPOSITION OR ALIENATION . I. L. R. 30 Calc. 990

1. ——— *Suit to set aside*

See PERSHAD SINGH *v.* CHEDEE LALL 15 W. R. 1

2 ——— *Hindu widow—*

LIMITATION ACT (XV OF 1877)—*contd.*

Schedule—II—*contd.*

——— Art. 125—*contd.*

December 1864 The suit was brought, and a certain sum, in Government paper and notes, was decreed to *K* on August 5th, 1868 This sum was paid into Court by *B C* on 10th March 1869, and upon *K's* application was, on 10th March 1871, paid out to her *B C* then sued as reversionary heir to have the deed of assignment set aside, and prayed that *H S* should be restrained from receiving the moiety The plaint was filed on 14th March 1871. In it he alleged his apprehension of waste by *K*. *Held*, that

was not barred by the law of limitation. BISWANATH CHUNDER *v.* KHANTOMANI DASI 7 B. L. R. 131

3 ——— *Alienation—Decree in a collusive suit against a Hindu widow. Held*, that

a decree for possession of property of which the widow was in possession holding a Hindu widow's estate, amounted to an "alienation" of such property within the meaning of Art. 125 of the second Schedule of Act XV of 1877. SHEO SINGH *v* JEON I. L. R. 19 All. 524

See CHUNDER KANTH ROY *v* PEARY MOHUN ROY 1 Ind. Jur. O. S. 21 Marsh. 33 : 1 Hay 69

WOOMA CHURN BANERJEE *v.* HARADHUN MOZOOMDAR . . . . 1 W. R. 347

and SRINATH GANGOPADHYA *v* MAHES CHANDRA ROY . . . . 4 B. L. R. F. B. 3

4. ——— *Limitation—Alienation—Fictitious award—Hindu widow* A Hindu widow, plaintiff in a suit to recover property, in respect of which she was entitled to a

LIMITATION ACT (XV OF 1877)—*contd.*

Schedule II—*contd.*

——— Art. 125—*concld.*

125 of the second Schedule to the Indian Limitation Act. *Sheo Singh* v. *Jeoni, I. L. R. 19 All 524,* referred to. RAM SARUP v. RAM DEI (1906)
I. L. R. 29 All. 239

——— Art. 126 (1871, Art. 125)—*Cause of action—Suit for possession of joint estate improperly alienated by father of plaintiff.* In a suit under the Mitakshara law for possession of land by annulment of illegal sales by his father, the plaintiff's only cause of action is the taking possession by the defendant of what was son's joint share of the family property, and his suit ought to be brought within twelve years of such adverse possession. POONHEET KOOER v KISHEN KISHORE NARAIN SINGH . . . 23 W. R. 419

See NOWBUT RAM v DURBAREE SINGH
2 Agra 145

——— Art. 127 (1871, Art 127; 1859, s 1, cl. 13)—

See ante, ART 120 . 7 C W. N 155

See ONUS OF PROOF—LIMITATION AND ADVERSE POSSESSION.
I L. R. 24 Mad 441
I. L R 18 Bom. 513

S. 1, cl. 13, of the Act of 1859 applied to Mahomedan as well as Hindu families. KHYROONISSA v. SABHOONISSA KHATOON . . 5 W. R. 238

as this article does; the corresponding article of the Act of 1871 was specially applicable only to Hindus.

1. ——— *Suit for share in*

of 1859. DENONATH SHAW v. HURRYNARAIN SHAW
12 B L R. 349

KRISHNADHAN CHOWDHARY v. HUR COOMARY CHOWDHRAIN . . . 25 W. R. 37

2. ——— *Mortgage by one member of Hindu family—Surrender of equity of redemption.* Act XIV of 1859, s. 1, cl. 13, was intended to apply to suits between members of a joint family, not to a case where a mortgage having been made by one member on behalf of all to a stranger, that member afterwards, against the will of his co-partners, releases the equity of redemption RADHANATH DAS v. ELLIOT
6 B. L R. 530

s.c. RADHANATH DAS v. GISBORNE & Co
15 W. R. P. C. 4
14 Moo. I. A. 1

3. ——— *Suit to establish right to share profits of watan.* In a suit to establish a right to share in a watan and to recover a portion of the profits thereof for seven years:—*Held,* that the case was governed, as to limitation, by cl 13, and not cl. 16, of s. 1, and that arrears for seven years were therefore properly awarded. GUNDO ANANDHRAV v. KRISHNARAV GOBIND . . 4 Bom. A. C 55

LIMITATION ACT (XV OF 1877)—*contd.*

Schedule II—*contd.*

——— Art. 127—*contd.*

4. ——— *Suit to enforce right to separate possession.* Cl. 13, s. 1, applied to suits in which a plaintiff sought to introduce one or more additional co-sharers into the enjoyment of property alleged to be joint, not where a plaintiff sought to enforce his right to separate possession of that to which he was entitled. LUKHEE MONEE DOSSEE v. BROJO BULLUB SEAL
11 W. R. 132

5. ——— *Right of son claiming partition after father's death—Survivorship—Inheritance.* Cl. 13 of s. 1 of Act XVI of 1859, when it provided, as the period of limitation for partition suits, "the period of twelve years from the death of the persons from whom the property alleged to be joint is said to have descended," must be taken to have been intended to apply, [illegible] ...ath ...ago ...nas-much as in this Presidency, and [illegible] the Mitakshara law prevails, sons in such a case are considered to take by survivorship rather than by inheritance. HANSJI CHHIBA v. VALABH CHHIBA
I. L R 7 Bom 297

6. ——— *Suit for division of family property.* Where a suit was brought for a division of family property twelve years after the death of the head of the family:—*Held,* that the suit was not barred by cl. 13, s. 1, Act XIV of 1859. SUBHAIYAN v. SANKARA SUBHAIYAN
2 Mad 347

7. ——— *Suit to compel* ... *property* A ... right to a ... missed on ... father's ... overable; ... im failed, ... diction of ... ot barred ... s. 1, cl. ... aside the ... possession ... ad been ... rt of the ... as to the ... to de-

LIMITATION ACT (XV OF 1877)—*contd.*

Schedule II—*contd.*

——— Art. 127—*contd.*

clare partition of them, cause this part of the claim to fall under the provisions of Act XIV of 1859, s 14. As to the moveables · assuming that they could, on the question of limitation, be treated as distinct

correct, had been that the elder son could not assert his rights in the moveables until his father's death.

8. ——— *Suit to recover share of joint property inherited* Cl. 13, s. 1 of Act (XIV of 1859), was not applicable to a suit to recover a share of joint property to which the plaintiff claimed to be entitled by inheritance DINONATH RANA *v.* RUBEEBUNISSA BIBEE 20 W. R. 270

9. ——— *Suit to enforce right to share in joint property* Suits to enforce

Government and neither party was in possession. SHIDOJIRAV *v* NAIKJIRAV . . 10 Bom. 228

10. ——— *Suit by adopted son for share of ancestral estate—Cause of action.* As against an adopted son suing for his share of the ancestral estate, the law of limitation does not begin to run until the allotment of such share has been demanded and refused AYYAVU MUPPANAR *v* NILADATCHI AMMAL . 1 Mad. 45

11. ——— *Suit of share*

Act XIV of 1859, the claimant in order that the statute shall be a bar, must have been entirely out of possession and excluded from possession by those against whom he claims GOVINDUN PILLAI *v.* CHIDAMBARA PILLAI . . . 3 Mad. 99

See RAJESWARA GAJAPATY NARAINA DEO MAHARAJULUNGARU *v.* VIRAPRATAPAH RUDRA GAJAPATY NARAINA DEO MAHARAJULUNGARU 5 Mad. 31

and SUBBAIYA *v.* RAJESVARA SASTRULU 4 Mad. 354

12. ——— *Question as to exclusive possession—Onus of proof—Refusal to allow share.* The question of fact whether there has been such exclusive possession or enjoyment must be decided upon the evidence in each case, and may be satisfactorily proved, although there may be no evidence of an express refusal to allow plaintiff any part of the benefits of the joint property. SUBBAIYA *v.* RAJESVARA SASTRULU . . . . . 4 Mad. 354

JARAOO *v.* FAKEERA . . . 3 Agra 133

RAJOO SINGH *v* GUNESHMONEE BURMONEE 15 W. R. 400

13. ——— *Suit for share of joint property.* *A* got a decree for possession, but before she obtained possession, *B* obtained a decree declaring him jointly entitled with *A* to a particular share of the same property.—*Held,* that

possession and a suit was not barred if brought within twelve years of that time. GOOROO CHURN SIRCAR *v.* GOLUKMONEE DOSSEE . 13 W. R. 188

14. ——— *Suit for share of profits* If by arrangement the shares of certain co-sharers are left in the possession of other co-sharers during the period of a current settlement, the cause of action to the sharers whose shares have been so left for profits accrues only when the settlement expires TOOLSEE RAM *v* NAHUR SINGH 3 Agra 271

15. ——— *Suit for share of joint property—Cause of action.* Where parties are living together in commensality and in joint

16. ——— *Adverse possession—Suit for partition.* Where the bulk of the estate of a Hindu family is held and managed by a single member of the family, and the other members receive and enjoy part of the lands as *sir,* the possession of the bulk of the estate by the manager is not adverse so as to bar, under the Limitation Act XIV of 1859, s 1, cl. 13, a suit by the others for partition, unless there are circumstances to show that they accepted the *sir* lands in

L. R. 1 I. A. 9

17. ——— *Receipt of payments for share of joint property.* That a Hindu widow, entitled to her husband's share of the joint property, continues to live in the

LIMITATION ACT (XV OF 1877)—*contd.*

Schedule II—*contd.*

——— Art 127—*contd.*

family and mess with them, is sufficient in the absence of evidence to the contrary, to show that she is receiving payments on account of her share, within cl. 13, s. 1, Act XIV of 1859 GOBIND CHUNDER BAGCHEE *v.* KRIPAMOYEE DABEE . . . . . . 11 W. R. 336

18. ——— *Rent collected by one member of Mahomedan family living jointly.* Even if a member of a Mahomedan family collects the rents and profits of the family property, his possession cannot be considered adverse to his mother and sister, so long as these live and mess jointly with him and receive money's worth in the payment of their family expenses. SIRDAR *v.* MOLUNGO SIRDAR . . . 24 W. R. 1

19. ——— *Joint property, suit for share of—Onus probandi.* A suit to enforce a right to a share of joint family property must be brought within twelve years from the date of the last payment to the plaintiff, or the person through whom he claims on account of the share: and the onus is on the plaintiff to show possession of the share, or receipt of a payment on account of it, within twelve years. It is not

12 B. L. R. 219 : 18 W. R. 182

UMBIKA CHURN SHET *v.* BHAGGOBUTTY CHURN SHET . . . . . . 3 W. R. 173

BYDDONATH OJHA *v.* GOPAL MAL 6 W. R. 170

HUREEHUR MOOKERJEE *v.* TEENCOWREE DOSSEE 6 W. R. 170

KRISTO CHUNDER BURMO SURMAH *v.* MOHESH CHUNDER BURMO SURMAH . 23 W. R. 381

20. ——— *Suit for share of joint ancestral property.* A Hindu died in

until 1859, when a separation in mess took place. Subsequently, more than twelve years after the father's death a suit was brought by the youngest son for his share of the joint ancestral property belonging to the father, and to property subsequently acquired out of the proceeds of such joint estate, to which the brothers were entitled in equal shares. The plaintiff failed to show that any payment was made to him or any person through whom he claimed, by the person in possession or management of the property, within twelve years before the commencement of the suit:—*Held*, that the suit was barred by limitation under cl. 13, s. 1, Act XIV of 1859. UMA SUNDARI DASI *v.* DWARKANATH ROY 2 B. L. R. A. C. 284

LIMITATION ACT (XV OF 1877)—*contd.*

Schedule II—*contd.*

——— Art. 127—*contd.*

S.C. WOOMA SUNDUREE DOSSEE *v.* DWARKANATH ROY . . . . . 11 W. R. 72

AMITRAV BIN YESHVANTRAV DESHMUKH *v.* ANYABA ABAJI DESMUKH . 5 Bom. A. C. 50

21. ——— *Entry of names in register. Held*, that the plaintiffs' suit was barred by lapse of time, they having received nothing from the property, a share of which they clai

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revenue registered as proprietors, is not equivalent to proof of payment to and receipt by them of any profit on account of their share. KHORUN SINGH *v.* BEHAREE LALL . 3 Agra 95

MAKSOOD ALI KHAN *v.* GHAZEEOODDEEN KHAN 3 Agra 158

22. ——— *Suit to enforce share of joint property—Proof of payments.* In ruling that a suit to enforce the right to a share in certain property on the ground that it is joint family property is barred under s. 1, cl. 13, Act XIV of 1859, it is not enough to find that the plaintiff had occasionally received money from the defendant, and that his

SONO COOMAR MOOKERJEE *v.* SHAMA CHURN MOOKERJEE . . . . 17 W. R. 451

23. ——— *Payments for joint share.* Proof of payment is not necessary to bring a case within cl. 13, s. 1, Act XIV of 1859: but the limitation therein prescribed will apply to the case of a person entitled to a share in property and simply enjoying the property with the co-sharers, there being no division of money or any payment at all made between them. BHUJOHUREE PAUL *v.* HURO SOONDUREE DEBEE 17 W. R. 530

24. ——— *Receipt of share of profits otherwise than by money.* In a suit to

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LIMITATION ACT (XV OF 1877)—*contd.*

Schedule II—*contd.*

———— Art. 127—*contd*

and the suit was not barred. CHUNDER MONEE DEBIA *v.* MEHARJAN BIBEE . 22 W. R. 185

25. ———— *Suit by Hindu excluded from joint family property.* In a suit by a Hindu excluded from joint family property, to enforce a right to a share therein, brought before the 1st of October 1877, the period of limitation must be computed under Art. 127, and not under Art. 143, of Sch. II of Act IX of 1871 KALI KISHORE ROY *v.* DHUNUNJOY ROY
I. L. R. 3 Calc. 282

Under Act IX of 1871, the cause of action arose from the time when the plaintiff demanded, and was refused, his share; consequently it was then necessary to make that allegation HANSJI CHHIBA *v.* VALABH CHHIBA . . I. L. R. 7 Bom. 297

26. ———— *Exclusion from share of joint property* Art. 127, Sch II of Act IX of 1871 presupposes the existence of joint family property and that there has been an exclusion from participation in the enjoyment of such property *Semble*: The word "excluded" in that Article implies previous inclusion SARODA SOONDURY DOSSEE *v.* DOYA MOYEE DOSSEE
I. L. R. 5 Calc. 938

27. ———— *Joint property —Evidence.* Before a plaintiff can bring his case within Art. 127 of Sch II of the Limitation Act, 1877, it is incumbent on him to show that the property in which he seeks to recover a share is "joint property." OBHOY CHURN GHOSE *v.* GOBIND CHUNDER DEY . . I. L. R. 9 Calc 237

28. ———— *Suit by person* [illegible]

[illegible] *0*; and [illegible] *Mundul* [illegible] CHUN- [illegible]
I. L. R. 18 Calc. 642

29. ———— *Application of Article—Stranger holding property belonging to joint family.* Art. 127 of Sch II of the Limitation Act (XV of 1877) does not apply except in cases between members of a joint family. It does not apply to the case of a stranger to the family holding property which originally belonged to the family. As to him, the ordinary rule of limitation (Art. 144) applies. BHAVRAO *v.* RAKHMIN
I. L. R. 23 Bom. 137

30. ———— *Claim to property as daughter's son.* The provisions of Art. 127 of Sch. II of the Limitation Act do not apply to a person who claims to inherit property as a daughter's son. MOTHURA NATH DUTT *v.* BORKANT NATH DUTT. PEARI MOHUN DUTT *v.* BORKANT NATH DUTT . . 11 C. L. R. 312

31. ———— *Suit for possession and partition—Acquiescence in alienation —Exclusion from share.* In a suit to obtain a share by partition of a joint family property, the interest of the plaintiff's father having been sold in execution of a decree, limitation is to be computed from the time when exclusion from his share first becomes known to the plaintiff. ISSURIDUTT SINGH *v.* IBRAHIM
I. L. R. 8 Calc. 653

32. ———— *Exclusion from share—Suit for partition.* Where in a suit for partition a District Judge held the plaintiff's claim barred on the ground that the defendant had been in possession of the property in dispute for more than fifteen years without any claim having been made by the plaintiff:—*Held*, that under the Limitation Act (XV of 1877), Art. 127, time would not run against the plaintiff until his exclusion (if he was excluded) from the property had become known to him. HARI *v.* MARUTI
I. L. R. 6 Bom. 741

33. ———— *Exclusion from joint property* A collateral member of a Hindu [illegible] e of [illegible] med [illegible] by [illegible] had [illegible] This [illegible] taking was entered in the first and second of the lists made under the provisions of the Oudh Estates Act (I of 1869), and as to it there was no ground of claim. But with respect to the savings, accumulations, and investments made from the income and proceeds of the talukh before the confiscation and restoration of Oudh lands in 1858 the contention was that each member was entitled to his share, and that, by the presumption in respect of a joint family, the burden was on the talukhdar to prove that there were no [illegible]

[illegible] somewhat special circumstances. However, this [illegible]

34. ———— *Aliyasantana law—Exclusion from joint family property.* In a

LIMITATION ACT (XV OF 1877)—*contd.*

Schedule II—*contd.*

———— Art. 127—*contd.*

suit in which the plaintiffs sought declarations that they were members of an undivided Aliyasantana family with the defendants, that certain pr[illegible] plaintiff I[illegible] was entit[illegible] name, th[illegible] the plain[illegible], and pleaded that the suit for declarations only was not maintainable, and that it was barred by limitation. It was found that the plaintiffs had separated themselves from the defendants more than twelve years before suit :—*Held*, that Art 127 applied to the case, and that the plaintiffs, having separated themselves from the defendants, had for more than twleve years been to their own knowledge excluded from the joint family property, and that their suit to enforce a right to share therein was barred. *Mahalinga* v. *Mariyamma, I. L. R. 12 Mad. 462*, distinguished. MUTTAKKE *v.* THIMMAPPA.

I. L. R. 15 Mad. 186

35. ———————— *Suit for share of joint property—Exclusion—Adverse possession* In a suit for a share of undivided property from which the plaintiff had been out of possession admittedly for thirty-five years .—*Held*, that the suit was not barred by limitation, as the possession of the share in question by the defendant since 1845 had not been a possession of it as their own property to the exclusion of the plaintiffs or their father. NILO RAMCHANDRA *v.* GOBIND BALLAL . . . I. L. R. 10 Bom. 24

36. ———————— *Limitation Act, 1859, s. 1, cl. 13—Hindu law, Maintenance—Refusal of person liable to maintain—Cause of action* In a suit for [illegible]

maintanance had not been made a charge on specific property :—*Held*, that time began to run against the plaintiff's claim, under the Limitation Act of 1859, only from the date of refusal on the defendant's part to maintain her *Narayan Rao Ramchandra Pant* v. *Ramabai, I. L. R. 3 Bom. 41* , followed. RAMANAMMA *v.* SAMBAYYA . . I. L. R. 12 Mad. 347

37. ———————— *Suit for share of property alleged to be joint—Limitation Act, 1859, s 1, cl. 13—Property in possession of a managing member.* Suit for partition and possession of an undivided share of property sold to plaintiff by an aged gosha lady of the class of Canarese Mahomedans called Navayats. The property sold was the vendor's share as heiress of her father, brother, and sister, who died in 1856, 1866, and 1871, respectively; but it appeared that the property of the family had been in the possession of one managing member since 1856 :—*Held*, that the suit was not barred by limitation. KHATIJA *v.* ISMAIL

I. L. R. 12 Mad. 380

38. ———————— *Suit for possession by purchaser from sharer in joint family.* Art. 127 of Sch. II of Act XV of 1877 does not apply to a suit where the plaintiff is a stranger, who has purchased a share in joint family property from one of the members thereof. HORENDRA CHUNDRA GUPTA ROY *v.* AUNOARDI MUNDUL

I. L. R. 14 Calc. 544

39. ———————— *Hindu law—Joint family—Joint estate—Partition—Portion of estate reserved undivided—Possession of reserved portion by one member of family—Adverse possession—Possession, inference arising from—Burden of proof—Res judicata as between defendants* The plaintiffs sued for part of a house as a portion of joint family property left undivided on the occasion of a general partition which had taken place about thirty-five years before the suit. The defendant had since then been in sole possession and enjoyment of the house in dispute. The Subordinate Judge dismissed the suit as barred by limitation on the ground that the plaintiffs had failed to prove participation in possession or enjoyment within twelve years. On appeal, the Assistant Judge held that, as no share had been demanded or refused, the defendant's [illegible] decree of the Subordinate Judge, and remanded the case for re-trial on the merits On appeal to the High Court :—*Held*, that the suit was barred. The fact that the house in question had admittedly remained undivided did not prevent the operation of the Limitation Act, and Art. 127 of Act XV of 1877 applied. That Article applies equally to a portion of joint family poperty left undivided as to the whole estate, and a twelve years' exclusion known to the excluded sharer, binds him in the one case as in the other. What would bar the operation of the Article in question would be a reserve of a part of the joint estate from partition and a possession of that portion conceded to, and taken by, one of the sharers as the common property of himself and the other sharers. RAMCHANDRA NARAYAN *v.* NARAYAN MAHADEV

I. L. R. 11 Bom. 216

See TATYA *v.* ANAJI

I. L. R. 11 Bom. 220 note

and VITHOBA *v.* NARAYAN

I. L. R. 11 Bom. 221 note

40. ———————— *Hindu law—Partition—Property excluded from partition.* The members of a joint Hindu family made a partition of family property in 1877, reserving undivided

LIMITATION ACT (XV OF 1877)—*contd.*

Schedule II—*contd.*

——— Art. 127—*contd.*

however, certain land and the capital and assets of their family business which remained under the con-

the defendants refused to give effect to his claim. The plaintiff in 1892 sued for his share in the property —*Held*, that the property in question was co-parcenary property, notwithstanding the transaction of 1877, and that the plaintiff's suit was not barred by limitation. MUTHUSAMI MUDALIAR *v.* NALLAKULANTHA MUDALIAR

I. L. R. 18 Mad. 418

41. ——— *Exclusion from share in a portion of joint property* The fact that the plaintiffs were not excluded from their share in part of the joint property does not prevent Art 127, Sch. II of the Limitation Act (XV of 1877), from operating in respect of another part from which they had been excluded to their knowledge. VISHNU RAMCHANRA *v.* GANESH APPAJI CHOWDHARI . . . I. L. R. 21 Bom. 325

42. ——— and Art. 144—*Partition effected without taking into account a minor co-parcener—Invalid partition—Adverse possession—Exclusion from joint property* Three brothers, *S*, *L*, and *K*,

I. L. R. 16 Bom. 197

43. ——— *Suit for partition—Exclusion—Burden of proof.* In a suit for partition of joint family property the defendant

LIMITATION ACT (XV OF 1877)—*contd.*

Schedule II—*contd.*

——— Art. 127—*contd.*

44. ——— and Art. 142—*Exclusion from joint family property. Onus of proof.* Art. 127 (and not Art. 142), Sch II of the Limitation Act, applies to a case where the plaintiff has

before suit. *Brindarani* v *Bundhoo* (Appeal from Appellate Decree No. 1023 of 1888, decided by O'KINEALY and TREVELYAN JJ., on the 22nd February 1889, unreported), followed. UMESH CHANDRA BHATTACHARJEE *v.* JAGADIS CHANDRA BHATTACHARJEE . . . 1 C. W. N. 543

45. ——— *Joint family—Possession by one member of family—neglect by plaintiff to take possession of his share notwithstanding request that he would do so—Adverse possession.* The plaintiff and the defendant were brothers and members of an undivided family. The plaintiff was in Government service, and had been for a long time absent from his native place on duty, the family property remaining under the management of the defendant In 1863 the defendant wrote to the plaintiff, requesting him to return and manage his share of the property, or to employ some one to manage it for him. Nothing, however, was done by the plaintiff in the matter and the defendant

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letter The Court of first instance awarded the plaintiff's claim. The defendant appealed, and

which it was written, the defendant had not been in possession of the property, "as his own property to the exclusion of the plaintiff," and the mere

I. L. R. 11 Bom. 36

46. ——— *Limitation Act, 1859, s. 1, cl. 13—Suit for share on partition of property.* In 1803, *G* being in possession of the zamindari of *M* the permanent settlement was made with him, and a sanad was granted to him as prescribed by Regulation XXV of 1802. In 1827 *C*, the only son of *G* being in possession of the zamindari, got into debt, and the zamindari was sold in execution of a decree and bought by Government In 1835 the zamindari was granted to *J*, the son of *C*, by Government and a

LIMITATION ACT (XV OF 1877)—*contd.*

Schedule II—*contd.*

———— Art. 127—*contd.*

sanad issued in the usual terms as prescribed by Regulation XXV of 1802. *J* died in 1864, leaving four sons, the three plaintiffs and *D*, his eldest son. *D* died in 1869 leaving an only son, the infant defendant. In 1869 the Court of Wards took charge of the estate on behalf of the infant defendant and allowed his uncle, plaintiff No. 1, to receive the rents of the zamindari as renter. The infant defendant and his three uncles lived in the same house and participated in the joint family property until 1872, when the plaintiffs claimed to have the zamindari divided. By an agreement between the plaintiffs and the Court of Wards all the moveable and immoveable property, except the zamindari talukh, was divided into four shares and distributed in 1874 between the plaintiffs and defendants. In 1884 the plaintiffs sued for partition of the zamindari, alleging that their cause of action arose in 1872, when the Court of Wards denied their right to a partition of the zamindari talukh The defendants pleaded that the suit was not barred by limitation :—*Held*, that the suit was not barred by limitation JAGANATHA *v.* RAMBHADRA . . . I. L. R. 11 Mad. 380

47. ———— *Act XIV of 1859, s. 1, cl. 13—Joint family—Partition—Claim by absent member—Adverse possession—Exclusion—Participation in profits of joint property—Payment—Occasional residence of wife of absent member with joint family* The plaintiff and his four brothers (*G*, *S*, *R*, and *B*) were members of a joint Hindu family. The only one of them who lived at home was *S*. In 1854 the family property, which had been mortgaged, was redeemed by the brothers, and after redemption it was placed under the management of *S* by the eldest brother *G*. Subsequently, two of the brothers

visits resided in the family house with *S* and *G*. In 1872 *G* died. The plaintiff alleged that in 1876 he demanded his share, but was refused. In 1883 he filed this suit for partition. It was contended that the right of the plaintiff had become barred by the Limitation Act (XIV of 1859) and was not revived by Act XV of 1877, which was in force at the date the suit was brought. The Court of first instance awarded the plaintiff's claim. On appeal the Assistant Judge reversed the decree of the Court below, holding that under cl. 13 of s. 1 of the Limitation Act (XIV of 1859) the plaintiff had his right to sue, and that such right could not be revived by the passing of the subsequent Limitation Acts (IX of 1871 and XV of 1877). He was of opinion that the fact that the plaintiff's wife "had put up at *S*'s house for a few days, if it were a fact, did not help the plaintiff's title":—*Held*, by the High Court following *Ahmed v. Moro Keshav, I. L. R. 11 Bom. 461 note*, that

years previously to the repeal of that Act, the plaintiff had not lost his right to sue at the date of the passing of Act IX of 1871; and that Act would therefore have applied to any suit brought by him

KANE BABLE *v.* ANTAJI GANGADHAR
I. L. R. 11 Bom. 455

AHMED *v.* MORO KESHAV
I. L. R. 11 Bom. 461 note

48. ———— *Suit by a Mahomedan for partition of joint property.* Art. 127 of the Limitation Act (XV of 1877) applies to a suit by a Mahomedan for partition of joint family property. BAVASHA *v* MASUMSHA
I. L. R. 14 Bom. 70

49. ———— *Joint family property—Suit by Mahomedan heir for his share in an undistributed estate.* The words "joint family property" in Limitation Act, 1877, Sch. II, Art. 127, are intended to refer to joint family property in the Hindu sense of the term. A Mahomedan sued as heir in 1888 to recover his share in the property of his grandfather, which had been enjoyed jointly by his descendants from his death, which occurred in 1840, up to a recent date. It did not appear that the family was governed by any special custom:—*Held*, that the suit was not governed by Art 127 of the Limitation Act, and was barred by limitation. PATCHA *v.* MOHIDIN . I. L. R. 15 Mad. 57

KASMI *v.* AYISHAMMA . I. L. R. 15 Mad. 60

50. ———— *Mahomedan family—Redemption of mortgage by some co-sharers—Possession by such co-sharers after redemption—Subsequent claim to property by other co-sharers.* The possession by a Mahomedan co-sharer of property which he has redeemed from a mortgage does not become adverse to the other co-sharers until some exclusive title is set up. *Ramchandra Yashvant v. Sadashiv Abaji, I. L. R. 11 Bom 422*, and *Bhaudin v. Ismail, I. L. R. 11 Bom. 425*, referred to. FAKI ABAS *v.* FAKI NURUDIN
I. L. R. 16 Bom. 191

LIMITATION ACT (XV OF 1877)—*contd.*

Schedule II—*contd.*

———— Art. 127—*contd*

51. — — — *Suit by Mahomedans for possession by right of inheritance of shares in the property of their deceased ancestor* The words "joint family property" in Art. 127

possession by right of inheritance of shares in immoveable property alleged to have been that of the deceased common ancestor of themselves and some of the defendants, and of which they allege they had been dispossessed by the defendants. *Bavasha* v. *Masumsha, I L R. 14 Bom. 70,* dissented from. AMME RAHAM v. ZIA AHMAD

I. L. R. 13 All. 282

52. ———— *Joint family property—Suit by Mahomedan for possession of share by*

MAHOMED AKRAM SHAHA v. ANARBI CHOWDHRANI

I. L. R. 22 Calc. 954

53. ———— *"Joint family property"—"Exclusion" from such property.* A Mahomedan family consisting of three brothers and their uncle jointly owned certain immoveable property which the uncle managed. Two of the brothers effected a settlement of accounts with the uncle with reference to the profits of the estate; the share of the three brothers was appropriated; and the money representing that share was deposited with the uncle. Subsequently the two who had effected the settlement withdrew their portion of the common share, and the third brother sued the uncle to recover a sum of money as his one-third portion He alleged that he had been deceived by the defendant into supposing that his portion was included in the amount withdrawn by his brothers; but he did not base his suit upon any allegation of fraud. It was

I. L. R. 10 All. 100

54. ———— *Limitation Act, 1859, s. 1, cl. 13—Partition suit for share of joint family estate—Failure to prove participation in the family co-parcenary within the period.* In a suit brought in 1881 for a share of joint family estate, the question whether the plaintiff's right to sue was barred by limitation under Act XIV of 1859, s 1, cl. 13, depended on whether there had been any participation of profits between the plaintiff's father and the defendants, who with him were co-descendants from a common ancestor, after 1837 down to which year the family was certainly joint. If in 1871 the period of limitation had expired, the Act IX of that year and the later Acts need not be referred to; for, if they altered the law, they would not revive the right of suit. Upon the evidence it was found that whatever might have been the father's intention

I. L. R. 12 Mad. 26
L. R. 15 I. A. 167

55. ———— and Art. 131—*Pension, suit for share of—Gift of pension, effect of, as against right of heir by inheritance.* A pension of

originally been granted were handed over to the donee. After the death of the donor, one of his sisters brought a suit against his widow to establish her right (i) to receive the share in the pension which she had inherited from her father and received up

UN-NISSA BIBI . . I. L R. 9 All. 213

56. ———— *Time does not*

1883. He consented to reside with V, and in 1896 orally renounced his right to a share in the property belonging to his natural family in consideration of

LIMITATION ACT (XV OF 1877)—*contd.*

Schedule II—*contd.*

——— Art. 127—*concld.*

his co-sharers who were also the reversioners of *V*

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ment by *A* of his right to partition or to an exclusion of *A* to his knowledge, from the enjoyment of his family property and that his right to partition was not barred by Art. 127, Sch II of the Limitation

such renunciation cannot be a good consideration for a contract. DHOORJETI SUBBAYYA *v.* DHOORJITI VENKAYYA (1906) . I. L. R. 30 Mad. 201

57. ——— *Suit by a Maho-* *her deceased* le 127, Sche- 1877) applies Mahomedan erty. *Sayad Gulam Hussein* v. *Bibi Anvernisa, P. J. (1885), 170,* followed. BOO FATMA *v.* BOO GHISANBOO (1909) . . . I. L. R. 33 Bom. 610

——— Art. 128 (1871, Art. 128 ; 1859, s. 1, cl. 13)—

1. ——— *Suit to recover*

2. ——— *Suit for maintenance.* Cl. 13, s. 1, Act XIV of 1859, did not apply to a suit for maintenance, when the right to receive such maintenance was not a charge on the estate of a deceased person, but on the estate of living person. BINOD LALL CHATTERJEE *v.* LUCKHEE MONEE DEBIA . . 4 W. R. 84

3. ——— *Suit for maintenance. In a suit for maintenance, the cause of action ordinarily arises at the time when the maintenance having become necessary is refused by the party from whom it is claimed.* S. 1, cl. 13, Act XIV of 1859, did not apply to all suits for the recovery of maintenance brought by a Hindu widow against her husband's family, but only to suits in which the plaintiff seeks to have her maintenance made a charge on a particular estate. TIMMAPPA BHAT *v.* PARMESHRIAMMA 5 Bom. A. C. 130

4. ——— *Suit for maintenance as charge on estate.* The plaintiff sued the defendants for future and past maintenance and obtained a decree for future maintenance and for

LIMITATION ACT (XV OF 1877)—*contd.*

Schedule II—*contd.*

——— Art. 128—*contd.*

arrears of maintenance for seven years. The parties were governed by the Aliyasantana law. It was found by the lower Appellate Court that for twenty years before the suit the plaintiff lived apart from the defendants and the other members of the family, and supported herself without receiving or applying for anything towards her maintenance out of the family property in the possession of the defendants, or main- TLAND, recog- eparate maintenance as a charge upon the estate, the plaintiff's claim was barred by s. 1, cl 13, Act XIV of 1859. *Per* COLLETT, *J.*—It is doubtful whether cl. 13, which applies to cases where the right to receive maintenance is a charge on the inheritance of any estate, applies in a case where the right of the plaintiff is said to exist by reason of her being a co-proprietor with the defendants. If the suit be not within cl. 13, then it was one to recover an interest in immoveable property, and was equally barred by cl. 12 of s. 1. ABBAKKU *v.* AMMU SHETTATI . 4 Mad. 137

SUBRAMANIA MUDALIAR *v.* KALIANI AMMAL 7 Mad. 226

Suits for maintenance not chargeable on any estate were governed by cl. 16 of s 1 of the Act of 1859; the cause of action in such cases did not arise until there had been a demand and a refusal. KALO NILKANTH *v.* LAKSHMIBAI I. L. R. 2 Bom 637

5. ——— *Hindu widow—Maintenance.* With regard to the widow's right would do their but would losing that his wives and son would all live amicably together after his death, and would all look upon his eldest son as the head of the family; he then bequeathed the whole of his property to his eldest son, directing him to provide for his (the testator's) widows, and for the other members and defendents of the family, and he declared that he made these provisions with a view to prevent dissensions in the family, and to enable them to live in peace and harmony after his than sixteen of his ainten- e claim 1, Act or the recovery of maintenance, when the right to receive such maintenance is a charge on the inheritance of any estate must be brought within twelve years

LIMITATION ACT (XV OF 1877)—*contd.*

Schedule II—*contd.*

——— Art. 128—*concld.*

from the death of the person on whose estate the maintenance is alleged to be a charge:—*Held*, that the testator had not created by his will a specific charge on the inheritance of his estate within the meaning of the provision of Act XIV of 1859, but had merely imposed upon the defendant an obligation, in case the will should interfere with the ordinary Hindu law entitling his widow to main-

tenance had been withheld under circumstances amounting to a refusal, giving rise to a cause of action. NARAYANRAV RAMCHANDRA PANT *v.* RAMABAI . . . . I. L. R. 3 Bom. 415
L. R. 6 I. A. 114 : 6 C. L. R. 162

6. ——————— *Suit for arrears of maintenance.* In suits coming within the operation of the Limitation Act, IX of 1871, the widow might recover arrears for any period unless it appeared that there had been a demand and refusal, in which case she could recover arrears for twelve years only from the date of such demand and refusal. JIVI *v.* RAMJI
I. L. R. 3 Bom. 207

7. ——— and Arts. 130 and 132—*Suit for arrears of maintenance charged upon immoveable property.* An allowance for the maintenance of a younger member of a family was charged upon the inheritance to which the eldest male member alone succeeded:—*Held*, that a suit for arrears of such maintenance within twelve years

8. ——————— *Suit for arrears of maintenance—Suit on decree specifying no date for payment of future maintenance.* A Hindu widow obtained a decree in 1876, which provided that she should receive future maintenance annually at a certain rate, but did not specify any date on which it should become due. In 1877 she filed the present suit claiming arrears of maintenance at the rate fixed in the decree of 1876:—*Held*, that the suit did not lie. *Sabhanatha Dikshatar* v. *Subba Lakshmi Ammal, I. L. R. 7 Mad.* 80, distinguished. VENKANA *v.* AITAMMA . I. L. R. 12 Mad. 183

——— Art. 130 (1871, Art. 130, 1859, s. 1, cl. 14)—

See ONUS OF PROOF—RESUMPTION AND ASSESSMENT. . 3 W. R. 69; 182

Cl. 14 of s. 1 of the Act of 1859 applied to suits to resume or assess lands held rent-free subsequent

LIMITATION ACT (XV OF 1877)—*contd.*

Schedule II—*contd.*

——— Art. 130—*contd.*

to the Permanent Settlement, 1790. KRISHTO MOHUN DOSS BUKSHEE *v.* JOY KISHEN MOOKERJEE
3 W. R. 33

DHUNPUT SINGH *v.* BOOJAH SAHOO.
4 W. R. 53

1. ——————— *Suit for resumption.* Under Act XIV of 1859, a zamindar could

SRISTEEDHUR SAMUNT *v.* ROMANATH ROKHIT
6 W. R. 58

KHELUT CHUNDER GHOSE *v.* POORNO CHUNDER ROY . . . . . . 2 W. R. 258

2. ——————— *Suit for land as part of mal tenure—Cause of action.* The cause of action in a suit for land as part of the plaintiff's *mal* tenure which land the defendant is holding on an invalid lakhiraj tenure, arises when the defendant first begins to hold the land in dispute rent-free. FURLONG *v.* KUSROO MUNDUR . . . . . 7 W. R. 531

See BARODA KANT ROY *v.* SOOKMOY MOKERJEE
1 W. R. 29

3. ——————— *Suit to recover portion of zamindari granted not in accordance with Mad. Reg. XXV of 1802.* The appellant, a zamindar, sued to recover a portion of the

that more than twelve years having elapsed since the title accrued to the person under ... resume, the ... 14, of Act ... SETA RAMA ... *v.* JAGUNTI SITAYAMMA GARU . . . 3 Mad. 67

ALI SAIB *v.* SANYASIRAJ PEDDABALIYARA SIMHULU . . . . . . 3 Mad. 5

See KRISHNA DEVU GARU *v.* RAMCHANDRA DEVU MAHARAJULU GARU . . 3 Mad. 153

4. ——————— *Suit for resumption by darpatnidar—Cause of action.* In a suit by a darpatnidar for the resumption of land alleged to be held as lakhiraj under an invalid title, limitation must be calculated, *not from* the date of the creation of his dar-patni title, but from that of possession of the party *from* whom the patnidar originally derived his title. GUNGARAM CHOWDHRY *v.* HUREE NATH CHOWDRY
15 W. R. 436

LIMITATION ACT (XV OF 1877)—*contd.*

Schedule II—*contd.*

——— Art. 130—*contd.*

And so if he is an auction-purchaser. BUSSEEROODDEEN *v.* SHIBPERSHAD CHOWDHRY
W. R. 1864, 170

NIRUNJUN ACHARJEE *v.* KURALEE CHURN BANERJEE . . . . . . 1 W. R. 197

Or a purchaser from Government: his cause of action dates from the time when the right accrued to the Government. BUNNOO *v.* AMEEROODDEEN
23 W. R. 24

5. ——— *Suit for assessment of rent after resumption of lakhiraj lands.* *A* got a decree against *B*, which declared that certain lands in *B*'s possession, alleged to have been lakhiraj lands from before 1790, were *A*'s *mal* lands and liable to assessment. More than twelve years after the date of this decree, *A* sued to assess the lands:—*Held* (affirming the decision of AINSLIE, *J.*), that the suit was not barred by the provisions of Act IX of 1871, Sch. II, Art. 130. PROTAB CHUNDER CHOWDHRY *v.* SHUKHEE SOONDAREE DASSEE . 2 C. L. R. 569

6. ——— *Service tenure—Assessment of rent by Settlement Officer.* In a suit against the Talukhdari Settlement Officer, who had assessed rent-free land on the ground that it had been granted for service, and that service was no longer required:—*Held*, that, if the grant was the grant of an office remunerated by the use of land, the right to assess was barred by the possession of a person not claiming under the grantee for a longer period than twelve years after the right to resume accrued under Act IX of 1871, s. 29, and Art. 130, Sch. II. KEVAL KUBER *v.* TALUKHDARI SETTLEMENT OFFICER
I. L. R. 1 Bom. 586

7. ——— and Arts. 121 and 149—*Resumption and assessment of lakhiraj land.* Discussion of the law of limitation as applicable to the resumption and assessment of lakhiraj lands. KOYLASHBASHINY DOSSEE *v.* GOCOOLMONI DOSSEE
I. L. R. 8 Calc. 230 : 10 C. L. R. 41

8. ——— *Suit for assessment of rent on lakhiraj land after decree for resumption—Effect of decree as creating or not relationship of landlord and tenant.* The plaintiff brought a suit in 1861 against *C* for resumption of, and for declaration of his right to, assess rent upon, *C*'s lands within his zamindari which *C* held as lakhiraj. That suit was presumably instituted under Regulation II of 1819, s. 30, which related only to resumption of lakhiraj lands existing prior to 1790, but there was nothing to show conclusively under what law it was instituted, or whether the lakhiraj grant was one subsequent or anterior to 1790. In that suit an *exparte* decree was passed in 1863 that "the suit be decreed and the land in dispute be declared to be shukur," *i.e.*, liable to assessment. In a suit brought in 1886 against the representatives of *C*, after serving a notice upon them to pay rent for the land at a certain rate, to assess the land at the rate mentioned in the notice, and for the recovery of rent at that rate:—*Held*, that the decree of 1863 had not the effect of creating the relationship of landlord and tenant between the parties, and therefore the suit, not having been brought within twelve years from the date of that decree, was barred by Art. 130 of the Limitation Act (XV of 1877). BIR CHUNDER MANIKYA *v.* RAJMOHUN GOSWAMI
I. L. R. 16 Calc. 449

9. ——— *Suit for assessment of rent on lakhiraj land after decree for resumption—Effect of decree as creating or not relationship of landlord and tenant.* The plaintiff in 1862 obtained a decree for resumption of land held under an invalid lakhiraj title created before 1790, the decree declaring the land liable to assessment. In a suit brought more [illegible]

[illegible] and tenant between the parties, and that the suit was therefore barred under Art. 130 of the Limitation Act (XV of 1877). NIL KOMAL CHUCKERBUTTY *v.* BIR CHUNDER MANIKYA
I. L. R. 16 Calc. 450 note

——— Art. 131 (1871, Art. 131)—

1. ——— *Cause of action—Suit for turn of worship of an idol.* The plaintiff [illegible] of his right to [illegible]

[illegible] DHRY *v.* MADAN MOHAN CHOWDHRY
6 B. L. R. 352 : 15 W. R. 29

[illegible]

claim as to the idol *A* came under the [illegible] was not barred; Art. 131 of Act IX of 1871, and but as to *A*, the claim was governed by Art. 118 of the same Act, and, not having been preferred within six years, was barred by lapse of time. ESHAN CHUNDER ROY *v.* MONMOHINI DASSI
I. L. R. 4 Calc. 683

LIMITATION ACT (XV OF 1877)—*contd.*

Schedule II—*contd.*

——— Art. 131—*contd.*

3 ——— *Worship of idol—Turn of worship—Recurring right.* A suit for a pala

GOPEEKISHAN GOSSAMY v THAKOORDASS GOSSAMY I. L. R. 8 Calc. 807 : 10 C. L. R. 439

4 ——— *Suit to recover burial fees—Cause of action.* In a suit to recover burial fees, the right to which occurred whenever a corpse was brought for burial, the period of limitation was held to be twelve years from the date of the first refusal of the enjoyment of the right BAHAR SHAH v. PERO SHAH . . . 24 W. R. 385

5. ——— *Claim for monthly allowance from zamindari—Demand and refusal—Recurring right* S, being entitled to a monthly allowance from a zamindari under an agreement dated 1861, died in that year. In 1867 K, his senior widow, claimed the allowance; the zamindar contended that the allowance was personal to S, and did not descend to his heirs. K obtained a

the zamindari. In 1876 M came of age, and in 1879 brought a suit against the zamindar to establish his right to the allowance: *Held*, that the claim by M was not barred by limitation. RAMNAD ZAMINDAR v DORASAMI I. L. R 7 Mad. 341

ZAMINDAR OF RAMNAD v DORASAMI I. L. R. 7 Mad 341

6. ——— *Execution of decree for maintenance—Decree for payment of an*

her every year on account of her maintenance The judgment debtors paid the annuity for some years In 1881 the widow applied for execution of the decree and recovered three years' arrears

LIMITATION ACT (XV OF 1877)—*contd.*

Schedule II—*contd.*

——— Art. 131—*contd.*

speaking on the day upon which for that year it became operative, and separately for each year.

Subba Lakshmi Ammal, I L R 1 Mad. 89, and *Yusuf Khan* v. *Sirdar Khan, I L R 7 Mad. 83,* distinguished LAKSHMIBAI BAPUJI OKA v. MADHAVRAV BAPUJI OKA I. L. R 12 Bom. 65

7 ——— *Declaratory decree for share of rents and for mesne profits—Periodical payments* A decree declaring that the plaintiff was entitled to receive every year from the defendant 12 per cent of the rents and profits of a certain inam village, and awarding mesne profits from the date of suit, was held not to be an award of a periodical payment *in æternum* The very word "mesne" implies a terminus *ad quem* as well as *à quo*, and in the absence of a special order the terminus was the date of the decree VINAYAK AMRIT v. ABAJI HAIBATRAV . . I. L. R 12 Bom 416

8 ——— and Art. 132—*Claim for arrears*

was brought to recover arrears of revenue from the owners of the land. It was found that no payment of revenue had ever been made by the defendants to the plaintiff, and the suit was dismissed as barred by limitation under Art 144, Sch. II of the Limitation Act: *Held*, that the suit was not barred, and that the plaintiff was entitled, under Arts. 131 and 132 of the Limitation Act, to recover twelve years' arrears of revenue. ALUBI v KUNHI BI . . I L R 10. Mad 115

9 ——— and Art 62—*Suit to establish title to a share in an annual allowance and also to re-*

recover six years' arrears. Both the lower Courts found that the plaintiffs had not received their share of the allowance at any time within twelve

LIMITATION ACT (XV OF 1877)—*contd.*

Schedule II—*contd.*

——— Art. 131—*concld.*

exclusion was the result of refusal made upon a demand. The period of twelve years provided by that article would run from the time when the plaintiffs were first refused the enjoyment of the right. *Held*, further, that the claim for arrears of the allowance fell under Art. 62 of the Limitation

I. L. R. 16 Bom 185

10 ——— and Art 132—*Kattubadi—Recurring right—Madras Rent Recovery Act* (*Mad*

dar ars ıad of twelve years before suit. The suit was dismissed in

dings among not proved his at his right to On second hat the above second appeal *L R 10 Mad. 115,* distinguished. RAMCHANDRA *v* JAGANMOHANA

I L R 15 Mad 161

——— Art. 132—

See ACCOUNT . I. L. R 35 Calc 298

See CONTRIBUTION, SUIT FOR—PAYMENT OF JOINT DEBT BY ONE DEBTOR.

I L. R 26 Mad 686

See HINDU LAW—ALIENATION.

I L R 34 Calc 184

See LIMITATION . 10 C W N. 151

See LIS PENDENS.

I L. R 31 Calc 745

See MORTGAGE . 9 C. W. N 989

See TRANSFER OF PROPERTY ACT, s. 95

I. L. R 26 All. 227

1. ——— *Malikana— Re-*

(by 1 kana *Bhu* *46.* mali

kana had not been received for a period of twelve years. BHULI SINGH *v* NEHMU BEHU

4 B. L. R. A C. 29 : 12 W. R 498

LIMITATION ACT (XV OF 1877)—*contd*

Schedule II—*contd*

——— Art. 132—*contd.*

BADURUL HUQ *v.* COURT OF WARDS

10 W. R. 302

CHUMMUN *v.* OM KOOLSOOM . 13 W. R. 465

(*Contra*) GOVERNMENT *v.* RHOOP NARAIN SINGH

2 W. R 162

HEERANUND SAHOO *v.* OZEERUN 6 W. R 151

Reversed, however, on review, in OZEERUN *v.* HEERANUND SAHOO . . 7 W. R 336

Where it was held that the twelve years' limitation applied, but that s. 1, cl. 13, of the Limitation Act was applicable

On a second review in HEERANUND SAHOO *v* OZEERUN . . . . 9 W. R. 102

cl. 12 of s 1 was held to apply to the case

2. ——— *Malikana—Interest in land.* Malikana is an interest in land coming under Act XIV of 1859, s. 1, cl 12, and the

KRISHTO CHUNDER SANDEL CHOWDHRY *v* SHAMA SOONDUREE DEBIA CHOWDHRAIN 22 W. 520

3 ——— *Payment of malikana by one of joint holders.* A payment by one of two persons holding land jointly of malikana on account of the joint land saves the operation of the limitation as against both of them. NURSINGH NARAIN SINGH *v.* AMEERUN . 22 W. R. 551

4 ——— *Malikana commuted from payment in cash to set-off against rent* Where an arrangement has been effected by which

claim of the ... 21 W. R. 88
AHMUD *v.* NEHAL SINGH

6. ——— *Suit for recovery of hak—Immoveable property.* In suits for recovery of haks, which are of the nature of claims of money charged upon or payable out of land, the period of limitation is twelve years. BHARATSANGJI MANSANGJI *v.* NAVANAIDHARAYA MANSUKHRAM

I Bom. 186

See FUTTEHSANGJI JESWANTSANGJI *v.* DESAI KULLIANRAIJI HAKOOMUTRAIJI

13 B L R. 254 : 10 Bom. 281
L. R. I I. A. 34 : 21 W. R. 178

LIMITATION ACT (XV OF 1877)—*contd.*

Schedule II—*contd.*

——— Art. 132—*contd.*

Overruling decision in FATESSANJI v. DESAI KALYANRAJA . . . 4 Bom A. C 189

But *see* RALJU MANOR v. DESAI KULLIANRAI HUKMATRAI . . . 6 Bom A C 56

which was held to be a case of a *hak* not charged on land.

7. ——— *Suit by hakdar against original grantee—Suit by sharer of hak against another—Desaigiri allowance.* Art 132, Sch

description is a suit for money received by the defendant for the plaintiff's use, and the period of limitation is three years as prescribed by Art 60 of the Act. HAPMUKHGAURI v. HARISUKH PRASAD . . . I L R 7 Bom 191

8 ——— *Bond charging immoveable property—Enforcing bond by demanding payment as if secured by collateral mortgage of land.* Where a suit was brought upon a bond to secure the payment of principal and interest, and the relief

for the recovery of an interest in land under s. 1, cl. 12, Act XIV of 1859, and was not barred for twelve years KRISTNA ROW v HACHAHA SUGAPA 2 Mad 307

CHETTI GAUNDAN v. SUNDARAM PILLAI 2 Mad. 51

KAUNDAN v MUTTAMMAL . . 3 Mad. 92

OOMRAO BEGUM v KHOOSERAM 1 N W. 181: Ed 1873, 260

JONNA VENKATA SAWMY *alias* VENKATASETTI v. BASIREDDY KONDAREDDY . 5 Mad 364

and SURWAR HOSSEIN KHAN v GHOLAM MAHOMED . . B L R. Sup Vol 879

s c. SURWAN HOSSEIN v. GHOLAM MAHOMED 9 W. R 170

Overruling PARUSH NATH MISSER v. BUNDAH ALI 6 W. R 132

The cases of GORA CHAND DUTT v. LOKENATH DUTT . . . . 8 W R 334

KADARSA RAUTAN v. RAVIAH BIBI 2 Mad. 108

SEETUL SINGH v. SOORUJ BUKSH SINGH 6 W. R. 318

and LYSTER v. KO MIHONE . 7 W. R. 354

may also be considered as overruled.

LIMITATION ACT (XV OF 1877)—*contd.*

Schedule II—*contd.*

——— Art. 132—*contd.*

9 ——— *Bond—Instrument creating interest in immoveable property.* B, having borrowed money from A, executed in his favour a bond (which was afterwards duly registered in which he engaged to repay the amount with interest on a day named, and hypothecated certain lands by way of security, with a condition that, in the event of the said lands being sold in execution of decree before the day fixed for repayment, A should be at liberty at once to sue for the recovery of the debt. Before the term for repayment expired, the mortgaged lands were sold in execution of a decree obtained by another creditor on a second bond made by B subsequently and subject to the bond made to A In a suit by A against B and the purchasers of the lands at the execution-sale, A

consequently was governed by the twelve years' rule of limitation therein provided, and not by the rules provided by cls 10 and 16 of the same section. *Semble* Although A was at liberty to sue from the date of the sale of the lands, limitation

L R 3 I. A. 1

10 ——— *Suit for money charged on immoveable property.* R obtained a decree on a bond hypothecating certain immoveable property and a declaration of his lien on the

7 N. W. 223

11 ——— *Charge on immoveable property—Mortgage—Suit for money lent.* A lent B R99, and B executed a document on the 24th July 1881, whereby he agreed to repay the

LIMITATION ACT (XV OF 1877)—*contd.*

Schedule II—*contd.*

——— Art. 132—*contd.*

was barred by limitation, three years, and not twelve years, under Art. 132 of the Limitation Act being the period applicable. MADHO MISSER *v.* SIDH BINAIK UPADHYA *alias* BENA UPADHYA
I. L. R. 14 Calc 687

12. ——— *Registered hypothecation bond—Personal remedy barred after six years.* Art 132 of Sch II of the Indian Limitation Act, 1877, by which a period of twelve years is allowed to enforce payment of money charged on immoveable property, refers only to suits to enforce payment by sale of the property charged, and not to

ANNAMMA . . . I. L. R. 10 Mad 100

13. ——— *Suit for money charged upon immoveable property—Instrument*

at the rate of R1-8 per cent per mensem, and promised to pay the principal with interest at the agreed rate upon a date named The bond

that all should be available to the said banker. If, without discharging the debt due to this banker, I should sell, mortgage, or dispose of the property to another banker, such transfer shall be void. For this reason, I have of my free will and consent executed this hypothecation-bond that it may be of use when needed" The amount secured by the bond become due on the 6th May 1879. The bond was *registered under the Registration Act* as a document affecting immoveable property, and the obligor was a party to such registration On the 9th May 1885, the obligee sued the heir of the obligor

that the bond created a charge upon the immoveable property of the obligor in respect of the principal and interest in question; that such principal and interest were moneys charged upon immoveable property within the meaning of Sch. II, Art. 132, of the Limitation Act (XV of 1877); and

14. ——— *Construction of*

when the debt was so charged, ... time GRISH CHUNDER MAITI *v* ANUNDOMOYI DEBI . . . . I. L. R. 15 Calc. 66
L. R. 14 I. A. 137

15. ——— *Purchase-money, Suit by vendor to recover.* The defendants purchased land from the plaintiff, and gave bonds for the purchase-money. These bonds were not registered,

KUMAJI . . . I. L. R. 10 Bom

16. ——— *Suit for payment of annuity* A plaintiff, whose right to receive a yearly payment out of the income of certain im-

of such allowance for ... The plaintiff alleged, but failed to prove, that he and his predecessor in title had received payment of the allowance for the intervening years or any of them:—*Held*, that the suit was not barred by limitation *Chagan Lal v. Bapubai, I. L. R. 5 Bom 68*, followed. GAJPAT RAI *v.* CHIMMAN RAI
I. L. R. 16 All. 189

17. ——— *Suit for kattubadi—Whether kattubadi is rent merely or constitutes a charge.* The plaintiff sued for possession of three villages granted by his predecessor to the ancestors of the defendants on the ground that the villages

LIMITATION ACT (XV OF 1877)—*contd.*

Schedule II—*contd.*

——— Art. 132—*contd.*

had been granted on service tenure, and that he was entitled to resume them He prayed in the alternative for a decree for six years' arrears of kattubadi:—*Held*, that the plaintiff was entitled to a decree for only three years' arrears of kattubadi. VIZIANAGRAM MAHARAJAH *v.* SITARAMARAZU I. L. R. 19 Mad. 100

(*Contra*) VENKATARAMA DOSS *v* MAHARAJAH OF VIZIANAGRAM . I. L. R. 19 Mad. 103 note

18. ——— *Suit for money due on mortgage bond—Money payable by instalments—Default in payment of instalment—Right to sue for entire amount due on default of payment of any instalment.* Where, by a mortgage-bond (hypothecating immoveable property) executed by the defendants, a sum of money was made payable by four instalments, the plaintiff to be at liberty in case of any default to sue either for the amount of that instalment or for the whole amount due on the bond:—*Held*, that limitation ran from the date of the first default SITAB CHAND NAHAR *v* HYDER MALLA . . I. L. R. 24 Calc. 281 1 C. W. N. 229

19. ——— *Suit for money lent on mortgage—Cause of action—Bond, cons*

bond ended on the 14th June 1882 In a suit brought upon the bond on the 12th June 1894.—*Held* (AMEER ALI, J., *dubitante*), that the money sued for became due on the 14th June 1882, and the suit was in time. *Rungo Bujaji* v *Babaji, I. L. R. 6 Bom 83*; *Almas Banee* v *Mahomed Ruja, I. L. R. 6 Calc. 239*; and *Gnanasammanda Pandaram* v. *Palaniyandi Pillai, I. L. R. 17 Mad. 61*, referred to by BEVERLEY, J. LATIFUNNESSA *v* DHAN KUNWAR . I. L. R. 24 Calc. 382

20. ——— *Hypothecation-bond for payment on certain date—On default in*

demand:—*Held*, that the period of limitation pre-

I. L. R. 20 Mad. 245

LIMITATION ACT (XV OF 1877)—*contd.*

Schedule II—*contd*

——— Art. 132—*contd*

21. ——— *Interest on mort-*

the property, and that the claim for interest fell under Art 132 of the Limitation Act (XV of 1877). VITHOBA TIMAP SHANBHOG *v.* VIGNESHWAR GANAP HEDGE . I. L. R. 22 Bom 107

22. ——— and Art 120—*Suit on mortgage-*

amount due by sale of the mortgaged property, and that, if the proceeds of such sale should not be sufficient to liquidate the debt, the mortgagees should realize the balance from the persons and

contemplate a second suit being instituted to recover the balance from the persons of the mortgagors in the event of the first remedy against the mortgaged property proving insufficient to pay the debt in full, and consequently that the cause of

was barred by limitation, so far as the personal liability of the mortgagors was concerned *Held*, also, that Art 132, Sch. II of the Limitation Act (XV of 1877), only refers to suits to enforce payment of money charged upon immoveable property by the sale of such property MILLER *v.* RUNGA NATH MULLICK . . I. L. R. 12 Calc. 389

See CHETTAR MAL *v.* THAKURI I. L. R. 20 All. 512

23. ——— *Suit to enforce charge under mortgage-deed. Held*, that a suit to en-

MANNU LALL *v* PEGUE 9 B. L. R. 175 note: 10 W. R. 379

GOKALBHAI MULCHAND *v.* JHAVER CHATURBHUJ
8 Bom. A. C. 61

24. ——— *Mortgage—Interest—Charge on land.* In suits to recover the

25. ——— *Money charged on immoveable property.* The plaintiff held a mortgage of certain immoveable property given to him by the defendant to secure the repayment of a loan of money with interest. The plaint stated the fact of the mortgage, but prayed only a money-decree.

a suit for a money-decree on the promise to pay in the mortgage, inasmuch as the article referred to was meant to apply to suits brought to enforce against the property payment of "money charged

26. ——— *Mortgage—Suit by a mortgagee to recover debt from a mortgagor personally—Money-decree.* Art. 132 of the Limitation Act, XV of 1877, Sch. II, is applicable to a suit

I. L. R 6 Bom 719

27. ——— and Art 120—*Sale for arrears of revenue—Lien of mortgagee on balance of sale-proceeds—Transfer of Property Act (IV of 1882), s 73—Mortgage suit—Charge on proceeds of revenue sale—Revenue-paying estate—Act XI of 1859, s. 53.* When a mortgaged property, being a revenue-paying estate, is sold free from all incumbrances for arrears of revenue, the lien of the mortgagee is transferred from the property itself to the balance of the sale proceeds which remains after satisfying the Government demand. The time within which a suit can be brought to recover money charged on a mortgaged estate is not therefore shortened by reason of the estate having been sold for arrears of Government revenue, in such a case, a suit brought by the mortgagee for satisfaction of the

LIMITATION ACT (XV OF 1877)—*contd.*

Schedule II—*contd.*

——— Art. 132—*contd.*

to enforce a charge on the mortgaged property be considered to cease when the property was sold

I. L. R 27 Calc 160.

28. ——— *Interest—Bom. Reg V of 1827, ss. 11 and 12—Act XXVIII of 1855—Act XIV of 1870—General Clauses Consolidation Act (I of 1868)—Damdupat—Rule* The mortgagor of an estate gave to the mortgagee,

under the mortgage, and that redemption of the mortgage should not be claimed until the bond has been satisfied. The assignee of the equity of redemption sued for possession of the estate on payment merely of the mortgage-money: *Held,* that s. 12 of Regulation V of 1827 is not in force. That section was repealed by Act XXVIII of 1855, *s.* 1, and although the latter section was repealed by Act XIV of 1870, the former was not restored, there being no express provision in Act XIV of 1870 to revive it, as required by the General Clauses Act (I of 1868, s. 3). The question of the period for which interest was to be allowed was therefore to be determined by Act XV of 1877, the Act in force at the date of the institution of this suit, Art 132 of which applied; but as the rule of damdupat is not affected by Limitation Acts, the defendants could not be allowed as interest more than the amount of the principal on which it was to be paid. HARI MAHADAJI *v.* BALAMBHAT RAGHUNATH
I. L R. 8 Bom. 233

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on
of mortgagor. In a suit by a mortgagee to enforce the mortgage, Art. 132, Sch. II of the Limitation Act, 1877, is not applicable, so far as relief against the mortgagor personally is claimed *Lallubhai v. Naran, I. L R. 6 Bom. 719,* dissented from. RAGHUBAR DAYAL *v.* LACHMIN SHANKAR
I. L. R. 5 All. 461

30. ——— *Periods respectively applicable to personal demands and to claims charged on immoveable property.* That there is a personal liability upon an instrument charging a debt upon immoveable property does not carry with it the effect that the period of limitation fixed for personal demands by Act IX of 1871 is extended

by reason of this demand being thereby brought within the meaning of Art. 132 of Sch. II of that Act, which applies to claims "for money charged upon immoveable property." A mortgagee of lands

Kalka Prasad
I. L R. 7 All 502: L. R 12 I A 12

31. ———— *Unpaid purchase-money—Suit to recover the money from the vendee personally and from the property sold—Personal remedy—Limitation Act, Sch II, Art 111* Unpaid

under the Act to claims to recover the money from the defaulter personally or his other property The

See Natesan Chetti *v* Soundararaja Ayyangar . I L R 21 Mad 141

32. ———— *Transfer of Property Act (IV of 1882), s 55, sub-s 4 (b)—Vendor's lien—Suit to enforce charge against the property. Held*, that a suit by a vendor of immoveable property to enforce against the property his lien for the unpaid purchase-money under s. 55, sub-s 4 (b), of the Transfer of Property Act, 1882, falls, within

from. *Ramdin v. Kalkapershad, L. R. 12 I. A 12, Sutton v. Sutton, L. R. 22 Ch. D 511*, and *Toft v. Stevenson, 5 De G. M. & G. 735*, referred to. Har Lal *v.* Muhamdi . I. L. R. 21 All. 454

33. ———— and Art. 147—*Hypothecation.* In 1884 *N* sued *A* to recover the principal and interest due on a registered bond executed in 1870.

LIMITATION ACT (XV OF 1877)—*contd.*

Schedule II—*contd.*

———— Art. 132—*contd.*

It was stipulated that the amount should be repaid with interest in 1871, and certain immoveable pro-

closure or sale from the date the money became due, but under Art 132 of the same schedule, which allows twelve years to enforce a payment of money charged on immoveable property. Aiiba *v.* Nanu
I. L. R. 9 Mad. 218

34 ———— *Suit for sale of immoveable property by a creditor who has a right to realize a charge not amounting to a mortgage.* The special provision of Art 147 of the Limitation Act

35 ———— *Suit for dower as a charge on immoveable property in hands of heir.*

36 ———— *Suit for money lent on deposit of title-deeds.* Where a creditor sues to recover money advanced by him on the deposit of title-deeds of property, his claim is governed by the limitation applying to debts; but where he

37. ———— *Suit for money charged on rents and profits—Suit for money, charged on immoveable property.* *K* borrowed from *C* a sum of R571, and at the same time executed a bond whereby he mortgaged usufructuarily to his creditor his "entire right and share" in a particular estate in lieu of the abovementioned sum; and it was agreed that *C* might realize the debt from the rents and profits of two years, and that, as

Abdool Rahiman, I. L. R. 5 Bom. 463, dissented from *Fatehsangji Jaswantsangji v. Desai Kul-*

LIMITATION ACT (XV OF 1877)—*contd.*

Schedule II—*contd.*

——— Art. 132—*contd.*

Lianraiji Hakoomathraiji, 13 B. L R. 254, referred to *Lallubhai v. Naran, I. L. R. 6 Bom. 719,* followed. MUHAMMAD ZAKI v CHATKU
I. L. R. 7 All 20

38. ——— *Suit for share of Government revenue and for declaration that estate is charged with amount.* A suit for recovery of Government revenue, which the defendant was bound to pay, but which has been paid by the plaintiff to save the whole estate from sale, where the plaintiff asks to have the amount so paid made a charge on the portion for which he paid it, is governed by Art. 132, and not by Art 99, of Act XV of 1877. RAM DUTT SINGH v. HORAKH NARAIN SINGH
I L R 6 Calc 549: 8 C L R 209

DEO NUNDUN AGHA v. DESPUTTY SINGH
8 C. L R 210 note

39. ——— *Suit to establish*

claimed arrears for twelve years, *viz*, from 1862 to 1874 ;—He admitted that he had received no payment for the year 1861, and that his claim for that year was barred The defendants contended that the period of limitation applicable to such a claim was six years, and not twelve years ; that this was the case, at any rate, so long as the Limitation Act, XIV of 1859, was in force, and that therefore the claim to so much of the arrears as was time-barred under that Act could not be revived by Act IX of 1871 ;—*Held*, that, whether Act XIV of 1859 or Act IX of 1871 applied to the plaintiff's claim, the

payments or allowances made on account of such

held to be twelve years, the plaintiff's claim was neverthless barred *in toto*, inasmuch as he admitted that he had received no payment on account of his share for thirteen years preceding the institution of the suit. In support of this contention, the cases of *Raiji Manor v Desai Kallianrai, 6 Bom A. C. 56,* and *Madvala v Balvant, 9 Bom 260,* were cited, where it was laid down that the cause of action to establish title and the cause of action to recover

LIMITATION ACT (XV OF 1877)—*contd.*

Schedule II—*contd.*

——— Art. 132—*contd.*

arrears which rest on such title are not distinct and

before he can ask for arrears accruing due under

become payable :—*Held*, that, unless the debt had

L R 19 I. A. 234

41 ——— *Suit to enforce mortgage by father against sons.* A suit to enforce against the sons a mortgage-bond executed by their father is governed by Art. 132 of Sch. II of the Limitation Act PRAN KRISHNA TEWARY v JADU NATH TRIVEDY . . 2 C W. N. 603

42 ——— and Arts 99 and 120—*Contribution, suit for—Sale of mortgaged property in execution of decree—Confirmation of sale* Where the owner of two villages sold under a decree obtained upon a mortgage claims contribution proportion-

im from ribution, uit, and

LIMITATION ACT (XV OF 1877)—*contd.*

Schedule II—*contd*

——— Art. 132—*contd.*

43. ——— and Arts 135 and 147—*Suit on a mortgage-bond—Conditional sale—Foreclosure—Beng Reg. XVII of 1806, ss 7, 8—Transfer of Property Act (IV of 1882), s. 67, cl, (a).* In a suit for possession of land on the allegations that it was mortgaged by the defendant's father in July 1849 to the plaintiffs' predecessors, by way of conditional sale, by a deed which fixed no time for payment, and made no provision as to the mortgagee taking possession, that the mortgagor made various payments down to 1875, and that subsequently foreclosure proceedings were instituted under Regula-

that, inasmuch as the deed fixed no time of payment and the suit was brought more than twelve years after the date of the mortgage-deed, and also more than twelve years after the date of the alleged last payment to the mortgagee, which was in 1875, the suit was barred by Art 132, Sch II of the Limitation Act Having regard to the provisions of s 67, cl. (*a*), of the Transfer of Property Act, the mort-

ferred to *Held*, also, that, inasmuch as the mortgagee did not become entitled to possession after foreclosure proceedings under Regulation XVIII of 1806, the proceedings having been found to have been invalid, and as the mortgage-deed did not contain any provision as to the mortgagee taking possession, Art. 135 was not applicable NILCOMAL PRAMANICK *v.* KAMINI KOOMAR BASU

I L R 20 Calc 269

44 ——— *Mortgage—Usufructuary mortgage—Further mortgage of the same property—Destruction of mortgaged property by diluvion—Transfer of Property Act (IV of 1882), s 68, right to sue under* Plaintiffs advanced money on an usufructuary mortgage of certain land in Magh 1280 (January 1873), and subsequently advanced another sum of money in Sraban 1280 (July 1873) on the security of the same land. The land was washed away in 1892. In an action

overruling the objection of limitation (i) with reference to the terms of the mortgage of Sraban 1280, that it was intended to add the money to the amount of the previous mortgage and to place it on the same conditions, and that the plaintiffs were therefore equally entitled to sue for the money upon this mortgage as upon the other (ii) That assuming that there was a right to sue for the money, it did not follow that the plaintiffs were not entitled to have substituted for the security the money which took the place of the security. That on the happening of the event provided for in s 68, the plaintiffs, who were admittedly entitled to remain in possession of the property until the money had been repaid, were clearly entitled to have the money substituted for the property. RAM JEWAN MISSER *v.* JUGGERNATH PERSHAD SINGH

I L R 25 Calc 450

45 ——— and Art 147—*Suit on a mortgage-bond—English mortgage—" Mortgage " and "Charge "—Transfer of Property Act, ss 58, 60, 67,*

Charan Sen, I. L R 12 Calc. 111, overruled. *Shib Lal v. Ganga Pershad, I. L R 6 All. 551,* dissented from. The clear distinction drawn for the first time between " mortgage " and " charge " in the Transfer of Property Act is not observed in the Limitation Act GIRWAR SINGH *v* THAKUR NARAIN SINGH . . . I L R 14 Calc 730

46. ——— and Art. 147—*Transfer of Property Act (IV of 1882), ss 58, 100—Hypothecation-bond* The period of limitation for suits upon hypothecation-bonds, which contain no power of sale, or effect no transfer of property, executed before the Transfer of Property Act came into operation, is twelve years under Sch II, Art 132, of the Limitation Act of 1877. *Aliba v. Nanu, I. L. R. 9 Mad 218,* followed *Per* MUTTUSAMI AYYAR, *J* —

I L R 10 Mad. 509

47 ——— and Art. 147—*Mortgage—Suit to sale.* On 2nd July 1879 the defendant mortgaged to the plaintiff certain property to secure payment of a debt with interest. The instrument

LIMITATION ACT (XV OF 1877)—*contd.*

Schedule II—*contd.*

———— Art. 132—*contd*

of the land:—*Held*, that the suit was governed by Art. 132, and not Art. 147, of Limitation Act, Sch. II, and was accordingly barred by limitation. RAMACHANDRA RAYAGURU *v.* MODHU PADHI

I L R. 21 Mad. 326

48 ———— and Art. 147—*Suit on mortgage bond to enforce payment of amount due by sale of mortgaged property—Suit on mortgage in English form for foreclosure of sale—Transfer of Property Act (IV of 1882), ss. 58, 88, 100.* A suit on a simple mortgage bond to enforce payment of the amount due on the bond by sale of the mortgaged property is governed by Article 132 of Schedule II of the Limitation Act (XV of 1877) and not by Article 147. The latter Article is limited in its application to the one class of mortgages in which alone the suit can be, and always is, brought for foreclosure or sale, that is to mortgages in the English form VASUDEVA MUDALIAR *v.* SRINIVASA PILLAI (1907) . I L R. 30 Mad 426

L R. 34 I A 186

49. ———— *Suit on a hypothecation-bond, dated 1876 (before Transfer of Property Act), to secure money payable on demand* In a suit to recover principal and interest due on a hypothecation-bond executed before the Transfer of Property Act was passed to secure a loan payable on demand, it appeared that the plaint was filed more than twelve years after the date of the document sued on:—*Held*, that the suit was governed by Limitation Act, Sch. II, Art. 132, and that an actual demand was not necessary to establish a starting point for limitation, and that the suit was barred by limitation. PERIANNA GOUNDAN *v* MUTHUVIRA GOUNDAN . I. L. R. 21 Mad. 139

50 ———— "*On demand*"

[illegible]

pulated that, if interest was not paid at 10 per cent. per annum as therein provided, then the loan should be repaid with interest at 15 per cent. when the obligee should require it. Default had been made in the payment of interest in 1831, but the obligee had not called for the money:—*Held*, that the suit was not barred by limitation NETTAKARUPPA GOUNDAN *v.* KUMARASAMI GOUNDAN

I L R 22 Mad 20

51. ———— *Transfer of Property Act (IV of 1882), s. 73—Mortgage—Surplus sale-proceeds at revenue sales—Suit for enforcement of payment of money under a mortgage deed.* Where property mortgaged to the plaintiff was sold for arrears of Government revenue, and, out of the

[illegible]

LIMITATION ACT (XV OF 1877)—*contd*

Schedule II—*contd.*

———— Art. 132—*concld.*

Collectorate, with interest:—*Held*, that, having regard to the provision of s. 73 to the Transfer of Property Act, a suit like the present, to enforce payment of money charged upon immoveable property, is governed by Art. 132 of Sch. II to the Limitation Act. *Kamala Kanta Sen* v. *Abdul Bakrul* alias *Habibullah, I. L. R. 27 Calc. 180*, referred to. JOGESHUR BHAGAT *v.* GHANASHAM DASS (1901) . . . . 5 C W. N. 356

52. ———— *Suit for contri-*

[illegible]

Act. *Rajah of Vizianagram* v. *Rajah Satrucherla Somasekhararaz, I. L. R. 26 Mad. 686, 780*, followed. When a plaint is presented as a pauper

[illegible]

and the subsequent payment of stamp duty was

[illegible] of the plaint.

William Orde,

AKAMMAL *v.*

I. L R. 28 Mad. 493

53 ———— *Voluntary pay-*

[illegible]

der the contribution,

SHIVRAO

I. L. R. [illegible] Bom. 437

LIMITATION ACT (XV OF 1877)—*contd.*

Schedule II—*contd.*

——— Art. 134 (1871, Art. 134: 1859, s. 5)—

See DEBUTTER I L R. 33 Calc. 511
13 C W N 805

See MORTGAGE—REDEMPTION.
I L R 29 All 471

See TRANSFER OF PROPERTY ACT (IV OF 1882), *ss* 62, 63.
I L R 29 All 471

1 ——— *Boná fide purchasers.* S 5, Act XIV of 1859, was intended to benefit only *boná fide* purchasers from trustees. KYBOONISSA *v* SABHOONISSA KHATOON
5 W R 238

2 ——— *Priority of boná fide purchase.* S 5, Act XIV of 1859, was held not to apply to a case of priority of *boná fide* purchase. KALLY MOHUN PAL *v* BHOLANATH CHAKLADAR
7 W R 138

3 ——— *Boná fide purchaser—Property belonging to idol* In 1799 an estate was purchased in the name of an idol, and immediately afterwards was mortgaged Subse-

[illegible]

second mortgage was purchased. The defendant held the property under titles derived from the mortgage of 1816 The shebaits representatives in 1867 sued to recover possession of the property as belonging to the idol, alleging that the purchaser was a mere trustee for the idol; that the present

[illegible]

property to the idol —*Held*, that the defendant claimed under the purchasers who had purchased *boná fide* and for valuable consideration within s 5, and that therefore the period of limitation was twelve years from the date of purchase, and the suit was barred. BRAJA SUNDARI DEBI *v.* LACHMI KUNWARI 2 B L R A C 155: 11 W R 13

s.c. on appeal to Privy Council
15 B L R P C 176 note: 20 W R 95

4 ——— *Endowed pro-*

[illegible]

[illegible] W. R. 116

——— Art. 134—*contd.*

A suit by a mutwali for endowed property alienated would probably come within this article.

See LALL MAHOMED *v.* LALL BRIJ KISHORE.
17 W. R. 430

5. ——— *Mortgage of endowed property—Suit for recovery of property.* Certain landed property alleged to have been sold to an idol, and registered in the name of the vendee's infant son as shebait, had, after the death of that son, been mortgaged twice by the vendee, who succeeded to the office of shebait, and was mortgaged subse-

[illegible]

LUCHMEE KOOMAREE . . 11 W. R 36

6 ——— *Suit to remove trustee and recover possession of trust property from*

[illegible]

7 ——— *Suit against pur-*

[illegible]

SAMI IYENGAR . . . [illegible] Mad. [illegible]

8 ——— *Mortgage by*

[illegible]

wards sold to *H*, the owner of a factory, who afterwards sold to *G & Co.* the factory with the lands

LIMITATION ACT (XV OF 1877)—*contd.*

Schedule II—*contd.*

———— Art. 134—*contd.*

appertaining thereto, amongst which was the property so released, and proceedings had for many years been taken by the other members to assert their rights :—*Held,* reversing the decision of the High Court, that *G & Co.* were not purchasers entitled to the protection of Act XIV of 1859, s. 5 :—*Held,* also, that s. 10 does not apply in such a case, although *K* acted fraudulently. RADHANATH DAS v. ELLIOTT . . . 6 B. L. R. 530

s c. RADHANATH DAS *v.* GISBORNE & CO. 14 Moo. I A 1: 15 W. R P. C 24

Reversing the decision of the High Court in GISBORNE & Co *v.* RADHANATH DAS 5 W. R. 253

9 ———— *Mortgage— Purchaser from mortgagee—Necessity of possession in*

as against the original mortgagor under Art 134 of the Limitation Act (XV of 1877). RAMCHANDRA VITHAL RAJADHIKSHA *v.* MOHIDIN I L R 23 Bom. 614

10. ———— *Sale of property by representative of mortgagee* The sale of mortgaged property by the heirs of a mortgagee after it has been held and enjoyed by them upwards of sixty years does not give a fresh cause of action to the representatives of the mortgagor. RAM DHUN BHUGGUT *v.* GUNESHEE MAHTOON 16 W. R. 96

11 ———— *Boná fide purchaser.* A defendant who seeks to protect himself by the provisions of s. 5, Act XIV of 1859, against the claim of a mortgagor suing within sixty years to recover mortgaged lands must show clearly that he or the person from whom he derives his title, was a *boná fide* purchaser. JUGGURNATH SAHOO *v.* SHAH MAHOMMED HOSSEIN . 14 B L R 386 23 W. R 99: L R. 2 I. A. 48

12 ———— *Mortgage—Sub-mortgage by mortgagee—Suit for redemption by original mortgagor against mortgagee and sub-mortgagees—Adverse possession by sub-mortgagees—"Purchaser for value" —"Valuable consideration"—S. 5 of the Limitation Act (XIV of 1859)—Art. 134, Sch. II of the Limitation Act (IX of 1871). Held,* that the expression "purchaser for valuable consideration" in Art 134 of the Limitation Acts (IX of 1871 and XV of 1877) includes a mortgagee as well as a purchaser properly so called. *Semble*

LIMITATION ACT (XV OF 1877)—*contd.*

Schedule II—*contd.*

———— Art. 134—*contd.*

13 ———— *Mortgage—Sub-mortgage—Suit for redemption.* In 1864 *A* mortgaged the property in dispute with possession to *B.*

5, and in 1891 the five plaintiffs sued defendants Nos. 1 and 2, the heirs of *B* (original mortgagee), and the sub-mortgagee (defendant No 3), for redemption and possession. The defendants contended that the suit was barred by the Limitation Act (XV of 1877), Sch. II, Art. 134 :—*Held,* that Art.

Khan v. *Bhiku Sazba, I. L. R. 9 Bom 475* and *Yesu Ramji* v. *Balkrishna, I. L. R. 15 Bom. 583,* referred to. SAVALARAM *v* GENU I. L R 18 Bom 387

14. ———— *Mortgage—Decree obtained by mortgagee for possession until payment of mortgage-debt—Possession taken by mortgagee under decree—Continuance after decree of relation of mortgagor and mortgagee—Sale by mortgagee—Vendor and purchaser—Subsequent suit for redemption by mortgagor against mortgagee and his vendee—Purchaser, boná fide.* A decree on a mortgage having directed the mortgagor to give possession to the mortgagee until the payment of the

as distinguished from actual knowledge . . . dor's title, does not prevent the purchaser from . . . In order to give

in that article is meant a person who purchases that which is *de facto* a mortgage upon the representation made to him and in the belief that it is an absolute title PANDU *v.* VITHU I. L R 19 Bom. 140

15 ———— *Vendor and purchaser—Bond fides—Notice of charitable trust.* The wo . . . 134 of Sch II of the . . . devised in . . . "vested in trust . . . The words "in good faith" in Art. 134 of Sch. II, and in s. 10

LIMITATION ACT (XV OF 1877)—*contd*

Schedule II—*contd.*

———— Art. 134—*contd*

of the Limitation Act (IX of 1871), do not necessarily involve absence of notice in the purchaser of an existing trust or equity, though the fact of there being such notice may be an important element in the question whether there was *boná fides* The defendant in the present case though he purchased with actual notice, must, having regard to all the

serting their right to claim under a *boná fide* purchase for value, by reason that those claiming against them are the objects of a charitable trust imposed on such property. MANIKLAL ATMARAM *v* MANCHERSHI DINSHA I L R 1 Bom 269

16 ———— *Mortgage—Sale of mortgagee's rights and interests for the recovery of arrears of revenue—Suit for redemption—Reg XI of 1822, s 29—Reg XVII of 1806* It was not intended that property which would pass on the sale by a mortgagee of his interest should come within the scope of Art 134, Sch II of the Limitation Act (XV of 1877) The article was intended to protect after the expiration of twelve years from the date of a purchase, a person who, happening to purchase from a mortgagee, had reasonable grounds for believing, and did believe, that his vendor had the power to convey and was conveying to him an absolute interest and not merely the interest of a mortgagee *Radanath Doss v Gisborne & Co, 14 Moo. I A 1 6 B. L. R 530, Pearey Lal v Saliga, I. L R 2 All. 394, and Kamala Singh v Batul Fatima, I L R 2 All 460*, referred to Contemporaneously with the execution of a registered deed of sale of zamindari property in 1835 for R4,000, the vendee executed a deed in favour of the vendors, which also was registered, and by which he agreed that, if within ten years the vendors should pay R4,000 in a lump sum without interest, he would accept the same and cancel the sale, and

entered in the Collector's register as that of proprietor. No application for foreclosure was made at any time. In 1885 the representatives of the

LIMITATION ACT (XV OF 1877)—*contd.*

Schedule II—*contd.*

———— Art. 134—*contd.*

mortgagors brought a suit against the representative of *C* for redemption of the mortgage and for mesne profits The defendant pleaded (i) that the suit was barred by limitation under Art 134, Sch. II of Act XV of 1877; (ii) that the several transferees were innocent purchasers for valuable consideration without notice, who had purchased in each case from the person who was, with the con-

ferees knew the law and made inquiries as to the

inferred that the transferees knew, or might or ought to have known, unless they wilfully abstained from inquiry, that the interest which they

entitled to a decree for redemption. BHAGWAN SAHAI *v* BHAGWAN DIN . I. L. R 9 All 97

17 ———— *Clause of condi-*

payment by mortgagors—Effect of such default—

LIMITATION ACT (XV OF 1877)—*contd.*

Schedule II—*contd.*

——— Art. 134—*contd.*

sequently converted into one for a declaration of *G*'s title as owner as against the mortgagors, *B* and *C*, who claimed a right to redeem. A decree was passed in 1872, ordering *B* and *C* to pay R100 to *G* within one month, or, in default, to deliver up to him possession of the land. The money was not

deem the property. The Court of first instance dismissed the suit, holding that the plaintiff's claim was *res judicata* by virtue of the decree passed in

1877), *V* having purchased the land for value from *G*, the ostensible owner, more than twelve years before suit. VISHNU CHINTAMAN *v.* BALAJI BIN RAGHUJI . . . I L. R 12 Bom 352

18. ——— *Suit to redeem by assignee of equity of redemption—Title purchased at execution-sale* Suit, in 1885, by the assignee of the equity of redemption to redeem a mortgage of 1826. The mortgagees were put into possession

tion-purchaser, who had dealt with it as absolute owner:—*Held*, that the suit was barred under the Limitation Act, 1877, Sch II, Art. 134. MUTHU *v* KAMBALINGA . . I L R. 12 Mad 316

19. ——— *Purchaser for value—Mortgage in 1842—Subsequent mortgage in 1872 by mortgagee representing himself to be owner—Decree on second mortgage—Sale in execution—Purchaser at auction-sale—Right of original mortgagor in 1892 to redeem mortgaged property.* In 1842 the grandfather of the plaintiff mortgaged the land in question to one *M* with possession. On 9th May 1872, *M*'s son, who was then still in possession representing himself to be the owner, mortgaged the property with possession to defendant No. 2 and *S*, the grandfather of defendant No. 3. These defendants sued upon their mortgage of May 1872, and obtained a decree and sold the property in 1881 in execution, purchasing it themselves. Defendant No 3 subsequently sold his share to defendant No 4 In 1892 the plaintiff sued the first defendant (the grandson of the original mortgagee *M* under the mortgage of 1842) for redemption, making defendants Nos. 2, 3 and 4 party defendants. The defendants contended that they were purchasers for value, and that the suit was barred by Art. 134 of the Limitation Act:—*Held*, that the suit was not barred, and that the plaintiff was entitled to redeem. By the sale in 1881, the interest of defendant No. 1 became vested in them. The plaintiff could then have redeemed them on paying off the amount due under the mortgage of 1842, disregarding the mortgage of 9th May 1872 altogether. But when the defendants Nos. 2 and 3 had held possession under that mortgage for

sion without redeeming it also. The purchase by defendants Nos 2 and 3 at the auction-sale in 1881 could not avail them, as the present suit was brought within twelve years from that date. Though a mortgagee is a purchaser for value, he is not an out-and-out purchaser, but only a purchaser *sub modo.* He purchases a mortgagee's interest in the land, *viz*, a right to hold the mortgaged property until the debt is paid. A mortgagee is *pro tanto* a purchaser for value within the meaning of Art 134 of the Limitation Act (XV of 1877). MALUJI *v* FAKIRCHAND . I. L. R. 22 Bom. 225

20. ——— *Sale by mortgagee as owner.* *A* mortgaged land to *B* and then sold it

sion of certain waqf property during the years 1864 to 1869 executed various mortgages of portions of the waqf property, professing to do so

recover possession of the mortgaged property

LIMITATION ACT (XV OF 1877)—*contd.*

Schedule II—*contd.*

——— Art. 134—*contd.*

Madhaba v. *Narayana, I L R. 9 Mad 241*, referred to. *Per* BANERJI, J.—The suit is barred by Art. 134 of the second Schedule to the Indian Limitation Act, 1877, which is as much applicable to a suit against a mortgagee for value from a trustee as to a suit against a person to whom the trustee has sold trust property for value *Gobind Nath Roy v Luchmee Koomaree, 11 W R 36; Yesu Ramji Kalnath v Ballrishna Lakshman, I. L. R 15 Bom 583; Maluji v. Fakir Chand, I L R 22 Bom 225*, and *Nilmony Singh v. Jagabondhu Roy, I L R 23 Calc 536*, referred to. *Per* AIKMAN J—The term "purchased" as used in Art. 134 of the second Schedule cannot be taken as including "mortgaged," but Art 144 would apply and be a bar to the suit. BEHARI LAL v MUHAMMAD MUTTAKI
I. L. R. 20 All. 482

22. ——— "*Purchased*"—*Sub-mortgage by a mortgagee as if complete owner—Possession by sub-mortgagee for over twelve years—Suit for redemption by original mortgagor—Right of sub-mortgagee to be redeemed* In 1864, *A* mortgaged certain lands to *B* for R750 In 1881, *B*

was, in fact, only that of a mortgagee *C* enjoyed

valid as against *A*, had become good by *C*'s possession for twelve years, the property having been "purchased" from a mortgagee, within the meaning of Art 134 of Sch II to the Limitation Act—*Held* (DAVIES, J, dissenting), that *C* had "purchased," within the meaning of Art 134 MANAVIKRAMAN ETTAN THAMBURAN v AMMU (1901)
I. L. R. 24 Mad. 471

23. ——— *Inapplicability to case of involuntary sale.* Where, in execution of a money-decree, immoveable property of a judgment-debtor, in which his real interest is only that of a mortgagee, is attached and brought to sale, the auction-purchaser is not a purchaser from

purchase is made at a sale by the Court in execution of a decree it is complete, for purposes of limitation, at the date of the purchase, and not at the date of its confirmation by the Court. AHMAD KUTTI v. RAMAN NAMBUDRI (1901) **I. L. R. 25 Mad. 99**

24. ——— *Alienation of trust property by guru of a math for valuable consideration—Suit by his successor to recover possession. Trustee, alienation by—Adverse possession—Limitation.* The *guru* or manager of a certain *math*, who, as trustee, held certain property belonging to the *math*, sold it for value to the defendant in 1871. In

GOSAVI v. DATTATRAYA KRISHNA SINDE (1902)
I. L. R. 27 Bom. 363

25. ——— *Trust property—Wakf—Land held on condition of service—Alienation* Where trust property is alienated by the trustees, and the alienees have been in possession by purchase for more than twelve years, the suit, as one for the purpose of restoring the property to the trust, must fail as being barred by Art. 134, Sch II to the Limitation Act (XV of 1877). SAGUN BALKRISHNASHET KANEKAR v. KAJI HUSSEN VALAD KAJI ALI (1903) **I. L. R. 27 Bom. 500**

26 ——— *Applies only when absolute property sold—Malabar Law—'Anubhavam' grants, meaning of—Whether the use of the word creates an irredeemable tenure depends on the particular instrument in each case.* A stipulation in a kanom deed that a certain amount in grain or money is granted to the mortgagee as 'anubhavam'

VYTHILINGAM PILLAI v. KUTHIRAVATIAH NAIR (1906) **I. L. R. 29 Mad. 501**

27. ——— **and Art. 144**—*Temple property—Manager—Trustee—Lease by manager—Suit by*

LIMITATION ACT (XV OF 1877)—*contd.*

Schedule II—*contd.*

——— Art. 134—*concld.*

subsequent manager to recover the property—Adverse possession. In 1845, one Krishna Swami granted

drawn In 1885 the then manager brought a similar suit against the defendants, with a similar result. In April, 1900, the present plaintiff, as manager of the temple, filed this suit to eject the defendants, alleging that they were yearly tenants and that he had given them notice to quit. He contended that his predecessor, Krishna Swami had no power to alienate the property of the temple:—*Held*, that the suit was barred by limitation. If the original lessor was not a trustee for the temple of the land in question, then the defendants had held by adverse possession, and the suit was barred

purchase *pro tanto* of the interest thereby assured. NARAYAN MANJAYA *v.* RAMCHANDRA DEVASTHAN (1903) . . I. L. R. 27 Bom. 373

——— Art. 135 (1871, Art. 135)—

1. ——— *Suit for possession by mortgagee of deed of conditional sale—Foreclosure—Cause of action* A conditional mortgage-deed was drawn out, stipulating for the repayment of the loan by annual instalments in nineteen years, and empowering the mortgagee to foreclose if two instalments remained unpaid on any third yearly instalment falling due:—*Held*, on the construction of the mortgage-deed, that the mortgagee was not thereby limited to foreclose as soon as the first default in payment of those instalments occurred and not afterwards; but that the mortgagee was authorized in proceeding to foreclose if there were

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gagee's right is not repudiated, but recognized. The mortgagee's right to sue for possession accrues upon the final foreclosure, and he can sue at any time within twelve years from that date, under cl. 12, s. I, Act XIV of 1859 BULDEEN *v.* GOLAB KOONWER . Agra F. B. 102 : Ed. 1874, 77

2. ——— *Mortgage—Dispossession of mortgagor* The rule that the date

LIMITATION ACT (XV OF 1877)—*contd.*

Schedule II—*contd.*

——— Art. 135—*contd.*

undisturbed possession of the estate. But when the mortgagor is dispossessed and his title disputed, and another person obtains possession of the estate,

adverse possession, unless when the mortgagor contests the title of the new holder, and litigation

an adverse one, the mortgagee's cause of action against the new holder commences from the date on which the latter obtains possession on his title adverse to the mortgagor which has been confirmed by the Courts. RAMCOOMAR SEIN *v.* PROSONOCOOMAR SEIN . . . . W. R. 1864, 375

See SHEOUMBER SAHOO *v.* BHOWANEEDEEN KULWAR . . . . . 2 N. W. 223

3. ——— *Suit for possession—Mortgagor transferee, possession by.* In

WAN DOSS *v.* BEHARY KHAN Marsh. 191 : 1 Hay 437

4. ——— *Suit for possession after foreclosure of mortgage—Adverse possession* Where a plaint-

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High Court

limitation.

runation of

LIMITATION ACT (XV OF 1867)—*contd.*

Schedule II—*contd.*

——— Art. 135—*contd*

to find out the owners and deliver up the estate to them KANTI CHUNDER MOOKERJEE v BAMUN DOSS MOOKERJEE . . 25 W. R. 434

5. ——— *Purchaser from mortgagor—Adverse possession.* Where a party *bona fide* purchased from another as his own

twelve years, and after the lapse of ... e than twelve years from the accrual to the mortgagee of the right of entry under the mortgage-deed (which was in the English form), the mortgagee sued the purchaser to obtain possession of the property :—*Held*, that the suit was barred. *Quære* Whether in cases in the mofussil, where the mortgagor continues in possession, paying rent to the

16 W. R. P. C. 33

s c in High Court, KHELAT CHUNDER GHOSE *v.* TARACHURN KOONDOO CHOWDHRY 6 W. R. 269

6. ——— *Adverse possession—Purchaser at a sale in execution of decree*

s on ANAND MAYI DASI v DHARENDRA CHANDRA MOOKERJEE

8 B. L. R. 122 : 14 Moo. I. A. 101
16 W. R. P. C. 19

Affirming decision of High Court in DHURUNDRO CHUNDER MOOKERJEE v ANNUND MOYEE DOSSEE 1 W. R. 103

7. ——— *Suit for possession—Conditional mortgagee, title of.* It is not necessary for a conditional mortgage, if he be in possession at the expiry of the year of grace, to

8. ——— *Mortgage—Suit for possession—Foreclosure—Beng Reg XVII of*

LIMITATION ACT (XV

Schedule II—*contd.*

——— Art. 135—*contd.*

upon and retain possession of the mor

1867 he instituted foreclosure proceedi Regulation XVII of 1806 against the the auction purchasers. In a suit institu plaintiff on the 22nd January 1874 agains tion-purchasers to recover possession of gaged property .—*Held*, that the cause of arose on 9th July 1865, when default was payment of the *mortgage*-debt, and the sui having been instituted within twelve years that date, was barred by s. 1, cl 12, Act 1859 No new cause of action arose by reason the foreclosure proceedings on the expiry of year of grace in August 1868. DENONATH GAN LY v NURSING PROSAHAD DAS

14 B. L. R. 87 : 22 W. R.

9. ——— *Mortgage—Suit for possession—Foreclosure—Cause of action.* The defendant mortgaged certain immoveable property

gagee, the possession of the mortgagor was permissive, and no cause of action accrued to the mortgagee MANKEE KOOER v MUNNOO

14 B. L. R. 315 : 22 W. R. 543

10. ——— *Suit for fore-* ... The plaintiff

plaintiff filed a suit in the nature of a ...

LIMITATION ACT (XV OF 1877)—*contd.*

Schedule II—*contd.*

———— Art. 134—*concld.*

subsequent manager to recover the property—Adverse

the latter pleaded his lease, and the suit was withdrawn. In 1885 the then manager brought a similar suit against the defendants, with a similar result. In April, 1900, the present plaintiff, as manager of the temple, filed this suit to eject the defendants, alleging that they were yearly tenants and that he had given them notice to quit. He contended that his predecessor Krishna Swami had no power to alienate the property of the temple:—*Held,* that the suit was barred by limitation. If the original lessor was not a trustee for the temple of the land in question, then the defendants had held by adverse possession, and the suit was barred under Art. 144 of Sch. II to the Limitation Act (XV

purchase *pro tanto* of the interest thereby assured. NARAYAN MANJAYA *v* RAMCHANDRA DEVASTHAN (1903) . . I. L. R. 27 Bom. 373

———— Art. 135 (1871, Art. 135)—

1. ———— *Suit for possession by mortgagee of deed of conditional sale—Foreclosure—Cause of action* A conditional mortgage-deed was drawn out, stipulating for the repayment of the loan by annual instalments in nineteen years, and empowering the mortgagee to foreclose if two instalments remained unpaid on any third yearly instalment falling due:—*Held*, on the construction of the mortgage-deed, that the mortgagee was not thereby limited to foreclose as soon as the first default in payment of those instalments occurred and not afterwards; but that the mortgagee was authorized in proceeding to foreclose if there were subsequent defaults, any previous default notwithstanding, in fact, there is nothing in law to limit the time within which a mortgagee may foreclose, if, notwithstanding one or more default, the mortgagee's right is not repudiated, but recognized. The mortgagee's right to sue for possession accrues

2. ———— *Mortgage—Dispossession of mortgagor* The rule that the date

LIMITATION ACT (XV OF 1877)—*contd.*

Schedule II—*contd.*

———— Art. 135—*contd.*

of expiry of the year of grace is the date from which a mortgagee's cause of action to obtain possession of the mortgaged estate is to be calculated, applies only when the mortgagor remains in peaceable and undisturbed possession of the estate. But when

adverse possession, unless when the mortgagor contests the title of the new holder, and litigation

an adverse one, the mortgagee's cause of action against the new holder commences from the date on which the latter obtains possession on his title adverse to the mortgagor which has been confirmed by the Courts RAMCOOMAR SEIN *v* PROSONOCOOMAR SEIN . . . . . W. R. 1864, 375

See SHEOUMBER SAHOO *v* BHOWANEEDEEN KULWAR . . . . . 2 N. W. 223

3. ———— *Suit for possession—Mortgagor transferee, possession by.* In

WAN DOSS *v*. BEHARY KHAN Marsh. 191 : 1 Hay 437

4. ———— *Suit for possession after foreclosure of mortgage—Adverse possession* Where a plaint-

and had taken posses-

LIMITATION ACT (XV OF 1887)—*contd.*

Schedule II—*contd.*

———— **Art. 135—*contd.***

to find out the owners and deliver up the estate to them KANTI CHUNDER MOOKERJEE *v* BAMUN DOSS MOOKERJEE . . 25 W. R. 434

5. ———— *Purchaser from mortgagor—Adverse possession.* Where a party *bonâ fide* purchased from another as his own property land in fact mortgaged, and obtained possession and mutation of names, his title was held to be adverse to the mortgagee. After a *bonâ fide* purchaser had been in open possession more than twelve years, and after the lapse of more than twelve years from the accrual to the mortgagee of the right of entry under the mortgage-deed (which was in the English form), the mortgagee sued the purchaser to obtain possession of the property:—*Held*, that the suit was barred. *Quære*: Whether in cases in the mofussil, where the mortgagor continues in possession, paying rent to the mortgagee, the law of limitation begins to run from [illegible]

[illegible]

s c in High Court, KHELAT CHUNDER GHOSE *v* TARACHURN KOONDOO CHOWDHRY 6 W. R. 269

6. ———— *Adverse possession—Purchaser at a sale in execution of decree* The possession of a purchaser at the sale in execution of decree, without notice of a mortgage of the property, is adverse to the mortgagee, and a suit to disturb his possession must be brought within twelve years of the commencement of such possession ANAND MAYI DASI *v* DHARENDRA CHANDRA MOOKERJEE

8 B. L. R. 122 : 14 Moo I. A. 101
16 W. R. P. C. 19

Affirming decision of High Court in DHURUNDRO CHUNDER MOOKERJEE *v* ANNUND MOYEE DOSSEE
1 W. R. 103

7. ———— *Suit for possession—Conditional mortgagee, title of* It is not necessary for a conditional mortgage, if he be in possession at the expiry of the year of grace, to bring a suit to complete his title The limitation period should be computed from the expiry of the year of grace, if the mortgagee be then in possession. KHOOB CHUND *v.* LELLA DHUR . 3 Agra 103

8. ———— *Mortgage—Suit for possession—Foreclosure—Beng. Reg. XVII of* [illegible]

LIMITATION ACT (XV OF 1877)—*contd.*

Schedule II—*contd.*

———— **Art. 135—*contd.***

upon and retain possession of the mortgaged pro- [illegible]

[illegible] mortgage. On the 3rd of April 1866, the plaintiff bought the mortgagee's interest and [illegible]
1867 [illegible]
Regul [illegible]
the a [illegible]
plaintiff on the 22nd January 1874 against the auction-purchasers to recover possession of the mortgaged property —*Held*, that the cause of action arose on 9th July 1865, when default was made in payment of the mortgage-debt, and the suit, not having been instituted within twelve years from that date, was barred by s 1, cl. 12, Act XIV of [illegible]

14 B. L. R. 87 : 22 W. R. 90

9. ———— *Mortgage—Suit for possession—Foreclosure—Cause of action.* The [illegible]

[illegible] missive, and no cause of action accrued to the mortgagee MANKEE KOOER *v.* MUNNOO
14 B. L R. 315 : 22 W. R. 543

10. ———— *Suit for fore-* [illegible]

[illegible] gagee Default was made in payment and the mortgagee entered into possession, and continued in possession until 1858, when he was dispossessed by the mortgagor. On the 29th March 1866, the plaintiff filed a suit in the nature of a foreclosure suit

LIMITATION ACT (XV OF 1877)—*contd.*

Schedule II—*contd.*

——— Art. 134—*concld.*

subsequent manager to recover the property—Adverse

drawn. In 1885 the then manager brought a similar suit against the defendants, with a similar result. In April, 1900, the present plaintiff, as manager of the temple, filed this suit to eject the defendants, alleging that they were yearly tenants and that he had given them notice to quit. He contended that his predecessor Krishna Swami had no power to alienate the property of the temple.—*Held*, that the suit was barred by limitation. If the original lessor was not a trustee for the temple of the land in question, then the defendants had held by adverse possession, and the suit was barred under Art. 144 of Sch. II to the Limitation Act (XV

tion, made no difference. *A mulgeni* lease is a purchase *pro tanto* of the interest thereby assured. NARAYAN MANJAYA *v.* RAMCHANDRA DEVASTHAN (1903) . . I. L. R. 27 Bom. 373

——— Art. 135 (1871, Art. 135)—

1. ——— *Suit for possession by mortgagee of deed of conditional sale—Foreclosure—Cause of action.* A conditional mortgage-deed was drawn out, stipulating for the repayment of the loan by annual instalments in nineteen years, and empowering the mortgagee to foreclose if two instalments remained unpaid on any third yearly instalment falling due:—*Held*, on the construction of the mortgage-deed, that the mortgagee was not thereby limited to foreclose as soon as the first default in payment of those instalments occurred and not afterwards; but that the mortgagee was authorized in proceeding to foreclose if there were subsequent defaults, any previous default notwithstanding, in fact, there is nothing in law to limit the time within which a mortgagee may foreclose, if, notwithstanding one or more default, the mortgagee's right is not repudiated, but recognized.

2. ——— *Mortgage—Dispossession of mortgagor* The rule that the date

LIMITATION ACT (XV OF 1877)—*contd.*

Schedule II—*contd.*

——— Art. 135—*contd.*

of expiry of the year of grace is the date from which a mortgagee's cause of action to obtain possession

the mortgagor is dispossessed and his title disputed, and another person obtains possession of the estate, the possession of the new holder becomes adverse to both mortgagor and mortgagee. The mortgagee's cause of action against the new holder will count from the date on which the latter obtained such adverse possession, unless when the mortgagor contests the title of the new holder, and litigation

an adverse one, the mortgagee's cause of action against the new holder commences from the date on which the latter obtains possession on his title adverse to the mortgagor which has been confirmed by the Courts RAMCOOMAR SEIN *v* PROSONOCOOMAR SEIN . . . . . W. R. 1864, 375

See SHEOUMBER SAHOO *v* BHOWANEEDEEN KULWAR . . . . . 2 N. W. 223

3. ——— *Suit for possession—Mortgagor transferee, possession by.* In 1835, *A*, a mortgagee, obtained a decree in a foreclosure suit, subject to two prior mortgages. In

4. ——— *Suit for possession after foreclosure of mortgage—Adverse possession—Possession of dar-patnidar.* Where a plaintiff, who had acquired the right of a mortgagee in a ... under a ... had omit- ... he first ... nt put in ... t his pre- ... d in the decessor in title ... revenue to save the patni, and had taken possession of the estate under s. 13, Regulation VIII, of 1819; and the lower Courts found that plaintiff ... because the dar-

Art. 135—contd.

to find out the owners and deliver up the estate to them KANTI CHUNDER MOOKERJEE v BAMUN DOSS MOOKERJEE 25 W. R. 434

5. ——— *Purchaser from mortgagor—Adverse possession* Where a
... s own
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... s held
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... *fide* purchaser had been in open possession more than twelve years, and after the lapse of more than twelve years from the accrual to the mortgagee of the right of entry under the mortgage-deed (which was in the English form), the mort-
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... in possession paying rent to the
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... C. 33

s.c in High Court, KHELAT CHUNDER GHOSE v TARACHURN KOONDOO CHOWDHRY 6 W. R. 269

6. ——— *Adverse possession—Purchaser at a sale in execution of decree* ... at the sale in execu-

...

MOOKERJEE 8 B. L. R. 122 : 14 Moo I. A. 101 16 W. R P. C. 19

Affirming decision of High Court in DHURUNDRO CHUNDER MOOKERJEE v ANNUND MOYEE DOSSEE 1 W. R. 103

7. ——— *Suit for possession—Conditional mortgagee, title of* It is not ... conditional mortgagee, if he be in

...

8. ——— *Mortgage—Suit for possession—Foreclosure—Beng Reg XVII of* ... Bengali deed

Art. 135—contd.

... and retain possession of the mortgaged pro...
... A failed to pay at the time stipulated ...
... 18th of December 18.. ...
... the estates were sold in execution, and
... by the defendants without notice of the
1867 ... On the 3rd of April 1866, the plaintiff
... mortgagee's interest, and in August
Regulation ... foreclosure proceedings under
the auction ... XVII of 1806 against the defendants,
plaintiff ... In a suit instituted by the
tion-purchasers ... January 1874 against the auc-
gaged property ... possession of the mort-
arose on 9th ... that the cause of action
payment of the ... when default was made in
having been ins... mortgage-debt, and the suit, not
that date, was barred within twelve years from
1859. No new cause ... s. 1, cl. 12, Act XIV of
the foreclosure proceedings ... arose by reason of
year of grace in August ... on the expiry of the
LY v NURSING PROSHAD DAS ... DEBONATH GANGOO-
14 B. L. R. 87 : 22 W. R. 90

9. ——— *for possession—Foreclosure—Cause of action—Mortgage—Suit* ... defendant mortgaged certain immoveable property to the plaintiff by a byebil wafa, or deed of conditional sale, dated 20th January 18..

...

gagee, the possession
missive, and no cause of action accr...
gagee. MANKEE KOOER v MUNNOO
14 B. L. R. 315 : 23

10 ——— *Suit*

...

gagee, ...
mortgagee entered into possession, and
in possession until 1858, when he was di-
by the mortgagor On the 29th March
plaintiff filed a suit in the nature of a fore-

10

LIMITATION ACT (XV OF 1877)—*contd.*

Schedule II—*contd.*

——— Art. 134—*concld.*

subsequent manager to recover the property—Adverse possession. In 1845, one Krishna Swami granted a *mulgeni* (perpetual) lease of the land in question

that time belonged to the temple. In 1854 Krishna Swami's successor, the then manager of the temple, sued Hanmanna (the lessee) for enhanced rent, but the latter pleaded his lease, and the suit was withdrawn. In 1885 the then manager brought a

original lessor was not a trustee for the temple of the land in question, then the defendants had held by adverse possession, and the suit was barred under Art 144 of Sch. II to the Limitation Act (XV of 1877) If the original lessor was a trustee, he had, as such, alienated the land for valuable consideration, and the suit was barred by Art. 134 of Sch. II to the Limitation Act. The fact that there was a lease to the defendants, and not an absolute alienation, made no difference. *A mulgeni lease is a purchase pro tanto of the interest thereby assured.* NARAYAN MANJAYA *v.* RAMCHANDRA DEVASTHAN (1903) . . I. L. R. 27 Bom. 373

——— Art. 135 (1871, Art. 135)—

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2. ——— *Mortgage—Dispossession of mortgagor* The rule that the date

LIMITATION ACT (XV OF 1877)—*contd.*

Schedule II—*contd.*

——— Art. 135—*contd.*

of [illegible]

the mortgagor is dispossessed and his title disputed, and another person obtains possession of the estate, the possession of the new holder becomes adverse to both mortgagor and mortgagee. The mortgagee's cause of action against the new holder will count from the date on which the latter obtained such adverse possession, unless when the mortgagor contests the title of the new holder, and litigation

verse to the mortgagor which has been confirmed by the Courts RAMCOOMAR SEIN *v.* PROSONOCOOMAR SEIN . . . . W. R. 1864, 375

See SHEOUMBER SAHOO *v.* BHOWANEEDEEN KULWAR . . . . . 2 N. W. 223

3. ——— *Suit for possession—Mortgagor transferee, possession by.* In 1835, *A*, a mortgagee, obtained a decree in a foreclosure suit, subject to two prior mortgages. In

4. ——— *Suit for possession after foreclosure of mortgage—Adverse possession* [illegible] Where a plaint- [illegible]

revenue to save the patni, and had taken possession of the estate under s. 13, Regulation VIII, of 1819; and the lower Courts found that plaintiff was entitled to recover possession because the patnidar had recovered the amount of his deposit [illegible] by the High Court

LIMITAT... —contd.

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6. ——— *...sion—Purchaser ...*
The possession of ... tion of decree, with... property, is adverse to ... to disturb his possession m... twelve years of the commenceme... sion ANAND MAYI DASI v. DHARENDRA... MOOKERJEE

8 B. L. R. 122 : 14 Moo. I. A.
16 W. R. P. C. 1...

Affirming decision of High Court in DHURUNDRO CHUNDER MOOKERJEE v. ANNUND MOYEE DOSSEE
1 W. R. 103

7. ——— *Suit for possession—Conditional mortgagee, title of.* It is not ...

... year of grace, if the mortgagee be then in possession.
KHOOB CHUND v. LEELA DHUR . 3 Agra 103

8. — *Mortgage—Suit for possession—Foreclosure—Beng. Reg. XVII of 1806, s. 8—Cause of action.* ...A, by a Bengali deed ...

LIMITATION ACT (XV OF 1877)—*contd.*

Schedule II—*contd.*

——— Art. 141—*contd.*

41. ——— *Suit by reversioner for possession of immoveable property on death of Hindu female heir—Adverse possession—Limitation Act, 1877, s. 2—Revival of extinguished right—* ...

... reversioner was also ... Kumar Ghose, ... v. Shama ... BRAJA ...

... 285

... *law— ... held* ...

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10. ——— *...closure of m...* on the 2nd ... house ... vided that ... of the ... should be c... gagee. ... mortgagee in possession by the ...

877)—*contd.*

In a suit brought
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Mahabir P.
Singh, I.
Art. 141, Sc
1877), applies to a case in which the reversion

ferred to (iii) The old law that limitation which barred the widow barred the reversioner has undergone a change under Art. 142, Sch. II of Act IX of 1871, and Art 141, Sch. II of Act XV of 1877 (*Sreenath Kur* v. *Prosunno Kumar Ghose, I. L. R.*

and the coming into operation of Act IX of 1871 in April 1871: *Drobomoyi Gupta* v. *Davis, I. L. R. 14 Calc. 323,* referred to. In the present case, however, the possession held by the heir of *G* was not adverse to the widow in the sense of its being obtained against her will, and there was every reason to think that it was obtained in collusion with her; the reversioner's claim was therefore not barred by limitation. *Nobin Chunder Chuckerbutty* v. *Gurupersad Doss, B. L. R. Sup Vol. 1008, 9 W. R. 05,* referred to (iv) As regards the moiety covered by the hebas, the widow, when she came into possession, was the heir of *K*, and she could not by any act or declaration of her own while retaining possession of her husband's estate give her possession or estate a character different from that attaching to the possession or estate of a Hindu widow; the objection that she held as donee and adversely to the reversioner therefore failed, and the claim as regards this moiety also was not barred by limitation. *Lachhan Kunwar* v. *Manorath Ram, I. L. R. 22 Calc. 445,* distinguished. Sham Lall Mitra v. Amarendro Nath Bose

I. L. R. 23 Calc. 460

LIMITATION ACT (XV OF 1877)—*contd.*

Schedule II—*contd*

———— **Art. 141**—*contd.*

38. ———— *Limitation applicable to reversioner.* One *C S* died without issue

two others his executors and trustees. The two

death to the charity

testator, and he sued to have his rights in and to his uncle's estate ascertained. He contended that the bequests for dharam were void, and that the property bequeathed for that purpose was undisposed of. He claimed to be entitled to the whole of the testator's immoveable property, including that which had been devised to the widows for life. The defendant pleaded that he and his

barred by limitation. Vundravandas Purshotamdas v. Cursondas Govindji

I. L. R. 21 Bom 646

Held, by the Privy Council, in appeal, on the

Art. 144, which makes the period of limitation commence from the date when the possession of the defendant is adverse to the plaintiff, does not

on the death of the
ravandas
Bom. 725
N 621

39. ———— *Suit by reversioner to recover possession of immoveable property alienated by intermediate female heir—Limitation Act (XIV of 1859), s. 1—Limitation Act (IX of 1871), Art. 142.* A female heir in possession of immoveable property for her life can, without legal necessity, make a valid alienation of her life

LIMITATION ACT (XV OF 1877)—*contd.*

Schedule II—*contd.*

——— Art. 141—*contd.*

estate, but the possession of the alienee will not, under ordinary circumstances, be adverse to the reversioner, whose cause of action for possession of the said property will not accrue until the death of the female heir, or of the last of such heirs if more than one. One *P*, a separated Hindu, died about 1822, leaving two widows, *H* and *A*, and three daughters, *R*, *J*, and *D*. The widows took possession of the immoveable property of *P*, and some time before 1857 *H*, the sur-

a female heir in possession is good against her for her life, but is not necessarily binding on the reversioner, to whom, if it be invalid, a cause of action accrues on the death of the female heir. Where property, the estate in which has descended to a female heir, never reaches her hands, but is held adversely to her by a stranger, the cause of action for a suit for the recovery of the property accrues

the statutory period of limitation counting from the commencement of the adverse possession, the

40. ——— *Adverse possession—Suit by reversioner to Hindu female heir.* Where property which should by law be in the possession of a female heir is held adversely to such heir by a trespasser, the possession of the trespasser

I. L. R. 20 All. 42

LIMITATION ACT (XV OF 1877)—*contd.*

Schedule II—*contd.*

——— Art. 141—*contd.*

41. ——— *Suit by reversioner for possession of immoveable property on death of Hindu female heir—Adverse possession—Limitation Act, 1877, s. 2—Revival of extinguished right—Limitation Act (IX of 1871)*. *A* and *I*, daughters

I. L. R. 26 Calc. 285

42. ——— *Hindu law—*

although she may have been out of possession for more than twelve years. *Runchordas Vandravan-*

referred to. AMRIT DHAR *v.* BINDESRI PRASAD (1901) . . . . I. L. R. 23 All. 448

43. ——— *Cause of action, accrual of—Adoption—Reversioners, suit by—Hindu widow, alienation by—Minority, evidence of.* A Hindu widow alienated certain immoveable pro-

LIMITATION ACT (XV OF 1877)—*contd*

Schedule II—*contd.*

——— Art. 141—*concld.*

Nath Roy v. *Ram Kanai Chowdhury*, 24 W. R 183, and *Prosanna Nath Roy* v. *Afzolonnessa Begum*, I. L. R. 4 Calc. 523, doubted. *Lakshman* v. *Radhabai*, I. L. R 11 Bom 601; *Nathaji Krishnaji* v. *Hari Jagoji*, 8 Bom H. C. 67; *Moro Narayan* v. *Balaji Raghunath*, I. L R 19 Bom. 809, and *Bijoy Gopal Mukherji* v. *Nil Ratan Mukerji*, I. L. R. 30 Calc 910, referred to AMRITA LAL BAGCHI v. JATINDRA NATH CHOWDHURY (1905)

I. L. R 32 Calc. 165

44. ——— *Suit by a Hindu entitled to possession of immoveable property on the death of a Hindu female* One Hazari Lal died in 1856, possessed of certain immoveable property, and leaving a son, Jawahir Lal, and a widow, … Jawahir Lal died in 1861, …

… them, and … the hands of Chandan, the daughter of Hazari Lal, came into the possession of Nand Lal and Duli Chand, the two sons of Chandan. Nand Lal and Duli Chand in 1876 sold their interest to one Jaidip who in turn made a gift thereof to his wife, …

Vandravandas v. … 23 Bom. 725; *Ram Kali* v. *Kedar Nath*, I. L R 14 All 156; and *Amrit Dhar* v. *Bindesri Prasad*, I. L R. 23 All. 418, followed. *Mussummat Lachhan Kunwar* v. *Anant Singh*, L. R 22 I. A. 25, distinguished. *Hanuman Prasad Singh* v. *Bhagauti Prasad*, I. L R. 19 All. 357, and *Tila Ram* v *Shama Charan*, I. L. R. 20 All 42, referred to. JHAMMAN KUNWAR v. TILOKI (1903)

I L R 25 All 435

45. ——— *Suit for possession of immoveable property—Suit by assignee of reversioner—Limitation—Time from which limitation runs—Vendor out of possession at date of transfer.* Where a suit by an assignee from a …

… Arts. 140 and 141 of the second Schedule to the Limitation Act should be read together and the suit was not barred by limitation. GADADHAR ROY v. HARE KRISHNA SARKAR (1901)

8 C W. N. 535

——— Art. 142 (1871, art. 143)—

See ante, ss 23 AND 23 AND SCH. II, ARTS. 120, 142 AND 141.

See DOCUMENT.

I. L. R. 30 Calc.

LIMITATION ACT (XV OF 1877)—*contd.*

Schedule II—*contd.*

——— Art. 142—*contd.*

See LANDLORD AND TENANT.

13 C. W. N. 698

See ONUS OF PROOF—LIMITATION AND ADVERSE POSSESSION.

I. L R. 16 Calc 473
I. L. R 19 Calc. 660
I. L. R 14 Bom. 458
I L R 16 Bom. 343
I. L R. 14 Mad. 96

1. ——— *Sale in execution of decree.* When a suit to establish his title and to recover possession of property is brought by a person who has been dispossessed under a sale in execution of a decree against other persons, and no summary … the pro- … decree, … that pre- … by cl. 12, s. 1, Act XIV of 1859,—viz, twelve years from the date of dispossession. JODOO NATH CHOWDHRY v RADHOMONEE DASSEE

B L R Sup Vol 643: 7 W. R 56

GEDROO SIRCAR BEHAREE LALL RUDRA

20 W. R 165

2 ——— *Dispossession or discontinuance.* The word "discontinuance" in Art. 142, Sch II of the Limitation Act, refers to a case where the person in possession goes out and is succeeded in possession by another. *Rains* v. *Buxton*, *L. R 14 Ch. D. 537*, and *Gobind Lall Seal* v. *Debendro Nath Mullick*, *I. L. R. 6 Calc. 311*, followed. SOHNUR ALI v HATEMAN

1 C W. N. 277

3. ——— *Joint family property, exclusion from.* Art. 142, Sch. II of the Limitation Act, has no application to a case where the plaintiff has been excluded from a joint family property. UMESH CHANDRA BHATTACHARJEE v. JAGADISH CHANDRA BHATTACHARJEE

1 C. W. N 543

4. ——— *Suit to recover possession—Sale in execution—Civil Procedure Code, ss. 249, 259, 264, and 269.* In execution of a decree, obtained against *A*, his right, title, and interest in certain property were sold, but the certificate of sale erroneously recited that *A* and *B*'s ancestor were defendants in the suit, and that the interest of the defendants in the suit had been sold; and accordingly the purchaser was put in possession under s. 264, Act VIII of 1859, of the right, title and interest of B's ancestor as well as of *A* in the …

7 W. R. 253

… *of sale.*

LIMITATION ACT (XV OF 1877)—*contd.*

Schedule II—*contd.*

——— Art 142—*contd.*

Plaintiff, having been dispossessed under a certificate of sale which was not conformable to or warranted by the sale itself, was declared entitled (having made no complaint to the Court which was executing the decree) to bring his suit for restoration to his property any time within twelve years from the date of his dispossession. BHEEM GOYALLEE *v.* KHOOBUN SAHOO . 17 W R. 429

6. ——— *Suit to recover possession of lands sold in execution of decree* The

of the dispossession, under cl. 12, s. 1 LALCHAND AMBAIDAS *v.* LAKHARAM . 5 Bom A C 139

overruling KRISHNAJI *v.* JOSHI MAKUND CHIMANSHET . . . . 2 Bom A C 18

decree comes within the twelve years period of limitation. GOUR MONI MOORAIN *v.* SHUN KUBEE PAHARINEE . . . . 13 W R 459

8 ——— *Decree for wrongful possession—Cause of action* In a suit for recovery of possession of a share in a certain talukh, on the allegation that the plaintiff had been dis-

possession which the plaintiff held during the few

12 W. R 9

PREMCHAND KYBUTTA *v.* HUREE DOSS KYBUTTA 22 W R 259

TARA BANU *v.* ABDUL GUFFER CHOWDHRY 12 C L R 486

9 ——— *Suit to establish*

10. ——— *Suit for possession—Illegal resumption by Government.* The plaintiff was possessed of an estate situate on the bank of a river, and of certain chur lands which had accreted thereto. The Collector took possession of the chur lands in 1818, upon the default of the proprietor to appear to answer a claim made by Government to assess the chur land. In 1824 a

lector, in conformity with a general order under Act IX of 1847, "for the abatement of all suits for the resumption of alluvial lands then pending," struck off the suit and restored the lands to the possession of the zamindar The proprietor claimed the wasilat enjoyed by the Government during his dispossession; and the Government again dispossessed him, under the assumption that the lands were an island in the river, and that the

because the pendency of the suit for the resumption and assessment of the lands between 1824 and 1848 prevented the proprietor from commencing a suit during that period, and that during such period the limitation did not run; and, further, after that period the necessity for a suit was obviated by the restoration of the lands to the proprietor *Held,* also, that a fresh cause of action accrued under the second ouster. SURNOMOYE *v* COLLECTOR OF RUNGPORE Marsh 13: W R F. B 4 1 Hay 37

11. ——— *Suit to recover possession of land sold for arrears of revenue* In a

at an increased revenue *Held,* that such grant would not give a new cause of action, and could not affect the time when the only cause of action arose to the plaintiff. CHAITANYA CHUNDRA HURIS CHANDANA JAGADEVU *v.* COLLECTOR OF GANJAM 22 W. R. 187 L R. 1 I A 335

12 ——— *Cause of action—*

under an agreement that he would make over other lands in exchange, plaintiff's contention being that he had been dispossessed of these other lands which

LIMITATION ACT (XV OF 1877)—*contd.*

Schedule II—*contd.*

———— Art. 142—*contd.*

were eventaully decreed to another party:—*Held*, that plaintiff's cause of action originated on the date of the decree depriving him of the lands last mentioned. KABUL KRISHNA DOSS *v.* MOHESSUREE DEBIA . . . . . 16 W. R. 270

13. ———— *Discontinuance of possession—Diluviated lands afterwards re-formed—Adverse possession. Per* GARTH, *C.J.*—Where a person can show that he has been in possession of

under water in consequence of a second diluvion. KALLY CHURN SHAHOO *v.* SECRETARY OF STATE FOR INDIA . I. L. R. 6 Calc. 725: 8 C. L. R. 90

14. ———— and Arts 139, 144—*Discontinuance of possession* In a suit to recover possession of a house, the plaintiffs alleged that their predecessor in title had permitted *A*, the

paying rent The defendants contended that the plaintiff's predecessor in title had made a gift of the house to *A*, that he had remained in possession of it until his death, and that since then they had been in possession of the house by virtue of the gift *Held*, that the suit was ...

tion und[er] ...
meanin[g] ...
possessi[on] ...
sion ti[tle] ...
ance, w[ith] ...
possessi[on] ...
with which ...
possession ...
of Act XV ...
v. DEBEN[DRONATH] ...

I. L. R. 5 Calc. 679: 5 C. L. R. 527

LIMITATION ACT (XV OF 1877)—*contd.*

Schedule II—*contd.*

———— Art. 142—*contd.*

In the same case on appeal:—*Held*, that a suit for the recovery of immoveable property against a person who had originally been in mere permissive occupation or possession accorded on the ground of charity or relationship is governed by Act XV of 1877, Sch. II, Art. 144, and not by Art. 142 of the same Schedule. In such a case the owner of the property, who has accorded the permissive occupation, cannot be said to have "discontinued" the possession. GOBIND LALL SEAL *v.* DEBENDRONATH MULLICK

I. L. R. 6 Calc. 311: 7 C. L. R. 181

15. ———— *Proprietors having*

plaintiff, while in possession of the property, has

adverse possession is not required to be proved in order to maintain a defence At the regular

claimed possession alleging their title, and that the village co-parceners held only in farm from the Collector ... settlement:—*Held*,

BADAN SINGH . . I. L. R. 17 Calc 13: L. R. 16 I. A. 148

16. ———— *Suit for possession—Dispossession during unexpired lease by plaintiff's predecessor.* In a suit brought by the plaintiff in 1880 to recover possession of certain lands from which his predecessor in title had been dispossessed, in which suit the Court of first instance found that the defendant had dispossessed the plaintiff's father in 1860, during the unexpired term of a lease granted by the plaintiff's father to a ticcadar:—*Held*, that the preponderance of authority in India was in favour of the view that limitation ran from the date of the expiry of the term, and not from the time when the defendant had been held by the Court of first instance to have

LIMITATION ACT (XV OF 1877)—*contd.*

Schedule II—*contd.*

———— Art. 142—*contd.*

dispossessed the plaintiff's father. SHEO SOHYE ROY *v* LUCHMESHUR SINGH
I L R 10 Calc 577

17. — *Suit for posses-*

sale of certain immoveable property belonging to him, made on his behalf during his minority, and for possession of the property *Held*, that the suit was one described in Art 142, Sch II, Limitation Act, 1877, and not in Art. 91 of that Schedule RAMAUSAR PANDEY *v.* RAGHUBAR JATI
I L R 5 All 490

18. ———— *Symbolical possession* On the 7th November 1868, certain property was purchased by one *G D B* at a sale held in execution of a decree obtained against one *J G* On the 8th January 1873, the purchaser obtained

been dispossessed therefrom, on the 13th July 1885,

R. 10 Calc. 402, overruled. JOGOPUNDHU MITTER *v.* PURNANUND GOSSAMI I L R 16 Calc 530

DHAPI *v.* BARHAM DEO PERSHAD
4 C W N. 297

19 ———— *Dispossession.*

L R 18 I A. 148
I. L R 17 Calc. 137

20 ———— *Possession, suit for—Privy Council, practice of—Concurrent deci-*

LIMITATION ACT (XV OF 1877)—*contd.*

Schedule II—*contd.*

———— Art. 142—*contd.*

properties, they concurred in finding the facts entitling these sons alone, and the committee preferred not to depart from the general rule as to concurrent decisions on fact. As to the other pro-

Court However, the title not having been clearly proved, they preferred to rest their decision on the possession found The claimants, and their father

21 ———— and Art 44—*Mortgage, suit*

fendant, and that in 1863 the equity of redemption had been sold to the mortgagee by the widows of the mortgagor, the plaintiff being then a minor. The defendants contended that this suit was really to set aside the sale of 1863, and was barred by Art. 44 of the Limitation Act (XV of 1877) The second defendant also pleaded adverse possession. The

also, that the second defendant, having entered into possession as mortgagee, could not afterwards set up an adverse possession as owner so as to defeat the plaintiff's right to redeem. BHAGVANT GOVIND *v.* KONDI VALAD MAHADU
I L R 14 Bom. 279

22 ———— and Art. 144—*Suit for possession alleging obstruction to possession—Adverse*

LIMITATION ACT (XV OF 1877)—*contd.*

Schedule II—*contd.*

——— Art. 142—*contd.*

possession. The plaintiff sued to recover possession of certain land, together with mesne profits until recovery of possession, alleging that he had obtained possession under his sale, and that his possession was obstructed by the defendants. *Held,* that the suit fell under Art. 142, and not Art. 144, of the Limitation Act. FAKI ABDULLA *v.* BABAJI GUNOAJI . . I. L. R. 14 Bom. 458

23. ——— *"Possession," "dispossession," meaning of—Dispossession in execution of decree under s. 9, Specific Relief Act (I of 1877)—Wrongful possession—Civil Procedure Code (Act XIV of 1882), s. 544—Appeal—Common ground—Death of one of several appellants—Legal representatives not brought on record—Partial reversal of decree.* When a plaintiff's title is once ... ined would ... II of the ... had been ... lands appertaining to their taluk, forcibly dispossessed the ...

... for recovery of possession within 12 years from their dispossession in execution of the decree, but more than twelve years after the original dispossession *Held* (affirming MITRA, J.), that the suit was not barred by limitation. *Golam Nabee* v. *Bissanath Kar, 12 W. R. 9; Prem Chand Kybutta* v. *Haridas Kybutta, 22 W. R 259, Tarabanu* v. ...

9 C. W. N 1061

24. ——— *Adverse possession—Cause of action—Title—Specific Relief Act (I of 1877), s 9.* The plaintiffs having been dispossessed of certain lands by the defendants in 1894 and 1896 in execution of decrees under s. 9 of the Specific Relief Act, instituted this suit in 1901 to recover possession of those lands. The suit was dismissed by the Courts below on the ground that the claim was barred by limitation, the plaintiffs having failed to prove possession within 12 years antecedent to the institution of the suit. *Held,* that, if the title was with the plaintiffs, their possession during the interval between the time when they ousted the defendants and the time when the latter recovered possession by virtue of the decree under s. 9 of the Specific Relief Act, should be regarded as the possession of the rightful owner, and not of trespassers, and therefore there would be no limitation against the plaintiffs' claim. *Mamtazuddin Bhuian* v. *Barkatulla, 2 C. L. J. 1,* and *Protap Chandra Chatterjee* v. *Durga Charan Ghose, 9 C. W. N. 1061,* referred to. JONAB SHEIKH *v.* SURJA KANTA ACHARYA CHOWDHURY (1907) . . . I L R 33 Calc 821 s c 10 C. W. N 1081

25. ——— *Suit by vendee for possession of immoveable property—Vendor out of possession—Burden of proof.* Where a vendee of immoveable property sues for possession, his vendor not having been in possession, at the time of the sale, it lies upon the plaintiff to show that his vendor was in possession at some period within twelve years prior to the date of the suit. *Kashinath Sitaram Oze* v. *Shridhar Mahadeo Patankar, I. L. R. 16 Bom. 343,* followed. And when in such a case the property sold was a share in a house belonging to two separated brothers: *Held,* that the possession of one of the brothers could not be taken to be on behalf of the absent vendor. DEBA *v.* ROHTAGI MAL (1906)

I. L. R 28 All 470

26. ——— *Possession, suit for—Limitation—Onus—Presumption from title.* It is for the plaintiff in a suit for ejectment to prove possession prior to the alleged dispossession. At the same time, in this question of evidence, the ...

... *I. A. 23,* approved. HEMANTA KUMARI DEBI *v.* JAGADINDRA NATH ROY (1906) 10 C W. N. 630

27. ——— *Limitation—Adverse possession—Defaulter—Share of defaulter let on farming lease—Share not claimed on expiry of lease.* One Mulchand, who owned an eight anna ...

... ants. In 1903 a suit was brought for recovery ... possession by the purchasers of Mulchand's rights from his representatives. *Held,* that after 1871 Pahalwan Singh's possession became adverse to Mulchand and the suit was barred by limitation. *Nihal Singh* v. *Dula Singh, Punj. Rec.* (1883) *C. J. No. 38, 71,* approved. MADHO SINGH *v.* SUBIAT KUNWAR (1905) . . I. L. R. 28 All 281

28. ——— *Public Demands Recovery Act (Bengal Act I of 1895), ss. 8, 11—Notice—Limitation Act (XV of 1877), Sch. II, Arts.*

LIMITATION ACT (XV OF 1877)—*contd.*

Schedule II—*contd.*

——— Art. 142—*concld.*

12,142—Sale in execution of certificates—Suit to set aside sale—Possession—Certificate, effect of. When notice has not been served under s. 10 of the Public Demands Recovery Act, 1895, and a suit is brought to set aside the sale and to recover possession of the

held without service of notice under s 10 is wholly without authority, and is a nullity PURNA CHANDRA CHATTERJEE *v* DINABANDHU MUKERJEE (1907) . I. L. R 34 Calc 811

——— Arts 142, 144—

See ante, ss 7, 9 . 9 C W N 795

——— *Res judicata—Findings necessary to support decree—Limitation Act (XV of 1877), s 14—' Unable to entertain suit' —' Other causes of a like nature '—Dismissal of previous suit for non-joinder—Possession under decree subsequently reversed—Sch II, Art 93* An appellate judgment operates by way of estoppel as regards all findings of the lower Court, which though not referred to in it, are necessary to make the appellate decree possible only on such findings. A plaintiff is not entitled under s 14 of the Limitation Act to exclude the time spent in prosecuting a previous suit when such suit was dismissed for non-joinder on findings arrived at after trial and not without trial, because the Court was unable to entertain the suit Under Art 142, Sch II of the Limitation Act limitation runs from the date of dispossession, and no fresh starting point is given because the party dispossessed subsequently obtains possession under a decree and is ousted from possession when the decree is reversed. *Sayad Nasrudin v. Venkatesh Prabhu, I. L. R 5 Bom 382*, followed

not apply when the suit is substantially for posses-

——— Art 143 (1871, art 144)—

1. ——— *Stipulation by tenant to clear land, suit for breach of.* Limitation was *held* to apply in a case where it was stipulated in a lease that the tenant should clear a defined area in a certain time, the cause of action accruing when the defendant did not clear by the time specified. TUMEEZOODEEN CHOWDHRY *v* SURWAR KHAN . . . . . 7 W. R. 209

2. ——— *Breach of condition—Forfeiture—Alienation by Hindu widow.* A Hindu widow, under an arrangement with her deceased husband's cousin, was in possession for life of a share of ancestral property of her husband's family, in which he jointly with the cousin had held a share in his lifetime This share she sold as if she had held an absolute interest, and the purchaser's name was entered, instead of hers, in the revenue records; but no change of possession took place till her death. To a suit brought by the cousin's heirs to recover the property purchased from the widow, more than twelve years after the sale, but less than twelve years after the widow's death, the defence was limitation under Act IX of 1871, Sch II, Art 144, commencing from the date of the sale, there having been, it was alleged, "a breach of condition or forfeiture" within the meaning of that clause By the terms of the arrangement contained in a solehnama, the widow was to have no power to alienate, and after her death

accordingly, that Art 144 did not apply, and the suit was not barred by limitation. SAHODRA *v.* RAI JANG BAHADUR LUTCHMAN SAHAI CHOWDHRY *v.* RAI JANG BAHADUR

I L R. 8 Calc. 224 : L R 8 I A. 210

3 ——— *Act IX of 1871, s 23—Breach of condition in mortgage—Suit for ejectment of mortgagees—Continuing breach of contract.* In November 1873 *M* sued for the cancel-

ation having been taken, the lower Courts held that ... within ... *held* in ... were in ... by Art. ... e plaint- ... ipulated ... ight to

LIMITATION ACT (XV OF 1877)—*contd.*

Schedule II—*contd.*

——— Art. 143—*contd.*

eject, and that the suit was therefore clearly within time. SADHA *v.* BHAGWANI . 7 N. W. 53

4. ——— ——— ——— *Agreement to pay* [illegible]

[illegible]

possession of a certain quantity of such land. The purchasers never paid the fees, and more than twelve years after the first default the vendors sued them for possession of the land they were entitled to [illegible] *Held*, that the suit, being governed by Art. 143, Sch. II of Act XV of 1877, and more than [illegible] breach [illegible] The [illegible] 1871 [illegible] and Act [illegible] pointed out. BHOJRAJ *v.* GULSHAN ALI I. L. R 4 All 493

——— Art. 144 (*1871, art 145; 1859, s. 1, cl. 12*)—

See ante, ss. 23 AND 28 AND SCH. II, ARTS. 120, 142 AND 144.

See ante, SCH. II—

ART. 10; . I L R 24 All. 17

ARTS. 119, 118 AND 144;

ARTS. 120 AND 144;

ARTS. 134 AND 144;

ARTS 136 TO 138 AND 144.

See BENAMI TRANSFER. I. L R. 35 Calc. 551

See LANDLORD AND TENANT—NATURE OF TENANCY . I. L. R 27. Bom 515

See ONUS OF PROOF—LIMITATION AND ADVERSE POSSESSION
I. L. R. 19 Calc. 660
I L R 14 Bom 96
I. L R 14 Bom 458
I L R. 18 Bom. 513
I L R. 25 Bom. 362

See POSSESSION—ADVERSE POSSESSION.
I L R 21 Bom 509
I. L. R 29 All. 593

See SALE FOR ARREARS OF REVENUE—INCUMBRANCES—ACT XI OF 1859
I. L. R. 14 Calc. 109

1. IMMOVEABLE PROPERTY.

1. ——— Toda giras hak—*Immoveable property.* The expression "immoveable property"

LIMITATION ACT (XV OF 1877)—*contd.*

Schedule II—*contd.*

——— Art. 144—*contd.*

1. IMMOVEABLE PROPERTY—*contd.*

in Act XIV of 1859, s. 1, cl. 12, must not be construed as identical with "lands or houses." It comprehends all that would be real property according to English law, and possibly more. [illegible]

[illegible] an interest in immoveable property within the meaning of cl. 12, s 1, Act XIV of 1859. FUTTEHSANGJI JASWANTSANGJI *v.* DESAI KULLIANRAIJI HAKOOMUTRAIJI
13 B L R 254: 10 Bom. 281
L R 1 I. A 34: 21 W. R 178

Overruling decision in FATESANGJI *v.* DESAI KALYANRAIJI . . 4 Bom A. C. 169

2. ——— Hereditary office—*Immoveable property—Fees paid to hereditary office holder* The clause of the Limitation Act (XIV of 1859) which was applicable to a suit to recover fees payable to the incumbent of an hereditary office such as that of a village Joshi was cl. 12, and not cl. 16, of s 1 of that Act. *Krishnabhat v. Kapabhat, 6 Bom. A. C. 137*, followed. The meaning of the term "immoveable property," as used with regard to Hindu law, discussed. BALVANTRAV *alias* TATIAJI BAPAJI *v.* PURSHOTAM SIDHESHVAR . . . . 9 Bom. 99

3 ——— *Immoveable property—Suit for dues of hereditary office.* A suit to recover payment of sums claimed by certain persons [illegible] grant by [illegible]

[illegible]

4. ——— *Suit for share of* [illegible] *of office of* [illegible]

[illegible]

office of managing revenue and police patil, sued the defendant in possession to recover a third of a portion of the hereditary fields set apart as remuneration for the performance of the duties of the office; and the District Judge on appeal found his claim barred on the ground solely that he had not for twelve years been in possession of the one-third which he claimed of the service land. *Held*, that, having regard to s. 4 of Act XI of 1843, the plaintiff's cause of action did not depend on his possession within twelve years, but on whether his turn to officiate as patil, and his right to enjoy the land in

LIMITATION ACT (XV OF 1877)—*contd.*

Schedule II—*contd.*

——— Art. 144—*contd.*

1. IMMOVEABLE PROPERTY—*contd.*

dispute, arose more than twelve years before the suit was brought SINDE *v* SINDE 4 Bom. A C. 51

5. ——— **Grant by a Hindu sovereign to a Hindu temple**—*Immoveable property* The Peishwa, by a sanad dated 1790, granted to an ancestor of the plaintiffs, for the support of a Hindu temple, an annual cash allowance of R350 out of the "antastha sadilvar" and three khandis of rice out of the "kherij jamabandi parbhare" to be levied from certain mehals and forts mentioned in

establish their right to the grant and to recover six years' arrears of the allowances The defendant pleaded that the suit was barred by the law of limitation. The question for consideration was whether the suit was governed by cl. 12 or cl 16 of s. 1 of the Limitation Act (XIV of 1859) *Held* (*per* SARGENT, *J*), that the grant in question was of the nature of immoveable property, and that the suit therefore fell within the provisions of cl. 12 of s. 1 of the Limitation Act (XIV of 1859). In using the expression "subject of the suit" in the rule laid down by the Privy Council in the Toda Giras case (*Fatesangji* v *Desai Kallianrayaji*, *L. R 1 I. A 34*), their Lordships intended to include in it all the facts which determine the nature of the plaintiff's claim, and not merely of the allowance itself, and to confine the application of Hindu law to those cases in which the "subject of the suit" has such a

grant, from the object which it had in view, was to be deemed to be one in perpetuity, and the fund out of which this perpetual allowance was to be paid was derived from a permanent source. It had therefore all the characteristics of permanency and durabilit[illegible]
ing to H[illegible]
property.
ance in
and that the suit therefore did not come within the

1859 must be interpreted, on general principles of

construction, with reference to the nature of the

moveable property properly so called, and which

property Pensions and annuities not secured upon land, houses, or the like, as clearly do not constitute such an interest. When a classification can thus be made, it ought to be so made without reference to the character of the party claiming the right But there may be cases in which the test prescribed by the rule fails, or is very difficult of application, and then will come in the operation of the exception to the rule, and it may become

question is a claim to an annuity granted by a Hindu sovereign to a Hindu temple The annuity is not made a charge upon land, and it is not therefore, according to general principles of construction, immoveable property That being so, it is not necessary to go further. COLLECTOR OF THANA *v*. KRISHNANATH GOVIND . I. L R. 5 Bom. 322

LIMITATION ACT (XV OF 1877)—*contd.*

Schedule II—*contd.*

——— Art. 144—*contd.*

1. IMMOVEABLE PROPERTY—*contd.*

hardship upon them to construe the Act inconsistently with such ideas, inasmuch as they were furnished with no guide which could have led them to suppose that "immoveable property," according to Act XIV of 1859, meant anything less than what they had previously known as such. And

manence is nibandha, whether secured on land or not. COLLECTOR OF THANA *v.* HARI SITARAM
I. L R. 6 Bom 546

6. ——— Easements—*Claim to easement —Immoveable property.* A claim to an easement is one relating to an interest in land and is governed by the limitation of twelve years. DEO SURUN POORY *v.* MAHOMED ISMAIL
24 W. R. 300

7. ——— Jalkar—*Immoveable property—Jalkar, suit to establish.* A jalkar is not an easement within the meaning of s. 27 of Act IX of 1871, but is an interest in immoveable property

the plaintiff for a declaration that he was entitled to the exclusive right of fishing in such water was barred by limitation. PARBUTTY NATH ROY CHOWDHRY *v.* MUDHO PAROE
I. L R 3 Calc 276 : 1 C. L R 592

8. ——— *Suit for opening*

by cl. 12, s. 1. OODAYESSUREE *v.* HUROKISHORE DUTT . 4 W R 107

9 ——— Suit for a declaration of proprietary right—*Suit for possession of immove-*

LIMITATION ACT (XV OF 1877)—*contd.*

Schedule II—*contd.*

——— Art. 144—*contd.*

1. IMMOVEABLE PROPERTY—*contd.*

able property. Where the plaintiff claimed a declaration *of his proprietary right to land, and to be* maintained in possession thereof as proprietor free from the liability to pay rent:—*Held,* that the limitation applicable to the present suit was not that provided by Art. 118 of Sch. II of Act IX of 1871, but that provided by Art. 145 of that Schedule, a suit by a person in the possession of land for a declaration of proprietary right being substantially a suit for possession of immoveable property, and the present suit was therefore within time; and that Arts. 14 and 15 of *that Schedule were not applicable, there being no decree or order* which the plaintiff was bound to have set aside within one year. DEBI PRASAD *v.* JAFER ALI
I. L. R. 3 All. 40

(*Contra*) LEGGE *v.* RAMBARAN SINGH
I. L. R. 20 All. 35

10 ——— Suit claiming exemption from payment of assessment on land after payment. Where a person claiming to hold land free of Government assessment was compelled by the Collector to pay the same and

yment of the rought within not barred;

but that only one year's arrears was recoverable under Act *XIV* of *1859*, *s.* 1, *cl.* 4. BHUJANG MAHADEB *v.* COLLECTOR OF BELGAUM 11 Bom 1

11. ——— Suit recover share of estate *—Agreement defining shares of parties in immoveable property—Deed of compromise* An agreement by way of compromise of disputed title to immoveable estate, under which shares are allotted to the parties thereto, gives to each party a cause of action founded not merely upon contract within the meaning of Act XIV of *1859*, s. 1, cl. 10, but upon the title which is acknowledged and defined by the agreement; and a suit brought to recover a share of the estate was governed by s. 1, cl. 12. MEWA KOWAR *v.* HULAS KOWAR . . . 13 B L R. 312
L R. 1 I. A 157

12 ——— Agreement to lease—*Suit on agreement to lease land.* An agreement to grant a lease cannot be said to create an interest in

property governed, of s 1, LALL *v.*

CHOWBAIN . . . . R 287

13 ——— Trees—*Interest in immoveable property.* Trees are immoveable property, and

LIMITATION ACT (XV OF 1877)—*contd.*

Schedule II—*contd.*

——— Art 144—*contd.*

1. IMMOVEABLE PROPERTY—*contd.*

a claim in connection with them relates to an interest in such property, and was subject to the limitation specified in s. 1, cl. 12, of Act XIV of 1859. GHUFOORUN BEBEE *v.* MUSTUKEDEH
2 Agra 300

14 ——— and s 26—*Suit to recover possession of mango trees—Adverse possession for twelve years by taking fruit—Easement.* The plaintiff having brought a suit to recover possession of

property and was governed by the limitation of twelve years prescribed by Art 144 of the Limitation Act XV of 1877. BAPU *v.* DHONDI
I L R 16 Bom 353

15 ——— *Growing tree—*

I L R 19 Bom 207

16 ——— *Suit to set aside solehnamah relating to produce of trees—Interest in*

namah was barred by limitation under cl. 16. HANOOMAN PERSHAD *v.* SURUBJEET SINGH
4 N W. 167

17. ——— Mortgage of house "exclusive of land"—*Interest in immoveable property.* A bond whereby "the superstructure of a house exclusive of the land beneath" is hypothecated creates an interest in immoveable property within the terms of the Limitation Act, the apparent intention being to mortgage the existing house and not merely the materials NARAYANA PILLAY *v.* RAMASAWMY THAVUTHARAN . 8 Mad 100

LIMITATION ACT (XV OF 1877)—*contd.*

Schedule II—*contd.*

——— Art. 144—*contd*

1. IMMOVEABLE PROPERTY—*contd.*

18 ——— Immoveable and moveable

D, and, shortly after *A*'s death, *D* gave birth to another son, the plaintiff *E*. In 1865 *D* instituted a suit against *C* and *B* and *E*, alleging that *A* had left a will In this suit *C* claimed to be the heiress of *A*. No decree was made in the suit, which was compromised. In November 1877 *B* and *E* entered into possession of a shop which had belonged to their father, and which had been managed, during their minority, by the defendant *C*. In 1879 the plaintiffs instituted the present

CHURN SHAW *v* DUKEE BIBEE
I L R 5 Calc 692: 5 C. L. R 505

19 ——— Saranjam—*Right to possession and management of saranjam* The right to possession and management of a saranjam is an interest in immoveable property within the meaning of Art 144 of Sch. II of the Limitation Act XV of 1877; and where the defendant had enjoyed that interest since 1866, at which date the plaintiff, who had been in correspondence with Government with reference to his claim against the defendant, was referred by Government to the Civil Courts, the plaintiff's claim was, in a suit brought in 1885, *held* to be barred by limitation. NARAYAN JAGANNATH DIKSHIT *v.* VASUDEV VISHNU DIKSHIT . . . I L R. 15 Bom 247

20 ——— Emoluments of hereditary office—*Interest in immoveable property* A suit to recover a sum of money due by custom as an emolument of an hereditary office is not one for the possession of an interest in immoveable property. In 1888 a sum of money became payable, as marriage dues, to the holder of certain offices connected with a temple. Upon a suit being brought more than six years thereafter, namely in 1895, to recover the amount, it was objected that the claim was barred by limitation:—*Held*, that such a claim is governed, not by Art. 144, but by Art. 120 of Sch. II to the Limitation Act, and must, in consequence, be enforced within six years of the accrual of the right RATHNA MUDALIAR *v.* TIRUVENKATA CHARIAR . I. L. R 22 Mad. 351

21. ——— Right of purchaser to have lands registered in his name—*Nature of such right —Cause of action in respect of such right—Suit for declaration of such right—Vendor and purchaser—Limitation Act, Sch. II, Art. 120.*

LIMITATION ACT (XV OF 1877)—*contd.*

Schedule II—*contd.*

——— Art. 144—*contd.*

1. IMMOVEABLE PROPERTY—*concld.*

Plaintiffs, having purchased certain lands in 1867,

filed, and the suit was therefore not barred. BHIKAJI BAJI *v* PANDU . I. L. R. 19 Bom. 43

22. ——— Right of adopted son to claim property alienated—*Widow's estate*— ... *-Limitation* ... part of ... her husband ... the son cannot sue to recover possession of the property until the termination of her widowhood. Where such a suit is brought during the widowhood, it is governed by Art. 144 of Sch II to the Limitation Act, and the starting point for the period of Limitation is the date of the adoption SREERAMULU *v.* KRISTAMMA (1902)

I. L. R. 26 Mad. 143

23. ——— Arthamulgeni lease—*Suit* ... *lease governed* ... ssession of land ... e is not based ... ssion contained ... npleted *title* to ... The period of ... uit is that pro- ... the Limitation ... ESWARA UDPA (1907) . . . . I. L. R. 31 Mad 51

2. ADVERSE POSSESSION.

1. ——— *Application of the Article.* Art. 144 of Sch II of Act XV of 1877, as to adverse possession, only gives the rules of limitation where there is no other Article in the Schedule specially providing for the case. MAHAMMUD AMANULLA KHAN *v* BADAN SINGH

I L. R 17 Calc. 137
L R. 16 I A. 148

2. ——— *Onus probandi* Under Art. 144 of the Limitation Act (XV of 1877) it is not for the plaintiff to prove that he has been in possession within twelve years before suit, but it is for the defendant to show that he has held adversely to the plaintiff for twelve years. NYAMTULA *v.* NANA VALAD FARIDSHA

I. L R. 13 Bom. 424

3. ——— *Adverse possession.* *A*, *B*, and *C* were brothers. In 1846 and 1847, a partition was effected between *A* (since deceased) and *C* on the one part and *B* on the other, *C* being at the time a minor. *B* then obtained, and since held separately as his share, certain lands in the village of *K* among others. By a razinama

as in quantity, *B* continuing to hold nearly the same quantity of land as he did before. *C* attained

starting point; the suit therefore was ... limitation. SRINIVASSIENGAR *v.* SRINIVASSARANGA CHARIYAR . . . . . 4 Mad. 10

4 ——— *Adverse possession.* The political department in Chota Nagpore ... against as judgm ... a family ... prevailed ... priated the proceeds in satisfaction Objection was made by a member of the family claiming ten of the villages as held by him and his ancestors under a mokurari grant for maintenance An answer was put in and litigation followed, resulting in a final decision by the civil authorities of the zillah that the claimant was not entitled to four out of the villages claimed, and the proceeds were diverted to the payment of debts which were not his. He then sued for a declaration of his right and title to the four villages:—*Held*, that the possession of the political department had not been

5. ——— *Suit for possession of land—Collector's possession not adverse to true owner.* Act IX of 1871, Sch. II, Art 145, enacting that suits for possession of immoveable property, or any interest therein, must be brought within twelve years from the time when the possession of the defendant, or some person through whom he claims, has become adverse to the plaintiff, differs from the rule formerly in force under Act XIV of 1859, s 1, cl. 12. The latter was that

the suit must be brought within twelve years from the time when the cause of action arose, and thus the former rule that, where the cause of action arose upon an alleged dispossession, the burden was upon the plaintiff to show that he, or some one through whom he claimed, had actual possession within twelve years before the institution of the suit, has been superseded by the above Where the Government, in the Revenue Department, has taken possession of land, it is the duty of the Collector, after payment of the revenue and the expenses of the collection, to pay over the surplus proceeds of the estate to the true owner The Collector's possession does not become adverse to the owner by reason of his making this payment to another claimant KARAN SINGH *v* BAKAR ALI KHAN

I L R 5 All 1
L R 9 I A 99

6. ——————— *Adverse possession—Attachment of vatan lands—Peshwa's Government—Resumption by British Government—Restoration—Inability to sue during attachment and resumption—Bom Act I of 1865, s. 34—"Contra non valentem agere nulla currit præscriptio," application of* In the year 1806 07 the Peshwas attached certain vatan lands belonging to the plaintiff's family The attachment continued till the year 1866, when the British Government made them khalsa, or resumed them The defendant in the meanwhile entered upon them as tenant to the [illegible] In the [illegible] ured to [illegible] n, the [illegible] eners [illegible] execution of this decree they were obstructed by the [illegible]

[illegible]

[illegible] Court was of

claim to that even was barred, as it was brought after twelve years from the date of resumption. [illegible]

ment held the same as constructive trustees for the plaintiffs, and when that Government was succeeded by the British Government, the same relation continued The British Government, having succeeded to the trust,—continued to hold as trustee for the family of the plaintiffs; their possession therefore could not be made adverse by intimation or notice to the plaintiffs It was not found that the defendant held the lands before the attachment by the Peshwas, and the British Government could not, as guardian or bailiff for the real owners, the plaintiffs, put the defendant into a better position than their own. The plaintiffs' right, having never been extinguished, had the [illegible]

from that time, it was not barred —the inability of the plaintiffs to sue before 1871 falling within the purview of the maxim *contra non valentem agere nulla currit præscriptio* It was contended for the defendant that s 34 of Bombay Act I of 1865 [illegible]

7 ——— and Art 142 and s 28—*Decree obtained—Decree restoring possession to trespasser against dispossession by another trespasser, effect of—Illegal dispossession by the true owner.* [illegible]

sion not aggregating to twelve years, it was contended on their behalf that the decree abovementioned restoring them to possession did away with the effect of dispossession, so as to complete their title by adverse possession:—*Held*, that [illegible]

the principal defendants' right had been extinguished under s. 28 of the Limitation Act, and therefore their dispossession of plaintiffs was illegal. GUROO CHURN DUTT *v* KRISHNA MONI GUPTA

2 C. W. N. 315

8. ——————— *Adverse possession.* *A* became a bairagi and went on a pilgrimage.

LIMITATION ACT (XV OF 1877)—*contd.*

Schedule II—*contd.*

——— **Art. 144—*contd.***

2. ADVERSE POSSESSION—*contd.*

He alleged that before his departure he made over his property to *B*, on the condition that it should revert to him on his return. *B* sold it to *C*. Upon his return after several years, *A* claimed the property from *C*, who refused to give up possession. *D* purchased *A's* rights, and then sued the widow of *C* to obtain possession. She denied that the property was made over to *B* upon trust for *A* on his return, and contended that the suit was

possession in trust for *A*, or adversely to him, for more than twelve years. JAGANNATH PAL *v* BIDYANAND

1 B. L. R. A. C. 114 : 10 W. R. 172

9. ——— *Suit for possession—Interrupted adverse possession.* In a suit to recover possession of immoveable property, the defence was adverse possession for more than twelve years, except for two short periods during which plaintiffs had been put in possession by a Civil Court, first, under a decree of the High Court between the same parties, but that they had been dispossessed upon that decree being reversed on review; and second, under a misconception, by the Principal Sudder Ameen, of another order of the High Court in another suit between the same parties; but that they had again been dispossessed after appeal by defendant to the High Court:

s c. MOTEE SINGH *v.* LEELANAND SINGH

11 W R. 40

10. ——— *Temporary interruption of possession—Wrongful possession given*

session

In a

n land

d held

plaintiff

from 1881 up to the date of suit (2nd October 1895),

ears (*viz.*,

which he

ivil Court

y a third

person, which being reversed in appeal he was restored to possession on the said 9th April 1895:—*Held*, that the present suit was barred by limitation The wrongful possession given by the Court to a third person did not (after possession had been restored to the defendant) prevent the statute from

LIMITATION ACT (XV OF 1877)—*contd.*

Schedule II—*contd.*

——— **Art. 144—*contd.***

2. ADVERSE POSSESSION—*contd.*

running during its continuance against the plaintiff and in favour of the defendant. DAGDU *v.* KALU

I L R. 22 Bom. 733

11. ——— *Adverse possession—Admission of lambardar to partition* Where the lamb

ul arz th

Governm

sir land,

has had sole right to the profit and loss:—*Held*, that the claim of the shareholders to definition of their shares was not lost. MEHTAB SINGH *v* PURMA

3 Agra 241

12. ——— *Adverse posses-*

father-in-law's will, as a security for his own debt to his father-in-law, not to any other person in trust for the benefit of any parties who might be entitled to the estate, but to the insolvent's wife, who was the tenant for life of the residue:—*Held*, that, in the absence of any proof of fraud, the widow's continuous and adverse possession for more than twelve years barred the suit. COCHRANE *v* HURROSOONDERY DEBIA

4 W. R. P. C. 103 : 6 Moo. I. A. 494

13. ——— *Adverse possession—Joint entry of names* In a suit by a Hindu widow for a declaration of right and title to dhurmutter land of which she asserted she had always been in possession, but which defendant had got registered in his own name as well as in hers, and claimed to have been in possession of with his father since the death of the husband:—*Held*, that the entry of plaintiff's name conjointly with defendant's was a declaration of at least joint title such as nullified a plea of bar by limitation by adverse possession. DEEPO DEBIA *v.* GOBINDO DEB

16 W. R 42

14. ——— *Suit by widow for share on partition of husband's estate—Adverse possession.* In a partition suit by a widow for the recovery of her husband's share of property, held during his lifetime jointly with his brother, although such suit be brought more than twelve years after her husband's death, her claim is not barred by the statute of limitations, unless the brother has for a period of twelve years before suit held adversely to her. KISTOMONI CHOWDHRY *v.* SIBCHUNDER CHOWDHRY . **Marsh. 196 : 1 Hay 473**

15. ——— *Adverse possession.* A Hindu of Tirhoot died in 1849, leaving two widows and a brother. A compromise was made by the three, whereby they agreed that the brother should remain in possession of the property

LIMITATION ACT (XV OF 1877)—*contd.*

Schedule II—*contd.*

——— Art. 144—*contd.*

2. ADVERSE POSSESSION—*contd.*

left by the deceased, and that some land should be assigned to the widows for maintenance The elder widow died in 1867, and the younger sued the heirs of the brother for recovery of possession of the property The defence set up was that the suit was barred by limitation, as her cause of action arose not on the death of her co-widow, but on the death of her husband:—*Held*, that, as to recovery of possession of a moiety of the property, the cause of action arose on the death of the co-widow; that the possession of the elder widow was not adverse to the younger widow, as the elder widow was permitted to enjoy the possession of the husband's property during her lifetime, the younger widow receiving an allowance from the profits of the estate. INDUBANSI KUNWAR *v.* GRIBHIRUN KUNWAR 3 B. L. R. A. C. 289

S C. JUDOOBANSEE KOER *v.* GIRBHIRUN KOER 12 W R 158

16. ——— *Hindu widow—Adopted son—Possession.* A Hindu died after leaving directions to his widow to adopt a son. Upon a partition of the joint property amongst his brothers and widow, a certain property was allotted to his widow as her share of the joint property. Afterwards in 1849 his brothers dispossessed the widow In 1854 she adopted a son, who attained his majority in 1865, and in 1866 instituted the present suit for possession of the property:—*Held*, that the suit was barred by lapse of time. GOBIND CHANDRA SARMA MAZOOMDAR *v.* ANAND MAHAN SARMA MAZOOMDAR 2 B L R. A C. 313

17. ———Two sisters, *B* and *P*, not being heirs, took possession of ancestral property as heirs on the death of their mother *H* After a few years they quarrelled. *P* adopted a son and executed a deed of gift in his favour. *B* claimed the whole property through her deceased husband as heir of *B M*, who again was heir of the

SHAMA SOONDERY DOSSEA *v.* TARINEE CHURN SINGH . . . . 3 W. R. 194

18. ——— *Impartible zamindari—Succession—Adverse possession by one branch of family.* Upon the death of *G* in 1829,

the estate remained in the possession of *K*. It was subsequently recovered by suit from her sons by the defendant (the son of her elder sister), as being the eldest surviving grandson of *G*. The plaintiff, alleging that he was the third son of *N*, who was the second son of *G* by his wife *M*, and that he, and not the defendant, was the eldest surviving grandson of *G*, sued in 1881 to recover

brothers, and a son of his father's elder brother had all died:—*Held*, that from 1829 limitation began and continued to run against the descendants of *M*. VIJAYASAMI *v* PERIASAMI I. L. R. 7 Mad. 242

19. ——— *Hindu law—Widow* The holder of an impartible zamindari died in 1822, leaving two widows and a daughter. The widows entered on the estate, and having successfully resisted a suit for ejectment brought by the rightful heir (the present plaintiff's great-grandfather) in 1824, they and the survivor of them retained possession till 1870, when the last surviving widow died, and the daughter entered.

20. ——— *Widow in possession of estate for dower—Suit by heirs for possession—Adverse possession.* If a Mahomedan widow,

21. ——— *Suit for posses-*

LIMITATION ACT (XV OF 1877)—*contd.*

Schedule II—*contd.*

——— Art. 144—*contd.*

2. ADVERSE POSSESSION—*contd.*

See SUNNUD ALI *v.* KURIMOONISSA 9 W. R. 124

MOOCHEE RAM MAJHEE *v.* BISSAMBHUR ROY CHOWDHRY . . . . 24 W. R. 410

22 ——— ——— *Possession of ijaradar—Effect of dispossession on zamindar.* The zamindar or owner is bound by the dispossession suffered by his ijaradar. BRINDABUN CHUNDER SIRCAR CHOWDHRY *v.* BHOOPAL CHUNDER BISWAS 17 W R 377

23. ——— ——— *Landlord and tenant—Suit by occupancy-raiyat for recovery of his holding—Ouster, not by landlord—Twelve years' limitation.*

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landlord is i

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the ouster of the plaintiff, is governed by twelve years' limitation, though the defendant might claim to hold under the same landlord. ERADUT *v* DALOO SHEIKH . . . 1 C. W N. 573

24 ——— *Confirmation of title—Cause of action.* The plaintiff sued for confirmation of his title to, and for possession of, a jote in the Nowabad mehal deriving his title under a pottah from the ijaradar. The defendant's case was that he had bought the lands as a talukh, and been in possession accordingly; but finding that the lands had been surveyed as a part of the Nowabad mehal, he took a pottah from the ijaradar four years previous to the plaintiff's pottah. The defendant's pottah was found to be a forgery :—*Held*, that the plaintiff's cause of action arose solely from the title set up by the defendant under the pottah derived from the ijaradar, and not from the date when the defendant purchased the lands as a talukh. SHAHABOODEEN *v.* NADUROOJUMA 12 W R. 44

25. ——— *Lessee under Government* *A* claimed certain immoveable property as lessee under a Government settlement made in 1859. *B* had been in possession for more than twelve years before the institution of the suit:—*Held*, that the suit was barred under cl. 12 of s. 1. ASU MIA *v.* RAJU MIA 1 B. L R. A C. 34 : 10 W R. 76

26 ——— *Adverse possession—Suit for ejectment by a jenmi—Defendant in possession under Government cowle* The plaintiffs sued for possession of land which was found to be their jenm It appeared that the defendant had been in possession for more than twelve years under a cowle from Government, which provided that the grant of the cowle should not affect the jenmi's right, but that the defendant had never recognized the plaintiff's title :—*Held*, that the suit was barred by limitation. MUNIAPPAN CHETTI *v.* MUPPIL NAYAR . . I. L. R. 21 Mad. 169

LIMITATION ACT (XV OF 1877)—*contd.*

Schedule II—*contd.*

——— Art. 144—*contd.*

2. ADVERSE POSSESSION—*contd.*

27. ——— and Arts 113 and 139—*Agreement to occupy for a term—Permissive occupation—Expiration of term—Suit for possession.* Plaintiffs sued in September 1893 to recover posses-

admitted that the house belonged to *K* and promised to vacate it at the end of two years from the date of execution. The document being presented for registration on the 18th May 1880, *M* denied its execution, but after inquiry the District Registrar ordered it to be registered. The lower Court dismissed the suit as barred by limitation (either by Art. 113 or Art. 144 of the Limitation Act (XV of 1877) :—*Held*, reversing the decree and remanding the case, that the suit was not barred By the agreement the tenancy or permissive occupation was to end on 3rd May 1882. Either under Art. 139 or 144 the plaintiff had twelve years from that date within which to sue. SHIVRUDRAPPA KRISHNAPPA *v.* BALAPPA . I. L. R. 23 Bom. 283

28 ——— *Landlord and tenant—Suit for possession—Cause of action* The plaintiff stated that in the year 1862 he purchased a talukh in which some of the defendants then held an ijara for a term of years expiring in 1868. The talukh had previously been a khas mehal in the possession of the Government, and was bought by the plaintiff at an auction-sale held by the Collector. The plaintiff also stated that the ijaradar defendants, in collusion with the other defendants, had continued in possession of the lands held in ijara after the term of the ijara had expired and had refused to give up possession thereof to the plaintiff. The Judge of the lower Appellate

suit (which was brought in 1880) on the ground limitation :—*Held*, on second appeal, that the ... on the expiration of ... governed by ... XV of 1877) ... limitation, ... *Woomesh Chunder Goopto* v. *Raj Narain Roy, 10 W. R. 15*, cited. KRISHNA GOBIND DHUR *v* HARI CHURN DHUR

I. L. R 9 Calc. 367 : 12 C. L. R. 19

29. ——— *Landlord and tenant—Notice by tenant claiming to hold under perpetual lease.* The possession of a tenant for life is not rendered adverse within the meaning of Act XV of 1877 by a notice from the tenant that he

LIMITATION ACT (XV OF 1877)—*contd.*

Schedule II—*contd.*

———— Art. 144—*contd.*

2. ADVERSE POSSESSION—*contd.*

claims to be holding on a perpetual or hereditary lease. BENI PERSHAD KOERI *v.* DUDHNATH ROY

I. L. R. 27 Calc. 156
4 C. W. N. 274

30. ———————— *Landlord and tenant—Adverse possession—Trespasser.* A defendant has a right to set up the plea of tenancy and at the same time to rely on the statute of limitations. The plaintiff sued to recover possession of certain land. The defendant pleaded that it was included in a permanent lease granted to him in 1849 by the plaintiff's predecessor in title, and that the suit was barred by the law of limitation. It

defendant had claimed the land as a tenant, his possession was not adverse under Art. 144 of the Limitation Act (XV of 1877):—*Held*, that, under the circumstances, the defendant's possession was adverse. The defendant was a trespasser, setting up a pretended tenancy which the plaintiff denied throughout. The case therefore was to be regarded as one against a trespasser, and not as one between landlord and tenant. *Dinomony Dabea* v. *Doorga Persad Mozoomdar, 12 B. L. R. 274,* followed; and *Tekaitne Gowra Kumari* v. *Bengal Coal Company, 12 B. L. R. 282 note,* distinguished. MAIDIN SAIBA *v.* NAGAPA . . . I. L. R. 7 Bom. 96

31. ———————— *Anubhavom tenure—Forfeiture by alienation—Landlord and tenant.* Lands in Malabar were demised on *anubhavom* tenure. Some of them were alienated by the tenant, but the landlord subsequently accepted

I. L. R. 15 Mad. 123

32. ———————— *Landlord and tenant—Perpetual lease—Surrender of lease.* The

LIMITATION ACT (XV OF 1877)—*contd.*

Schedule II—*contd.*

———— Art. 144—*contd.*

2. ADVERSE POSSESSION—*contd.*

adverse to the plaintiff's kovilagom. RAMUNNI *v.* KERALA VARMA VALIA RAJA

I. L. R. 15 Mad. 166

33. ———————— *Land in possession of tenant—Relinquishment—Cause of action.*

in the possession of an ijaradar or under-tenure holder, but in the possession of ordinary tenants, before it can be determined whether the suit is barred or not, it must be found upon the evidence as to whether the tenants in occupation of the land had been paying rent to the plaintiffs or to the defendants. If they had been paying rent to the defendants and not to the plaintiffs, possession must be held to have been with the defendants, and a complete cause of action must be deemed to have arisen to the plaintiffs. On the other hand, if the plaintiffs had been in receipt of rent from the tenants and if such receipt of rent extended to a period within twelve years before the date of the

34. ———————— *Adverse posses-*

substantially was that B held it exclusively as owner and not as trustee, and that the suit was

LIMITATION ACT (XV OF 1877)—*contd.*

Schedule II—*contd.*

——— **Art. 144—*contd.***

2. ADVERSE POSSESSION—*contd.*

barred by limitation. Both the lower Courts dis-

in the first instance in accordance with the contract,

might assert. As he entered and continued to hold in a character consistent with the subsistence of their rights, they were never called on to eject him, or by any other process to establish rights which were not denied. While there subsisted any contract, express or implied, between the parties in and out of possession to which the possession might be referred as legal and proper, it could not be pronounced adverse. DADOBA *v.* KRISHNA I. L. R. 7 Bom. 34

TATIA *v.* SADASHIV . I. L. R. 7 Bom. 40

35 ——— *Suit for partition between co-owners—Possession of tenants.* The

the de- occu- which under a demise or kanom, and had attorned to the defendant; in other instances they were shown to have been admitted by the defendant on paying off the former tenant who had been admitted by the Zamorin. In all these instances the defendant intended the tenant who attorned to him to hold as his tenant to the exclusion of any claim by the Zamorin, but it was not shown that the Zamorin had any notice of such attempted usurpation on the part of the defendant. And on these facts the defence of limitation was raised on the ground that the land had been held for more than twelve years adversely to the Zamorin:—*Held*, that Limitation Act, Sch. II, Art. 144, and not Art. 142, was applicable to the suit, and that in the first class cases referred to above, the tenancy under the Zamorin had not been determined, and that, in the second class, there had been no ouster of the Zamorin, and that consequently the suit was not barred by limitation. ITTAPPAN *v* MANAVIKRAMA I. L. R. 21 Mad. 153

LIMITATION ACT (XV OF 1877)—*contd.*

Schedule II—*contd.*

——— **Art. 144—*contd.***

2. ADVERSE POSSESSION—*contd.*

36 ——— *Ijaradar, dispossession of—Adverse possession—Zamindar, suit by.* Possession taken by a trespasser during the currency of an ijara lease does not become adverse to the zamindar (lessor) until upon the expiration of the term, and a suit for possession may be brought within twelve years of that date under the provisions of Art. 144 of the Limitation Act. *Krishna Gobind Dhur* v. *Hari Churn Dhur, I. L. R. 9 Calc. 367*, followed. SHARAT SUNDARI DABIA *v.* BHOBO PERSHAD KHAN CHOWDHURI I. L. R. 13 Calc. 101

37. ——— *Adverse possession of limited interest in land.* The manager of a Nambudri family in Malabar, having demised certain land on kanam in 1868, was removed from his position as manager in 1875. In 1883 his successor sued to eject the kanam-holders.—*Held*, that the suit was barred by limitation. MADHAVA *v.* NARAYYANA . . I. L. R 9 Mad. 244

38. ——— *Suit for possession—Redemption of mortgage.* In a suit in 1887 to redeem a kanam for R62 of 1835, it appeared that in 1862 the mortgagee had received a renewal of his kanam for a larger amount, and that the defendant had produced the document of renewal in 1864 to the knowledge of the plaintiff in a suit to which the plaintiff was a party:—*Held*, that the defendant's possession had not become adverse from 1864 so as to make it necessary for the plaintiff to sue within twelve years, and that the suit was not barred by limitation. *Madhava* v. *Narayana, I. L. R. 9 Mad. 244*, distinguished. RAIRU NAYAR *v.* MOIDIN . . I L. R. 13 Mad. 39

39. ——— *Adverse possession—An outside person claiming an interest in an estate together with an undivided family—Inheritance to such owners.* In a family of three undivided brothers, an estate was purchased by the eldest as ... a fourth party, a

of the fourth recorded ... must be presumed to have been adverse to

LIMITATION ACT (XV OF 1877)—*contd.*

Schedule II—*contd.*

——— Art. 144—*contd.*

2. ADVERSE POSSESSION—*contd.*

ule of Act XIV of 1877. RAMALAKSHAMMA *v.* RAMANNA . . . I. L. R 9 Mad. 482

s.c. COLLECTOR OF GODAVERY *v.* ADDANKI RAMANWA PANTULU . . L. R 13 I. A. 147

40. ——— *Suit for possession.* On the 7th December 1863, *A*, in execution of his decree, purchased and obtained symbolical

term of the lease expired in 1870 or 1871 *A*, *C*,

it in the name of *E*. *B* then brought a suit to enforce his mortgage against *F*, the heir of his

possession of the property in 1870 or 1871 soon

obtained under the decree of the 29th July. *B*

KISHOR GANGAPADHYA *v* BANDIKARATAN TEWARI CHOWDHRY . . . I L R 13 Calc. 203

41. ——— *Suit to recover possession from mortgagees* The defendant was in possession of three fields (Survey Nos. 222, 360,

sent suit was brought in 1882 to recover possession of the fields on the ground that *G* was not competent to alienate them Two of these fields had been originally mortgaged by *G* to one *S* in 1863. In July 1866 a fresh loan on the security of the same land was obtained from *D*, the son of *S*, and the first mortgage deed was then superseded by one executed in favour of *D* In 1871 *D* assigned his mortgage to the defendant. It was contended that the plaintiffs' claim to these two fields was barred, as the mortgage to *D* was more than twelve years anterior to the suit:—*Held*, that the suit was not barred, as the cause of action accrued to the plaintiff on *G's* death, and the suit was brought only eight years after that event. JAMAL SAHEB *v* MURGAYA SWAMI . I. L. R. 10 Bom 34

42. ——— *Adverse possession—Benamidar* In a suit against a purchaser at a sale under Act XI of 1859, s. 13, the plaintiff

incumbrance was good to the extent of such fourth, and that the claim was not barred by Art 144 of Act XV of 1877. IMAMBANDI BEGUM *v.* KUMLESWARI PERSHAD

I. L. R. 14 Calc. 109 : L R. 13 I. A. 160

43. ——— *Adverse possession—Under-tenure granted under ghatwali tenure.*

abovementioned claim to the compensation-money which was made less than twelve years before the present suit was brought; and accordingly the

LIMITATION ACT (XV OF 1877)—*contd.*

Schedule II—*contd.*

——— Art. 144—*contd.*

2. ADVERSE POSSESSION—*contd.*

suit was not barred. RAM CHUNDER SINGH *v.* MADHO KUMARI
I. L. R 12 Calc. 484 : L. R. 12 I. A. 188

reversing on this point the decision of the High Court in MADHO KOOERY *v.* RAM CHUNDER SINGH
I L. R. 9 Calc. 411

44. ——— *Possession by mortgagee.* Where plaintiff's ancestors mortgaged

fendants in this suit, who were among his heirs,

tinuously for more than twelve years the profits of the unmortgaged moiety of such estate, and the malikana paid by the mortgagee of the mortgaged property. In 1877 the defendants redeemed the mortgage of the mortgaged moiety of such estate from their own moneys In 1878 the plaintiff sued for the possession of her share by inheritance of such estate :—*Held* (SPANKIE, *J*, doubting), with reference to the mortgaged moiety of such estate, that the possession of the defendants in respect of such moiety did not become adverse, within the meaning of Art 144 of Sch II of Act XV of 1877, on the death of *I* in 1861, but on the redemption of such moiety in 1877—"adverse possession" under that article meaning the same sort of possession as is claimed,—that is to say, in this case, full proprietary possession, which was not the nature of the possession of the defendants until the redemption of the mortgage ; and the suit therefore in respect of such moiety was within time. UMR-UN-NISSA *v* MUHAMMAD YAR KHAN
I. L R. 3 All. 24

46. ——— *Adverse possession* On the 6th September 1865 *B* obtained a patni lease of certain land from the zamindar, and at an auction sale by the Sheriff of Calcutta on the 21st February 1867, the zamindar's interest was knocked down to *B*, and a conveyance of the property to him was executed by the Sheriff on the 1st April 1867. On the 13th March 1879 a suit for

1867 ; and that therefore the plea of adverse possession was bad, since the suit had been instituted within twelve years of that date. KASUMUNNISSA BIBEE *v.* NILRATNA BOSE
I. L. R. 8 Calc. 79 : 9 C. L. R. 173
10 C. L. R. 113

47. ——— *Adverse possession—Suit for possession of mortgaged property.* Where there was nothing to show whether the family had been a joint or a divided family, and where the suit was not against a mortgagee, but, before the plaintiff could get at the mortgagee, he had to remove the obstacle presented by the adverse title (based on a twelve years' usufructuary original possession) of the daughter-in-law of the original mortgagor :—*Held*, that the limitation applicable to the case was that prescribed by cl. 12, s. 1, Act XIV, of 1859 NUND KOOMAR LALL *v.* SHUMBOO SINGH . . . . **8 W. R 34**

48 ——— *Mortgagor and mortgagee—Adverse possession of tortious mortgagee—Heir of mortgagee, right of, to redeem* Lands

for joint interests, but she had not ... respect of the portions mortgaged The mortgagee had held and enjoyed from the first, and had assigned absolutely, and the assignee had again ... In execution for the ... on, her right ... were sold, ... mortgagee.

The son of the surviving sister (not the mortgagor) sued for redemption and possession :—*Held*, that, as his title accrued (on his showing) on his mother's death, at which time defendant's vendors held adversely, no mortgage relation had been established as between plaintiff and defendants; and more than twelve years having elapsed before suit, the suit was not maintainable SREEMUTMONEY BEBEE *v.* GOBERDHONE BERMONO
2 Ind. Jur. N. S. 319

LIMITATION ACT (XV OF 1877)—*contd.*

Schedule II—*contd.*

——— Art. 144—*contd.*

2. ADVERSE POSSESSION—*contd.*

49. ——— *Cause of action—Adverse possession* R obtained, on 7th January 1862, a decree declaring a deed of sale of an estate in his favour, dated 7th January 1854, to be a genuine, authentic, and valid instrument In the meantime the plaintiff had acquired possession of the estate under a farm from Government, which farm expired in 1872 In a suit for possession [illegible]

could have obtained adverse possession DHUNDI v. RAM LALL . . . . 7 N. W. 149

50. ——— *Transfer of right—Dispossession of ijaradar.* After adverse posses- [illegible]

CHUNDER BISWAS . . . 17 W. R 377

51 ——— *Adverse possession—Transferee from defendant not a party to suit* A took and held possession of land adversely to B, and afterwards let it in patni to C B brought a suit for possession against A, and, having obtained a decree, attempted to execute it by turning C out of possession Between the date on which A originally took adverse possession of the land and the date on which B attempted to turn C out of possession, more than twelve years elapsed —*Held*, that B's claim against C was barred by limitation, and that he was not bound by the decree obtained by B against A, not having been made a party to the suit MOHENDRO NATH MUKERJEA v. NAFFUR CHUNDER PAL CHOWDHRY . 1 C. L. R. 537

52 ——— *Adverse possession—Suit to recover possession of property sold at execution sale* The plaintiff and two other members of his family, M and S, held a zamindar in the following shares, viz,—the plaintiff ten annas, M two annas, and S four annas Having [illegible]

partition, and for a declaration of his right to possession of a four annas share of the whole estate. A decree was made to that effect in 1860, and in 1863 an appeal by S alone against this decree was dismissed by the High Court. The purchaser's [illegible]

against him, claiming that the partition having been set aside and a four annas share of the whole estate obtained by the purchasers under the decree of 1860, a right accrued to him to have his share [illegible]

possession adverse to the plaintiff rendering it necessary for him to assert his right until the dismissal of the appeal in 1863. MANWAR ALI v. ANNODAPERSAD RAI

I. L. R. 5 Calc. 644 : 6 C. L. R. 71
L. R. 7 I. A. 1

53 ——— *Suit by trustee to recover temple lands—Possession for twelve years by party claiming to be trustee.* The defendant purchased from one of the co trustees of a temple the right to manage the affairs of the temple and enjoy certain land which formed the endowment of the temple, and held possession of the land for more than twelve years ;—*Held*, that a suit by the other trustee to recover the land was barred by limitation. KANNAN v NILAKANDAN . I. L. R. 7 Mad. 337

54 ——— *Cause of action—Suit for accretions to tenure.* The cause of action in respect of accretions accrues from their formation and delivery to the defendant, and a suit brought after twelve years from that time is barred. LUCHMEE NARAIN SHAHA v JUTADHAREE HOLDAR 7 W. R. 89

Upheld on review in DOYAMOYEE DOSSEE v. LUCHMEE NARAIN SHAHA . . 7 W. R. 457

55 ——— *Suit for alluvial* [illegible]

LIMITATION ACT (XV OF 1877)—*contd.*

Schedule II—*contd.*

——— Art. 144—*contd.*

2. ADVERSE POSSESSION—*contd.*

the defendant who owned villages on the opposite side of the river :—*Held*, in a suit to recover the land, that the twelve years which would bar the suit ran from 1876, the judicial ascertainment of the land decreed, and the suit, having been brought within twelve years from that time, was not barred. JAGAJIT SINGH *v.* SARABJIT SINGH

I. L. R. 19 Calc. 159
L. R. 18 I. A. 165

56. ——— *Suit for division of lands according to custom established in former suit—Establishment of right* A co-owner of village lands sued in 1861 to have them divided among the villagers according to a custom (last observed in 1835) that at the expiration of every twelve years the lands should be redistributed by lot among the co-owners, and to have two of the shares delivered to him as one of such co-owners. In 1851 another co-owner had, in a suit to which some only of the present defendants were parties, obtained a decree for the periodical allotment of the lands; and in

from barring the plaintiff's right to sue, and that the circumstance that some only of the present defendants were parties to such litigation could make no difference with regard to the litigation bar. *Quære:* Whether, in the absence of such litigation, the law of limitation would have been a bar. VENKATASVAMI NAYAKKAN *v.* SUBBA RAU SANKARA SUBBAIYAN *v.* SUBBA RAU 2 Mad. 1

57. ——— *Suit for possession by avoidance of sale-deed—Cause of action—Adverse possession* The suit was instituted on the 17th of February 1874, the plaintiff claiming the possession of his deceased brother's share in the

B, who had redeemed the mortgage about five years before suit and obtained possession; and that *M*, having made a second marriage, had lost her interest in the share. *Held*, that the suit was barred by limitation under Art. 145, second

58. ——— *Act IX of 1871, Art. 93—Suit to set aside deed and for possession* On the death of *A*, his property was taken possession of by *C* under an alleged deed of sale from *A*.—*Held*, that a suit by *A's* heir for possession and to set aside the deed was governed by Act IX of 1871, Sch. II, Art. 145, and not by Art 93. TRILOCHUN CHATTAPADHYA *v.* NOBOKISHORE GHUTTUCK

2 C. L R 10

59. ——— *Suit for cancellation of deed of sale.* Plaintiff sued for cancellation of the sale of certain lands made to defendants in 1841. In 1843 defendants executed an agreement (A) to plaintiff, giving her a right of re purchase. The language of the document was—"If you and your posterity pay in a lump the 175 rupees, we will hand over the lands to you" Upon

(1843 at latest) having elapsed before suit VENKAPPA CHETTI *v.* AKKU . . 7 Mad. 219

60. ——— and Art. 91—*Suit for posses-*

years was applicable to the ... *v. Kara Mal, I. L R. 3 All. 394; S. A. No 432 of 1882, decided the 11th August 1882; Weekly Notes All. (1882) 173; Sobha Pandey v. Sahodra Bibi ... Raghubar ... Kalka ... ment of ... Singh,* ... *I. L. R 5 All. 76*, followed. *Bhawani Prasad v. Bisheshar Prasad, I. L. R. 3 All 846; Ashgar Ali v. Mahammad Zainulabdin, I. L. R 5 All. 573*, distinguished IKRAM SINGH *v.* INTIZAM ALI

I. L. R. 6 All. 260

61. ——— and Art. 44—*Omission to sue ... affecting im-*

from availing himself of ... for the recovery of immoveable property, ... that he can prove that such instrument is null and

LIMITATION ACT (XV OF 1877)—*contd.*

Schedule II—*contd.*

——— Art. 144—*contd*

2. ADVERSE POSSESSION—*contd.*

void so far as his interests are concerned. RAGHUBAR DYAL SAHU v. BHIKYA LAL MISSER

I. L. R. 12 Calc. 69

62. ——— *Agreement not to execute decree—Wrongful execution in breach of agreement—Deed of conditional sale—Disavowal of trust* The plaintiff sued in 1875 to recover possession of immoveable property which the defendant had obtained in 1873, in execution of an *ex parte* decree, dated the 8th June 1861. That decree was founded on a deed purporting to be a deed of conditional sale, dated the 24th December 1853, executed by the plaintiff in favour of the defendant The plaintiff alleged that the deed was executed in

not be disturbed. The defendant, *inter alia*, pleaded the bar of limitation against plaintiff's suit —*Held*, that the suit was not barred by limitation,

63. ——— *Suit for recovery of endowed property.* In 1801 the shebait and proprietor of the gudi of a debsheba at K alienated part of the land by deed of gift to *B* for the purpose of founding a sheba at C, which was accordingly done. In 1823 the then shebait of the debsheba at K instituted a suit for the recovery of the alienated lands against the then shebait of the sheba at C, and in that suit it was declared that the sheba was independent of the debsheba, and the then plaintiff

Statute of Limitations, Bengal Regulation III of 1793, barred the suit twelve years after the death of *A*. KISSNONUND ASHROM DUNDY v. NURSING DASS BYRAGEE . . . Marsh. 485

64. ——— *Religious endowment—Sale of trust property in execution—Suit by trustee to recover the property* In execution of decrees against the plaintiff, as the representative of his deceased father and brother, certain lands

plaintiff was entitled to recover the property.

I. L. R. 8 Bom. 168

65 ——— *Suit by a trustee of a devasom disaffirming the act of his predecessor.* The trustee of a Mâlabar *devasom*, who had succeeded to his office in June 1883, sued in 1887 to recover for the *devasom* possession of land which had been demised on kanom by his predecessor in Febr

inval

had

twelve years, falsely asserting the title of kanomdar with the permission of the plaintiff's predecessor in office :—*Held*, that the suit was not barred by limitation VEDAPURATTI v. VALLABHA

I. L. R. 13 Mad 402

66 ——— *Suit by mirasidar to recover land resigned to Government by his ancestor—Cause of action* In a suit brought by a mirasidar to recover possession of miras land, which his ancestor had resigned to Government, against a holder to whom Government had subse-

the consent of his heirs is not requisite. ARJUNA VALAD BHIVA v. BHAVAN VALAD NIMBAJI

4 Bom. A. C. 133

67. ——— *Suit by mirasidar to recover tenure relinquished and taken up by another.* Where a mirasidar left his miras in 1850 without executing a razinamah resigning it, and the miras lay waste until 1855, when the defendant took it up and cultivated it, it was held that the cause of action of the mirasidar arose in 1855, when the miras was taken up by the defendant. LAKSHUMAN RAMJI v. RAMLAL VALAD MAHIPATA

6 Bom. A. C. 66

68. ——— *Adverse possession—Mokurari title—Onus probandi* The plaintiff purchased a mouzah from the proprietor in 1869, and now sued to obtain possession from the defendant, who was proved to have held under a

within twelve years of suit brought, and therefore

LIMITATION ACT (XV OF 1877)—*contd.*

Schedule II—*contd.*

——— Art. 144—*contd.*

2. ADVERSE POSSESSION—*contd.*

the Courts below dismissed his suit. On special appeal it was *held* that the defendant, before succeeding on the question of limitation, ought to have shown that the plaintiff had notice of the mokurari title set up. The case was sent back to the Court below to try the validity of that title. DHANUK DHARI SINGH *v.* GAPI SINGH

6 B. L. R. Ap 151 : 15 W. R. 191

See PRAHLAD SEN *v.* RUN BAHADUR SINGH
2 B. L. R. P. C. 111 : 12 Moo I. A. 289
12 W. R. P. C. 6

69. ——— *Suit to set aside mokurari grant—Notice of claim—Cause of action.* In a suit by the guardian of a minor to recover possession of certain lands in her zamindari and to set aside an alleged mokurari grant, the plaintiff's case was that the defendants had held under a ticca lease, and had wrongfully held on after its expiration. The defendants set up an old mokurari grant under which they claimed to hold in perpetuity upon the payment of a fixed rent. The High Court, overruling the decision of the first [illegible]

had notice that the former claims under a mokurari grant, and such notice was not given in the present instance twelve years before the commencement of the suit. TEKAETNEE GOURA COOMAREE *v.* SAROO KOOMAREE . . . 19 W. R. P. C. 252

Affirming TEKAITNEE GOURA COOMAREE *v.* BENGAL COAL COMPANY
13 W. R. 129 : 5 B. L. R. 667 note
12 B. L. R. 282 note

70. ——— *Act IX of 1871,* [illegible]

DOBEY
7 C. L. R. 580 . I. L. R. 6 Calc 566 note

71. ——— *Suit by mortgagee for possession after foreclosure* In a suit by a mortgagee to obtain possession after foreclosure instituted more than twelve [illegible]

granted under the foreclosure proceeding :—*Held,* under s. 145 of the Limitation Act (IX of 1871), that the period of limitation must be calculated from the date of the expiry of the year of grace, and not from the time when the default was first

LIMITATION ACT (XV OF 1877)—*contd.*

Schedule II—*contd.*

——— Art. 144—*contd.*

2. ADVERSE POSSESSION—*contd.*

made. BURMAMOYE DASSEE *v.* DINOBUNDHOO GHOSE . . . . I. L. R. 6 Calc. 564
7 C. L. R. 583

GHINARAM DOBEY *v.* RAM MONARUTH RAM DOBEY
I. L. R. 6 Calc. 566 note : 7 C. L. R. 580

72. ——— *Act XV of 1877, Sch. II, Art. 135—Possession under mortgage* Under a mortgage-deed, which by its express terms allows the mortgagee a right to take possession upon default by the mortgagor in payment of the mortgage-money, the mortgagee, as absolute owner of the property, has twelve years from the time at which his right to possession commences, in which he may bring his suit for possession. But where there is no such stipulation in the mortgage, the [illegible] does not [illegible] year of [illegible] ASHAD [illegible]

I. L. R. 10 Calc. 68 : 13 C. L. R. 51

See DENONAUTH GANGOOLY *v.* NURSINGH PROSHAD DOS . . 14 B. L. R. 87 : 22 W. R. 90

73. ——— *Suit to set aside alienation by mortgagee.* The cause of action in a suit by a mortgagor to set aside an alienation by a mortgagee in possession arises from the date of redemption of the property by the mortgagor. ADJOODHYA SINGH *v.* GIRDHAREE . 2 N. W. 199

74. ——— *Suit for redemption against person not claiming under mortgagee.* [illegible] for redemption, [illegible]

by a title adverse to that of the plaintiff [illegible] that the claim was barred under Art. 145 of Act IX of 1871. The contention that so long as the mortgagor is entitled only to the equity of redemption there can be no invasion of his interest cannot be assented to. There are cases in which the rights [illegible] mortgagee are [illegible] mortgagor [illegible] allowed for [illegible] in land.

AMMU *v* RAMAKRISHNA SASTRI
I. L. R. 2 Mad. 226

75. ——— *Suit to set aside* [illegible] *from mortgage into sale.* Where [illegible] to a sale, [illegible] arises, [illegible] the date [illegible] from that [illegible] DABEE [illegible] Agra 180

DYAL [illegible]

LIMITATION ACT (XV OF 1877)—*contd.*

Schedule II—*contd*

———— Art. 144—*contd.*

2. ADVERSE POSSESSION—*contd.*

76. ———————— *Adverse posses-*

JAMNABAI . . I. L. R. 10 Bom 4

77. ———————— *Adverse possession—Mortgagor and mortgagee—Suit by mortgagee for possession of mortgaged property—Pre-emption—Purchaser for value without notice* Under a registered deed of mortgage, dated in May 1869, the mortgagee had a right to immediate possession,

gagors sold the property, and thereupon one *R*

possession under his mortgage:—*Held*, with reference to a plea of adverse possession for more than twelve years set up by the defendant, that the position of a person who purchased property by asserting a right of pre-emption was not analogous to that of an auction-purchaser in execution of a decree, but that such person merely took the place

DURGA PRASAD *v.* SHAMBHU NATH
I. L. R. 8 All 86

78 ———————— *Limitation Act, 1871, Arts. 15 and 82—Suit by minor to set aside alienation of property by guardian* A Hindu family being heavily oppressed with debts, ancestral and

satisfy personal debts of their own:—*Held*, that a suit of this nature was not a suit to "set aside an order of a Civil Court" under Art. 15, Sch II, of Act IX of 1874; nor was it a Suit "to cancel or set aside an instrument not otherwise provided for" under Art. 82, but that it was governed by Art 145.

SIKHER CHUND *v.* DULPUTTY SINGH
I. L. R. 5 Calc. 363: 5 C. L. R. 374

79 ———— and Art 11—*Suit for possession—Civil Procedure Code (Act VIII of 1859), s 246—Limitation Act (XV of 1877), Sch II, Art 11.*

iff's right to certain property and for possession,

Chatterjee v. *Shama Churn Garai, 10 C. L. R. 435,* cited GOPAL CHUNDER MITTER *v.* MOHESH CHUNDER BORAL
I. L. R. 9 Calc 230: 11 C. L. R. 363

BISSESSUR BHUGUT *v.* MURLI SAHU
I. L. R. 9 Calc. 163: 11 C. L. R. 409

80. ———— and Art. 136—*Suit to obtain possession of land from vendor who has been dispossessed and subsequently recovered possession—Possession, suit for* A vendor who was at the time out of possession of certain immoveable property sold a share in it to a purchaser by a kobala After the date of the sale, the vendor recovered possession, and the purchaser, within twelve years of the

thereupon, on the 6th September 1886, brought the

LIMITATION ACT (XV OF 1877)—*contd.*

Schedule II—*contd.*

——— Art. 144—*contd.*

2. ADVERSE POSSESSION—*contd.*

present suit to recover possession of the property :—*Held*, that the title of defendant No. I to the land

twelve years from the date of the purchase set up by defendant No I (which was held by the lower Courts not proved), the claim was not barred. Want of possession for twelve years after the date of purchase would extinguish the purchaser's title. *Ram Prosad Janna* v. *Lakhi Narain Pradhan, I. L. R 12 Calc. 197*, and *Sheo Prasad* v. *Udai Singh, I. L. R. 2 All. 718*, referred to LAKSHMAN VINAYAK KULKARNI *v.* BISANSING

I L R. 15 Bom 261

82. ——— *Suit by auction-purchaser to set aside alienation by judgment-debtor.* An auction-purchaser can sue to set aside any alienation made by the judgment-debtor previously to the sale in execution which he thinks to be collusive. BAICHOO *v* HOWARD . . **3 Agra 15**

The cause of action in such a suit runs from the date of transfer, and the suit is barred after the expiration of twelve years, unless the transfer was actually fraudulent. NARAIN DASS *v.* NIDDHA LALL . . . . **3 Agra 19**

83. ——— *Purchaser at sale for arrears of revenue—Shikmi talukh* *A* purchased a zamindari of which certain mouzahs were claimed and taken possession of by *B* and *C* as mokurari holders of a shikmi talukh created by the former zamindar before the Decennial Settlement. To a suit by *A* for the recovery of the lands, *B* and *C* pleaded limitation, calculating the period from the time of the purchase in 1833 :—*Held*, that limitation must be computed not from the time of the purchase, but from the time when possession was taken from the purchaser. WISE *v.* BHOOBUN MOYE DEBIA . **3 W R P. C. 5 : 10 Moo. I A. 165**

84. ——— *Suit by purchaser to compel zamindar to register transfer.* Where a zamindar refuses to register a transfer on the application of a purchaser, the latter's cause of action in a suit to compel him to do so arises from the time of such refusal, and not from the time when his title accrued by his purchase. RADHIKA PERSHAD SHADHOO *v.* GOOROO PROSUNNO ROY

20 W. R 125

85. ——— *Rights of—Limitation.* One of four children set up a deed of gift and a will, in virtue of which he was in 1842 placed, by a summary proceeding of the Courts, in posses-

LIMITATION ACT (XV OF 1877)—*contd.*

Schedule II—*contd.*

——— Art. 144—*contd.*

2. ADVERSE POSSESSION—*contd.*

been made without due consent of heirs, the consent alleged in the will being held to be no consent. The plaintiffs now sued to get possession of the shares of the two children whose rights and interests they had bought :—*Held*, reversing the decision of the High Court that the plaintiffs, as purchasers at an execution sale, were in no better position than claimants under any other conveyance or assignment, and, their cause of action arising in 1842, they were barred by limitation. ENAYET HOSSEIN *v.* GRIDHARI LALL

2 B. L R. P. C. 75 : 11 W. R. P. C 29
12 Moo I. A. 366

86. ——— *Suit to recover land sold in execution of decree—Possession* The purchaser at a sale held on the 14th September 1881 in execution of a decree in the form of a money-decree, obtained upon a mortgage-bond executed by the father of a Mitakshara joint family during the minority of his only son, having failed to obtain possession of the property mortgaged, brought a suit for possession, and under a decree

entitled only to the share of the mortgagor ... that the suit, having been brought within twelve years from the date on which the defendant obtained possession, was not barred by limitation. MUNBASI KOER *v.* NOWRUTTON KOER

8 C. L. R 428

87. ——— *Settlement by revenue authorities* Where the defendants, who were at the settlement in 1841, when the estate was farmed out, recorded as proprietors by the revenue authorities did not hold proprietary and adverse possession till the expiry of the farming lease :—*Held*, that the plaintiff's suit was not barred by limitation as not having been brought within twelve years after 1841. RAMAISHER SINGH *v.* SAIVA ZALIM SINGH . . . . **2 Agra 8**

88. ——— *Settlement by* ... *Co-sharer.* In a case in which ... holders, for ... ement from ... areholder to ... crued from ... thin twelve ... BUNWAREE ... W. R. 14

89. ——— *Suit for confirmation of partition—Cause of action—Limitation.*

LIMITATION ACT (XV OF 1877)—*contd.*

Schedule II—*contd.*

——— Art. 144—*contd.*

2 ADVERSE POSSESSION—*contd.*

Where there had been a private partition of an estate, and the several shareholders had held their lands in accordance therewith, an application was made by some of the shareholders to the Collector to have a fresh partition made as if the whole lands were held jointly Plaintiff, who was also a shareholder, objected, but his objection was overruled Thereupon he brought a suit for confirmation of the partition, and for an injunction to stay the partition pending before the Collector :—*Held*, that the plaintiff's cause of action against the defendants arose upon their moving the Collector to interfere with the first partition, and that the period of limitation in respect of such cause of action was the same as in any other suit for determining the rights of parties to immoveable property KHOOBUN *v* WOOMA CHURUN SINGH . 3 C L R. 453

90. ——————— *Cause of action—*

declared to be liable to assessment under Regulation II of 1819. The recorded proprietors of the adjoining permanently-settled estate, to which the chur was a contiguous accretion, refused to make a permanent settlement with Government at the rent demanded The chur was then held khas by Government for some time and subsequently leased out for temporary periods to strangers. In these temporary leases Government reserved the proprietor's rights to come in and take a permanent settlement on the expiry of the temporary settlements, and also reserved an allowance of ten per cent on the rent as malikana on their account, which sum had been kept in deposit in the Collectorate treasury In 1867 Government made a permanent settlement with the defendant, one of the

menced from the date of the settlement with the defendant. KRISHNA CHANDRA SANDYAL CHOWDRY *v.* HARISH CHANDRA CHOWDRY . 8 B L R. 524

s.c KRISTO CHUNDER SANDYAL *v.* KASHEE KISHORE ROY CHOWDHRY . 17 W. R. 145

KRISTO CHUNDER SANDEL CHOWDHRY *v.* SHAMA SOONDUREE DEBIA CHOWDHRAIN 22 W. R. 520

LIMITATION ACT (XV OF 1877)—*contd.*

Schedule II—*contd.*

——— Art. 144—*contd*

2. ADVERSE POSSESSION—*contd*

91. ——— and Art. 113—*Suit for possession of land based on compromise—Specific performance* A suit for recovery of possession of land, based on a compromise effected in the course of

but by s 145 In a suit for recovery of possession based on an agreement to surrender possession, the possession of defendants at the time when they made the agreement to deliver over the land to the plaintiff cannot be taken as hostile to the plaintiff, but can only be considered adverse to plaintiff from and after the date of the agreement by reason of defendant's refusal to carry out the promise BETTS *v.* MAHOMED ISMAEL CHOWDHRY . . . . . . 25 W. R. 521

92. ——————— *Vendor and purchaser—Transfer of immoveable property—Specific performance of contract—Limitation Act, 1877, Arts 113, 136.* On the 27th October 1865 the vendor of certain immoveable property executed a conveyance of such property to the purchasers. On

or undertaking on the vendor's part to put the purchasers into possession. On the 24th February 1870 the vendor obtained possession of the larger portion of the property, and on the 23rd August 1872 of the remainder. On the 5th October 1877 the purchasers sued the vendor for the possession of the property, stating that "possession was agreed to be delivered on the receipt of possession by the vendor," and that the cause of action was that the vendor had not put them into possession: —*Held*, that the suit was not one for the specific performance of a contract to deliver possession, to which Art. 113 of Sch. II of Act

SHEO PRASAD *v.* UDAI SINGH

I. L. R. 2 All. 716

93 ——————— *Suit to declare will invalid—Reversioner.* Suit by *A*, a Hindu lady and daughter of *B*, to declare invalid a will of *B*, made in favour of *C*, a relative It appeared that *D*,

LIMITATION ACT (XV OF 1877)—*contd.*

Schedule II—*contd.*

Art. 144—*contd.*

2. ADVERSE POSSESSION—*contd.*

the date on which the widow admitted the devisee's rights, and not from any prior date, as during the period of the widow's dispute with the devisee she

BISTOO NARAIN ROY . . 8 W. R 323

94. ———— *Stranger claiming interest in estate together with an undivided family—Inheritance among such owners.* In a family of three undivided brothers an estate was purchased by the eldest as manager, on whose application a fourth party, a sister's husband, was recorded in the revenue records as a co-proprietor with them. The latter, even if he by joining in the purchase had become entitled to an undivided fourth share in the estate, did not thereby become a member of the undivided family and the members of it would not have had a right to succeed to his fourth share which would descend to his own heirs, the other three-fourths which he would not have

one-fourth share abovementioned by any right of inheritance, and that, in the absence of proof that his possession of it was by authority of the fourth recorded co-proprietor, his possession must be presumed to have been adverse to the latter and to any

by a purchaser, relying on a title through the fourth co-proprietor, was barred by limitation under Art 144 of the second Schedule of Act XV of 1877

RAMALAKSHAMMA *v.* RAMANNA I L R. 9 Mad. 482

COLLECTOR OF GODAVERY *v* ADDANKI RAMANNA PANTULU . . . L R 13 I. A 147

95. ———— *Benamidars—Purchaser at sale for arrears of revenue.* In a suit against a purchaser at a sale under Act XI of 1859, s. 13, the plaintiff claimed to have an incumbrance by virtue of two mokurari pottahs executed by the heirs of the last of a series of benamidars, and the question was whether those who had granted the mokurari were entitled to all or to any and what part of the land comprised in their grant and as to this the most important fact was the actual possession or receipt of the rents, it being found that the last benamidar had actual ownership of one-fourth of the property comprised therein:—*Held*, that the incumbrance was good to the extent of such one-fourth share, and twelve years' bar commencing from the date of possession first held

LIMITATION ACT (XV OF 1877)—*contd.*

Schedule II—*contd.*

Art. 144—*contd.*

2. ADVERSE POSSESSION—*contd.*

96. ———— *Cause of action—Acts IX of 1871 and XV of 1877.* *R*, a Hindu widow, granted a jungleburi tenure to certain tenants in respect of a chur belonging to her husband's estate. An amulnama was granted to the tenants signed by a karpardaz of *R* in respect of the tenure. *R* died in January 1861, and was succeeded by *J* and *P*, two daughters, the last of whom died on the 31st December 1880. On her death the grandsons succeeded to the estate One *R's* death, *J* and *P* got possession of all estate papers, and amongst them a dowl granted by the tenants in return for the amulnama In 1865 proceedings were taken by the tenants to obtain kabuliats on the footing of those documents, which proceedings came to an end in

J and *P* had all along been aware of the claim made by the tenants that they held a permanent tenure, and the suits were dismissed on the ground that it was too late for *J* and *P*, after the lapse of twelve years from *R's* death, to raise the question In

was not binding on them; that the tenants were middlemen and had no right of occupancy; that at all events the plaintiffs were entitled to rent on the area of land then held by the defendants, as there had been large accretions to the amount covered by the amulnama and dowl. The defendants amongst other things pleaded limitation:—*Held*, that the suit was barred by limitation. Adverse possession began to run on *R's* death (as *J* and *P*, who represented the estate, were then well aware that the tenants claimed to hold the lands under

Act IX of 1871 came into force, a good title by the defendants had then obtained a good title by adverse possession as against all the reversioners which could not be defeated by the provisions of the subsequent Limitation Acts of 1871 and 1877.

DROBOMOYI GUPTA *v.* DAVIS I. L. R. 14 Calc. 323

97. ———— *Limitation Act, 1877, Art. 141—Adverse possession against widow—Reversioners* The plaintiffs sued for possession of

LIMITATION ACT (XV OF 1877)—*contd.*

Schedule II—*contd*

——— Art. 144—*contd.*

2 ADVERSE POSSESSION—*contd*

also the reversioners, and therefore the claim was barred *Shiva Ganga Case*, 9 *Moo I A.* 543, referred to. GHANDHARAP SINGH *v.* LACHMAN SINGH I L R 10 All 485

98 ——— *Hindu widow—Adopted son—Adverse possession against widow for more than twelve years, effect of, as against a subsequently adopted son—Title.* Adverse possession

years before the plaintiff's adoption. KRISHNAJI JANARDHAN *v.* MORBHAT . I L R 13 Bom. 276

99 ——— *Mortgagee be-*

who had not been in actual possession since the date of the mortgage. On the 20th January 1885, *B* brought a suit to recover possession of his purchased share :—*Held*, that the subsequent purchase did not change the character of *B* from that of a mortgagee to that of an owner, and that his suit was barred by twelve years' limitation. NUNDO LAL ADDY *v* JODU NATH HALDER I L R. 14 Calc. 674

100. ——— *Co-sharer—Possession of one co-sharer when adverse—Mortgage—Mortgage by three co-sharers—Redemption by one of several mortgagors—Right of the other mortgagors to sue for redemption—Period of limitation for such suit* In 1847 the property in dispute was mortgaged by three co-sharers, *D*, *A*, and *R*. In

brought more than twelve years after *R* had redeemed the property, and *R's* possession subse-

101. ——— *Suit for redemption or recovery of property on payment of a charge—Possession after a redemption by one of*

defective for want of parties, and that it was time-

LIMITATION ACT (XV OF 1877)—*contd.*

Schedule II—*contd.*

——— Art. 144—*contd.*

2. ADVERSE POSSESSION—*contd.*

barred:—*Held*, that the plaintiff's brother and sisters ought to have been joined as co-plaintiffs, the defendant No. 1's possession after redemption not being adverse to them. If it was adverse at all, it was adverse to the whole of the plaintiff's branch of the family, so as to bar the right of the group altogether. But that was no reason why the co-owners should not be admitted as co-plaintiffs, and the suit must go on upon its merits. BHAUDIN *v.* ISMAIL

I. L. R. 11 Bom. 425

102. ——————— *Redemption of land by one of two co-mortgagors and re-mortgage thereof—Possession under second mortgage for more than twelve years.* *A* and *B*, two brothers, being entitled to certain land, mortgaged it in 1852 to *C*. In 1864 *A* redeemed the mortgage and re-mortgaged the land to *D* for the same amount. In 1885 the defendants (sons of *A*) redeemed the mortgaged to *D*. In 1886 the plaintiff (son of *B*) sued defendants and the representatives of *C* and *D* to redeem a moiety of the land on payment of a moiety of the amount due on the mortgage of 1852. The defendants pleaded, *inter alia*, that the suit was barred by limitation, as the land had been held adversely since the mortgage of 1864:—*Held*, that, in the absence of proof that the land was held with an assertion of adverse title, the plaintiff was entitled to a decree. MOIDIN *v.* OOTHUMANGANNI

I. L. R. 11 Mad 416

103. ——————— *Mortgage—Conditional sale—Foreclosure—Suit for possession—Reg. XVII of 1806, s. 8—Cause of action—Limitation Act (XIV of 1859), s. 1 (12).* A suit for foreclosure was brought in 1886 upon a mortgage by conditional sale executed in 1846, the condition being for payment within five years from that date. The deed provided that, in default of payment within the prescribed period, the property mortgaged "will be foreclosed (baibat), and this mortgage-deed will be considered as an absolute

mortgagor:—*Held*, that by reason of Act XIV of 1859 (Limitation Act) the plaintiff's remedy was

could not create a fresh cause of action. *Deno-nath Gangooly* v. *Nursing Proshad Doss, 14 B. L. R. 87*, referred to. MURALIDHAR *v.* KANCHAN SINGH

I. L. R. 11 All. 144

LIMITATION ACT (XV OF 1877)—*contd.*

Schedule II—*contd.*

——— Art. 144—*contd.*

2. ADVERSE POSSESSION—*contd.*

104. ——————— *Hindu law—*

alleged. One of the members of the family who was

683, followed. MUTTUSAMI *v.* RAMAKRISHNA

I. L. R. 12 Mad. 292

105. ——————— *Partition—Alienation by co-parceners—Possession by alienee.* Where co-parceners have alienated their shares in the joint property by sale and mortgage, and the alienees have been in possession for more than

apply except in cases between members of a joint

106. ——— and Art. 141—*Exclusive possession by one of the co-sharers of portions of joint property, the rest being held jointly.* Plaintiff and defendant No. 2 (two sisters) inherited jointly to their father's estate twenty-five or *thirty years* ago. Admittedly all the joint property except the dwelling-house (the subject-matter of the suit) was in the joint possession of both of them. Defendant No. 2 alone was in possession of the family dwelling-house, but plaintiff visited her sister occasionally there in the character of a guest. There was no evidence that plaintiff asserted her title to the house or that her sister denied it. The second defendant then sold the dwelling-house to the defendant No. 1, whereupon the plaintiff brought the present suit:—*Held*, that Art. 144 of Sch. II of the Limitation Act, and not Art. 141, was applicable to the case, but that the possession of defendant No. 2 was not adverse to the plaintiff, the circumstances of the case showing that that effect could not be given to the exclusive possession of defendant No. 2. *Asud Ali Khan* v. *Akbar Ali Khan, 1 C. L. R. 364*, followed. BARODA SUNDARI DEBY *v.* ANNODA SUNDARI DEBY . 3 C. W. N. 774

LIMITATION ACT (XV OF 1877)—*contd.*

Schedule II—*contd.*

——— Art. 144—*contd.*

2. ADVERSE POSSESSION—*contd.*

107. ——— *Limitation Act,*

able properties of the muth to a nominee of the plaintiff The claim extended also to religious establishments at Benares and elsewhere connected with the muth. The muth was founded by a member of the adhinam. Many previous heads of the muth had agreed to be " slaves " of the head of the adhinam, but for over sixty years the head of the adhinam had exercised no management over the endowments belonging to the muth, and in a suit (compromised) of the year 1854 the present pretentions of the head of the adhinam had been denied *in toto.* The defendant had succeeded in

claim to manage the endowments as to which no claim had been put forward for sixty years; that

competent dharmapuram man be appointed, in spite

the a

head

guru

that

that

under such agreement GIYANA SAMBANDHA PANDARA SANNADHI *v* KANDASAMI TAMBIRAM

I L R 10 Mad. 375

108. ——— *Grant of profits of deshmukhi vatan in perpetuity—Hereditary gomastas—How far such grant valid after the death of the grantor.* By a sanad duly executed on the 20th August 1850, the plaintiffs' father, Y, who

was obtained by the defendants against Y. In 1859 execution of the decree was granted against Y. In 1864 the services connected with the vatan were discontinued by Government. In 1871 *Y* died. The

execution of the decree against the vatan The

appeal by the defendants to the High Court:—*Held,* confirming the decree of the lower Courts, that the plaintiffs were entitled to the declaratory decree and to the injunction prayed for Although the management of the vatan was vested by the sanad in the defendants and their heirs in perpetuity under the title of gomastas, never-

109. ——— *Suit against Government for inam lands and mokasa amals—Attachment under Act XI of 1852, effect of—Adverse possession—Mokasa amals, meaning of.* In 1826 *A* obtained a decree on a mortgage, awarding him pos-

mokasa amals and obtained a decree in 1868.

LIMITATION ACT (XV OF 1877)—*contd.*

Schedule II—*contd.*

——— Art. 144—*contd.*

2. ADVERSE POSSESSION—*contd*

Held, also, that even if the suit were cognizable by the Civil Courts, it would be barred by limitation. The plaintiff's right to the periodical payments was barred by a total discontinuance of them for more than twelve years before the institution of the suit, notwithstanding his decree for the amals in 1868, which might establish his right to them in that particular year. *Held*, further, that the claim to the lands was also time-barred, the Collector's possession being that of an adverse holder since 1865, when the attachment was ordered to be withdrawn. The land could not properly be said to be *in custodia legis*, Government having taken possession of it in its own right, and not on behalf of any rival claimants thereto. *Rao Karan Singh* v. *Baker Ali Khan, L R 9 I. A. 99 · I. L. R. 5 All. 1; Shidhojirav* v. *Naikojirav, 10 Bom. 228*, and *Tukaram* v. *Sujan Gir Guru, I L. R. 8 Bom 585*, distinguished. SHIVRAM DINKAR GHARPURAY *v.* SECRETARY OF STATE FOR INDIA

I. L R 11 Bom 222

110. ———— *Suit for decla-* ... ich were ... akkata- son of ... ana for a declaration of his title to certain lands as the sole uralen of a devasom. He was in possession of the greater part of the land, but one paramba was alleged to be held adversely to him by a person not joined in the suit, and the tenants of part of the remaining land had attorned to the defendant. In 1875 a suit was brought by the defendant's brother and others against the plaintiff and others to set aside an alienation by the present plaintiff's predecessor in title, but the suit was dismissed without any decision as to the co-uraimi right of the then plaintiff; and the present plaintiff had no further notice of interference by the present defendant's mana:—*Held*, that the claim was not barred, and that the plaintiff was entitled to the decree sued for. SUBRAMANYAN *v.* PARAMASWARAN

I. L R. 11 Mad 116

111. ———— *Manager of a Hindu temple—Shevaks or servants of an idol—Rights of manager and servants inter se.* The plaintiff was the hereditary manager of the temple of Shri Ranchod Raiji at Dakor. The defendants were the shevaks or ministers of the deity. The plaintiff sued to oust the ...

... limitation:—*Held*, that the defendants had not by occupation and user acquired any title as against the plaintiff, who was the manager of the temple ...

GANESH ... I. L R ...

112. ———— *Adverse possession of defendant supplemented by previous adverse possession of widow by whom defendant was adopted—Limitation Act (XV of 1877), s. 3.* B died in 1865 ... L and ...

12th August 1869 L adopted the defendant. On the 10th August 1881 the plaintiff filed this suit against the defendant, alleging himself to be B's adopted son and as such claiming possession of B's property. He did not deny the factum of the defendant's alleged adop... (the ... ant ... B, He ... id. having been carried out without the consent of ..., he senior widow. He further contended that the plaintiff's claim to the property was barred by limitation, it having been in possession of himself (the defendant) and L for more than twelve years before this suit was filed:—*Held*, that the suit was barred by limitation (Art. 144 of the Limitation Act XV of 1877), the defendant having been in adverse possession of the property for more than twelve ... place in ... put ... suit ... days ... date ... te of

LIMITATION ACT (XV OF 1877)—*contd.*

Schedule II—*contd.*

——— Art. 144—*contd.*

2. ADVERSE POSSESSION—*contd.*

the defendant's adoption, *L* had been either actually or constructively in exclusive possession of the property, such possession being distinctly adverse both to the plaintiff, so far as he claimed to be the adopted son, and to *C*, so far as she might claim to represent him during his minority. The question of limitation then depended on whether the defendant could supplement his own adverse possession since his adoption (which was deficient by two days) by the adverse possession of *L*, and this again

therefore became barred in 1878. PADAJIRAO *v.* RAMRAV . . . I. L. R. 13 Bom. 160

113. ——— *Mortgage—Mortgagee in possession—Dispossession of mortgagee by trespasser—Adverse possession as against mortgagee when effectual also as against the mortgagor—Burden of proof.* Land was mortgaged with possession to *A* (defendant No. 1) in 1828. In 1856 *A* was ousted from possession by *B*, a trespasser (defendant No. 2), who subsequently held the land and dealt with it as his own for forty years. The mortgagor sued both *A* and *B* for redemption. In appeal it was contended by *B* that his possession had been adverse not merely to *A* (the mortgagee), but also to the plaintiff (the mortgagor), and that the suit was barred by limitation. The plaintiff

became adverse to the plaintiff. CHINTO *v.* JANKI I. L. R. 18 Bom. 51

114. ——— *Alienation of an infant's property by his mother and guardian* Suit

ance and that of her daughter, and that it had been assigned by her to *A*, *B*, and *C* —*Held*, that the plaintiff's claim to the lands in the possession of *A*, *B*, and *C* was barred by limitation SUNDRAMMAL *v.* RANGASAMI MUDALIAR I. L. R. 18 Mad. 193

115 ——— *Non-payment*

I. L. R. 18 Mad. 111

116. ——— *Mortgage by previous owner out of possession for twelve years—Alienation of endowed property.* In a suit on a

the instrument above referred to, but it appeared that he never actually resumed the manage-

whatever the purpose of the debt intended to be secured thereby. SUBBARAMAYYAR *v.* NIGAMADULLAH SAHEB . . . I. L. R. 18 Mad 342

117. ——— *Patnidar and dar-patnidar, dispossession of—Adverse possession—Relinquishment by the patnidar, effect of* The land in dispute along with other lands were let out in patni and dar-patni by the predecessor in interest of the plaintiffs. During the continuance of the said leases the land in dispute was taken possession of, and held ad-

LIMITATION ACT (XV OF 1877)—*contd.*

Schedule II—*contd.*

——— Art. 144—*contd.*

2. ADVERSE POSSESSION—*contd.*

versely by, the defendants or their predecessor. The patni and dar-patni were relinquished by the patnidar and dar-patnidar in favour of the plaintiffs on the 29th June 1891, and they, on the 28th June 1893, brought a suit for recovery of possession of the disputed land from the defendants. The defence was that the suit was barred by limitation:—*Held*, that Art. 144, Sch. II of the Limitation Act, applied to the case, and that the suit was barred by limitation, inasmuch as it was not brought within twelve years from the date when the possession of the defendants became adverse to the plaintiffs. *Nuffer Chandra Pal Chowdhry* v. *Rajendra Lal Goswami, I. L. R. 25 Calc. 1·7*, *Gunga Kumar Mitter* v. *Asutosh Gossami, I. L. R 23 Calc. 863*; *Sharat Sundari Dabia* v. *Bhobo Pershad Khan Chowdhuri, I. L R. 13 Calc 101*; and *Chinto* v. *Janki, I L. R. 18 Bom 51*, distinguished. GOBINDA NATH SHAHA CHOWDHRY *v.* SURJA KANTA LAHIRI

I. L R 26 Calc. 460

118. ——— *Mortgage dating from before the annexation of Oude—Oude Redemption Act XIII of 1866—Under-proprietary rights of third parties in adverse possession, with a sub-settlement of one of the villages mortgaged.* In 1854, [illegible]

lasted The confiscation of 1858 had at one time swept away all rights, whether of the talukhdar, who was mortgagee, or of the mortgagor's heir, to redeem, or of any under-proprietors on the ilaka. This effect was thus counteracted. In the settlement of 1859-60, adjustments were made of the [illegible]

mortgagor's heir, being, however, unaware of his [illegible]

mortgagor's heir, having by that time discovered [illegible]

[illegible] but the tenth was in

the hands of the under-proprietors above mentioned, whom he sued for possession of it in 1887:—*Held*, that, inasmuch as the defendants were by the decree of 1866 established as owners of an under-proprietary right, becoming thereby entitled to a sub-settlement which they had obtained, their possession was adverse to any one claiming to be talukhdar or superior proprietor of the same estate, as well as to others. The defendant's possession with title dating from 1866 at latest, the lapse of time barred this suit under Act XV of 1877. IMDAD HUSAIN *v.* AZIZ-UN-NESSA

I. L. R. 23 Calc 483
L. R. 23 I A 8

119. ——— *Right of possession claimed by tenant against landlord—Mortgage by landlord—Possessory suit in the Mamlatdar's Court by the tenant against the mortgagor—Decree in favour of the tenant—Assignment of mortgage by mortgagee—Suit brought by the assignee to recover possession—Effect of Mamlatdar's order against mortgagor.* One *R*, who was the owner of the land in dispute, mortgaged it to *B* in July 1870. [illegible]

second appeal:—*Held*, that [illegible] ings in the Mamlatdar's Court commencing with the defendant's suit in May 1876, the possession of the defendant, whatever may have been its nature originally, was distinctly adverse to *R*, and also to the plaintiff, who as assignee might have taken the possession at any time under the mortgage, and the present suit, not having been brought until September 1888, was barred by the Limitation Act (XV of 1877). BAPU BIN MAHADAJ *v.* MAHADAJI VASUDEO

I. L. R. 18 Bom. 348

120. ——— *Manager—Land appertaining to muth—Sale of miras malki (ownership of miras tenure)—Mirasdar on inam estates, position of—Limitation Act (XV of 1877), s. 28—Right to recover rent.* In 1860, *K*, the manager of a muth, sold to *B* the miras malki (ownership of miras tenure) of certain lands appertaining to the muth subject to the payment of assessment. *K* died in the same year, and was succeeded by *R* as manager. In 1864 *R* sued *B* to set aside the sale. The suit was dismissed in 1865, and *B*'s miras right was confirmed. In 1871 one *G* obtained a decree declaring him to be the legal manager of the muth and removing *R*, who was held to have had no title

LIMITATION ACT (XV OF 1877)—*contd.*

Schedule II—*contd.*

Art. 144—*contd.*

2. ADVERSE POSSESSION—*contd.*

to the office. In 1887 the plaintiff, who succeeded *G* in the management of the muth, brought the present suit against the defendant, who was the vendee of *B*, to recover possession of the lands or to recover assessment for three years previous to the suit. The defendant pleaded that the suit was barred by limitation. The plaintiff contended that, as there was no lawful manager between 1860 and 1875, that period ought to be omitted in computing the period of limitation, and that as under the deed of sale to *B* the vendee became a tenant, the possession of the vendee and of the defendant could not be adverse:—*Held*, that, if defendant's possession

mirasdar on inam estates is only "a tenant at quit-rent or at a reasonable rent not subject to ejectment so long as he pays it," and as there was nothing in the sale-deed passed by *K* to *B* which required a different construction to be put on the miras tenure created by it, *B*' possession under it could not be adverse to the muth until there was an assertion by the grantee of his claim to be a permanent tenant, up to which time he would, in the eye of

right to recover three years' arrears of rent as reserved by the mirasi grant was not affected, as the

I. L. R. 18 Bom. 607

121. ———— *Suit for declaration that lands are khoti—Allegation of fraud—Survey Settlement Act (Bom. Act I of 1865).* A mixed khoti village, consisting of khoti and dhara lands, belonged to two co-sharers, *P* and *D*; each of them passed kabulats to Government in alternate years till 1862-63, when *P* on account of his advanced age allowed *D* to pass the kabulat every year. In the year 1867 the survey settlement having been introduced under Bombay Act I of 1865, *D* refused to pass the annual kabulat. Government thereupon put the village under attachment, which was, however, removed in the year 1878 on his passing the required kabulat. The management of the village was restored to him and certain surplus profits were handed over to him by Government. In the year 1881 *P* sold his share in the khoti to *S*, who brought a suit against *D* and his brother to recover a half share of the abovementioned profits. *D* resisted the claim, denying that either *P* or his assignee had any right to the khoti or to share in the khoti profits. The suit was dismissed on a technical ground. Subsequently in the years 1881 and 1884, *D* got decrees against the actual tenants declaring that the lands, the subject-matter of the present suit, were his dhara lands, and in accordance with those decrees the revenue authorities made corresponding entries in the revenue records. In the year 1888-89 *S* passed a kabulat as a half sharer in the khoti, and enjoyed the khoti profits for one year. Afterwards plaintiff No 1, one of *S*'s sons who died in the meanwhile, having passed the annual kabulat in 1892-93 and again in 1894-95 and having failed during both the years to recover khoti profits from the lands in dispute, he filed the present suit in August 1895 for a declaration that the lands were khoti, and that the defendants had fraudulently got them entered in the revenue records as dhara. The plaintiff stated that they learnt of the defendant's fraud in the year 1895, and sought to recover

when *S* first entered on the management, and the Appeal Court holding that the cause of action accrued in 1881 and 1884, when the dhara entries were made in the revenue records, and that, but for s 18 of the Limitation Act (XV of 1877), the plaintiff's suit would have been time-barred even

beyond t
s. 18 of
apply.
RAM SOV

122. ———— *Estate in the possession of the widow of the last male survivor of a family co-parcenary—Possession first obtained through her, held, adversely to the heirs, by the widow of another co-parcener.* The plaintiffs were in the line of the heirs of an ancestor from whom, through his daughter, their grandmother, they were descendants in the third generation. In 1888 they sued the defendants, who were in possession to recover what

2. ADVERSE POSSESSION—*contd.*

had been part of the family estate, alleging title according to the Mitakshara. A question whether the plaintiffs were not barred by limitation depended on whether the now disputed part of the family property had not been from the year 1843 in the adverse possession of the widow of one of their great uncles. This widow, after transferring that part of the property to a person through whom the defendants made title, died in 1886 She was the widow of the elder of two brothers, the last co-parceners of the family, who, being sons of the said ancestor, had at one time held the family estate. This elder brother, her husband, died in 1826. His younger brother survived him, and, having taken the whole estate by survivorship, died in 1833, leaving a widow, who died in 1843. The latter widow, having inherited the estate from her husband for her life-estate, there being no co-parcener left, gave a share of her inheritance to the abovementioned widow of the elder brother So assigned, the property remained, with the addition in 1843 of the share which the younger brother's widow had kept for herself, in the possession of the other widow, the one first abovementioned. After many years, this widow transferred it to her own brother, of whom the present defendants were the heirs and representatives. It was decided below that it had not been in the right of a Hindu widow taking by inheritance from her husband that the elder brother's widow had obtained, and had dealt with, the property. A widow's estate for life never constituted a possession adverse to the reversionary heir, but here the widow, through whom the defendants claimed, had been from 1843 in adverse possession for more than twelve years The suit was therefore barred under the Limitation Act (XV of 1877) This judgment was affirmed by their Lordships MAHABIR PERSHAD *v* ADHIKARI KOER . . . I. L. R. 23 Calc 942

123. ——————— *Purchase by*

show that *G's* possession ever became hostile to plaintiff:—*Held*, that the fact that plaintiff's title

2. ADVERSE POSSESSION—*contd*

ledged the plaintiff's title in his sale-deed dated 1881 to the second defendant; and that the suit was not barred. ANANTHA BHATTA *v* HOLEYA DEYYU . . . I L R 19 Mad 437

124. ——————— *Landlord and tenant—Permanent tenant—Notice to pay enhanced rent or quit the land—Denial of landlord's right to enhance rent—Suit to recover enhanced rent—Limitation Act, s 23.* An inamdar gave his permanent tenant notice to pay enhanced rent or quit the land on a certain date. The tenant denied the liability to pay enhanced rent, and, stating that he held the land on payment of Government assessment only, refused to quit The inamdar, more than twelve years after the date mentioned in the notice, sued the tenant to recover enhanced rent:—*Held*, that the plaintiff's (inamdar's) right to enhance the rent and to recover the land in default of payment of such rent was barred by limitation, the tenant, so far as the right was concerned, having been holding adversely to him for more than twelve years. *Held*, also, that s 23 of the Limitation Act (XV of 1877) had no application to the case. GOPAL RAO KRISHNA RAJOPADHE *v* MAHADEVRAO BALLAL MULE

I. L. R. 21 Bom. 394

125. ——————— *Suit for possession of property purchased at auction-sale in execution of a decree—Effect of formal possession in saving limitation—Possession given under Civil Procedure Code, 1882, ss. 318 and 319.* Where

of a suit for possession of the property sold by the auction-purchaser or his representative. *Juggobundhu Mukerjee v. Ram Chunder Bysack, I. L. R. 5 Calc 584*, and *Joggobundhu Mitter v. Purnanund Gossami, I. L. R 16 Calc. 530*, referred to. MANGLI PRASAD *v.* DEBI DIN

I. L R. 19 All. 499

126. ——————— *Alienation by a Hindu widow—Subsequent adoption by widow—*

suit was not barred by limitation. ... J.—Whether Art. 140 or Art. 144 of Sch. II of the Limitation Act (XV of 1877) applied to the case, the

LIMITATION ACT (XV OF 1877)—*contd.*

Schedule II—*contd.*

——— Art 144—*contd.*

2. ADVERSE POSSESSION—*contd*

the defendants did not become adverse to the plaintiff until he became entitled to possession of the property upon his adoption. *Srinath Kur* v *Prosunno Kumar Ghose, I L R 9 Calc 934*, and *Kokilmoni Dassia* v *Manick Chandra Joaddar, I L R 11 Calc 791*, followed. *Per* CANDY, J —The suit was governed by Art. 144, under which the period of limitation began to run from the time when the possession of the defendants became adverse to the plaintiff on his adoption in 1888 Assuming that the possession of the defendants was adverse to the widow, that fact did not affect the plaintiff, who did not derive his right to sue from or through her MORO NARAYAN JOSHI v BALAJI RAGHUNATH

I L R. 19 Bom 809

127. ——— *Suit by shebait for possession of debutter property alienated by former shebait—Hindu law, Endowment—Position of Hindu idol—Limitation Act, Art 134.* A suit was brought in 1892 by the shebait of an idol for recovery of khas possession of mokurari property belonging

under Art 134 or under Art 144 of Sch II of Limitation Act (XV of 1877) *Held*, that the idol is a juridical person capable of holding property, and the possession of the defendants, who professed to derive title not from the idol, but ignoring its rights, must be taken to have become adverse to the idol from the dates of the two alienations; *and, although it is true that an idol* holds property in an ideal sense, and its acts relating to any property must be done by or through its manager or shebait, yet that does not show that each succeeding manager gets a fresh

128. ——— *Formal possession—Effect of formal possession as against a third person other than the judgment debtor—Civil Procedure Code, 1882, s 319.* *Held*, that whatever might be the effect of the delivery of formal possession under s 319 of the Code of Civil Procedure as against the judgment-debtor himself, such formal delivery of possession will not take effect as actual possession as against a purchaser of the rights of the judgment debtor who was previously obtained actual possession *Mangli Prasad* v *Debi Din, I. L R 19 All 499*, referred to NARAIN DAS v LALTA PRASAD . . I. L R 21 All. 269

129. ——— *Diluviation—*

sion of three plots of land, on the allegation that the lands in dispute were re formations on the site of their villages of *K* and *M*, which were let out in patni and darpatni to third parties in 1868, and that the rights of the patnidar and the darpatnidar were re-acquired by them in the years 1878, 1880, 1883, and 1892, the defence was that the suit was barred by limitation, and that the lands were not re formation, but accretion to the defendants' village of *C* :—*Held*, that, inasmuch as

of, the villages of *K* and *M*, down to the time of their diluviation, was not denied, and as it was found that the disputed plots of land were part of the said villages, it was not incumbent on the plaintiffs to prove possession of the lands in dispute previous to the diluviation, but the onus lay on the defendants to prove adverse possession for more than twelve years prior to the institution of the suit *Woomesh Chunder Goopto* v. *Raj Narain Roy, 10 W. R 15*, and *Davis* v. *Abdul Hamed, 8 W. R 55*, referred to GUNGA KUMAR MITTER v ASHUTOSH GOSSAMI

I. L R. 23 Calc. 863

decessors in title, and to have it declared that he was entitled to the sole management of the trust property, it appeared that the property was held jointly by plaintiff's father and by the mother of the first

LIMITATION ACT (XV OF 1877)—*contd.*

Schedule II—*contd.*

——— Art. 144—*contd.*

2. ADVERSE POSSESSION—*contd.*

plaintiff was born in 1875:—*Held*, that the hereditary right of plaintiff was a personal right accruing on the death of his predecessor, *viz.*, his father, and that, as limitation ran from that date, the suit was not barred. VELU PANDARAM *v* GNANASAMBANDA PANDARA SANNADHI. GNANASAMBANDA PANDARA SANNADHI *v* VELU PANDARAM

I. L. R. 19 Mad. 243

In the same case in the Privy Council:—*Held*, that the possession delivered to the purchaser was adverse to the vendors. After the twelve years' period of limitation, which expired in the lifetime of the vendor, whose son now sued to recover the hereditary managership and possession of the lands of the endowment, the suit was barred under Limitation Act (XV of 1877). There was no distinction between the claim to the office and the claim

estates. If that contention had been right, the

table estates could not be created to take effect as successive life-estates and inconsistently with the

iff could not claim to have been entitled otherwise than as heir to, and from, and through his father, in whose lifetime the title had been extinguished by lapse of time and adverse possession of the defendant. GNANASAMBANDA PANDARA SANNADHI *v.* VELU PANDARAM

I. L. R. 23 Mad. 271
L. R. 27 I. A. 69

131. ——— *Suit to set aside alienation of property of religious endowment*—

Held, that the suit was barred by limitation, the

LIMITATION ACT (XV OF 1877)—*contd.*

Schedule II—*contd.*

——— Art. 144—*contd.*

2. ADVERSE POSSESSION—*contd.*

adverse possession held during the previous office-holder's time barring his successor. CHIDAMBARAM CHETTI *v* MINAMMAL . I. L. R. 23 Mad. 439

See RADHABAI *v.* ANANTRAV BHAGWANT DESHPANDE . . . I. L. R. 9 Bom. 198

132. ——— Symbolical possession. The plaintiff's precedessor in title, one *L N*, acquired the share of 2 annas and 8 pies in certain mouzahs by purchase at a sale held in execution of his own decree against one *H N*, and in September 1874 obtained symbolical possession.

obtained a decree. In March 1882 the plaintiff obtained symbolical possession in execution of that decree. On the 29th January 1887 one *B M* purchased at a sale in execution of a decree against *G* the right of the latter as lessee, and obtained through the Court symbolical possession of the same. In a

lease purporting to be a perpetual lease without

I. L. R. 18 Calc

133. ——— *Symbolical pos-*

the land in dispute

symbolical possession through

possession of the land:—*Held*, that the ... time-barred, the defendant's possession having been adverse to the plaintiff for more than twelve years LAKSHMAN *v.* MORU

I. L. R. 16 Bom. 723

134. ——— *Symbolical pos-*

remaining in actual pos-

aser to take

execution of

ion converted

e Code, 1882

LIMITATION ACT (XV OF 1877)—*contd.*

Schedule II—*contd.*

Art. 144—*contd.*

2 ADVERSE POSSESSION—*contd*

—*Limitation Act (XV of 1877), s 3, and Sch II, Art 138—Civil Procedure Code, 1882, s 331* The plaintiff purchased the property in dispute at an auction-sale in execution of a decree, and on the 14th August 1877 he took formal possession, but the judgment debtors remained in actual possession On the 18th September 1889, the plaintiff proceeded to take possession, but was obstructed by the defendant, who alleged that he had purchased the property from the judgment-debtors in 1888 The [illegible]

tation When his application was converted into a suit under s. 331, the rights of the parties had to be determined as if an ordinary suit for possession had been instituted against the defendant, and either Art 138 or Art 144 of the Limitation Act (XV of 1877) applied In either case the defendant could avail himself of the judgment-debtors' possession, which was adverse to the plaintiff NAMDEV v. RAMCHANDRA GOMAJI MARWADI

I. L. R 18 Bom 37

135. ———— *Symbolical possession—Effect of symbolical possession against third parties—Auction-purchaser—Right of auction-purchaser to tack on his own possession to that of judgment debtor.* The property in dispute belonged to *D* He sold it to *A* on the 25th April 1873, but did not put the vendee into possession On the 18th April 1883, *A* sold the property to the plaintiff On the 4th June 1883, in execution of a money-decree [illegible]

and *D*'s wife (*D* being then in prison) to recover possession of the property A decree was passed, in execution of which he obtained symbolical possession through the Court on the 8th February 1886. When he sought to take actual possession, he was resisted by the defendants. Thereupon the plaintiff filed the present suit, on the 19th December 1889, to obtain actual possession of the property from the defendants :—*Held,* that the suit was barred under Art. 144 of the Limitation Act (XV [illegible]

plaintiff did not break up the continuity of the adverse possession of the defendants and the person through whom they derived their title HARJIVAN v. SHIVRAM . . **I. L. R. 19 Bom. 620**

136. ———— *Suit for possession of land by an auction-purchaser, who obtained symbolical possession—Code of Civil Procedure, 1882, ss 318 and 319—Limitation Act, Art. 138.* In a suit for possession of land by an auction-purchaser, who had obtained symbolical possession, the defendant objected that the suit was barred by limitation, it not having been brought within twelve years from the date of the auction-purchase :—*Held,* that Art. 144, Sch II of the Limitation Act (XV of 1877), applied to the case and that, as the suit was brought within twelve years from the date when the auction-purchaser obtained symbolical possession, it was not barred by limitation HARI MOHAN SHAHA v. BABURALI . . . **I L. R 24 Calc. 715**

137. ———— *Symbolical possession—Effect of symbolical possession as between judgment-creditor or his assigns and judgment-debtor or his heirs—Suit by purchaser from judgment creditor to recover possession from heir of judgment* [illegible]

symbolical possession MAHADEO v PARASHRAM BHAWANCHAND (1900) . **I L R 25 Bom. 358**

138 ———— **Attachment by Magistrate**—*Continuance of possession—Payment of rents and profits to rightful owner during attachment by Magistrate under s 146, Criminal Procedure Code.* If the person, who is afterwards found to have title to a property, receives from the Magistrate the rents and profits thereof for the period during which it is held under attachment by the latter, under the provisions of s. 146, Criminal Procedure Code (Act X of 1882), he is *held* to be in constructive possession thereof until withdrawal of such attachment, and limitation does not run against him during such period JAGUBANDHU BHATTACHARJEE v. HARI MOHAN RAY

1 C W. N. 569

139. ———— **Suit by karnavan to recover lands alienated by previous karnavan.** The plaintiff sued as the karnavan of a Mapila tarwad to recover lands in the possession of the defendants, who were a donee from, and the descendents of, a previous karnavan and their tenants. It appeared that the alleged previous karnavan had died less than twelve years before the suit was filed, but more than twelve years before the joinder, as a supplemental defendant, of one to whom he had conveyed certain property by way of gift five years before his death : —*Held,* that the suit was barred by limitation as against the donee above referred to, her possession having been adverse to the tarwad since the date of the gift. BYATHAMMA v. AVULLA

I. L. R. 15 Mad. 19

LIMITATION ACT (XV OF 1877)—*contd.*

Schedule II—*contd.*

——— Art. 144—*contd.*

2. ADVERSE POSSESSION—*contd*

140. ——— *Gift of a life-interest.* The karnavan of a Malabar tarwad ex-

his successor in the office of karnavan to recover the property :—*Held,* that time began to run for the purposes of limitation from the death of the donee, and, therefore, the suit was not barred. KUTTYASSAN *v.* MAYAN . I. L. R. 14 Mad 495

141. ——— *Suit to recover*

estate at an enhanced rent was, however, given to him at the same time :—*Held,* that the suit was not barred by limitation, no adverse possession being shown MAHADEVI *v.* VIKRAMA

I L R. 14 Mad. 365

142. ——— *Suit for possession—Purchaser at a patni sale under Reg. VIII of 1819 how affected by adverse possession prior to date of sale.* A person who has held possession of property adversely against a former proprietor cannot be allowed, in a suit for possession, to set up such adverse possession against a person who has purchased the property at a patni sale, held under Regulation VIII of 1819, within twelve years from the date of the institution of the suit The purchaser is entitled to the patni free from all incumbrances and in the condition in which it was created *Womesh Chunder Goopto* v. *Raj Narain Roy, 10 W. R. 15,* referred to KHANTOMONI DASI *v.* BIJOY CHAND MAHATAB I. L R. 19 Calc 787

143. ——— Burden of proof. The plaintiff, who was the sister of the defendant, sued in 1888 to recover from him a moiety of a paramba purchased by them jointly in 1877. In 1878 the plaintiff went to live elsewhere, but, from time to time, returned and spent a few days with the defendant on the land in suit. The defendant pleaded limitation :—*Held,* that Limitation Act, Sch. II, Art 144, applied to the suit, and the burden of proving adverse possession lay on the defendant. ALIMA *v.* KUTTI

I. L. R. 14 Mad. 96

LIMITATION ACT (XV OF 1877)—*contd.*

Schedule II—*contd.*

——— Art. 144—*contd.*

2. ADVERSE POSSESSION—*contd.*

144. ——— and s. 19—*Mad. Reg. II of 1802, s. 18—Starting point of limitation—Acknowledgment—Adverse possession of partial interest in land.* Suit by the zamindar of Shivaganga to recover certain land as part of his zamindari from the defendants who claimed title under a deed of gift, dated in 1830 from the person then in possession of the zamindari. The istimar zamindar

poruppu did not prevent the possession of the defendants from being adverse to the plaintiff, as possession of a limited interest in immoveable property may be as much adverse for the purpose of barring a suit for the determination of that limited interest as is adverse possession of a complete interest in the property to bar a suit for the whole property ; (ii) that the date of the Privy Council

PERIASAMI . . . I. L R. 1[illegible] Mad.

145 ——— and Art. 123—*Distributive share under Mahomedan law—Suit for possession.* A Mapilla, alleging that certain "family property" had been enjoyed by herself and the defendants (who were her relations on the mother's side) in common till one year before suit, when she was excluded from possession, now sued to recover the share to which she claimed to be entitled under the Mahomedan law of inheritance. It

father, who e suit, and for his others, the contesting

defendants were parties, and that a plea then raised by the latter to the effect that the property had been acquired by him was overruled. The plaintiff's mother died about twenty years before the present

LIMITATION ACT (XV OF 1877)—*contd.*

Schedule II—*contd.*

—— Art. 144—*contd.*

2 ADVERSE POSSESSION—*contd.*

suit :—*Held*, by the Full Bench, that the plaintiff's cause of action arose not from the date when her share became deliverable on the death of the persons to whom the property originally belonged, but on her exclusion from enjoyment of the property, and that the suit was governed by Art 144, and not Art. 123, of the Limitation Act, and was not barred by limitation ABDUL KADER v. AISHAMMA

I L R 16 Mad 61

146. —— *Deed given by debtor to creditor assigning or appropriating rents till debt was paid—Possession of debtor by tenants*

therein by metes and bounds, but only as being in the occupation of certain persons paying so much

RAMCHANDRA DESHPANDE v. BABAJI ABAJI DESHPANDE . . I L R 16 Bom. 172

147. —— Mortgage—*Redemption—Adverse possession as against mortgagor—Possession obtained under an agreement with mortgagee—Notice to mortgagor of such possession* The plaintiff filed this suit, to redeem a mortgage, with possession of certain land, dated 18th October, 1866. The plaintiffs were the daughters and grandson of the mortgagor Khutubsha (the widow of one Kondi Aga) The first defendant was the grandson and heir of the mortgagee (Nageshrao) The second and third defendants were nephews of

27th November, 1885, under s 44 of the Act The last instalment of the mortgage debt was paid to the first defendant by defendants 2 and 3 in September, 1897 The plaintiffs had no notice or knowledge of any of the abovementioned proceedings. On the 5th October, 1897, the plaintiffs filed this suit, to redeem the mortgage of 1866 and to recover possession of the lands The lower Courts held that the plaintiffs were the heirs, but that the suit was barred by limitation under Art. 144 of Sch II to the Limitation Act (XV of 1877), inasmuch as defendants 2 and 3 had been in adverse possession for more than twelve years On appeal to the High Court: *Held* (reversing the decree of the lower

(mortgagors) that the defendants' possession was

148. —— Suit to recover land—*Claim that defendants were holding over as yearly tenants on expiration of lease—Previous suit on another lease—Claim by tenants as permanent lessees—Dismissal of suit, except as to rent—Payment of rent since—Limitation—Prescriptive right as permanent lessees* Plaintiffs sued on behalf of

eject the defendants from the same land, basing their suit on an alleged lease of 1865 The defence was set up by the predecessor of the present defend-

construed only, so far as the defendants were concerned, as payment by them of the rent admitted by them to be due as permanent tenants, and not as a

LIMITATION ACT (XV OF 1877)—*contd.*

Schedule II—*contd.*

——— Art. 144—*concld.*

2. ADVERSE POSSESSION—*concld.*

renewal of the alleged lease of 1862, with a variation of the amount of rent. Inasmuch as the defendants had set up their adverse possession at a time when, according to plaintiffs' case, their yearly tenancy had been determined, and such adverse possession had continued down to the date of the present suit, namely, for a period of more than twelve years the defendants had acquired, by prescription, a right to hold possession as permanent tenants at that rent. *Seshamma Shettati v. Chickaya Hegade, I. L. R. 25 Mad. 507, 513,* referred to. PARAMESWARAM MUMBANNOO *v.* KRISHNAN TENGAL (1902)

I. L R. 26 Mad 535

149. ——— *Arts. 144 and 139—Landlord and tenant—Ejectment—Plea by tenant of adverse possession.* The plaintiff sued to recover certain land, alleging that the defendant was in occupation as his tenant. The defendant pleaded adverse possession, and contended that the suit was barred by limitation. The plaintiff proved that up to 1879 the defendant, admitted the plaintiffs' ownership of the land. The two lower Courts found that the land was the plaintiff's, but held that the suit was barred :—*Held* (reversing the decree), that, the defendant having admitted the plaintiff's ownership up to 1879, it lay upon him to show when the alleged adverse possession under Art. 144 commenced, or under Art. 139, when the tenancy terminated. As the land was shown to belong to the plaintiff, and defendant had not proved any agreement under which he could remain in possession after plaintiff had signified his intention to resume, he must surrender possession. He was entitled to remove the superstructure of houses which he had erected on the land TALSHIPHAI NARANBHAI *v.* RANCHHOD GOBAR (1902)

I. L R. 26 Bom. 442

——— Art. 145 (1871, art. 147, 1859, s. 1, cl 15)—

See ante, ARTS. 48, 49 AND 145.

1. ——— *Deposit—Demand—Cause of action.* The plaintiff, on leaving Calcutta in 1850, deposited a sum of money with *A*, *B*, and *C* on which they were to pay him R9 monthly, and return the principal on his demanding it. Rupees 9 were paid to him monthly, until within twelve months of this suit. *A* and *B* had died since the date of the deposit. This suit was brought against *C* and the representatives of *A* and *B* to recover the amount deposited, and a decree was passed against *C* on his own admission. But [illegible]

LIMITATION ACT (XV OF 1877)—*contd.*

Schedule II—*contd.*

——— Art. 145—*concld.*

to repay the money on demand and not from the date of the demand, and therefore the suit was barred. PARBATI CHARAN MOOKERJEA *v.* RAMNARAYAN MATILAL

5 B. L. R. 398 : 16 W. R. 164 note

But *see* BRAHMAMAYI DASI *v.* ABHAI CHARAN CHOWDHRY . 7 B. L. R. 489 : 16 W. R. 164

2. ——— *Deposit of Government revenue with Collector pending partition—Account, adjustment of.* During the pendency of a batwara, the plaintiff purchased a share in an ijmali mehal ; and as the proportion of the Government revenue of each shareholder had not been ascertained, the shareholders, including the plaintiff's vendor, and subsequently the plaintiff, paid to the Collectorate what they thought due from them on account of Government revenue Upon an account stated in 1857 it was ascertained that, after all necessary deductions, a sum of R655 was due to the plaintiff who in 1864 applied to the Collector for payment of the amount ; but the application was rejected, as the money had been previously drawn away by certain creditors of his vendor. In 1867 he sued the Collector for recovery of the amount. [illegible]

In another case the Collector was *held* to be a depositary within cl. 15 of s. 1, Act XIV of 1859, as to a claim for malikana. GOVERNMENT *v.* BHOOP NARAIN SINGH . . . 2 W. R. 163

3 ——— *Collector—Depositary—Suit to recover surplus sale-proceeds of sale for* [illegible] Where *A* instituted a suit in [illegible] retary of [illegible] of three [illegible] revenue on [illegible] re in the [illegible] Collector hands of the Collector : [illegible] was not a depositary of the money within the meaning of Art 145 of Sch. II. SECRETARY OF STATE FOR INDIA *v.* FAZAL ALI . I. L. R. 18 Calc. 234

See SECRETARY OF STATE FOR INDIA *v.* GURU PROSHAD DHUR . . I. L. R. 20 Calc. 51

4. ——— *Deposit or loan of Government securities—Limitation Act, Sch. II. Arts. 59, 60.* Art. 145, Sch. II, of the Limitation Act governs the case of a deposit of Government securities, even if the transaction is considered as a loan of such securities and not merely as a deposit. KRISTO KAMINI DASSI *v.* ADMINISTRATOR GENERAL OF BENGAL (1903) . . . 7 C. W. N. 476

LIMITATION ACT (XV OF 1877)—*contd*

Schedule II—*contd.*

1. ———— Art. 146—*Suit to recover possession of mortgaged property—Demand* In 1842 *H C* executed, in favour of the plaintiff, his brother who was in possession of the family property as

amicable partition of the family property was proposed, and it was agreed that a certain portion should be allotted to the plaintiff in satisfaction of the debt due to him by *H C*, but this arrangement was never carried out In a suit brought in 1876 against the representative of *H C* for foreclosure of the mortgage, the plaintiff, who had admittedly been since 1842 in possession of the family property, alleged that no payment had ever been made in respect of the mortgage, nor any demand for payment, until 1876 The defendant contended that the suit was barred by lapse of time.—*Held*, on the construction of the mortgage-deed, and under the circumstances of the case, *per* GARTH, *C J*, that a demand was necessary, *per* MARKBY, *J*, that the words "on demand" did not postpone the date of payment and, that the mortgage-money became payable at once *Per* GARTH, *C J*, and MARKBY *J*.—A demand was made in 1847 on the agreement to partition the property The suit therefore was barred by Act XIV of 1859 as being brought more than twelve years after the cause of action arose That Act not only barred the remedy, but extinguished the right and therefore the plaintiff could

gage-debt has been paid RAM CHUNDER GHOSAUL *v* JUGGUTMONMOHINEY DABEE

I. L. R 4 Calc. 283; 3 C. L R. 336

2 ———— [and Arts 144, 132—*Suit for foreclosure.* The period of limitation prescribed for a suit for foreclosure by the Limitation Act (IX of 1871) is either twelve years under Art 132, or sixty years under Art. 149 of Sch II of that Act GANPAT PANDURANG *v* ADARJI DADABHAI . . . I. L. R. 3 Bom. 312

———— Art. 146A—

See PUBLIC ROAD, HIGHWAY, STREET OR THOROUGHFARE.

I. L R. 25 Mad 635

1. ———— Art 147—*Mortgage—Sale or foreclosure—Adverse possession.* In 1823 the

———— Art. 147—*contd.*

pleased, the rent of the premises being set off against the income of the trust funds to which he was entitled under the settlement In execution of a money-decree against the mortgagor, his right, title, and interest in the premises were purchased by the judgment-creditor, a lady who, at the time of execution and sale, lived in the mortgagor's house. After the purchase, all parties continued to live in the house as before.

and that plaintiff was entitled to a decree for sale. *Anandmayi Dasi* v. *Dharendra Chandra Mukerji*, *8 B. L. R 122*, distinguished. MANLY *v.* PATTERSON . . . I. L. R. 7 Calc. 394

2. ———— and Art 132—*Suit to enforce payment of money charged upon immoveable property—Suit by a mortgagee for sale.* A suit upon a bond for money payable on demand by which immoveable property is hypothecated as security for the debt, wherein the relief prayed is recovery of the amount with interest by establishment of the

3 ———— ———— *Mortgagor and mortgagee—Suit to follow mortgaged property.* A

BROJO LAL SINGH *v.* GOUR CHARAN SEN

I. L. R. 12 Calc. 111

4. ———— *Mortgage—Mortgagee, suit by a, to realize mortgage-debt by sale of mortgaged property, under power of sale—Cause of action—Construction.* By a mortgage-bond the

LIMITATION ACT (XV OF 1877)—*contd.*

Schedule II—*contd.*

——— Art. 147—*contd.*

co-plaintiffs, and they were so joined on the 1st March 1883, at which date both the lower Courts [illegible]

Held, reversing the lower Courts' decrees, that plaintiff's suit was governed by Art. 147 of the Limitation Act (XV of 1877), and therefore not barred. By [illegible]
in question
with an im[illegible]
same in the
paid at the e[illegible]
of the mort[illegible]
sixty years from the 1st January 1871. GOVIND BHAICHAND *v.* KALNAK . I. L. R. 10 Bom 592

5 ——— *Suit on a mortgage-bond—English mortgage—"Mortgage" and "Charge"—Transfer of Property Act, ss. 58 60, 67, 83, 85, 87, 89, 92, 93, 100.* A suit on a mortgage-bond to enforce payment by sale of premises hypothecated is governed by Art. 132, and not Art 147, of the Limitation Act. *Brojo Lal Sing* v *Gour Charan Sen, I. L. R. 12 Calc. 118*, overruled. *Shib Lal* v. *Ganga Pershad, I. L. R. 6 All. 551*, dissented from. The clear distinction drawn for the first time between "mortgage" and "charge" in the Transfer of Property Act is not observed in the Limitation Act. Art 147 of the Limitation Act relates to special kind of mortgage known as English mortgage, and includes only that class of suits in which the remedy is either foreclosure or sale in the alternative. GIRWAR SINGH *v.* THAKUR NARAIN SINGH

I L. R. 14 Calc. 730

6 ——— *Mortgage as distinguished from a charge* In 1867 the defendant borrowed R125 from the plaintiff and gave him a bond agreeing to pay interest at two per cent. per month. The bond provided that the whole debt [illegible]

was to take up the management of [illegible]

[illegible] amount of the interest that may be found due on making up the account." In 1886 the plaintiff sued the defendants to recover by sale of the property the sum of R250 as principal and interest due on the bond. It was contended that the bond created merely a charge upon the property in question, and was not a mortgage, and that the suit was barred by Art. 132 of Sch. II of the Limitation Act (XV of 1877) *Held*, that the document was a mortgage, and that the suit was not barred, being governed by Art. 147, and not by Art. 132, of Sch. II of the Limitation Act. MOTIRAM *v.* VITAI . . . . I. L. R. 13 Bom. 90

7. ——— *Mortgage as distinguished from a charge—Suit to enforce mortgage lien by sale of mortgaged property—Construction of mortgage* A bond contained the following stipulation [illegible]

are enjoying If we do not pay according to contract, you may sell the said fields through the Court and recover the amount If any balance remains, we will pay it off personally or by means of our other property." [illegible]

[illegible] I. L. R. 14 Bom. [illegible]

8. ——— *Mortgage—Bond—Charge on immoveable property—Limitation Act,* [illegible] contained [illegible]

make satisfaction:"—*Held*, that the transaction was a mortgage governed by Art. 147, Sch. II of the Limitation Act (XV of 1877), and not a charge [illegible] *I. L. R.* [illegible] umarappa, [illegible] *v.* *Pitai*, 13 *L. R. 15 Bom.* (1891) 31, VITHU [illegible] Bom. 408

9. ——— *Usufructuary mortgage—Personal covenant to pay.* Where a usufructuary mortgage contains a personal undertaking to pay the amount secured thereby, the limitation applicable to a suit brought on the mortgage is governed by Art. 147, Limitation Act XV of 1877. *Sivakami Ammal* v. *Gopala Saravaram Ayyan, I. L. R. 17 Mad. 131*, referred to. UDAYANA PILLAI *v.* SENTHIVELU PILLAI

I L. R. 19 Mad 411

10. ——— *Equitable mortgage by deposit of title-deeds—Suit by equitable mortgagee for foreclosure and sale—Right of such mortgagee to sue* [illegible] An equitable mortgagee by deposit of title-deeds is a mortgagee within the meaning of Art. 147, Sch. II of the Limitation Act (XV of 1877), and the period of limitation for a suit by such a mortgagee is sixty

LIMITATION ACT (XV OF 1877)—*contd*

Schedule II—*contd.*

———— Art 147—*contd.*

years, as therein prescribed A mortgagee by deposit of title-deeds has the right to sue for foreclosure or sale. MANEKJI FRAMJI *v.* RUSTOMJI NASERWANJI MISTRY I. L R 14 Bom. 269

11. ———————— *Mortgage-bond containing a power of sale in case of default—Suit by a mortgagee to recover the mortgage-debt from mortgaged property and from mortgagor personally—Personal remedy against mortgagor* Where certain land was given as security for repayment of a loan under an instalment bond which contained an express provision for sale of the property in case of default: *Held*, that the bond was a mortgage-bond, and that Art 147 of the Limitation Act (XV of 1877) applied to a suit to recover the instalments due under the bond by sale of the mortgaged property *Held*, also, that the limitation for the personal remedy against the mortgagor was three years. BULAKHI GANU SHET *v.* TUKARAMBHAT I. L. R 14 Bom 377

12 ———————— *Bonds creating interest in land, construction of—Mortgage—Charge on immoveable property.* Bonds by which the property mentioned therein is declared to be a security for a loan have been always regarded in the Bombay Presidency as creating the relationship of mortgagor and mortgagee, and fall under Art 147 of Sch. II of the Limitation Act (XV of 1877). VENKATESH SHETTI *v.* NARAYAN SHETTI I L R. 15 Bom. 183

13. ———— and Art. 144—*Suit for foreclosure or sale—Transfer of Property Act (IV of 1882), ss 58 (c), 67, 87—Mortgage by conditional sale—Decree for foreclosure and possession* On 28th March 1871 the defendant's father borrowed a sum of money from the plaintiff's father and placed him in possession of certain land under an instrument of mortgage, which provided for the application of the usufruct in liquidation of the interest and then in reduction of the principal. the instrument also contained a covenant for the repayment, in four years, of the balance that might then be due by the mortgagor, and a stipulation that, on default, the mortgagor was to surrender the property to the mortgagee as if it had been sold to him In 1874, *the mortgagor* resumed possession without discharging the mortgage debt The mortgagee having died, his sons, on 14th April 1888, filed the present suit on the mortgage and [illegible] *Held* [illegible]

them AMMANNA *v.* GURUMURTHI I. L. R. 16 Mad. 64

14 ———————— *Suit for sale of mortgaged property—Bom. Reg V of 1827, s 15, cl. 3—Special agreement* Plaintiff brought this suit in 1895 on a mortgage bond, dated 1870, to recover the balance due on the mortgage by sale, of the mortgaged property or in the alternative for possession of the property until payment of the balance The mortgage contained a stipulation that, on default of payment of interest by the [illegible]

I. L. R. [illegible] Bom. [illegible]

15. ———————— *Mortgage by conditional sale—Mortgagee in possession—Suit for foreclosure and recovery of possession—Redemption.* [illegible]

for foreclosure may be barred by limitation. The possession recovered is, however, possession as mortgagee subject to the mortgagor's right of redemption AMAN ALLI *v.* AZGAR ALI MIA I. L R. 27 Calc. 185

16. ———————— *Transfer of Property Act (IV of 1882), s 58(e)—"English mortgage"—Covenant or reconveyance not limited to time stipulated for repayment of mortgage money* The [illegible]

LIMITATION ACT (XV OF 1877)—*contd.*

Schedule II—*contd.*

———— **Art. 147—*concld.***

property to the mortgagors," etc. :—*Held* (by the DIVISION BENCH), that the transaction could not be regarded as an English mortgage, there being no words importing that the covenant to reconvey was dependent upon the repayment of the mortgage-money being made at the stipulated time and that it should not be enforced in default of repayment at that time. On the question what article of Sch II to the Limitation Act governs a suit for sale by a mortgagee under such a mortgage-deed :—*Held*, by the FULL BENCH, that the period of limitation was governed by Art. 147. That article applies to a suit by a mortgagee whether it is for foreclosure or sale ; and, in the former case, whether the prayer in the plaint is for foreclosure alone, or is coupled with a [illegible]

ted from NARAYANA AYYAR *v.* VENKATARAMANA AYYAR (1902) . . I. L. R. 25 Mad. 220

17. ———— *Mortgage by decree-holder out of possession—Decree for possession barred by limitation—Title of mortgagee—Adverse possession* *M*, holding a decree for possession of immoveable property against *L K* and *M K*, but [illegible]

adversely to *M*, and got a decree for sale. Meanwhile allowed his decree for possession to become barred by limitation. *L K* and *M K* mort- [illegible]

referred to. RAM LAL *v.* MASUM ALI KHAN (1902) . . . . . I. L. R. 25 All. 35

———— **Arts. 147, 120, 132—**

See HINDU LAW—JOINT FAMILY I. L. R. 29 All. 544

———— **Art. 148 (1871, art. 148 : 1859, s. 1, cl. 15)—**

See ante, s 19—ACKNOWLEDGMENT OF OTHER RIGHTS

See WAJIB-UL-ARZ I. L. R. 26 All 337

1. ———— *Suit for redemption—Nature of title of mortgagee.* The period of limitation for a suit to redeem a mortgage of im-

LIMITATION ACT (XV OF 1877)—*contd.*

Schedule II—*contd.*

———— **Art. 148—*contd.***

moveable property is sixty years, and this apparently without reference to the nature of the title the mortgagee in possession is asserting. *Semble :* It makes no difference that the hostile possession is supposed to have commenced on a claim of the defendant to a title altogether inconsistent with the mortgage. TANJI *v.* NAGAMMA . 3 Mad. 137

2. ———— *Relation of trust.* [illegible]

GUNGA MONEE DEBIA CHOWDHRAIN 3 W. R. 94

3. ———— *Suit by mortgagor for possession of mortgaged property* In a suit by a [illegible]

ALI . . . . . B. L. R. Sup Vol. 901
9 W. R. 187

4. ———— *Laches—Estoppel.* The laches of a mortgagor in taking no steps for [illegible]

14 B. L. R. [illegible]
L. R. 2 I. A. 49

5. ———— *Suit by a mortgagor for recovery of possession from a mortgagee holding over after expiry of the term of a usufructuary mortgage* When a mortgagee in possession under a usufructuary mortgage, holds over after the time limited in the mortgage-deed for surrender of the property his possession does not, by that fact alone, become adverse to the mortgagor, who still has a period of sixty years within which to sue for recovery of possession. *Jaggurnath Sahoo v. Mahomed Hossein, 14 B. L. R. 386 : L. R 2 I. A. 49*, referred to. POKHPAL SINGH *v* BISHAN SINGH I. L. R. 20 All. 115

6. ———— *Act XIV of 1859, s. 1, cl. 15—Act IX of 1871, s. 29, and Art 148—Usufructuary mortgage—Extinction of mortgagor's title—New starting point by acknowledgment.* The representatives in estate of a mortgagor, who executed a usufructuary mortgage, dated 17th October 1788, sued the heirs of the mortgagee in [illegible] and [illegible] property [illegible] acknow- [illegible] fying the [illegible] extension [illegible] 15, which [illegible] by the effect of Act [illegible]

LIMITATION ACT (XV OF 1877)—*contd.*

Schedule II—*contd.*

———— **Art. 148**—*contd.*

barred the suit after the 1st January 1862 Afterwards, by the effect of Act IX of 1871, s. 29, the right of property in the mortgagor was extinguished. In none of the documentary evidence adduced by the plaintiffs was there shown to have

the fact that a lease was made on the 8th January 1872 of some of the mortgaged property by one of the then mortgagees to one of the mortgagors, the lessor describing himself as usufructuary mort-

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make it good It was no essential part of a contract between these parties, and it did not affect the issue now raised The judgment in *Citizens Bank of Louisiana v First National Bank of New Orleans, L R. 6 E & I. App 352,* referred to TALIMATULNISSA BEGUM *v* SUNDAR DAS

I L R. 27 Calc. 1004
L. R. 27 I. A 103
4 C. W. N 565

Upholding the decision of the High Court in SUNDAR DASS *v* FATIMATNISSA 1 C W. N 153

7. ———— *Permissive occupation of house—Suit to recover house from heirs of tenant* About twenty-five years before suit brought,—*R*, being possessed of a house, allowed *K* to occupy it without paying rent, on condition that *K* would keep it in repair, and restore it to *R* on

8. ———— *Conditional sale—Suit for redemption* Redemption by the mort-

KESHAV *v.* RAVJI SADASHIV . . 9 Bom. 79

See SHANKARBHAI GULABBHAI *v.* KASSIBHAI VITHALBHAI . . . . . 9 Bom. 69

RAMJI BIN TUKARAM *v* CHINTO SAKHARAM
1 Bom. 199

RAMSHET BACHASHET *v.* PANDHARINATH
8 Bom. A. C. 236

9. ———— *Suit for redemption—Adverse possession* A mortgagor sued his mortgagee to redeem, joining as defendant the person in possession of the mortgaged land, who claimed to hold adversely to both the mortgagor and the mortgagee —*Held*, that the possession of the last defendant being a trespass not on the possession of the mortgagor, who had only the equitable

hostile possession commenced on a title independent of the mortgage. VITHOBA BIN CHABU *v* GANGARAM BIN BIRAMJI . . . 12 Bom. 180

10. ———— *Right of pur-*

not apply RAM SARUN SINGH *v* MAHOMED AMEER . . . . 13 W. R. 78

11. ———— *Mad. Reg II of*

1 Mad. 148

12 ———— *Suit for redemption—Assertion of adverse title.* It was held (in accordance with the opinion of the Full Bench), that the mere assertion of an adverse title will not enable a mortgagee in possession to abbreviate the period of sixty years which the law allows to a mortgagor to prosecute his right to redeem and seek his property by suit. *Ramdyal v. Jawahir Ram, S. D A. N. W. 1861, 22nd of April 1861,* overruled. [illegible] *v.* KHADIM HOSSEIN . . . 7 W. R. 22[illegible]

LIMITATION ACT (XV OF 1877)—*contd.*

Schedule II—*contd.*

—— Art. 148—*contd.*

13. —— *Suit for redemption of mortgage—Adverse possession—Title, assertion of.* The mere assertion of an adverse title by a mortgagee *in possession does not* make his possession adverse, or enable him to abbreviate the period of sixty years which the law allows to *a mortgagor to prosecute his right to redeem* and seek his remedy by suit. *Sheopal* v. *Khadim Hossein, 7 N W. 220,* followed. Where accordingly certain immoveable property was mortgaged in June 1854 for a term which expired in June 1874, and in July 1863 the equity of redemption of such property was transferred by sale to the mortgagees by a person who was not competent to make such transfer, and the mortgagees set up a proprietary title to such property in virtue of the sale :—*Held,* in a suit to redeem such property instituted in March 1877, that such suit was not barred, because it was not instituted within twelve years from the date of the deed of sale ALI MUHAMMAD *v.* LALTA BAKHSH

I. L. R. 1 All. 655

14 —— *Suit for redemption.* Art. 148, Sch II of the Limitation Act, 1871, *applies to suits for redemption, and to such suits instituted* against mortgagees, or persons claiming

15. —— and Art 145—*Right to officiate as priest, nature of suit to establish—Immoveable property.* A right to officiate as priest at funeral ceremonies of Hindus is in the nature of immoveable property, and a suit for redemption of such right therefore falls under Art 181, and not under Art 145, of the Limitation Act RAGHOO PANDEY *v* KASSY PAREY

I. L. R 10 Calc. 73 : 13 C. L. R. 263

16. —— *Mortgage—Subsequent agreement conveying to mortgagee for a term of years—Effect of such agreement—" Once a mortgage always a mortgage "—Suit by heirs of mortgagor to recover the property—Usufructuary mort-*

that the agreement was distinct from the original

the agreement GOPAL SITARAM GUNE *v.* DESAI

I L. R. 6 Bom. 674

17. —— and Art. 134—*Joint mortgage —Redemption by one mortgagor—Suit by other mortgagor for his share—Suit for redemption—*

LIMITATION ACT (XV OF 1877)—*contd.*

Schedule II—*contd.*

—— Art. 148—*contd.*

Transfer of Property Act (IV of 1882), ss. 95, 100.

of a decree for money against A held by B, A's rights and interests in the mortgaged property

ment of a proportionate amount of the mortgage-money paid by *P.* The plaintiff alleged that the mortgage to *C* had been made forty years before suit The defendants contended that a much longer period had expired since the date of the mortgage ; that forty-one years had elapsed since *C* transferred his rights as mortgagee ; that they had *redeemed the property twenty-one years ago* and had been since its redemption in proprietary and adverse possession of the sihams in suit ; and that

of the Transfer of Property Act (IV of 1882), that the owner of a portion of a mortgaged estate which

possible for one of *two mortgagors,* redeeming the whole mortgaged property behind the back of the

come in to redeem. *Held,* therefore, and not Art. 134, of Sch. II of the Limitation Act was applicable to the suit. *Umrunnissa* v. *Muhammad Yar Khan, I. L R 3 All 24,* distinguished. *Pancham Singh* v. *Ali Ahmad, I. L R. 4 All. 58,* referred to. NURA BIBI *v.* JAGAT NARAIN

I. L. R. 8 All. 295

18. —— *Mortgage—Redemption by co-mortgagor—Suit by other mortgagors against redeeming mortgagor for redemption of their shares.* Where one of several co mortgagors redeems the whole mortgage, he thereby puts himself in the position of the mortgagee as regards that

the date when the original mortgage became redeemable and, not from the date of its redemption by the aforesaid co-mortgagor. In 1828 one of several co-mortgagors redeemed an usufructuary mortgage

LIMITATION ACT (XV OF 1877)—*contd.*

Schedule II—*contd*

——— **Art. 148—*contd.***

executed in 1822 and obtained possession The other mortgagors brought a suit against the heir of

(XV of 1877); that time ran, not from the date of the redemption in 1828, but from the time when it would have run against the original mortgagee if he had been a defendant, *i e*, the date of the original mortgage of 1822, and that the suit was therefore barred by limitation *Nura Bibi* v *Jagat Narain, I L R 8 All 295*, and *Raghubir Sahai* v *Bunyad Ali, All Weekly Notes (1886) 152*, followed *Umr-un-nissa* v *Muhammad Yar Khan, I L R 3 All 24*, distinguished *Ram Singh* v *Baldeo Singh, All Weekly Notes (1885) 300*, referred to ASHFAQ AHMAD *v* WAZIR ALI . **I. L. R. 11 All 423**
I. L R 14 All. 1

19 ——— *Suit for redemption—Mortgagee purchasing equity of redemption from one without title to it—Adverse possession of mortgagee against true owner of equity of redemption* In the absence of any act showing that the mortgagee is asserting himself against the owner of the equity of redemption, his possession is not adverse against the latter as regards limitation The mere assertion of his claim by the mortgagee would not affect the right of the real owner of the equity of redemption where a person having no right in the property pretends to sell to the mortgagee the equity of redemption PANDU LAKSHMAN MASUREKAR *v* ANPURNA . **I. L. R. 21 Bom. 793**

20 ——— *Limitation Act (IX of 1871), s 148—Acknowledgment of title by one of several mortgagees as agent for the others—Acknowledgment by one of several heirs of the mortgagee—Redemption, suit for* Under Art 148 of the Limitation Act (IX of 1871), an acknowledgment

party, under a bond which recited the original mortgage by *H B* to *K*. In 1885 the defendant, who was a descendant of *K*, redeemed the sub-mortgage effected by *J* In 1887 the plaintiff, having purchased the equity of redemption from *H B's* descendants, filed the present suit for redemption of the mortgage of 1816 The plaintiff relied on the acknowledgment made by *J* in 1830 as giving a

LIMITATION ACT (XV OF 1877)—*contd.*

Schedule II—*contd.*

——— **Art. 148—*concld.***

fresh starting point to limitation:—*Held*, that the suit was barred by limitation The acknowledgment by *J*, whether as manager of the firm or as one of the heirs of the original mortgagee, was not sufficient under Art 148 of the Limitation Act (IX of 1871) BHOGILAL *v*. AMRITLAL
I. L. R. 17 Bom. 173

21. — **and Art 132**—*Interest—Mortgagee's right to interest in a redemption suit—Extent of the right—Transfer of Property Act (IV of 1882), s 58* In 1882 the plaintiffs sued to redeem a mortgage effected in 1833. The Court of first instance allowed the mortgagee interest from the date of the bond The Appellate Court reduced the interest awarded to the period of six years:—*Held*, reversing the decision of the lower Appellate Court, that the mortgagee was entitled to claim interest from the date of the bond up to the date of the decree Art 148, and not Art 132, applies to such a suit; but no provision of limitation is made by the Article for the payment of interest on the sum due to the mortgagee In s 58 of the Transfer of Property Act, the mortgage-money is interpreted to include the interest due, and no limit to the payment of interest is fixed. DAUDBHAI RAMBHAI *v* DAUDBHAI ALLIBHAI
I L. R. 14 Bom 113

22 ——— *Mortgage—Co-mortgagors—Redemption of entire mortgage by one co-mortgagor, who obtains possession of whole property—Subsequent suit against him by other co-mortgagors for their share of the property—Plea of adverse possession—Co-mortgagor who pays off entire mortgage has a charge on the property* In 1872, Vinayak and Ganesh, co-owners of the land in question, mortgaged it for R300. In 1882, in a suit brought by the

apply, and that the plaintiff's claim was barred by limitation. Art 148 applies to a suit against a mortgagee A co-mortgagor who has redeemed the

LIMITATION ACT (XV OF 1877)—*contd.*

Schedule II—*contd.*

——— Art. 149 (1871, art. 151; 1859, s. 17)—

1. ——— *Suit by or on behalf of Secretary of State for India.* Art. 149 of the Limitation Act applies only to suits brought by, or on behalf of, the Secretary of State, nor to a suit brought by a Municipality. SECRETARY OF STATE FOR INDIA *v.* KOTA BAPANAMMA GARU
I. L. R. 19 Mad. 165

2. ——— *Suit to establish*

sixty years' adverse possession against Government. COLLECTOR OF RUNGPORE *v* PROSUNNO COOMAR TAGORE . . . . . 5 W. R. 115

3 ——— *Suit for costs—Public right—Exemption from limitation.* In a suit for the recovery of costs incurred by the Govern-

from limitation within Regulation II of 1805 GOVERNMENT OF BENGAL *v.* SHURRUFFUTOONISSA
3 W. R. P. C. 31
8 Moo I. A. 225

4. ——— *Suit by Govern-*

own nominee in possession of the land as ghatwal, and that the limitation of sixty years was applicable to such a suit PETUMBER DEY *v* JUGGUNNATH ROY . . . . . . 18 W. R. 130

5. ——— and s 28—*Suit by Crown for declaration of title and possession of forest land—Mad. Reg II of 1802—Survival of right—Limitation Act, 1859.* In a suit instituted in March 1879 by the Crown for a declaration of title to certain forest land and for possession of a portion thereof, the defendants alleged that the land has been in their possession for more than sixty

menced or became adverse within such period. The District Court having held that, up to April 1st, 1873, when the Limitation Act of 1871 came into force, the limitation for such a suit was twelve years

LIMITATION ACT (XV OF 1877)—*contd.*

Schedule II—*contd.*

——— Art. 149—*contd.*

from the time when the cause of action arose, and that the suit was barred by adverse possession for twelve years prior to April 1st, 1873 :—*Held,* that, even if Regulation II of 1802 applied to claims by

in force ; and that the Crown, being entitled under that Act to sue within sixty years from the date of

SECRETARY OF STATE FOR INDIA *v* VIRA RAYAN
I. L. R. 9 Mad. 175

6. ——— *Suit by Government for recovery of stamp duty in pauper suit.* Five ... from the ... n preferred, ... imp duty by ... intiff's pro- ... a "public claim" within s. 17, Act XIV of 1859, was not barred. COLLECTOR OF SOUTH ARCOT *v.* THATHA CHARRY . . . . . 8 Mad 40

SHAMI MAHOMED *v.* MAHOMED ALI KHAN
2 B. L. R. Ap. 22 : 11 W. R. 67

7. ——— *Suit after dispossession—Disputes of private owners—Right of Government.* A dispute between two private ... cannot

make common cause with ... 24-PERGUNNAHS MUNDUL *v.* COLLECTOR OF THE 24-PERGUNNAHS
7 W. R. P. C. 21 : 11 Moo I. A. 345

8. ——— *Lessee under Government.* The mere fact that the plaintiff claims as a lessee under Government does not entitle him to the benefit of s. 17, Act XIV of 1859. ASU MIA *v.* RAJU MIA. 1 B. L. R. A. C. 34 : 10 W. R. 76

9. ——— *Suit by purchase of Government rights in a khas mehal.* A suit by the purchaser of the rights of Government in a khas mehal to obtain possession is governed, not by the limitation of sixty years, but by that of twelve years. HOSSEIN BUKSH *v.* AMEENA KHATOON
20 W. R. 231

LIMITATION ACT (XV OF 1877)—*contd.*

Schedule II—*contd.*

——— Art. 149—*concld*

BUNDI ROY *v.* BUNSEE THAKOOR 24 W. R. 64

10 ——— *Suit by mutwalli for endowed property* Since the passing of Act XX of 1863, a mutwalli, or manager of a Mahomedan endowment, cannot be considered to be an officer of Government, a position he was held to have in the Privy Council case of *Jewan Doss Sahoo* v *Kubeer-oddeen*, 6 W R P. C. 3 2 *Moo I. A* 390, and therefore the ordinary rules of limitation apply to a suit by him for endowed property. LALL MAHOMED *v* LALL BRIJ KISHORE . . 17 W. R. 430

11. ——— *Encroachment on public highway—Suit by Municipality to remove encroachment—Limitation Act, Art. 144—Title by adverse possession.* The Municipality of Madras

possession against the municipality, which was not entitled to call in aid the provisions of the Limitation Act, Sch II, Art 149. MUNICIPAL COMMISSIONERS *v* SARANGAPANI MUDALIAR
I. L. R. 19 Mad. 154

12. ——— *Decree in the alternative, legality of—Raiyatwari tenure—Grant of bed of tidal and navigable river on raiyatwari tenure—Power of Government to determine such*

[illegible]

v. VITTIL THALAKAT MUHAMMAD (1905)
I. L. R. 28 Mad. 505

13. ——— Art. 149 of Sch. II of the Limitation Act applies only to suits brought by the Secretary of State or on his behalf and not to suits brought by persons deriving title from him KUTHAPERUMAL RAJALI *v.* THE SECRETARY OF STATE FOR INDIA (1906)
I. L. R. 30 Mad. 245

LIMITATION ACT (XV OF 1877)—*contd.*

Schedule II—*contd.*

——— Art. 151—

See DIVORCE ACT, s 55.
I. L. R. 22 Bom. 612

——— Art. 152—

See APPEAL—DECREES.
I. L. R. 23 Calc. 279; 406

——— *Appeal from decree or order—Period from which time runs.* The time for presenting an appeal against a decree or order is thirty days from the date of such decree or order (Art 152 of the Limitation Act XV of 1877). The date of the decree or order is the date on which judgment is pronounced. YAMAJI *v.* ANTAJI
I. L. R. 23 Bom. 442

——— Art 155 (1871, art 153)—

See APPEAL IN CRIMINAL CASES—ACQUITTALS, APPEALS FROM.
I. L. R. 2 Calc. 436

——— *Appeal in criminal case—Appeal from the Resident's Court, Bangalore* A person who was being defended by Counsel

Bangalore. On an appeal to the High Court, preferred more than sixty days after the conviction,

I. L. R. 15 Mad. 414

——— Art. 156—*Burma Courts Act, 1875, ss 49, 97—Appeal from Recorder of Rangoon.*

AGA MAHOMED HAMADANI *v* COHEN
I. L. R. 13 Calc. 221

——— Art. 158—

See ARBITRATION—AWARDS—VALIDITY OF AWARDS, AND GROUND FOR SETTING THEM ASIDE . I. L. R. 29 Calc. 36

1. ——— *Application to set aside award—Ground for setting aside award—Civil Procedure Code, ss. 521, 522.* Where, in accordance with an award irregularly made, a decree was passed by the Court from which the defendant appealed:—*Held*, that the defendant was not pre-

LIMITATION ACT (XV OF 1877)—*contd.*

Schedule II—*contd.*

——— Art. 158—*concld.*

s 521,—and the defendant did not contest the award on any of those grounds. MUHAMMAD ABID v MUHAMMAD ASGHAR . I. L R 8 All 64

2 ——— *Arbitration—Award, application to set aside—Time from when limitation begins to run—Civil Procedure Code (Act XIV of 1882), s. 516.* An application to set aside an award must be made within ten days from the

——— Art. 159—

See NEGOTIABLE INSTRUMENTS, SUMMARY PROCEDURE ON . 5 C. W N 259

——— *Suit under Ch XXXIX, ss 532, 538, of the Civil Procedure Code, 1882—Application for leave to defend suit—Date of service of summons—Sheriff's return of service.* In a suit under Ch. XXXIX of the Civil Procedure Code (summary procedure on negotiable instruments) the defendant obtained

the service of summons. The date of service as

only date to which reference could be made was the date shown in the Sheriff's return, and that the Court could not at the present stage of the case allow the defendant to show a state of things different from that appearing in his petition MADHUB LALL DURGUR v. WOOPENDRANARAIN SEN . . . I. L. R. 23 Calc 573

——— Art. 162—

See DIVORCE ACT, s. 16.
I. L R 6 Bom 416

——— Art. 163—

See CIVIL PROCEDURE CODE, 1882, s. 103.
8 C. W. N. 97

See SUIT, RESTORATION OF.
I. L R. 31 Calc. 150

——— Art 164 (1871, art. 157; Civil Procedure Code, 1859, s. 119)—

1. ——— *Obligation on defendant against whom ex parte decree has been passed.* The object of s. 119, Act VIII of 1859, was to make it imperative on a defendant against whom

LIMITATION ACT (XV OF 1877)—*contd.*

Schedule II—*contd.*

——— Art. 164—*contd.*

an *ex parte* decree had been passed, and who desired to come in and set aside that decree, to apply to the Court as soon as possible after he had notice of the passing of the decree,—i e, within a reasonable time not exceeding thirty days from the first actual execution of process to enforce the judgment. GOLAM AHYAH v. SHAM SOONDER KOONWAREE
7 W. R 375

2. ——— *Meaning of "executing" process of judgment* Process of enforcing a judgment (within thirty days from which a defendant may apply to set aside an *ex parte* decree) has not been executed within the meaning of s. 119, Act VII of 1859, until the proceedings in execution have been brought to a termination by a sale of the property attached. RADHA BINODE CHOWDHRY v. MUDHOO SOODUN SIRCAR
7 W. R. 198

3 ——— *Act X of 1859, s. 58—Ex parte decree, Application to set aside—*

perty of the defendant had taken place; and any

MAHARAJA OF BURDWAN
B. L. R. Sup. Vol. 947: 9 W. R. 236

4. ——— The thirty days "after any process for enforcing the judgment has

person of property of the defendant. SRIB CHUNDER BHADOOREE v LUCKHEE DEBIA CHOWDHRAIN . . . . 6 W. R Mis. 51

Not process only against the person. BECHUN PARGASH v. DUMREE LALL
1 N. W. Ed. 1873, 133

See SOOKH MOYEE DOSSEE v. NURMOODA DOSSEE
15 W. R. 210

and KALEE PROSAD v DIGAMBUR CHATTERJEE
25 W. R. 79

5 ——— *Notice of ex parte decree.* It is not necessary that the judgment-debtor should have special notice of any process for enforcing an *ex parte* decree; he is bound to seek the remedy provided by s. 119, Act VIII of 1859,

6. ——— *Application for setting aside ex parte judgment after expiration of*

LIMITATION ACT (XV OF 1877)—*contd*

Schedule II—*contd.*

——— Art. 164—*contd.*

time limited. A Judge has no jurisdiction to grant an application, made by a defendant against whom an *ex parte* judgment has been passed, to set aside the judgment after the expiration of the thirty days allowed by s 119 of the Code of Civil Procedure for making such applications. Such an application must be made within thirty days after the first process for enforcing the judgment against such defendant has been executed KESHAVRAM VALAD HIRACHAND *v.* RAMCHANDRA TRIMBAK

8 Bom. A. C 44

7 ——— *Application to set aside ex parte decree after thirty days have expired* An application by a party to set aside an *ex parte* [illegible]

rights. ANORAGEE KOOER *v.* ABDOOLLAH KHAN

26 W. R 99

8 ——— *Application to restore suit after dismissal of ex parte case.* Where [illegible]

within one month, and that in default of such security the suit should be set down for dismissal [illegible]

suit to the board for hearing, was barred IBRAHIM BIN MAHASIM *v.* ABDUR RAHIMAN BIN ALLI GAMBLE *v.* ABDUR RAHIMAN BIN ALLI 12 Bom 257

9. ——— *Execution of ex parte decree—Notice of execution* Notice of execution of decree is not sufficient "process for enforcing" it within the meaning of Art. 157, Sch II, Act IX of 1871. Such process means actual process by attachment in execution of the person or property of the debtor. POORNO CHUNDER COONDOO *v.* PROSONNO COOMAR SIKDAR

I. L. R. 2 Calc 123

10. ——— Where property had been attached in execution of a decree.—*Held*, [illegible]

I. L. R. 1 All. 540

LIMITATION ACT (XV OF 1877)—*contd.*

Schedule II—*contd.*

——— Art. 164—*contd.*

11. ——— *Ex parte judgment, application for an order to set aside—Civil Procedure Code, s 108—"Execution of process for enforcing the judgment."* An *ex parte* order was [illegible]

injunction was served on *S* informing her that the certificate granted to her had been revoked and had been granted to *A*, and directing her to deliver the property of the minor to *A* and to render him accounts of all moneys realized and expended within one month.—*Held* [illegible]

was a "

and that

S within

Act, 1877. SUNRAJ KUARI *v.* AMBIKA PRASAD SINGH . . . . I. L. R. 6 All. 14

12. ——— *Code of Civil Procedure (Act X of 1877), s. 108—Ex parte decree—Setting aside ex parte decree* An *ex parte* decree was obtained against a defendant who applied to have it set aside under s. 108 of the Civil Procedure Code. [illegible]

BUNESSURY. BHAGBUNESSURY *v.* JUDOBENDRA NARAIN MULLICK . I. L. R. 9 Calc. 869

13. ——— *Ex parte decree—Application to set aside ex parte decree—Presidency Small Cause Court Act (XV of 1882), s 37.* S. 37 of the Presidency Small Cause Courts Act (XV of 1882) does not apply to an *ex parte* decree. An [illegible]

14. ——— *Execution of process for enforcing the judgment—Civil Procedure Code, s 108—Application to set aside a decree passed* [illegible]

process for enforcing the judgment within the meaning of Art. 164 of the second Schedule to the Indian Limitation Act, 1877. *Dwarka Nath Misser v. Barinda Nath Misser, I. L. R. 22 Calc. 425,* referred to. MUHAMMAD KHAN *v.* HANWANT SINGH . . . . I. L. R. 20 All. 311

LIMITATION ACT (XV OF 1877)—*contd.*

Schedule II—*contd.*

———Art 164—*concld.*

——— *Civil Procedure Code (Act XIV of 1882), s. 108—Ex parte decree against more defendants than one—Execution against some of the defendants—Application by the other defendants to set aside the decree—Limitation.* When a decree is passed against more defendants than one, and the decree is executed against some of the defendants only, that is not a process for enforcing the judgment as against the other defendants within the meaning of Art. 164, Sch. II of the Limitation Act (XV of 1877) *Ravji Ramchandra* v. *Ramji Bhaikaji, (1888) P. J. 56,* followed HANMANT *v.* SHANKAR (1907) . I. L. R. 31 Bom. 303

———Arts. 164, 169—

See CIVIL PROCEDURE CODE, 1882, ss. 108, 560, 582 . I. L. R. 30 Mad. 535

——— Art. 165 (1871, art. 158)—

1. ——— *Application for restitution by person dispossessed—Holiday.* In calculating the period of limitation prescribed in Sch. II of Act IX of 1871 for applications as well as for suits and appeals, the day on which the order or decree appealed against way made should be excluded. Consequently, where a person having been dispossessed of property held by him under a mortgage on the 14th of December 1875 applied on the 14th January of 1876 for restitu- [illegible]

I. L. R. 2 Bom. 673

2. ——— *Dispossession under sale in execution of decree—Summary order.* A person purchased certain property at a sale in execution of a decree in November 1878: his purchase was confirmed and he obtained a certificate of sale on the 23rd May 1879, from which date he remained in possession. The judgment-debtor applied unsuccessfully to have the sale set aside for irregularity. He had applied, before the sale took place, to stay the sale on the ground that the right to apply for execution was barred [illegible] missed, [illegible] appear [illegible] the pro[illegible] or that he was cognizant of the application. Two years from the date of the sale, and one and a half [illegible] [illegible] auction purchaser out of possession :—*Held,* that [illegible]

LIMITATION ACT (XV OF 1877)—*contd.*

Schedule II—*contd.*

——— Art. 165—*concld.*

3. ——— *Dispossession in execution—Application on behalf of minor* [illegible] to [illegible] 16 [illegible] a [illegible] well as when he is a stranger. But an application made on behalf of a minor objecting to dispossession more than thirty days after it took place is not barred by limitation by reason of Limitation Act, 1877, s. 7 RATNAM AYYAR *v.* KRISHNA DOSS VITAL DOSS . . I. L. R 21 Mad. 494

4. ——— *Execution of decree—Application by judgment-debtor, dispossessed of immoveable property, disputing the right of the decree-holder to be put into possession. Held,* that Art. 165 of the second Schedule to the Indian Limitation Act, 1877, is wide enough to include the case of [illegible] possessed [illegible] putes the [illegible] possession. [illegible] *Mad. 494,* referred to HAR DIN SINGH *v.* LACHMAN SINGH (1900) . I. L. R. 25 All. 343

——— Art. 166 (1871, art. 159)—

——— *Execution—Sale in execution, the judgment-debtor being ignorant of the execution-proceedings through the fraud of the decree-holder—Setting aside proceedings in execution—Civil Procedure Code (XIV of 1882), ss. 294, 311.* [illegible] purchaser. [illegible] did not apply for po[illegible] 1883, in which year he applied for and obtained possession of the property. *S* alleged that he then for the first time became aware of the sale, and that by the fraud of *D* and *K* he had been kept in ignor[illegible] [illegible] taken by *D* in [illegible]

GOVIND KALE *v.* DAMODAR AKHARAM I. L. R. 9 Bom 463

LIMITATION ACT (XV OF 1877)—*contd.*

Schedule II—*contd.*

———— Art. 167 (1871, art. 160)—

See CIVIL PROCEDURE CODE, 1882, ss. 318 AND 335 . I. L. R. 26 All. 365

1. —
sion
in exe(
1877, (
in endeavouring to obtain possession, apply, within thirty days, to the Court under the directions of which the execution-sale was held, to be put into actual possession, and if he omits to do so within thirty days from the time when his taking possession was first obstructed or resisted, his only remedy is by a civil suit. The plaintiffs, on the 31st January 1863, purchased a half share in a certain house at a sale in execution of a decree, but took no steps at the time to take possession of it In 1869 the Nazir of the Court was directed to put them nto possession, and gave them symbolical possession. Afterwards in 1871, the plaintiffs again with the assistance of the Nazir entered upon, and for the space of about a minute remained in possession of, one of the rooms in the house, until they were turned out by the defendants. On the 18th of November 1876, the plaintiffs filed a suit, praying for a declaration of right and for a

2. ———— *Warrant for possession—Obstruction in getting possession—Civil Procedure Code, 1877, s. 328* Where a warrant for possession of land in execution of a decree was not executed owing to the resistance of the judgment-debtor in September 1880, and no complaint was made under s 328 of the Code of Civil Procedure, 1877, but a fresh warrant for possession was applied for by and granted to the decree-holders and resistance was again made in January 1881 .—*Held*, that a complaint by the decree-holders as to the second obstruction, made within thirty days of the second obstruction, was not barred by reason of Art. 167 of Sch. II of the Limitation Act. RAMASEKARA PILLAI *v.* DHARMARAYA GOUNDAN

I. L. R. 5 Mad. 113

3. ———— *Civil Procedure Code, 1882 ss. 318, 334—Petition by purchaser at*

LIMITATION ACT (XV OF 1877)—*contd.*

Schedule II—*contd.*

———— Art. 167—*concld.*

assignee of the decree which was being executed), paying for delivery of possession of the property purchased, it appeared that the sale took place in 1885, that it was confirmed in 1886, and that in January 1887 an order was made for delivery of

barred by limitation, and should be heard and determined on the merits. MUTTIA *v.* APPASAMI

I. L. R. 13 Mad. 504

4 ———— *Minor—Purchase on behalf of a minor during minority—Agent of*

cedure Code (XIV of 1882), s. 335. In 1877, at

applicant intended to proceed summarily under the Civil Procedure Code, he should have taken proceedings within a month after he came of age. VINAYAKRAV AMRIT *v.* DEVRAV GOVIND

I. L. R. 11 Bom. 473

———— Art. 168 (1871, art. 161, Civil Procedure Code, 1859, s. 347)—

1. ———— *Time for appeal —Civil Procedure Code, 1859, s 347.* To bring an appellant within the terms of s. 347 of the Code of Civil Procedure, 1859, so as give to the Court jurisdiction, his application for re-admission of the appeal dismissed for default of prosecution had to be made within thirty days from the date of the dismissal. MITTOO KHAN *v.* RUHMAN KHAN

8 W. R. 361

LIMITATION ACT (XV OF 1877)—*contd*

Schedule II—*contd.*

——— **Art. 168**—*concld.*

[illegible]

2 ——— *Application for re-admission of appeal.* The time allowed by s. 347 of [illegible]

3. ——— *Application for re-admission of appeal dismissed on failure to deposit* [illegible] *Ch.* 558. [illegible] cree [illegible] of [illegible] the [illegible]

[illegible] show cause: *Held* (by PRINSEP and GHOSE, JJ.), that the application was not one under s. 558 of the Civil Procedure Code, that it was not barred [illegible]

See FATIMUNISSA *v.* DEORI PROSHAD
I. L. R. 24 Calc. 350

IKBAL HOSSAIN *v.* DEOKIE PERSHAD
1 C. W. N. 21

——— **Art. 170 (1871, art. 162)**—

[illegible]

ent contended that the pauper appeal was time- [illegible]

LIMITATION ACT (XV OF 1877)—*contd.*

Schedule II—*contd.*

——— **Art. 170**—*concld.*

proceeded with. Art. 178 of the Limitation Act had no application to the present case. MAHADEV BALVANT *v.* LAKSHMAN BALVANT
I. L. R. 19 Bom. 48

——— **Arts. 171, 171A, and 171B**—

See ABATEMENT OF SUIT—APPEALS.
I. L. R. 7 All. 693; 734

See ABATEMENT OF SUIT—SUITS.
I. L. R. 5 Calc. 139: 4 C. L. R. 374

1. ——— **Art. 171**—*Death of appellant—Civil Procedure Code, 1877, ss. 365 and 537—Application for substitution of heir to allow execution to proceed.* A suit was instituted and a decree obtained in the Court of first instance while Act [illegible]

[illegible] made under s. 365, but under [illegible] *Court ought* [illegible] to include cases not falling within the [illegible] meaning of the words used *In the matter of* RAM SUNKAR BHADORY
3 C. L. R. 440

2 ——— *Abatement of suit* [illegible] *Civil Procedure* [illegible]

[illegible] a sole plaintiff [illegible] the decree. [illegible] sue being merged in the decree. [illegible] MULLICK *v.* BHUGGOBUTTY CHURN MULLICK
5 C. L. R. 103

3 ——— *Death of plaintiff and substitution of his representatives as party to suit.* If a plaintiff dies after decree, his represen-

LIMITATION ACT (XV OF 1877)—*contd.*

Schedule II—*contd.*

——— Art. 171—*contd.*

the case of a plaintiff dying after decree. RAMANADA SASTRI *v.* MINATCHI AMMAL I. L. R. 3 Mad. 236

4. ——— *Civil Procedure Code, 1877, ss. 363, 365—Abatement of execution-proceedings—Representative.* The provision of the Limitation Act (XV of 1877), Sch. II, Art. 171, which gives a period of sixty days to a person claiming to be the legal representative of a deceased plaintiff under s. 363 or 365 of the Code

tions as would have applied to the plaintiff himself GULABDAS *v* LAKSHMAN NARHAR I. L. R. 3 Bom 221

5. ——— and Art. 171B—*Act XII of 1879, ss 60 and 108—Deceased defendant—Application to make legal representative defendant.* Subsequently to the institution of the plaintiffs' suit one of the defendants died, and his son as his legal representative, was made a defendant in his stead

a period of sixty days within which an application should be made to have the representative of a deceased defendant made a defendant to a suit.

trospective effect, and that the plaintiffs' application was not time barred. KHUSALBHAI *v* KABHAI . . . I. L. R. 6 Bom. 26

6 ——— *Civil Procedure Code (Act XIV of 1882), ss 3, 368, 582—Respondent,*

s. 582 must be held to include "respondent." *In the matter of the petition of* SOSHI BHUSAN CHAND. SOSHI BHUSAN CHAND *v.* GRISH CHUNDER TALUKHDAR . . . I. L. R. 11 Calc. 694

7. ——— and Arts. 171A, 171B—*Civil Procedure Code (Act XIV of 1882), s 582—Respondent, decease of, after appeal filed—Defendant. Held,* by the Full Bench, that the word "defendant" in Art 171B of the Limitation Act does not include a respondent S 582 of Act XIV of 1882 affects only proceedings under the Code, and does not extend the operation of any portion of Limitation Act. UDIT NARAIN SINGH *v* HAROGOURI PROSAD . . . I. L. R. 12 Calc. 590

8. ——— and Art. 171B—*Application to sue in formâ pauperis—Death of opponent—Substitution of heirs—Subsequent granting of application—Code of Civil Procedure, 1882, ss 48, 368, and 410* Neither Art 171B of Sch II of Act XV of 1877 nor any other section of the Law of Limitation

9. ——— *Appeal, abatement of—Application for declaration of insolvency—Appeal from order rejecting application—Death of decree-holder-respondent—No application by appellant for substitution of deceased's representative—Civil Procedure Code, ss 344-348, 350, 351, 368* The decree-holder-respondent, in an appeal from an order refusing an application by the judgment-debtor for declaration of insolvency under s 344 of the Civil Procedure Code, died and the judgment-debtor, appellant, took no steps to have the legal represen-

regular suit in the insolvency proceedings, the

LIMITATION ACT (XV OF 1877)—*contd.*

Schedule II—*contd.*

———— Art. 171—*contd.*

differed from the decision of the Full Bench, distinguished RAMESHAR SINGH *v.* BISHESHAR SINGH I. L. R. 7 All. 734

10. ———— and Art. 171B—*Per curiam*

Limitation Act, 1871. LAKSHMI *v* SRI DEVI I. L. R. 9 Mad. 1

11. ———————— *Civil Procedure Code (XIV of 1882), ss 368, 582—Decease of respondent after appeal filed.* The word "defendant" in Art. 171B of Sch. II of the Limitation Act (XV of 1877) does not include "respondent." BALKRISHNA GOPAL *v* BAL JOSHI SADASIV JOSHI I. L. R. 10 Bom. 663

12. ———— Art. 171B—*Appeal—Death of defendant-respondent—Civil Procedure Code, ss. 368, 582.* Art. 171B, Sch. II of the Limitation Act (XV of 1877), applies to applications to have the representative of a deceased defendant-respondent made a respondent BALDEO *v.* BISMILLAH BEGAM I. L. R. 9 All. 118

13. ———————— *Death of defendant-respondent—Application by plaintiff-appellant to have representative of deceased substituted as respondent —Civil Procedure Code ss 3, 368, 582. Held*, by the Full Bench (MAHMOOD, J., dissenting), that Art. 171B of the second schedule of the Limitation Act

MOOD, *J.*, *contra*, that the word "defendant" in Art 171B includes a defendant-respondent and, reading Art 171B with cl 2 of s 3 in conjunction with ss. 368 and 582 of the Civil Procedure Code, includes also a plaintiff-respondent; and that an application made by a plaintiff-appellant more than sixty days after the defendant-respondent's death to have the representative of a deceased made a respondent is barred by limitation, and the appeal is liable to abatement. *Soshi Bhusan Chand* v. *Grish Chunder Taluqdar, I. L. R 11 Calc. 694*, referred to. DEBI DIN *v.* CHUNNA LAL I. L. R. 10 All. 284

14. ———— and Art. 178—*Death of*

LIMITATION ACT (XV OF 1877)—*contd.*

Schedule II—*contd.*

———— Art. 171—*concld.*

cided that Art. 171B, Sch II of the Limitation Act of 1877, did not apply to an application by a defendant-appellant to have the representative of a deceased plaintiff-respondent made a respondent. Art. 178 applies to such applications. So *held*, by the Full Bench, MAHMOOD, J., dissenting. *Held*, by MAHMOOD, *J.*, that by reason of s. 3 (read with ss. 368 and 582) of the Civil Procedure Code, the word "defendant" in Art. 171B of the Limitation Act necessarily includes a plaintiff-respondent. *Soshi Bhusan Chand* v. *Grish Chunder Taluqdar, I. L. R. 11 Calc. 694*, referred to. CHAJMAL DAS *v.* JAGDAMBA PRASAD . I. L. R. 10 All. 280

15. ———— and Art. 179—*Application by representative of judgment-creditor to continue execution of decree.* The provision of the Limitation Act (XV of 1877), Sch. II, Art. 171, which gives a period of sixty days to a person claiming to be the legal representative of a deceased plaintiff under s. 363 or 365 of the Code of Civil Procedure, does not apply to the representative of a deceased judgment-creditor

death of the judgment-creditor; such re... tive may therefore come in at any time as his com... ing in is contemplated in Art. 179, explanation I of Sch. II of the Limitation Act, subject always to the same conditions as would apply to his principal. GULABDAS *v.* LAKSHMAN NARHAR I. L. R. 3 Bom. 221

———— Art. 173 (1871, Art. 164)—

See ante, s. 5 AND SCH II, ART. 173.

1. ———————— *Mofussil Small Cause Courts Act, XI of 1865, s. 21—New trial —Review.* Where the circumstances of a case in a mofussil Small Cause Court admit a new trial, an application for such new trial is governed by s. 21 of Act XI of 1865, which is still in force notwith... the right of review given by s. 623 of the ... mstances ... do admit ... applica... governed ... tion for review ... by Art. 173, Sch II of Act XV of 1877. MADON MOHON PODDAR *v.* PURNO CHUNDRA PURBOT I. L. R. 10 Calc 297

2. ———————— *Amendment of decree by orders in execution.* Where the first Court's decree in favour of the plaintiff was upheld in appeal, but in the course of the execution-proceedings the lower Appellate Court held that it judgment did not mean to uphold that decree in its entirety, it was held that this order was in the nature of an amendment of the decree, and that the ninety days allowed for an application for

LIMITATION ACT (XV OF 1877)—*contd.*

Schedule II—*contd.*

———— **Art. 173—*concld***

review should count from the date of such order. BULOBHUDDUR MAHANTEE *v* MUDHOOSOODUN PANDEY . . . . 23 W. R. 433

———— **Art. 173A—**

See MORTGAGE—SALE OF MORTGAGED PROPERTY—PURCHASERS.
I. L. R. 24 Mad. 412

See TRANSFER OF PROPERTY ACT, s. 89.
8 C. W. N. 102

———— **Arts. 173A, 179—**

See EXECUTION OF DECREE
I. L. R. 30 Mad. 537

———— **Art. 175—**

See CIVIL PROCEDURE CODE, 1882, s. 371
9 C. W. N. 369

See DECREE—ALTERATION OR AMENDMENT OF DECREE
I. L. R. 14 Calc. 348

See LIMITATION ACT, 1877, ART. 179—ORDER FOR PAYMENT AT SPECIFIED DATES. . . I. L. R. 14 Calc. 348

———— **Art. 175A—**

See ABATEMENT OF SUIT—APPEALS.
I. L. R. 23 Mad. 125

See PARTIES—SUBSTITUTION OF PARTIES—PLAINTIFFS I. L. R. 27 Bom. 162

———— *Substitution, application for—Application after preliminary decree for sale in mortgage-suit—Mortgagee, death of—Application by heirs—Transfer of Property Act (IV of 1882), s. 88—Conditional decree, effect of.* Where a mortgagee having obtained a preliminary decree for sale under s. 88, Transfer of Property Act, died and his heirs more than six months after his death applied to be brought on the record in the place of the deceased and to have an order absolute for sale made in their favour; *Held*, that the application for substitution was not governed by Art. 175A of Sch. II of the Limitation Act. Applications governed by Art. 175A of Sch. II of the Limitation Act are applications for substitution made in the course of the suit. After a conditional decree for sale is passed on a mortgage the suit as such is at an end. *Ajudhia Pershad* v. *Baldeo Singh, I. L. R. 21 Calc. 818*, and *Tara Prosad Roy* v. *Bhobodeb Roy, I. L. R. 22 Calc. 931*, referred to. MEHARI BIBI *v.* YAKUB ALI (1906)
11 C. W. N. 156

———— **Art. 175C—**

See ABATEMENT OF SUIT—APPEALS
I. L. R. 11 All. 408

See APPEAL, ABATEMENT OF.
I. L. R. 31 Calc. 487

LIMITATION ACT (XV OF 1877)—*contd.*

Schedule II—*contd.*

———— **Art. 175C—*contd.***

See CIVIL PROCEDURE CODE, 1882, ss. 368, 582, 587 . . 2 C. W. N. 442
I. L. R. 29 All. 535

See PARTIES—SUBSTITUTION OF PARTIES—RESPONDENT I. L. R. 11 All. 408

See SECOND APPEAL, ABATEMENT OF.
I. L. R. 34 Calc. 1020

1. ———— **Art. 175C and Art. 178—** *Substitution of the heirs of deceased defendant—Civil Procedure Code, 1882, ss. 368, 372—Substitution of parties.* After the institution of a suit for dissolution

Art. 175C of the Limitation Act and was barred unless the delay was sufficiently explained. JAMNADAS CHHABILDAS *v.* SORABJI KHARSEDJI
I. L. R. 16 Bom. 27

2. ———— *Art. 175 (c)*

3. ———— *Second appeal—Application to bring in legal representatives of deceased respondent in second appeal—Limitation*

Art. 175C, Sch. II, of the Limitation Act, for an application to bring in the heirs of a deceased

LIMITATION ACT (XV OF 1877)—*contd.*

Schedule II—*contd.*

——— Art. 175C—*concld.*

...ssed ... was ... eriod ... ation Act :—*Held,* that the appeal had abated so far as the deceased respondent was concerned, but that the appellants were entitled to go on with the appeal as against the other respondents. *Chandarsang Versabhai* v. *Khimabhai Raghabhai, I. L. R. 22 Bom. 718,* referred to. UPENDRA KUMAR CHAKRAVARTI *v.* SHAM LAL MANDAL (1907)
I. L. R. 34 Calc. 1020

4. ——————— *Civil Procedure Code (Act XIV of 1882), ss. 368, 582, 587—Applica-*

——— Arts. 175 (e), 178—*Art 178 applies to applications to bring in representatives of deceased respondent in second appeals—Civil Procedure Code (Act XIV of 1882), ss 582, 587.* The reference to s 582 of the Code of Civil Procedure in Art. 175 (*e*) of Sch. II of the Limitation Act does not include by implication second appeals referred to in s 587 of the Code of Civil Procedure The period of limitation for bringing in the representative of a deceased respondent in a second appeal is not that prescribed by Art. 175 (*e*) of Sch. II of the Limitation Act, but that prescribed by Art 178 *Lakshmi* v. *Sri Devi, I. L. R. 9 Mad. 1,* followed. *Vakkalagadda Narasimham* v. *Vabhizulla Sahib, I. L R 23 Mad. 498,* overruled SUBYA PILLAI *v.* AIYAKANNU PILLAI (1906)
I. L R. 29 Mad. 529

1 ——— Art 176 (1871, art. 165)—*Application—Filing award by arbitrators—Civil Procedure Code, 1877, s 516* The act of an arbitrator, in handing in an award to the proper officer of the Court for the purpose of the award being filed, cannot be considered as an " application " within the meaning of the Limitation Act. ROBERTS *v.* HARRISON
I. L. R. 7 Calc. 333 : 9 C. L. R. 209

2. ——————— *Execution of decree —Limitation—Execution temporarily suspended by action of Court* A decree-holder in whose favour a decree for sale on a mortgage and a subsequent order absolute for sale had been passed on the 27th May 1891 and the 3rd of February 1892, respectively, applied on the 24th April 1893 for sale of the mortgaged property. One of the judgment-debtors instituted a suit to set aside the decree on the ground of fraud,

LIMITATION ACT (XV OF 1877)—*contd.*

Schedule II—*contd.*

——— Art. 176—*concld.*

and on the 15th of December 1893 obtained an injunction restraining further proceedings in execu-

applied, that time began to run against the

red to. RUDDAR SINGH *v.* DHANPAL SINGH (1904)
I. L. R. 26 All. 156

1. ——— Art. 177—*Civil Procedure Code, s. 598—Application for certificate for appeal to*

I. L. R. 15 Mad.

2 ——————— *Civil Procedure Code, s. 599—General Clauses Act (I of 1868), s. 3, cl (1)—Civil Procedure Code Amendment Act (VII of 1888), s. 57—Application for leave to appeal to Her Majesty in Council.* S. 599 of Act No. XIV of 1882 is not inconsistent with Art 177 of Sch. II of Act XV of 1877 as

6 All. 250 ; *Burjore* v. *Bhagana, I. L. R.* ... 557 : *L. R. 11 I. A. 7 ; Lakshmi* v. *Ananta Shanbaga I. L. R. 2 Mad. 230,* and *Ganga Gir* v. *Bulwant Gir, All. Weekly Notes (1881) 130,* referred to *In the matter of the petition of* SITA RAM KESHO . . . . **I. L. R. 15 All. 14**

3 ——————— *Civil Procedure Code, 1882, ss. 596, 598, and 599—Limitation Act (XV of 1877), s. 7—Application to admit*

LIMITATION ACT (XV OF 1877)—*contd.*

Schedule II—*contd*

———— **Art. 177—*concld***

appeal to Privy Council—Disability by reason of minority—Deduction of time In 1885 the High Court in appeal passed a decree to which a minor under the Court of Wards was a party Having attained his majority in 1894, he sought to appeal to Her Majesty in Council, and [illegible]

[illegible]

4 ———— and s 12—*Application for leave to appeal to Privy Council—Time requisite for obtaining copy of judgment.* *Held per* Stuart, *C.J.* (Spankie, *J*, dissenting), that in computing the period of limitation prescribed by Art 177, Sch. II of Act XV of 1877, for an application for [illegible]

[illegible]

5. ———— *Application for leave to appeal to Privy Council—Time for presentation of application—Limitation Act (XV of 1877), ss 5 and 12—Civil Procedure Code, 1882, s 598.* An application for leave to appeal to the Privy [illegible]

[illegible]

———— **Art 178—**

See Civil Procedure Code (Act XIV of 1882), s. 318 . **I. L. R. 30 All. 390**

See Hindu Law—Debts. **I. L. R. 33 Bom. 39**

See Insolvency—Insolvent Debtors under Civil Procedure Code—Execution of Decree **I. L. R. 30 Calc. 407**

See Legal Representative **11 C. W. N. 186**

See Practice—Civil Cases—Parties. **I. L. R. 30 Calc. 609**

See Sale in Execution of Decree—Invalid Sales—Fraud. **5 C. W. N. 265**

———— Applications to enforce a "summary decision" were provided for in s. 22 of Act XIV of 1859, and this was continued in Art. 166 of Act IX of 1871, the period of limitation being one year. The provision was omitted in the present Act, but this Article (178) includ-

LIMITATION ACT (XV OF 1877)—*contd.*

Schedule II—*contd.*

———— **Art. 178—*contd.***

ing "applications for which no period of limitation is provided elsewhere in the Schedule" has [illegible]

1 ———— *Act XIV of 1859, s 22—Summary decision* The words "summary decision, as used in s. 22, Act XIV of 1859," meant a decision of the Civil Court not being a decree made in a regular suit or appeal Under s. 22, Act XIV of 1859, the period for enforcement of such decision was one year from the time it was passed. Ramdhan Mandal *v* Rameswar Bhattacharjee **2 B. L. R. A. C. 235 : 11 W. R. 117**

2. ———— *Act XIV of 1859, s. 22—Decree under Act XIX of 1841—Summary order* A decree passed under Act XIX of 1841 on a claim to a certain share of property by right of succession was a summary order, and therefore subject to the limitation of one year provided by s. 22, Act XIV of 1859 Mazedoonissa Beebee *v* Fuezun Beebee . . **4 W. R. Mis. 6**

3 ———— *Summary decision under Beng. Reg VII of 1799* To a process of [illegible]

Kant Ghose *v.* Bamun Dass Mookerjee **17 W. R 472**

4 ———— *Act XIV of 1859, s 22—Summary decision Semble*. An order under [illegible]

5. ———— *Act XIV of 1859, s. 22—Summary decision* An order awarding possession under s. 15, Act XIV of 1859, was a summary award to which the provisions of s. 22 were applicable. A summary decision is not a final one on the matter at issue between the parties. *In the matter of* Nuboo Kishen Mookerjee **11 W. R. 188**

6 ———— *Act XIV of 1859, s 22—Order for costs in execution of decree.* An order for costs made as a contested matter in execution of a decree was not a "summary decision or award" within s. 22, Act XIV of 1859, but an "order" under s. 20. *Puresh Narain Roy* v. *Dalrymple, 9 W. R. 458*, followed. Mohan Lall Sukul *v.* Ulfutunnisa **5 B. L. R. 164 note : 11 W. R. 98**

LIMITATION ACT (XV OF 1877)—*contd.*

Schedule II—*contd.*

———— Art. 178—*contd.*

7. ———— *Act XIV of 1859, s. 22—Order dismissing application for execution.* An order of a Court dismissing an application for execution of a decree, on the ground that it was barred by the Law of Limitation was not a "summary decision" within the meaning of s. 20. It was an order within the meaning of s. 22 of that Act. DHIRAJ MAHTAB CHAND BAHADOOR *v.* BACHARAM HAZRA

5 B. L. R. 162 : 13 W. R. F. B. 74

8. ———— *Act XIV of 1859, s. 22—Summary order.* A judgment-creditor having in execution taken possession of lands in excess of his decree, objection was raised and a case instituted in which adjudication was made in favour of the judgment debtor, the order for restoration of the excess land being confirmed in appeal :—*Held*, that this order was not a summary one within the meaning of s 22, and that an application for its execution was governed by the three years' limitation. ROOP MUNGUL SINGH *v.* CHOORAMUN SINGH . . . . . **16 W. R. 182**

9. ———— *Act XIV of 1858, s. 22—Decree under Registration Act, 1866, s. 53, Quære* · Whether a decree passed under s. 53 of the Registration Act was or was not a summary decree within the meaning of Act XIV of 1859, s. 22 HURNATH CHATTERJEE *v.* FUTTICK CHUNDER SUMADAR . . . . . . **18 W. R. 512**

10. ———— *Act IX of 1871, Art. 166—Application for execution of decree—Registration Act, 1866, s. 53.* An application for the execution of a decree made under s. 53 of Act XX of [illegible] within Art. 167, [illegible] *ankar v. Tetley*, [illegible] A proceeding [illegible], though in the [illegible]

decree, [illegible] specially registered under s. 52 of that Act. He applied for the execution of it,—first on the 2nd [illegible]

See (contra) JAI SHANKAR *v* TETLEY

I. L. R. 1 All. 586

LIMITATION ACT (XV OF 1877)—*contd.*

Schedule II—*contd.*

———— Art. 178—*contd.*

11. ———— *Act XIV of 1859, s. 22—Registration Act (XX of 1866), s 53—"Decree" made upon registered obligation—Summary decision.* A summary decision means a decision arrived at by a summary proceeding and a "decree" made under s. 53 of Act XX of 1876 was a summary decision. S. 20 of Act XIV of *1859 was intended to apply to decisions, whether* called judgments, decrees or orders, made in a regular suit, and s. 22 of the same Act was *intended to apply to all other decisions. A decree* made in 1867 under s. 53 of Act XX of 1866 *held* to be subject, as regards its execution to the law of limitation provided in Act XIV of 1859, s. 22. MINA KONWARI *v* JUGGAT SETANI

I. L. R. 10 Calc. 196 : 13 C. L. R. 385
L. R. 10 I. A. 119

12. ———— *Application to pass j*[illegible] *award—Civil Procedure* [illegible] the [illegible] an reques[illegible] award [illegible] dg- ment [illegible] ca- tions [illegible] se- quently made and granted The last application was made in 1880, and was rejected on the ground that there was *no decree to execute.* The order was confirmed by the High Court on appeal. The applicants then applied to the *lower Court to pass judgment* in terms of the award The Court rejected the application as barred under the Limitation Act, XV of 1877, Sch. II, Art. 178. The applicants appealed :—*Held*, by SARGENT, *C J.*, and KEMBALL, *J.*, that, *looking to* the provisions of the Codes of Civil Procedure of 1859 and 1877 with respect to the filing of awards in Court and the proceedings *thereon*, it appeared [illegible] of the Court under both Codes, to [illegible] to the award [illegible] hont waiting [illegible] jone, though [illegible] actice, usual [illegible], which [illegible] *Rama-* [illegible] *Vithal* *sami Ayyan, I. L. R. 4* [illegible] *I. L. R. 6 Bom.* *Janardan v. Vithojirav Putlajirav, I. L. R. 6 Bom.* *586*, was not within the *contemplation* of the Limitation Act. *Held*, further, that the same effect should be given to the language of s. 327 of Act VIII of 1859 and s. *526 of Act X* of 1877. The expression "may be enforced" in the concluding part of s. 327 ought to be read as "shall be enforced" as far as *it applies to the Court*, although the enforcement by execution of the decree must always, *of course*, be permissive, as regards the plaintiff. ISHWARDAS *v.* JAGJIVANDAS *v.* DOSIBAI . **I. L. R. 7 Bom. 316**

13 ———— *Application for certificate to collect debts of deceased person.* Art. 178 of Sch. II of the Limitation Act, 1877, does not affect an application under Act XXVII

LIMITATION ACT (XV OF 1877)—*contd.*

Schedule II—*contd*

———— Art. 178—*contd.*

of 1860 for a certificate to collect debts due to the estate of a deceased person. JANAKI *v* KESAVALU
I. L. R. 8 Mad. 207

14 ———— *Application for probate.* The Limitation Act is not applicable to an application for probate; such an application therefore is not barred by Art. 178 of Sch. II of that Act. *In the matter of the petition of* ISHAN CHUNDER ROY
I. L. R. 6 Calc. 707 : 8 C. L. R. 52

15 ———— *Application for probate or letters or certificate of administration.* Art 178 of Sch II of Act XV of 1877 has reference *only* to applications under the Civil Procedure Code (Act X of 1877), and does not apply to applications for probate or letters of certificates of administration BAI MANEKBAI *v* MANEKJI KAVASJI
I. L. R. 7 Bom. 213

16. ———— *Applications for probate or letters or certificates of administration* Applications for probate or letters or certificates of administration do not fall within the provisions of Art. 178 of the Limitation Act KASHI CHUNDRA DEB *v* GOPI KRISHNA DEB
I. L. R. 19 Calc 48

17. ———— *Applications for probate.* The Limitation Act does not apply to applications for probate, and the applications referred to in Art. 178 of Sch II of that Act are applications under the Code of Civil Procedure. *Janaki* v. *Kesavalu, I. L R 8 Mad 207, Bai Manekbai* v. *Manekji Kavasji, I. L R. 7 Bom 213*, and *In the matter of the petition of Ishan Chunder Roy, I L R 6 Calc 707*, followed GNANAMUTHU UPADESI *v* VANA KOILPILLAI NADAN
I. L. R. 17 Mad. 379

18. ———— *Application for certificate of sale—Civil Procedure Code, 1859, s. 259.* The provisions of the Limitation Act relating to applications do not extend to an application by a purchaser of land at a Court-sale under a decree to obtain a certificate KYLASA GOUNDAN *v* RAMASAMI AYYAN . I. L. R. 4 Mad. 172

19. ———— *Certificate of sale, Application for* Art. 178, Sch II of the Limitation Act (XV of 1877), is not applicable to applications

[illegible]

DEVIDAS JAGJIVAN *v.* PORJADA BEGAM
I. L. R. 8 Bom. 377

20. ———— *Certificate of sale, application for.* Where an application for a certificate of sale was made five years and a half after the confirmation of the sale :—*Held*, that it was barred by Art 178 of Sch. II of Act XV of 1877 TUKARAM *v.* SATVAJI KHANDAJI
I. L. R. 5 Bom. 206

21. ———— *Application for a certificate of sale—Accrual of cause of action.* The applicant purchased certain land at a Court-sale on the 17th February 1876. The sale was confirmed on the 20th March of the same year. The purchaser did not apply for a certificate of sale until the 10th March 1880 *Held*, that the application was barred by the Limitation Act, XV of 1877, Sch. II, Art. 178. *Held*, also, that the

[illegible]

22. ———— *Civil Procedure Code (Act XIV of 1882), s. 318—Purchaser at Court-sale—Certificate of confirmation of sale—Application for possession of purchased property—Date of accrual of right to apply for possession.* The right of a purchaser to apply for possession under s. 318 of the Civil Procedure Code (Act XIV of 1882) accrues to him when the certificate "has been granted,"—that is to say, when it has been issued to him, and the period of limitation for such an application is to be computed from that day. KASHINATH TRIMBAK JOSHI *v* DUMING ZUBAM
I. L. R. 17 Bom. 228

23. ———— *Application for possession after sale in execution of decree—Period from which limitation runs.* The right to apply for possession after a sale in execution of a decree accrues on the date the certificate of sale is issued not on that on which the sale was confirmed; the period of limitation therefore counts from the former date. BASAPA *v.* MARYA
I. L. R. 3 Bom. 433

24. ———— *Application for possession by purchaser at a Court-sale—Civil Procedure Code, Act XIV of 1882, s 318.* An

[illegible]

PANDURANG JOGLEKAR *v* SUBAJI GIRMAJI
I. L. R. 8 Bom. 257

25. ———— *Insolvent judgment-debtor—Application by creditor to prove claim.* In July 1878 a person was declared an insolvent under the provisions of Ch. XX of the Civil Procedure Code. Only one creditor then proved his debt and no schedule was framed. This creditor having applied for the sale of property belonging to the insolvent, another creditor, in May 1883, applied to prove his debt and to have his name inserted in

LIMITATION ACT (XV OF 1877)—*contd.*

Schedule II—*contd.*

———— Art. 178—*contd.*

the schedule which the Court then ordered to be framed —*Held*, that the application was governed by Art. 178 of the Limitation Act, 1877; and that, the right to apply having accrued at the date of the declaration of insolvency, the application was beyond time PARSADI LAL *v.* CHUNNI LAL
I. L. R. 6 All. 142

26. ———————— *Application to amend decree—Civil Procedure Code (Act X of 1877), s 206.* An application to amend a decree, which is found to be at variance with the judgment, in accordance with the provisions of s 206 of the Civil Procedure Code, is an application of the kind mentioned in Art. 178 of Sch. II of Act XV of 1877, and as such subject to the limitation of three years *In the matter of the petition of* GAYA PRASAD *v* SIKRI PRASAD . . . I. L. R. 4 All. 23

27. ———————— *Application to bring decree into conformity with judgment—Civil Procedure Code, 1882, s 206.* Applications to the Court under s 206 of the Code of Civil Procedure are not governed by the Limitation Act JIVRAJI *v* PRAGJI . I. L. R 10 Mad. 51

28. ———————— *Decree, application to correct errors in—Civil Procedure Code (Act XIV of 1882), s. 206—Practice.* An application, under s. 206 of the Civil Procedure Code (Act XIV of 1882), to correct errors in a decree, not being one within the purview of Art. 178, Sch. II of the Limitation Act (XV of 1877), is not governed by any limitation, and can be made at any time such errors are discovered. *Gaya Prasad* v. *Sikri Prasad, I L. R 4 All. 23*, dissented from. SHIVAPA *v.* SHIVAPANCH LINGAPA
I. L. R. 11 Bom. 284

29. ———————— *Civil Procedure Code, s. 206—Amendment of decree.* Art. 178 of Sch. II of the Limitation Act (XV of 1877) applies only to applications made to a Court to exercise powers which, without being moved by such application, it is not bound to exercise, and not to applications made to a Court to do acts which it has no discretion to refuse to do. It does not govern an application under s. 206 of the Civil Procedure Code for amend- [illegible]

[illegible] 172; [illegible] I. L. [illegible] RAI
I. L. R. 6 All. 364

30. ———————— *Amendment of decree—Civil Procedure Code, 1882, s. 206—Suit for mesne profits while plaintiff is out of possession.* There is no Limitation for an application under s. 206 of the Civil Procedure Code to amend a decree, it being the duty of the Court to amend it whenever it is found to be not in conformity with the judgment *A* instituted a suit for declaration of title and for possession. The decree, which was finally confirmed by the High Court gave her the declaration sought for, [illegible]

[illegible]

amended under s. 206, Civil Procedure Code, that, though the plaintiff's claim to possession was barred, yet his right was not extinguished, and he, having therefore a subsisting title, was entitled, though out of possession, to maintain the suit so far as it sought to recover mesne profits KALU *v.* LATU . . . . I. L. R. 21 Calc. 259

31. ———————— *Decree as originally framed incapable of execution—Amendment of decree—Application for execution of amended decree.* Where a decree as originally framed was found by the High Court to be incapable of execution and was not finally amended by that Court, so as to become capable of execution, until nearly twelve years after it was passed, it was *held*, that an application to execute such decree which was made within three years from the date of the amendment of the decree was within time, the rule of limitation applicable being that prescribed by Art. 178 of Sch. II of Act of 1877. MUHAMMAD SULEMAN KHAN *v.* MUHAMMAD YAR KHAN . . I. L. R. 17 All. 39

32. ———————— *Application for order absolute for sale of mortgaged property—Transfer of Property Act (IV of 1882), s. 89.* Art. 178, Sch. II of the Limitation Act, 1877, does not apply to an application for an order absolute for the sale of mortgaged property under s. 89 of the Transfer of Property Act, 1882. *Bai Manekbai* v. *Manekji Kavasji, I. L. R 7 Bom. 213*, approved. RANBIR SINGH *v.* DRIGPAL
I. L. R. 16 All. 23

(*Contra*) CHUNNI LAL *v.* HARNAM DASS
I. L. R. 20 All. 302

33. ———————— *Transfer of Property Act (IV of 1882), s. 89—Application for an order absolute for sale of mortgaged property* An application under s. 89 of the Transfer of Property Act (IV of 1882) to have a mortgage-

LIMITATION ACT (XV OF 1877)—*contd.*

Schedule II—*contd.*

—— Art. 178—*contd*

decree for sale made absolute is not governed by Art. 178, Sch. II of the Limitation Act, 1877. That article is limited to applications under the Code of Civil Procedure. *Bai Manekbai* v. *Manekji Kavasji, I. L. R 7 Bom. 213*, and *Ranbir Singh* v. *Drigpal, I. L. R. 16 All 23*,

suit may properly be regarded as pending TILUCK SINGH v. PARSOTEIN PROSHAD

I. L. R. 22 Calc. 924

34. —— *Application for a decree under s 90—Transfer of Property Act (IV of 1882).* *Held*, that the limitation governing an application for a decree under s 90 of the Transfer of Property Act is that prescribed by Art. 178 of the second Schedule to the Limitation Act, 1877. RAM SARUP v. GHAURANI

I. L. R. 21 All. 453

35. —— *Application for re-sale in execution of decree—Continuous proceedings.* Upon an application made on the 28th

property. The first Court found that the purchase was not benami, and confirmed the sale on the 12th April 1892, but the lower Appellate Court came to a contrary conclusion, and set aside the sale on the 22nd July 1892. The High Court, in second appeal, accepted the finding of the Appellate Court as regards the purchase being benami, but upheld the sale with the remark that the said property and any other property

and *Chintamon Damodar Agashi* v. *Balshastri, I. L. R. 16 Bom. 294*, referred to RAGHUNATH SAHAY SINGH v. LALJI SINGH

I. L. R. 23 Calc. 397

36. —— *Renewal of application for execution after intermediate proceedings* Certain holders of a decree for sale under s. 88 of the Transfer of Property Act applied for execution of their decree on the 6th of January 1887, and the application was granted. A third party, however, appeared and filed an objection under s 278 of the Code of Civil Procedure, which was allowed. Thereupon the decree-holders brought a suit under s. 283 of the Code. They obtained a decree on the 5th of June 1888, but the intervenor appealed, and the final de-

37. —— *Application to set aside a sale by a person interested in the sale—Bengal Tenancy Act (VIII of 1885), s. 173—*

I. L R. 24 Calc. 707
1 C. W. N. 534

38 —— *Application to*

See MOTI LAL CHAKRABATTY v. RUSICK CHANDRA BARRAJI . . I. L. R. 26 Calc. 326 note

which places such an application under Art. 95 of the Limitation Act.

39. —— Where a judg-

... C. W. N. 691

LUCHMIPAT v. MANDIL KOER 3 C. W. N. 333

40. —— *Limitation Act, 1877, s. 8—Mesne profits, decree for—Execution of decree—Application for assessment of mesne profits—Joint decree-holders—Minor, right of, to execute whole*

LIMITATION ACT (XV OF 1877)—*contd.*

Schedule II—*contd.*

——— Art. 178—*contd.*

that provided by Art 178 of Sch II of the Limitation Act (XV of 1877); that the right to apply accrued on the passing of the High Court's decree, and the application was therefore not barred by limitation; but that, looking to the great delay there had been on the part of the applicant, he should not be allowed any costs GIRDHARI v. SITAL PRASAD . . I L R 11 All 372

52. ——— *Application to revive a case and restore it to the board.* After a decree had been made in a suit, the case was in 1875 struck out of the board for want of prosecution No steps were taken to have it restored In 1879 both the plaintiff and defendant died. In the same year the heirs of the plaintiff instituted a suit against the administrator of the defendant for the purpose of having the decree in the original suit carried out. This suit was dismissed by the Court of first instance under s. 13 of the Code of Civil Procedure, but the Appellate Court, holding that the original suit was subsisting and might be reconstituted, directed that the plaintiffs should be allowed to amend their plaint by putting it into the form of a petition under s. 372 of the Code On a petition by the plaintiffs praying that the original suit might be revived and restored to the board —*Held*, that the application was not barred under Art 178 of Sch II to the Limitation Act of 1877 Even if Art. 178 was applicable, the application would not be barred, limitation running from the time when the suit was allowed to be reconstituted The Legislature did not intend to include in the Limitation Act every application to a Court with reference to its own list of causes, such as applications to transfer a case from one board to another, to transfer a case to the bottom of the board, change of attorneys, and so forth. GOVIND CHUNDER GHOSWAMI v. RUNGUNMONEY . I L R 6 Calc 60 : 6 C L R 345

53 ——— and Arts 171 and 171A—*Application to revive suit—Right to apply—Pending suit.* The right to apply in a pending suit,—i e, a suit in which no final order has been made,—is a right which accrues from day to day, and therefore the periods of limitation provided in Arts 171, 171A, and 178 do not apply in an application to revive such a suit KEDARNATH DUTT v HARA CHAND DUTT . . I L R 8 Calc 420

RAMNATH BHUTTACHARJEE v. UMA CHARAN SIRCAR . . . . 3 C W N. 756

54 ——— *Revival, application for—Civil Procedure Code, 1877, s 371.* An application by the legal representative of the

LIMITATION ACT (XV OF 1877)—*contd.*

Schedule II—*contd.*

——— Art. 178—*contd*

plaintiff to revive a suit which has abated on the death of the plaintiff may be granted if made within three years from the time when the right to apply accrued, if the applicant can show that he was prevented from sufficient cause from continuing the suit. BHOYRUB DOSS JOHURRY v. DOMAN THAKOOR

I. L R. 5 Calc. 139 : 4 C L R 374

55 ——— *Death of plaintiff-respondent—No application for substitution—Application by defendant-appellant for hearing of appeal* *Held*, by the Full Bench, that, inasmuch as Art. 178, and not Art. 171B, of the second Schedule of

of a deceas

defendant i

fendant-appellant to have his appeal heard in the absence of any representative of the deceased plaintiff-respondent could not be allowed until the period prescribed by Art. 178 had expired without the legal representatives of the deceased applying to be brought on the record in his place. RAM SARUP v. RAM SAHAI

I L R 10 All 270

56 ——— *Injunction restraining execution—Revival of proceedings by*

tachment and sale of certain immoveable property. The property was attached, but the sale was delayed by various causes until the 5th February 1876, when by various causes until the 5th February 1876, when

ary 1880, *G* applied to have his name substituted

and granted, but the

removed (Art 178 of Sch. II of Act XV of 1877). Where a decree-holder, whose right of execution has been thus temporarily suspended, dies, his representative has the same rights as he had himself to apply for and obtain a revival of the proceedings. It was contended in the above case that *G* had no right to apply for a revival of proceedings, unless his name was substituted on the record as *J*'s representative, that as his right to apply for such substitution accrued immediately upon *J*'s death, which had happened more than three years previously, so much of his application of 3rd February 1880 as related to the substitution of names was barred by Art. 178 of Sch II of Act XV of 1877; and that consequently the other portion of his application which related to execution was necessarily inadmissible inasmuch as it depended upon the substitution of *G*'s name, which it was too late to effect *Held*, that, under the circumstances of the case, *G*'s right to apply for the entry of his name in the place of that of *J* could not be regarded as having accrued immediately upon *J*'s death At that time *J*'s application for execution, being suspended by the injunction, was to all intents and purposes non-existent. It could not be revived until the injunction was removed. During the

for execution was in abeyance and would never be revived at all in the event of *P* succeeding in his

57 ——— *Death of sole defendant—Legal representative—Civil Procedure Code (Act X of 1877), ss 368, 372* In a suit for

November 1880 the Court rejected the appli-

this application was also rejected on the 20th of

BENODE MOHINI CHOWDHRAIN *v.* SHARAT CHUNDER DEY CHOWDHRY
I L R 8 Calc 837 : 10 C L R. 449
12 C L R 421

58 ——— *Application for fresh summons—Filing of plaint.* A plaint was filed on 12th March 1875, and the summons to the defendant to appear and answer issued on 13th March 1875 With the exception of an application for

limitation, and that, as no steps had been taken to renew the summons for three years, and as no sufficient case to excuse the delay had been made out, the application was out of time, and should be refused. RAMKISSEN DOSS *v* LUCKEYNARAIN . . . I. L R 3 Calc 312

59 ——— *Application for summons after period of limitation had expired—Rules of High Court (4th December 1875), 1, 2, 5.* In a suit upon a promissory note, dated the 4th June 1873, payable three months after date, the plaint was filed on the 22nd November 1873, but no summons to appear was issued until the 13th September 1878, when a Judge's order for the issue of a summons was obtained *ex parte*. *Held*, that the suit was not barred by limitation GERENDER COOMAR DUTT *v* JUGGADUMBA DABEE
I L R 5 Calc 126

60 ——— *Per Curiam* (KERNAN, J., dissenting): An application by an appellant to make the representative of a deceased respondent party to the appeal does not fall under Art. 171B, but under Art. 178, of Sch. II of the Limitation Act, 1871. LAKSHMI *v.* SRI DEVI
I L R 9 Mad 1

61 ——— *Sale in execution of decree—Interest of purchaser—Second sale of same property in execution of subsequent decree—*

to set aside such purchase. In 1884 the plaintiff brought the present suit against the defendant to

the same month. The defendant had previously purchased the same property at a sale held on the

LIMITATION ACT (XV OF 1877)—*contd.*

Schedule II—*contd.*

——— **Art. 178**—*contd.*

22nd November 1875, in execution of a decree

In a suit by the plaintiff for possession it was contended that under s. 294 of the Civil Procedure

VITHABAI . . . I. L. R. 11 Bom. 588

62 ——— *Execution of decree —Decree payable by instalments—Instalment default*

When a decree or order makes a sum

due and payable and be recoverable in execution by Art. 178, Sch. II of the Limitation Act, limitation begins to run from the date of the first default, unless the right to enforce payment in default has been waived by subsequent payment of the overdue instalment on the one hand and receipt on the other. *R* obtained a decree against *D C* and *K G* for a sum of money on 21st June 1880 On 25th May 1882 an order was made in terms of the petition of both parties, providing that the amount of the decree should be paid by five instalments, the first instalment being due in July 1882, and that in default of payment of any instalment the whole amount should be due and recoverable in execution. Default was made in payment of the first instalment, nor was there any subsequent payment of that or any other instalment. On 30th July 1886 *R* applied for execution of the four last instalments, alleging that the first had been paid *Held*, that the application was barred by limitation under Art 178, Sch. II, Limitation Act, 1877. *Hurronath Roy* v. *Maherecollah, B L. R Sup. Vol 618 7 W. R. 21; Dalsook Ruttan Chand* v *Chugan Narrun, I. L. R. 2 Bom. 356, Shib Dat* v *Kalka Persad, I. L. R. 2 All. 413; Cheni Bas Shaha* v. *Kadum Mundul, I. L. R. 5 Calc 97; Asmutullah Dalal* v. *Kali Churn Mitter, I. L. R 7 Calc. 56; Nil Madhub Chuckerbutty* v. *Ram Sodoy Ghose, I. L. R. 9 Calc. 857; Ram Kulpo Bhattacharji* v. *Ram Chunder*

Komal D

referred

GOOEE . . . I. L. R. 10 Calc.

63 ——— *Sanction for prosecution—Application for such sanction—Criminal Procedure Code, s 195.* Rules of limitation are foreign to the administration of criminal justice, and it is only by express statutory provision that any rule of limitation could be made applicable to

Munsif refused to sanction the prosecution for; but on application to the Sessions Judge such On application to revise the it was ree years, granted ation for 95 of the PRESS

Criminal Procedure Code. QUEEN I. L. R. 10 All. 350

AJUDHIA SINGH . .

64 ——— *Application to rescind leave to sue—Decree—Order* The granting of leave to sue is neither a decree nor an order, and the rescind it on Act DAMO

DAR JAIRAM v. LUCKMIDAS I. L. R 13 Bom. 404

65 ——— *Execution of de of the Court—* decree March perty 20th

1895, was made mortgaged was advertised for sale on by the of May 1897. A suit was, however, filed by in consequence of stayed ree was 1st 1897 Febru But which of the ord

LIMITATION ACT (XV OF 1877)—*contd.*

Schedule II—*contd.*

——— Art. 178—*contd.*

trial on the merits Finally, the decree of the 2nd

Court execution of the decree had been from time to time suspended, the only periods, which could be counted against the decree-holder, were from

PRASAD *v.* SARJU PRASAD (1904)
I. L R 26 All 140

66. ——— *Obstruction to execution—Removal by decision in favour of decree holder—Decree-holder's right to move the Court—Application to be regarded as a continuation of previous application.* A mortgage decree was obtained against the counter-petitioner on 28th February 1894. On 16th May 1895, the decree-holder assigned the decree to petitioner, who applied for execution on 6th December 1897. That applica-

1902. The application should be treated not as an application for execution, but as an application to revive or continue an application for execution that had been wrongly dismissed as a

67. ——— *Appeal—Order refusing application for appointment of commissioner to effect division of property by metes and bounds in partition suit.* The parties to a suit for partition entered into a compromise, which was recorded by the Court and by which their respective shares in

MANAN CHETTY *v* RAMANATHAN CHETTY (1905)
I L R. 28 Mad 127

68 ——— *Application in time if within three years of breach complained of—Court executing decree, powers of—Cannot go behind decree—Civil Procedure Code (Act XIV of 1882), s. 260—Decree for perpetual injunction, execution of.* Where a perpetual injunction has

tion, where a serious breach is afterwards committed Where the terms of a decree are clear, the executing Court is bound to give effect to it and cannot read into it limitations gathered from a reference to the records of the suit. VENKATTACHALLAM CHETTY *v* VEERAPPA PILLAI (1905)
I L. R 29 Mad. 314

69. ——— *High Court Rule 859—Application for enforcement for payment of costs by a solicitor against his client is not an*

LIMITATION ACT (XV OF 1877)—*contd.*

Schedule II—*contd.*

——— Art. 178—*concld.*

application under the Civil Procedure Code—Art. 178 applies only to applications under the Civil Procedure Code (Act XIV of 1882). There is no period of limitation provided for an application by an attorney for payment of his costs under Rule 859 of the High Court Rules. Art. 178 of the Limitation Act applies only to applications under the Civil Procedure Code. *Bai Manekbhai v. Manekji Kavasji, I. L. R. 7 Bom. 213,* followed WADIA, GANDHY AND COMPANY *v.* PURSHOTAM (1907)

I. L. R. 32 Bom. 1

Arts 178, 179—

See CIVIL PROCEDURE CODE, 1882, s 318. I. L R. 32 Mad. 136

See LIMITATION . I L R 29 All. 279
I. L. R. 30 Mad. 209

1 ——— *Ex parte decree —Application for refund of the amount of decree*

years from the date of setting aside of that decree. *Kurupam Zamindar v. Sadasiva, I L. R. 1 Mad. 66,* followed. HARISH CHUNDRA SHAHA *v* CHANDRA MOHAN DASS (1900) . I L R 28 Calc. 113

2 ——— *Execution of decree —Limitation—Decree for pre-emption—Time from which limitation begins to run against the decree-holder.* Art. 179 of the second Schedule to the Indian Limitation Act, 1877, applies only where there is a decree or order which can at its date be executed In the case of a decree for pre-emption there is no decree capable of execution until the decree-holder pays into Court the pre-emptive price The first application, therefore, for execution of such a decree will be governed, not by Art. 179, but by Art 178, and limitation commences to run against the decree-holder from the time when the pre-emptive price is paid. *Muhammad Suleman Khan v. Muhammad Yar Khan I. L R. 17 All 39,* referred to. CHHEDI *v.* LALU (1902)

I L R 24 All 300

3 ——— *Transfer of Property Act (IV of 1882), ss 86 and 87—Application for order absolute under s 87—Execution of decree—Limitation* An application for an order absolute under s. 87 of the Transfer of Property Act, 1882, is an application in execution of the

61; Oudh Behari Lal v. Nageshar Lal, I. L. R. 13 All. 278; Chuni Lal v. Harnam Das, I. L. R. 20 All 302; Parmeshari Lal v Mohan Lal, I. L. R 20 All 357; Bhagwan Ramji Marwadi v. Ganu, I. L. R. 23 Bom. 641; Mohammad Suleman Khan v. Muhammad Yar Khan, I. L. R 17 All 39; Chhedi v. Lalu, All Weekly Notes (1902) 60; Ram Sarup v. Ghaurani, I. L R. 21 All 453, and *Ranbir Singh v. Drigpal Singh, I L. R. 16 All 23,* referred to. ALI AHMAD *v.* NAZIRAN BIBI (1902)

I L R. 24 All. 542

4. ——— *Decree for sale of*

the hypothecated property should be sold ... date of the decree another suit was pending in the same Court, in which the decree-holders were de- ... On

being governed by Art. 178, and not by ... inasmuch as no prior application for execution of the decree or to take some step in aid of execution of the decree had been made. Art. 179 is not exhaustive of applications for execution of decrees. There are cases to which Art. 178 may apply. A decree which directs the sale of mortgaged property *in default of payment* of the mortgage money declared due on or before the date fixed in the decree is not, within the meaning of paragraph 6, column 3, of Art. 179, a decree directing the payment of the amount to be made at a certain date If, however, there is also a personal decree against the mortgagor, and the application is to execute the decree as such, limitation will run from the date of the decree, under paragraph 1 if payment is enforceable under the decree from the date thereof, or from a future date, under paragraph 6, if payment can be enforced under the decree only on or after such future date fixed in the decree. Neither paragraph 1 nor paragraph 6 can apply to the execution of a mortgage decree as such, namely, to an application for sale of the mortgaged property which the decree directs to be sold in default of payment of the ascertained amount on or before the day fixed in the decree. Principles laid down by which the article applicable should be

LIMITATION ACT (XV OF 1877)—*contd.*

Schedule II—*contd.*

——— **Arts 178, 179—*contd***

ascertained The decision of the Full Bench in *Mallikarjunadu Setti v Lingamurti, I L R 25 Mad 244*, in connection with questions relating to limitation, explained *Muhammad Suleman Khan v. Muhammad Yar Khan, I. L R 11 All 39*, *Muhammad Islam v Muhammad Ahsan, I L R 16 All 237*, *Thakurdas v Shadi Lal, I. L R 8 All 56*, *Ali Ahmed v Naziran Bibi, I L R. 24 All 542*, and *Ashrafuddin Ahmed v Bepin Behari Mullick, I. L R 30 Calc 407*, approved and followed. All applications for the execution of a decree for sale of mortgaged property are not governed by Art. 178 Observations as to when Art 179 will be applicable. The true criterion in determining

made merely for the purpose of signifying the decree-holder's intention to keep the decree in force RUNGIAH GOUNDEN AND CO v NANJAPPA ROW (1903) . . . **I L R 26 Mad 780**

5. ——— *Civil Procedure Code, ss 211 and 212—Mesne profits left to be subsequently ascertained—Limitation* Where in a decree for possession of immoveable property and for

ascertained *Puran Chand v Roy Radha Kishen, I. L R.19 Calc 132*, and *Fatima Bibi v Abul Majid, I L. R. 14 All 531*, referred to WADIYA BIBI v NAZAR HASSAN (1904) . **I L R. 26 All. 623**

6. ——— *Execution of decree—Limitation—Application to revive former application for execution.* Where a decree holder

I L R 28 All 651

7. ——— *No limitation as long as proceedings initiated by decree-holder are pending—Fresh application barred, if presented more than three years, after removal of bar.* Where the bar to execution proceedings is removed by the

LIMITATION ACT (XV OF 1877)—*contd.*

Schedule II—*contd*

——— **Arts. 178, 179—*contd.***

order of a lower Court, the fact that an appeal is

Court will be barred by limitation. The dismissal of an execution-petition without notice to the parties

holder's right to apply for their continuance accrues from day to day and will not be barred till three

attached under the former application, is one for continuance of proceedings and not a fresh application for execution *Kedarnath Dutt v. Harra Chand Dutt, I. L. R. 8 Calc 420*, followed CHALAVADI KOTIAH v POLOORI ALIMELAMMAH (1907) **I. L R 31 Mad 71**

the time when the right to apply accrues The effect of s. 40 of the Revenue Recovery Act is to place the purchaser in the position of a decree-

reference to the execution of decrees or orders of

LIMITATION ACT (XV OF 1877)—*contd.*

Schedule II—*contd.*

——— Arts. 178, 179—*contd.*

9. ——— *Application for ascertainment of mesne profits—Civil Procedure Code (Act XIV of 1882), ss. 211, 212.* Neither Art. 178 nor Art. 179 of the Limitation Act applies to an application to ascertain the amount of mesne profits awarded by a decree in accordance with the provisions of s. 211 or s. 212 of the Code of Civil Procedure. PURAN CHAND *v.* ROY RADHA KISHEN . . . . I. L. R. 19 Calc. 132

PRYAG SINGH *v.* RAJU SINGH I. L. R. 25 Calc. 203

10. ——— *Application for recovery of whole amount of decree under agreement—Civil Procedure Code, s. 257A.* On the 27th August 1878 the holder of a decree for money and the judgment-debtor agreed that the amount of the decree should be payable by instalments, and that, if default were made in payment of any one instalment, the whole decree should be executed. The Court executing the decree sanctioned this agreement. On 28th November 1881 default having

but Art. 178, and the period of limitation began to run from the date of default. The principle recognized in *Raghubans Gir* v. *Sheosaran Gir, I. L. R 5 All 243*, and *Kalyanbhai Dipchand* v. *Ghanashamlal Jadunathji, I. L. R 5 Bom. 29*, applied. SHAM KARAN *v.* PIARI

I. L R. 5 All. 596

11. ——— *Decree prohibiting execution till the expiration of a certain period.* A decree which was passed on the 8th December 1881 in a suit on a simple mortgage-bond contained the following provision. "If the judgment-debt is not paid within four months the decree-holder shall have the power to recover it by a sale of the mortgaged property." On the 17th February 1885 the decree-holder applied for execution of the decree.—*Held*, that inasmuch as the decree provided expressly that the decree-holder might not apply for its execution till after the expiry of four months from its date the limitation of Art 178, Sch. II of

12 ——— *Application for execution—Intermediate suit—Fresh application—Revival of application* On the 27th March 1878, the holder of a decree applied for execution. On the 27th May 1878, the Court made an order directing that the application should be struck off, as the record of the former execution proceedings was in the Appellate Court,

LIMITATION ACT (XV OF 1877)—*contd.*

Schedule II—*contd.*

——— Arts. 178, 179—*concld.*

and that the decree-holder should make a fresh

Ram v. *Gardner, I. L. R. 1 All. 355*, referred to. RAGHUBANS GIR *v.* SHEOSARAN GIR . I. L. R. 5 All 243

13 ——— *Limitation Act (XV of 1877), Sch II, Arts 178, 179—Art. 178*

L. R.

Ghana-

lowed.

RAMINEEDI VENKATA APPA RAO *v.* LAKKOJU CHINA AYYANNA (1906) . I. L R. 30 Mad 209

——— Art. 179 (1871, Art. 167; 1859, s. 20)—

LIMITATION ACT (XV OF 1877)—*contd.*

Schedule II—*contd.*

——— Art. 179—*contd.*

See ante, ARTS. 178, 179.

See BENGAL TENANCY ACT, SCH. II, ART. 6 . I. L R 22 Calc. 644
5 C. W. N. 763

See CIVIL PROCEDURE CODE, 1882, s. 248
I L R 30 All. 536

See EXECUTION I L. R. 35 Calc. 1047
13 C W N. 521; 533; 694

See EXECUTION OF DECREE, STEP IN AID OF . , I L R. 29 All 301
I. L. R. 30 Mad 541

See EXECUTION OF DECREE—TRANSFER OF DECREE FOR EXECUTION AND POWER OF COURT, ETC.
I. L R 12 All 571

See INJUNCTION—DISOBEDIENCE OF ORDER FOR INJUNCTION.
I L. R. 23 All 465

See MORTGAGE—DECREE.
8 C W. N 251

See PARTITION—MISCELLANEOUS CASES
I. L R 22 Calc 425

See PAUPER SUIT—SUITS.
2 B L R Ap 22

See SECOND APPEAL I. L R 30 Mad 1

See SPECIAL OR SECOND APPEAL—GROUNDS OF APPEAL—QUESTIONS OF FACT . . 13 B. L. R. Ap. 1
5 B. L. R. Ap. 59

See TRANSFER OF PROPERTY ACT (IV OF 1882), s 89 . I. L R. 31 Mad. 68

LIMITATION ACT (XV OF 1877)—*contd.*

Schedule II—*contd.*

——— Art. 179—*contd.*

——— joint decrees—joint decree holders—

See ante, SS. 7 AND 8 AND SCH. II, ART. 179

1. LAW APPLICABLE TO APPLICATION FOR EXECUTION.

1 ——— *Application for*

TETLEY . . . . . I L R 1 All. 586

But *see* BHAIKAMBAT *v.* FERNANDEZ
I L. R. 5 Bom 673

2 ——— *Order for costs by High Court on appeal.* An order for costs made by the High Court on appeal came within the scope of Art. 167 of the Limitation Act of 1871, Sch. II. HURBUNS LALL *v.* SHEONARAIN SINGH
21 W R 391

3. ——— *Application for execution of decree for costs when rejecting petition*

DHRY *v.* BHUPENDRO NARAIN DUTT
I L. R 6 Calc 201: 7 C L. R 79

4 ——— *Application to*

5. ——— *Decree in force*

6. ——— *Decree in force at passing of Act XIV of 1859.* In 1845 *K* and *M* obtained a joint decree for possession and mesne profits against *N*. In 1846 possession was taken, and the case was struck off in 1847. In 1850 *K* alone applied for execution and was refused, he not being the sole decree-holder. *K* disappeared in

LIMITATION ACT (XV OF 1877)—*contd.*

Schedule II—*contd.*

———— Art. 179—*contd.*

1. LAW APPLICABLE TO APPLICATION FOR EXECUTION—*contd.*

June in 1851, and was never afterwards heard of. In February 1852 *S S*, wife of *K*, and *R*, uncle of *K*,

the disappearance of her husband had not expired, and she had not performed the ceremony of kooshaputra, she could not claim as his representative. An appeal from this order was rejected on 6th December 1862. In 1863 *S S* applied for a certificate, under Act XXVII of 1860, to collect the debts due to her husband, which was granted in July in 1864. The present application was made by *S S* and *M* on the 23rd August 1864, *SS* having performed kooshaputra on 18th June 1863 The Court found that the various attempts to execute were made *bonâ fide* *Held*, *first*, that the decree

v. BOISTUB LALL
2 Ind. Jur N. S 1: 6 W R Mis. 104

7. ———— *Application for execution of decree.* Application for execution of a decree passed on 13th May 1869, and for which the period of limitation was three years, was made on 13th May 1872 —*Held*, the execution was barred by Art 167, Sch II of Act IX of 1871, notwithstanding the suit had been instituted before 13th April 1873. NUNDO COOMAR MOOKERJEE v. ISSUR CHUNDER BHUTTACHARJI . 12 B L R Ap 9

8 ———— *Period from which limitation runs—Payments since that date.* Limitation Act (No. IX of 1871) governs applications to execute decrees made before the Act, and, in computing the period of limitation, the Act directs the date of the prior application to be taken, and that date cannot be altered because intermediate payments may have been made on account of maintenance. NARANAPPA AIYAN v. NAMA AMMAL *alias* PARVATHY AMMAL . 8 Mad 97

See KRISHNA CHETTY v. RAMI CHETTY.
8 Mad. 99

MAHALAKSHMI AMMAL v LAKSHMI AMMAL.
8 Mad 105

COLLECTOR OF SOUTH ARCOT v. THATACHARRY.
8 Mad. 40

9. ———— *Application for execution of decree—General Clauses Consolidation Act, 1868, s. 6.* An application for execution of a decree being made on the 27th September 1871, *held*, not to be a suit within the meaning of s. 1, cl.

September 1871 could not be regarded as a ... continuation of a proceeding pending—*viz*, of a former application of the 7th January 1868—within the meaning of Act I of 1868, s. 6, at the time when the new Limitation Act came into operation, though the order on the latter application, having been made on the 31st March 1870, would possibly have been a sufficient proceeding within the 20th section of Act XIV of 1859 to constitute a fresh terminus whence time might run under that Act. GOVIND LAKSHUMAN v. NARAYAN MARESHVAR . . 11 Bom 111

BALKRISHNA v. GANESH . 11 Bom 116 note

10 ———— *Act IX of 1871,*

... date of a ...tion. Al... have been ...n application ... order for

such execution has been regularly made by a competent Court, having jurisdiction to try whether it was barred by time or not, such order, although erroneous, must, if unreversed, be treated as valid. MUNGUL PERSHAD DICHIT v. GRIJA KANT LAHIRI
I. L. R. 8 Calc. 51: 11 C. L R. 113
L R 8 I. A 123

Reversing on appeal, MUNGUL PERSHAD DICHIT v. SHAMA KANT LAHIRI CHOWDHRY
I. L R 4 Calc. 708

11. ———— *Application for execution—Act IX of 1871, s. 1.* The time prescribed by the Limitation Act (IX of 1871) within which applications for execution may be made governs all such applications made during the time that Act was in force. UNNODA PERSHAD ROY v. KOORPAN ALI
I. L. R. 3 Calc. 518 : 1 C. L R. 408

12 ———— *Application for execution—Law in force at time of application.*

LIMITATION ACT (XV OF 1877)—*contd.*

Schedule II—*contd.*

——— Art. 179—*contd*

1. LAW APPLICABLE TO APPLICATION FOR EXECUTION—*contd.*

The law of limitation applicable to proceedings in execution is not the law under which the suit was instituted, but the law in force at the date of the application for execution, in absence of a legislative provision to the contrary (such as that contained in s. 1 of Act IX of 1871) GURUPADAPA BASAPA *v* VIRBHADRAPA IRSANGAPA I L R 7 Bom 459

13 ——— *Execution of decree—Limitation applicable to execution of a decree passed previous to the 1st October 1877—Limitation Act (XV of 1877). Art 179—General Clauses Consolidation Act (I of 1868), 6, effect of.* In execution of a decree dated the 17th January 1877, the judgment-creditor applied on the 13th May 1878 to have the property of his judgment-debtor sold on the 16th September 1878. Subsequently, on the 2nd June 1881, he made a further application to have the decree executed *Held* that the case was governed by the provisions of Art 167 of Act IX of 1871, and not by those of Art 179 of Act XV of 1877; and that, as the application had not been [illegible]

14 ——— *Execution of decree, application for—Step in aid of execution—* [illegible]

1873. RADHA PROSAD SINGH *v.* SUNDER LALL I L R. 9 Calc 644

15 ——— *Act IX of 1871,* [illegible]

[illegible] was Act XV of 1877; and inasmuch as that application did not ask for any step to be taken towards executing the decree, it was not in accordance with Art 179, Sch. II of Act XV of 1877, and did not save the present application from being barred. *Mungul Pershad Dichit v Grija Kant Lahiri, I. L. R. 8 Calc. 51,* explained GURUPADAPA BASAPA *v.* VIRBHADRAPA IRASANGAPA . . . I L R. 7 Bom. 459

16 ——— *Proceeding to enforce judgment* Act XV of 1877 operates from the date on which it came into force as regards all appli- [illegible]

I. L. R. 11 Calc. 55

17 [illegible]

18 ——— *Decree of Small Cause Court transferred to High Court for execution—Civil Procedure Code, Act VIII of 1859, ss. 287, 288 (Act XIV of 1882), ss. 227, 228—Order in suit liable to be questioned by third persons not parties to suit—Revivor.* Having regard to the provisions of ss. 227 and 228 of the Code of Civil Procedure (Act XIV of 1882), the period of limita-

LIMITATION ACT (XV OF 1877)—*contd.*

Schedule II—*contd.*

———Art 179—*contd.*

1. LAW APPLICABLE TO APPLICATION FOR EXECUTION—*contd.*

the hands of a receiver belonging to the judgment-debtor. These moneys were also attached by other judgment-creditors. The question was then

... *Chatterjee, I. L. R. 6 Calc 504*, doubted. TINCOWRIE DAWN *v.* DEBENDRO NATH MOOKERJEE I L. R. 17 Calc 491

19 ——— *Bengal Tenancy Act (VIII of 1885), Sch. III, Art. 6—Whether an application for execution of a decree for a sum not exceeding R500, obtained by a co-sharer landlord for his share of the rent, is governed by the special rule of limitation as laid down in Bengal Tenancy Act or by the general law of limitation as laid down in the*

(VIII of 1885). KEDAR NATH BANERJEE *v.* ARDHA CHUNDER ROY (1901) . I L. R 29 Calc 54

20. ——— *Mortgage—Execution of decree, application for—Pleading limitation in appeal.* In an application for execution of a mortgage decree by a prior mortgagee, a subsequent mortgagee as a judgment-debtor is competent to plead limitation, either in the first Court or in appeal. Art. 179, Sch. II, of the Limitation Act applies to an application for execution of a mortgage decree. TROYLOKYA NATH BOSE *v.* JYOTI PROKASH NANDI (1903) I. L. R. 30 Calc 761

21. ——— *cl. 5.—Execution—Decree—Application for execution—Civil Procedure Code (Act XIV of 1882), s. 248—Notice—Date of the order.* The date of issuing a notice ...

The limitation therefore under Art. 179, cl. 5, of the second Schedule to the Limitation Act (XV of 1877) runs from the former date GOVIND *v.* DADA (1904) . . . I. L. R. 28 Bom 416

22. ——— *Suspension of execution proceedings—Revival of pending execution suspended by or on default of the decree holder.* On 24th August 1888 an application was made for execution of a decree, and on 18th December 1888 execution was allowed to proceed. On 29th November 1889 it was ordered that the case should be struck off the file and the record trans- ...

... December 1888 allowing execution to proceed and ...

... 1897 was one to revive and carry through a pending execution suspended by no act or default of the decree-holder, and not an application to initiate a ... and was therefore not barred by limitation.

LIMITATION ACT (XV OF 1877)—*contd.*

Schedule II—*contd.*

——— Art. 179—*contd.*

1. LAW APPLICABLE TO APPLICATION FOR EXECUTION—*contd.*

had not intervened there was nothing in its terms

AHMAD *v.* JAWAHIR LAL (1905)
I L R. 27 All. 334
L. R. 32 I. A. 102

23. ——— "*Application in accordance with law*"—*Application by guardian on behalf of one found to be a major at the time—Jurisdiction of Court to review its own order, when an appeal lay* An application for execution n … vas a … de, i … w … the I … to limitation, though it may perhaps be a good application for other purposes. *Taqui Jan* v *Obaidulla, I. L R. 21 Calc 866*, distinguished Neither can such an application be considered an application by *B* under s 235 of the Code of Civil Procedure. A Court can review its own order in execution, although an appeal might have been, but was not preferred. SARAMMA *v* SESHAYYA (1905)
I. L R. 28 Mad. 398

24. ——— *Application to take a step in aid of execution—Execution petition—Adjournment of sale on application of judgment-debtor consented to by decree-holder—Subsequent application within three years of date of adjournment, but more than three years from previous application—Limitation* A decree-holder applied for execution of his decree The last preceding application had been made more than three years before the present one In that application the

sent application was made within three years from the date of the judgment-debtor's application for a postponement of the sale. The sale had, in fact, not been carried out :—*Held*, that the application was barred by limitation. The mere consent by a decree-holder to the application made by the

27 Mad. 608, followed. SREENIVASA CHARIAR *v.* PONNUSAWMY NADAR (1905)
I. L. R. 28 Mad 40

25. ——— *Mortgage—Decree for redemption—Extension of time for payment of the mortgage amount—Execution* In a suit for re-

present application was made on the 15th October 1902 to the Court to have the time extended for three months. The decree-holders' last application to execute the decree was made on the 21st April, 1897 :—*Held*, that the application was barred by limitation. Notwithstanding that time is granted to a mortgagor for payment, a decree for redemption such as that in the present case should be taken to be executable from the passing of the decree and is therefore governed by Art. 179, Sch. II of the Limitation Act. *Rungiah Goundan* v. *Nanjappa Row, I L. R. 26 Mad. 780*, approved. ETYATI POOPARAMBIL BAVA *v.* MATALAKAT KRISHNA MENON (1905) . I. L. R. 28 Mad. 211

26 ——— *Decree, which leaves matters to be subsequently ascertained.* A decree, which leaves certain matters to be subse-

three years of the time when, by such matters being settled, it becomes executable. RATNACHALAM AYYAR *v.* VENKATRAMA AYYAR (1905)
I. L. R 29 Mad. 46

2. PERIOD FROM WHICH LIMITATION RUNS.

(*a*) GENERALLY.

1 ——— *Meaning of the words " date of the decree."* The words " date of the decree " in Sch. II, Art. 179, of the Limitation … d to bear … dure, and … was pro- … execute a decree, if not made within three years from the date when the judgment was pronounced, is barred by limitation. *Bani Madhub Mitter* v. *Matungini Dassi, I. L. R. 13 Calc 104*, referred to. GOLAM GAFFAR MANDAL *v.* GOLJAN BIBI
I. L. R. 25 Calc. 109

AFZUL HOSSAIN *v.* UMDA BIBI
1 C. W. N. 93

LIMITATION ACT (XV OF 1877)—*contd.*

Schedule II—*contd.*

———Art. 179—*contd.*

2. PERIOD FROM WHICH LIMITATION RUNS—*contd.*

(a) GENERALLY—*contd.*

2. ——————— *Decree specifying a certain time for execution—Construction—Condition precedent* The plaintiff obtained a decree on the 25th July 1882, which directed that he should give the defendant possession of certain

as being time-barred He contended that the plaintiff having failed to deliver up the land in his possession within the time specified in the decree, he had lost his right to execute the decree: *Held*, that the application was not time-barred. The

VITHUL PARSHOTAM . I. L. R. 12 Bom. 23

3 ——————— *Execution of decree determining rights of rival religious sects—Decree, whether executory or declaratory—How far a sect bound by decree against some of its members.* In a suit determined in 1840, in which various members of the Vadagalai sect residing in a certain village were plaintiffs, and various members of the Tengalai sect residing in the same village were defendants, it was held that an image of a priest revered by the latter sect was not entitled to a place in a certain temple of the village, or to public worship in

trict Magistrate had granted an application to restrain the Tengalais from acting contrary to the above decree. The execution-petition was dismissed by the District Court.—*Held*, that the petition was rightly dismissed, since the execution of the decree was barred by limitation, which began to run at all events from 1868, and the decree, if it was capable of execution at all, could not be executed against the parties to the present petition. SADAGOPACHARI *v.* KRISHNAMACHARI

I. L. R. 12 Mad. 356

4. ——————— cl. (5)—*Notice under s. 248 of the Civil Procedure Code (Act XIV of 1882)—"Date of issuing notice," meaning of—Ministerial Act. Held* (PARGITER, J., *dubitante*) that, in the case of an application for the execution of a

issue such notice. ...
Chandra, 6 C. W. N. 656, followed. *Damodar v. Sonaji, I. L. R. 27 Bom. 622*, and *Gobind v. Dada, I. L. R. 28 Bom. 416*, not followed. RATAN CHAND OSWAL *v.* DEB NATH BARUA (1906)

10 C. W. N. 303

(b) CONTINUOUS PROCEEDINGS.

5. ——————— *Order refusing ... operating as stay of process.* A decree-

and suits having been determined, the ... was renewed. More than three years had elapsed between the date of the order on the first application and the date of the renewed application.—*Held*, that the second application was not barred, the order on the first application operating simply as a temporary stay of process for the sale of the property and there being a pending proceeding to enforce the decree during the stay. RAGAVA PISHARDI *v.* AYUMANJURI MANKAL THUPAN . 4 Mad. 261

6 ——————— *Continuing at-... An attachment ... a decree- ... an order ... judgment- ... be enjoy- ... t, that an*

ment of property then under attach... order for the sale of the property should be stayed, ... continue in force ... and on 10th ... order setting ... stated that ... should be ... left at liberty to apply for execution of the decree.— *Held*, on an application made reversing the decision of the Court below, that the right to enforce pay-

LIMITATION ACT (XV OF 1877)—*contd.*

Schedule II—*contd.*

——— Art. 179—*contd.*

2. PERIOD FROM WHICH LIMITATION RUNS—*contd*

(*b*) CONTINUOUS PROCEEDINGS—*contd.*

ment of the amount due under the decree was not barred. BROOKS *v.* PATTAMMARI NANJAPPA NAICK 4 Mad. 316

But *see* RADHIKA CHOWDHRAIN *v* LUKHEE CHUNDER GHOSE . . . 18 W R 513

7 ——— *Continued proceeding—Application struck off* The effect of an

8. ——— *Application for execution "struck off the file"—Further application for execution—Renewal of previous application.* An application for execution of a decree of a District Munsif was made in April 1893, but was struck off the file on 20th July 1893, on a stay of execution

latter application should be regarded as a continuation of the former, and was not barred by limitation. SASIVARNA TEVAR *v.* ARULANANDAM PILLAI I. L. R. 21 Mad 261

9. ——— *Decree-holder, re-*

10 ——— *Separate decrees —Continued application* Where a plaintiff obtained separate decrees against several persons in respect of several duties which they were to perform separately, and the plaintiff chose to proceed in the

separately from the date of the latest action in each case CHOWDHRY HUREEHUR SINGH *v.* HRIDOY NARAIN . . 25 W R. 310

11. ——— *Application for execution of decree—Decree barred by lapse of time.* In a decree for possession passed on 19th December 1874 the enquiry into the mesne profits was reserved

plication for further execution was made by assess-

TARA CHOWDHRANI *v* ABDUL JUBBUR CHOWDHRY 24 W. R 339

12 ——— *Application for execution of decree—Continued application.* An

Judge himself also having believed that he had jurisdiction, and having acted accordingly,—was a proceeding to enforce the decree within the meaning of s 20. HIRA LAL *v.* BADRI DAS I L R 2 All 792

14 ——— *Application for execution of decree* On the 26th June 1867 a decree-holder applied for execution of his decree. A notice was thereupon issued to the judgment-debtor to

LIMITATION ACT (XV OF 1877)—*contd.*

Schedule II—*contd.*

——— Art. 179—*contd.*

2. PERIOD FROM WHICH LIMITATION RUNS—*contd.*

(*b*) CONTINUOUS PROCEEDINGS—*contd*

show cause, on the 13th of July 1867, why the decree should not be executed against him. The

plied to the Court to stop all further proceedings in the case on the ground that the judgment-debtor had promised to satisfy the decree. The decree, how-

it was beyond three years from the 26th June 1867,

ment-debtor was to show cause, and up to which day therefore the judgment-creditor must be considered as going on with one and the same proceeding, as the first Court actually made an order for a warrant to issue on that day. DAMODHAR LAKHMIDAS *v.* GULABDAS LALCHAI . 9 Bom 254

15. ——— *Decree remaining under attachment.* The period during which a decree remains under attachment should not be deducted from the time within which proceedings must be taken for the execution of the decree *Chandi Prosad Nandi* v. *Raghunath Dhar, 3 B. L R Ap 52*, dissented from AZMUDDIN *v* MATHURADAS GOVARDHANDAS GULABDAS . 11 Bom 206

16. ——— *Application for execution of decree—Continuing proceedings.* A decree-holder applied for execution on the 10th of October 1871. On the 24th of February 1872 he made an application to the Court executing the

the decree-holder applied for further execution. It was objected that execution of the decree was barred by limitation, but it was *held* that limitation did not apply, as the petition was for the continuance of the suspended proceedings and not for fresh execution. GOLAMI SAHU *v* CHUTTER BHOOJ PATUCK . . . . . 3 C. L. R. 261

17. ——— *Application for execution of decree—Reversal of sale in execution* *A* obtained a decree against *B* on the 21st of June 1871, and applied for execution on the 10th of July following. On the 2nd of October of the same year property attached under such execution was sold and the sale proceedings being paid over to *A*, the execution-proceedings were struck off the file on the 28th of July 1872 On the 14th of May 1873 *B* ob-

foot by the first application for execution, and therefore the right to execute the decree was not barred by the law of limitation. ISSUREE DASSEE *v* ABDOOL KHALAK

I. L. R. 4 Calc. 415 : 3 C. L R. 46

18. ——— *Execution of de-*

Art. 167, Sch. II, Act IX of 18[illegible], execu... decree was barred. PARAS RAM *v* GARDNER

I. L R. 1 All. 355

19. ——— *Continuation of previous application.* In June 1892, an application was made for execution of a decree, and it was dismissed, the applicant being relegated to a suit to establish his right He did not sue, but in September 1892 he put in a fresh application to execute, which was dismissed. He then sued, and ... decree was passed in his favour. He ... ing that ... or conti- ... applica- ... proceed ... SRI- ... PILLAI ... I. L. R. ... Mad. 237

20 ——— *Execution stayed by reason of injunction for more than three years—Revival of previous application.* A decree-holder, in execution of his decree, attached a decree held by his judgment-debtor. On the 3rd of July 1885, the

LIMITATION ACT (XV OF 1877)—*contd.*

Schedule II—*contd.*

——— Art. 179—*contd.*

2. PERIOD FROM WHICH LIMITATION RUNS—*contd*

(*b*) CONTINUOUS PROCEEDINGS—*contd.*

decree-holder applied for execution of his decree by enforcement of the second decree, and in pur-

5 *Bom.* 29, and *Paras Ram* v *Gardner, I L. R. 1 All* 355, referred to. LAKHMI CHAND *v* BALLAM DAS . . . . I. L. R 17 All. 425

21. ——— *Resistance and*

applied to the Court to have the obstruction removed.

I. L. R. 20 Bom. 175

LIMITATION ACT (XV OF 1877)—*contd.*

Schedule II—*contd.*

——— Art. 179—*contd.*

2. PERIOD FROM WHICH LIMITATION RUNS—*contd.*

(*b*) CONTINUOUS PROCEEDINGS—*contd.*

22. ——— *Suit to set aside*

holder brought a suit for a declaration that the

ceed with the execution. The present application, made subsequently to the removal of the bar should be treated as a continuation of the previous application which was admittedly in time; and

referred to. RUDRA NARAIN GURIA *v* PACHU MAITY . . . I. L. R. 23 Calc. 437

23 ——— *Decree for possession with mesne profits till delivery of possession—Darkhast for execution—Obstruction in execution—Application for removal of obstruction registered as a suit—Disposal of the darkhast.* The plaintiffs,

application before the obstruction to execution took place. NARAYAN GOVIND MANIK *v.* SONO SADASHIV I. L. R. 24 Bom. 345

LIMITATION ACT (XV OF 1877)—*contd.*

Schedule II—*contd.*

———— **Art. 179**—*contd.*

2. PERIOD FROM WHICH LIMITATION RUNS—*contd.*

(*b*) CONTINUOUS PROCEEDINGS—*contd.*

24. ———— *Application for*

their mortgaged property. On the 16th July 1877

applied for a postponement of the sale until harvest time, when he said he would pay the amount of decree The sale was accordingly, with the plaintiffs' consent, postponed to the 31st May 1879. On the 13th June 1879 the plaintiffs informed the Court that negotiations were proceeding between themselves and the defendants for the settlement of the decree, and prayed that their application of the 16th July 1877 might be struck off; adding that, if the negotiations failed, they would present a fresh application. The negotiations for settlement proved abortive, and the case being one to which the Dek-

application was not barred As it was understood between the parties, when the application of the 16th July 1877 was struck off on the 13th June 1879, that, if negotiations failed, a fresh application should be presented, the application of the 13th December 1881 was to be regarded as an application for the revival of the old execution-proceedings. But, in any case, the application, by the defendant, of the 18th November 1877, for a postponement of the sale of his property when he promised to pay

I. L. R. 10 Bom. 108

25. ———— *Civil Procedure Code, s. 583—Execution of decree—Decree enforcing*

LIMITATION ACT (XV OF 1877)—*contd.*

Schedule II—*contd.*

———— **Art. 179**—*contd.*

2. PERIOD FROM WHICH LIMITATION RUNS—*contd.*

(*b*) CONTINUOUS PROCEEDINGS—*contd.*

the right of pre-emption—Non-payment of purchase-money decreed by Appellate Court—Restitution of purchase-money paid under lower Court's decree—Application for restitution—Revival of application. A decree for pre-emption was passed conditionally upon payment by the decree-holder of R1,139, and in July 1880 the plaintiff paid this amount into Court and it was drawn out by the defendant in August 1881. Meanwhile, in July 1881, the High Court in second appeal raised the amount to be paid by the plaintiff to R2,400 but the plaintiff allowed the time limited for payment of the excess difference

was granted, and the defendant ordered to refund,

Act; and that his present application ... effect being within three years from that application, was within time. NAND RAM *v.* SITA RAM I. L. R. 8 All. 545

(*Contra*), KURUPAM ZAMINDER *v.* SADASIVA I. L. R. 10 Mad. 66

HARISH CHANDRA SHAHA *v.* CHANDRA MOHAN DASS . . . . I. L. R. 28 Calc. 109

26. ———— *Application for execution of decree—Step in aid of execution.* ... K as the legal representative of her deceased

LIMITATION ACT (XV OF 1877)—*contd.*

Schedule II—*contd.*

———— Art. 179—*contd.*

2. PERIOD FROM WHICH LIMITATION RUNS—*contd*

(*b*) CONTINUOUS PROCEEDINGS—*contd.*

band, *S*, on a bond executed by *S* in his favour and obtained a decree Subsequently he sued *K* on a bond which she had personally executed in his

on the 20th February 1877, being put up for sale in one lot in satisfaction of both decrees, in accordance with an application made by G on the 16th February, and was purchased by *G* for the amount of the decrees. This sale was subsequently confirmed, and on the 10th December 1877, satisfaction of the decrees was entered up, and the execution-proceedings struck off the file Subsequently three of the heirs of *S* in one case, and two in another,

v. *Gardner, I. L. R 1 All. 355*, and *Issurree Dassee* v. *Abdul Khalak, I. L. R 4 Calc., 415*, distinguished by STRAIGHT, J. KHAIR-UN-NISSA v. GAURI SHANKAR . . I. L. R. 3 All. 484

27. ———— *Futile attach-*

LIMITATION ACT (XV OF 1877)—*contd*

Schedule II—*contd.*

———— Art. 179—*contd.*

2. PERIOD FROM WHICH LIMITATION RUNS—*contd.*

(*b*) CONTINUOUS PROCEEDINGS—*contd.*

having elapsed since the passing of the decree. KRISHNAJI RAGHUNATH v. ANANDRAV BALLAL KOLHALKAR . . . I. L. R. 7 Bom. 293

28. ———— *Application for*

BALGOBIND . . . . I. L. R. 18 All. 9

484, followed. *Paras Ram* v. *Gardner, I. L. R. 1 All. 355*, distinguished. VIRASAMI v. ATHI I. L. R. 7 Mad. 595

30. ———— *Application for execution of decree—Decree for possession upon pay-*

LIMITATION (ACT XV OF 1877)—*contd.*

Schedule II—*contd.*

——— Art. 179—*contd.*

2. PERIOD FROM WHICH LIMITATION RUNS—*contd.*

(b) CONTINUOUS PROCEEDINGS—*contd.*

tion for execution was struck off the file on the 10th November 1881. On the 8th December 1883, the plaintiff applied again for execution and objection was taken that the application was barred by limitation:—*Held*, that the application was not barred by limitation. *Dildar Hossein* v. *Mujeedunnissa I. L. R. 4 Calc. 629*, approved. KRISHNAN *v.* NILAKANDAN . . I. L. R. 8 Mad. 137

31. ——— *Execution of decree—Arrears of rent, Decree for—Beng. Act VIII of 1869, s. 58—Application for execution—Suspended proceedings, effect of.* G obtained an *ex parte* decree in 1882 for a sum less than R500 as arrears of rent. Execution was taken out on the

G applied for the execution of his decree:—*Held*, that the decree-holder was entitled to execution, the application of the 3rd February being a continuation of the proceedings commenced on the 19th May, which had been suspended by the order of the Court of the 20th June. CHANDRA PRODHAN *v.* GOPI MOHUN SHAHA . I. L. R. 14 Calc. 385

CHANDRA KANT BANNERJEE *v.* SURJI KANTO RAI CHOWDHURY . I. L. R. 14 Calc. 387 note

32. ——— *Decree—Execution—Attachment set aside—Time occupied in suing to declare property liable to attachment not excluded from computation.* An application for execution

NARAYANA *v.* PAPPI BRAHMANI I. L. R. 10 Mad. 22

33

11th March 1882 presented a darkhast for complete execution of the decree. Having attempted to take possession of a moiety of a house to which he

LIMITATION ACT (XV OF 1877)—*contd.*

Schedule II—*contd.*

——— Art. 179—*contd.*

2. PERIOD FROM WHICH LIMITATION RUNS—*contd.*

(b) CONTINUOUS PROCEEDINGS—*contd.*

was entitled under the decree, he was obstructed by S, and it became necessary for him to file an ejectment suit against S before proceeding further with the execution of his partition decree. In August 1885 a second appeal in this ejectment suit was pending in the High Court, and A, in the 1st August 1885, obtained an order in the execution-matter,

the darkhast being in legal continuance of ... khast of 1882. CHINTAMAN DAMODAR AGASHE *v.* BALSHASTRI . I. L. R. 16 Bom 294

34. ——— *Application for execution—Non-payment of process fees—Pendency*

The attachment shall continue ... present application for execution was barred by limitation, and could not be looked upon as a continuation of the old proceedings. DHUKIRAM SRIMANI *v.* JOGENDRA CHUNDER SEN (1900) 5 C. W. N 347

(c) WHERE THERE HAS BEEN AN APPEAL.

35. ——— cl. 2—*Period from which limitation runs* The words "judgment, decree,

LIMITATION ACT (XV OF 1877)—*contd.*

Schedule II—*contd.*

——— Art. 179—*contd.*

2. PERIOD FROM WHICH LIMITATION RUNS—*contd.*

(c) WHERE THERE HAS BEEN AN APPEAL—*contd.*

or order " in s. 20 meant a judgment, decree, or order which could be enforced by execution. BIRBO DOSS GOSSAIN *v.* CHUNDER SIKUR BHUTTACHARJEE . . B L R Sup Vol 718 2 Ind Jur. N. S 248 : 7 W R. 521

The three years' limitation prescribed by s. 20,

SHAMI MAHOMED *v* MAHOMED ALI KHAN 2 B L R Ap 22 : 11 W R 67

GRISH CHUNDER BANERJEE *v* BHANOO MOTEE CHOWDHRAIN . . . . 11 W R. 329

MAHOMED BUSSEEROOLLAH *v* RAM KANT CHOWDHRY . . . . . . 16 W. R. 266

BULDEO *v* GUJ SINGH 1 N. W. Ed. 1873, 240

RAM RUTTUN BANERJEE *v.* AMEEROOLMOLK BUNWAREE GOBIND . . . . 6 W. R. Mis. 95

Where the appeal was dismissed for default, it was *held* the order was not a new decree from which limitation began again to run. VIRASAMY MUDALI *v.* MANOMMANYAMMAL . . 4 Mad. 32

BIRBO DOSS GOSSAIN *v.* CHUNDER SIKUR BHUTTACHARJEE . . . B. L. R. Sup. Vol. 718 : 2 Ind. Jur. N. S. 248 : 7 W. R. 521

and BAPURAV KRISHNA *v.* MADHAVRAV RAMRAV 5 Bom. A. C. 214

36. ——— *Period from which limitation runs.* Where a contest is raised between a decree-holder and judgment-debtor as to

LIMITATION ACT (XV OF 1877)—*contd.*

Schedule II—*contd.*

——— Art. 179—*contd.*

2. PERIOD FROM WHICH LIMITATION RUNS—*contd.*

(c) WHERE THERE HAS BEEN AN APPEAL—*contd.*

Court. DHIRAJ MAHTAB CHUND BAHADUR *v.* BULRAM SINGH BABOO 5 B. L. R. 611 : 14 W. R. P. C. 21 13 Moo I. A. 479

CHOTAY LAL *v* RAM DYAL 2 N. W. 482

MODHOOSOODUN MOOKERJEE *v.* KIRTEE CHUNDER GHOSE . . . 18 W. R. 7

38. ——— *Date of final de-*

39 ——— *Decree of Small Cause Court.* Where a Court of Small Causes delivered final judgment and decree on the whole matter in dispute, and more than a year, but less

barred by lapse of time PUNCHANADA CHETTI *v* RAMAN CHETTI . . . 1 Mad. 446

40. ——— *Application for*

41. ——— *Application for execution of decree* A decree was passed in June

42. ——— *Execution of decree.* The words " where there has been an appeal " in cl. 2, Art 167 of Sch. II of Act IX of 1871, contem-

LIMITATION ACT (XV OF 1877)—*contd.*

Schedule II—*contd.*

———— **Art. 179—*contd.***

2. PERIOD FROM WHICH LIMITATION RUNS—*contd.*

(c) WHERE THERE HAS BEEN AN APPEAL—*contd.*

plate and mean an appeal from the decree, and do not include an appeal from an order dismissing an *application to set aside a decree under s. 119 of Act* VIII of 1859. SHEO PRASAD *v.* ANRUDH SINGH. **I. L. R. 2 All. 273**

43. ———————— *Execution of decree—"Where there has been an appeal"* The words "where there has been an appeal" in cl. 2, Art. 179 of Sch. II of Act XV of 1877, do not con-

such decree is based, and an appeal from the decree passed on such review, such appeal:—*Held*, therefore, where there had been a review of judgment, and an appeal from the decree passed on review, and such decree having been set aside by the Appellate Court, application was made for execution of the original decree, that time began to run, not from the date of that decree, but from the date of the decree of the Appellate Court. *Sheo Prasad* v. *Anrudh Singh, I. L. R. 2 All. 273*, distinguished. NARSINGH SEWAK SINGH *v.* MADHO DAS **I. L. R. 4 All. 274**

44. ———————— *Presentation of appeal—Civil Procedure Code (Act XIV of 1882), s. 541—Execution of decree.* The words "appeal presented" in the Limitation Act, 1877, mean an

45. ———————— *Application for execution of decree for refund of costs—Proceedings to determine whether exemption from costs was personal or in representative character.* On an appli-

of the proceedings in the final appeal. MULLICK MAHOMED YAKOOB *v.* CHOWDHRY SHAIKH ZUHOORUL HUQ . . . **25 W. R. 309**

46. ———————— *Date of final decree.* A obtained a joint and several money-decrees against four defendants on the 12th November 1872.

LIMITATION ACT (XV OF 1877)—*contd.*

Schedule II—*contd.*

———— **Art. 179—*contd.***

2. PERIOD FROM WHICH LIMITATION RUNS—*contd.*

(c) WHERE THERE HAS BEEN AN APPEAL—*contd.*

One of the defendants preferred an appeal, and the decree as against him was set aside by the High *Court on the 19th February 1875. Subsequently,* on the 1st of August 1876, *A* sued out execution against the three defendants who had not appealed:—*Held*, that *A's* suit was not barred by limitation, as the final decree in the original suit within the meaning of Art. 167 of Act IX of 1871 was the decree as amended by the High Court on the 19th of February 1875. GUNGAMOYEE DASSEE *v.* SHIB SUNKUR BHUTTACHARJEE . **3 C. L. R. 430**

47. ———————— *Execution of de*

gave the plaintiffs a decree for certain mesne profits.

Judge's decree for possession, but did not interfere with the order of remand. *Held*, on the plaintiffs applying for execution of the Judge's decree, dated 7th June 1873, that the limitation for the execution

v. DASAUNDHI RAM . . **I. L. R. 1 All. 508**

48. ———————— *Execution of joint decree against two or more defendants* In a suit for possession of land brought by *A* against *B, C,* and *D* a decree was passed on the 14th of April 1874 for possession and costs against *B, C,* and *D* jointly. This decree was afterwards reversed on an appeal by *B*, who alone claimed the property. *A* then preferred a special appeal to the High Court, and on the 29th June 1877 the decision of the Judge was re-

LIMITATION ACT (XV of 1877)—*contd*

Schedule II—*contd.*

——— Art 179—*contd.*

2. PERIOD FROM WHICH LIMITATION RUNS—*contd.*

(c) WHERE THERE HAS BEEN AN APPEAL—*contd*

cree for costs could not be executed, the application for execution being barred by Art 179 of Sch II

within three years of the order of the High Court MULLICK AHMED ZUMMA *alias* TETUR *v* MAHOMED SYED . I L R 6 Calc 194: 6 C L R. 573

49. ——— " *Appellate Court* "—*Execution of decree* The meaning of

words Appellate Court ... Courts to which the appeal, mentioned in the article, has been preferred WAZIR MAHTON *v* LULIT SINGH . . . . I L. R. 9 Calc. 100

50 ——— *Execution of decree—Rejection of appeal as not being properly stamped—" Where there has been an appeal, etc "* Where an application for appeal was presented to the High Court, but rejected owing to the memorandum of appeal being insufficiently stamped —*Held*, that, under such circumstances, there had not been an appeal or a final decree or order of an Appellate Court within the meaning of Art. 179 (2) of the Limitation Act, so as to give a period from which limitation for execution of the decree appealed from could run DIANAT-ULLAH BEG *v* WAJID ALI SHAH . I. L. R. 6 All 438

51 ——— *Starting point for*

I L R 20 All ...

52. ——— *Application for*

LIMITATION ACT (XV OF 1877)—*contd.*

Schedule II—*contd*

——— Art. 179—*contd.*

2 PERIOD FROM WHICH LIMITATION RUNS—*contd.*

(c) WHERE THERE HAS BEEN AN APPEAL—*contd.*

53 ——— *Date from which limitation runs—Application to take money out of*

54. ——— *Decree of High*

LIMITATION ACT (XV OF 1877)—*contd.*

Schedule II—*contd.*

——— Art. 179—*contd.*

2. PERIOD FROM WHICH LIMITATION RUNS—*contd.*

(c) WHERE THERE HAS BEEN AN APPEAL—*contd.*

55. ——— *Application for execution of decree—Order of Privy Council. Held*, that the words "appeal" and "Appellate Court," Art. 179 (2), Sch. II of Act XV of 1877, include an appeal to Her Majesty in Council:—*Held*, therefore, where an appeal had been preferred to Her Majesty in Council from a decree of the High Court, dated the 19th August 1871 and the High Court's decree ...

application must be computed from the date of the order of Her Majesty in Council. NARSINGH DAS *v* NARAIN DAS . . . I. L. R. 2 All. 763

56 ——— "*Appeal*"—"*Appellate Court*"—*Order of Privy Council—Application for execution of decree.* The term "appeal" in Art. 167 of Sch. II of the Limitation Act (IX of 1871) includes an appeal to the Privy Council; and the term "Appellate Court" in the same article includes the Judicial Committee of the Privy Council sitting for the purpose of hearing appeals from orders passed by British Courts in India. Where an appeal had been preferred to Her Majesty in Council from a decree of the High Court reversing the decree of the Court of first instance, and the High Court's decree was affirmed by an order of Her Majesty in Council, dated the 15th February 1873, and an application for execution for the High Court's decree was made on the 17th November 1875, more than three years after the date of the decree, but within that period of the order of Her Majesty in Council —*Held*, that, under Art. 167 of Sch. II, Act IX of 1871, the limitation for such application must be computed from the date of the order of Her Majesty in Council, and consequently that the application for execution was not barred. GOPAL SAHU DEO *v.* JOYERAM TEWARY

I. L. R 7 Calc. 620: 9 C L. R. 402

57. ——— *Appeal by one of several defendants—Execution of decree—Application for execution against defendant who has not appealed* On the 11th July 1877 a decree was made against *B* and *J*, the defendants in a suit, against which *J* alone appealed, such appeal not proceeding on a ground common to him and *B*. The Appellate Court affirmed ...

against *B* —*Held*, that, so far as *B* was concerned, limitations should be computed from the date of such decree, and not from the date of the decree of the Appellate Court, and such application was therefore barred by limitation. SANGRAM SINGH *v.* BUJHARAT SINGH . . I. L. R 4 All. 36

58. ——— *Appeal by some only and not all of the defendants—Amendment of decree—Review of judgment* On the 7th July 1864 ...

on the 6th March 1865 set aside such decree and dismissed the suit. The plaintiff appealed to ...

the Sudder Court's decree and restoring that of the ...

applied for amendment of such decree in certain respects, it being incapable of execution in those respects. *B* was a party to this proceeding On ... such decree was amended; ...

application to amend such decree, being substantially one for review of judgment, gave under Art. 167, Sch. II of Act IX of 1871, a period from which limitation would run in respect of the subsequent application for execution, which was therefore within time. KISHEN SAHAI *v.* COLLECTOR OF ALLAHABAD . . . I. L R. 4 All 137

See KALI PROSUNNO BASU ROY *v.* LAL MOHAN GUHA ROY.
I. L R. 25 Calc 258
2 C. W. N. 219

59. ——— *Appeal against whole decree by one defendant only—Execution of decree against judgment-debtor who did not ...*

LIMITATION ACT (XV OF 1877)—*contd.*

Schedule II—*contd.*

——— Art. 179—*contd.*

2. PERIOD FROM WHICH LIMITATION RUNS—*contd.*

(c) WHERE THERE HAS BEEN AN APPEAL—*contd*

barred, for that limitation ran from the 16th January 1884 NUNDUN LALL v. RAI JOYKISHEN

I L R. 16 Calc 598

60 ——— *Appeal against part of decree—Execution against judgment-debtors whose interests were not sought to be affected by the*

Art 179 MUTHU v CHELLAPPA

I. L. R 12 Mad 479

61. ——— *Appeal against part of decree—Execution against judgment-debtors who were not joined in the appeal.* By a decree of a Court of first instance, dated the 16th August 1880, R15,260-5-6 was found due against *A*, and R20,099-2-6 against *A* and *B* jointly, the suit being dismissed as against two other defendants who were alleged to have been sureties. The plaintiff ap-

PERSHAD v. ABDUL HYE . I. L. R. 14 Calc. 26

62 ——— *Execution of decree—"Appeal"—"Final decree or order"—Decree against defendants severally—Appeal by some only of the judgment-debtors—Civil Procedure Code, s.*

LIMITATION ACT (XV OF 1877)—*contd.*

Schedule II—*contd.*

——— Art. 179—*contd.*

2. PERIOD FROM WHICH LIMITATION RUNS—*contd*

(c) WHERE THERE HAS BEEN AN APPEAL—*contd.*

those defendants who had not appealed from it, and which was made five years after the date of the

Mahomed Syed, I. L. R 6 Calc. 194, approved. *Held* by BRODHURST and MAHMOOD, *JJ. (contra),*

63 ——— *Date of final de-*

BADI-UN-NISSA v. SHAMS-UD-DIN

I. L. R. 17 All. 103

64. ——— *Final decree of the Appellate Court—Appeal as to portion of the claim disallowed.* *A* brought a suit against *B* for a sum

LIMITATION ACT (XV OF 1877)—*contd.*

Schedule II—*contd.*

—— Art. 179—*contd*

2 PERIOD FROM WHICH LIMITATION RUNS—*contd.*

(*c*) WHERE THERE HAS BEEN AN APPEAL—*contd.*

raised by the judgment-debtor that execution was barred by lapse of time :—*Held*, that Art. 179, Sch.

HARKANT SEN *v.* BIRAJ MOHAN ROY
I L R 23 Calc 876

65 —— *Appeal by one of several defendants against part of the decree.* The

made the appealing defendants liable for damages, but was affirmed in all other respects. A second

within three years from the date of the final decree dated 9th July 1888. Defendant No. 1 objected that limitation as against him would run from 21st May 1886, there being no appeal by or against him from the decree of that date :—*Held*, that limitation

66. —— *Ex parte decree* ... *order* ... *for* ... *date* ... *parte*

decree against the defendant on the 10th March 1886. The defendant applied to have the decree set

appeal from an order of the Court refusing to set it aside. The unsuccessful attempts made by the defendants to set aside the *ex parte* decree could not have the effect of extending the period prescribed by law for execution of the decree JIVAJI *v.* RAMCHANDRA . . I. L R. 16 Bom 123

67. —— *Execution of decree—Appeal by plaintiff against part of decree making all defendants respondents—Execution of part of decree not appealed against* On the 23rd

perty, which was, however, modified on

favour of defendants Nos.

defendants respondents, which appeal was

... the Court to which the application ... allowing ... of that ... the lower ... for the ... practi- ... parties ... might ... them.

Quære : Whether under such circumstances the Legislature could have intended the Court executing a decree to go into questions so complicated as to whether in such a case the whole decree was or might have been or become imperilled in the Court of Appeal, and whether the plain words of Art. 179 might not be followed with less of possible inconvenience and complexity, even though in some cases it ... against a ... after such ... Nan- ... *Ic.* 593, ap-

dan Lal v.

LIMITATION ACT (XV OF 1877)—*contd*

Schedule II—*contd.*

——— Art. 179—*contd.*

2. PERIOD FROM WHICH LIMITATION RUNS—*contd*

(c) WHERE THERE HAS BEEN AN APPEAL—*contd*

proved. KRISTO CHURN DASS *v.* RADHA CHURN KUR . . . . I. L. R. 19 Calc 750

68. ——— *Appeal against*

sale of $\frac{5}{12}$ of the mortgaged property, but it exonerated from liability the share of a female member (defendant No. 2) of the family, which was $\frac{1}{12}$ of the whole estate. The plaintiff appealed as to the $\frac{1}{12}$ share only. He made all the defendants respondents

(XV of 1877), not having been made within three years from the 26th June 1891 :—*Held*, that the

means any appeal by any party *Per* RANADE, J — Except in the case where a nominally single decree awards separate reliefs against separate defendants, the words of Art 179 must be construed in their natural sense as permitting an extension of limitation where an appeal is preferred and is not withdrawn. ABDUL RAHIMAN *v.* MAIDIN SAIBA I. L. R. 22 Bom. 500

69. ——— *Final decree of*

LIMITATION ACT (XV OF 1877)—*contd.*

Schedule II—*contd.*

——— Art 179—*contd*

2 PERIOD FROM WHICH LIMITATION RUNS—*contd*

(c) WHERE THERE HAS BEEN AN APPEAL—*contd.*

again not being made a party On 23rd July 1894, the District Munsif delivered a revised judgment,

decree as against the first defendant was not barred by limitation, inasmuch as it had been imperilled by the appeal on the second defendant *Per*

"imperilled" by an appeal was foreign to the intention of the Legislature. VIRARAGHAVA AYYANGAR *v.* PONNAMMAL . . I. L. R. 23 Mad. 60

70. ——— *Application for possession and mesne profits after execution of decree is barred.* *A*, as purchaser of a decree against *B*, applied for execution thereof, and, having caused five fields of *B* to be sold in execution, purchased

LIMITATION ACT (XV OF 1877)—*contd.*

Schedule II—*contd.*

——— Art. 179—*contd.*

2. PERIOD FROM WHICH LIMITATION RUNS—*contd.*

(c) WHERE THERE HAS BEEN AN APPEAL—*contd.*

71. ——— *Application for execution of decree.* *A*, the judgment-debtor, opposed an application made by *B*, the judgment-creditor, for execution under a decree. This objection was overruled on the 17th January 1876. The appeal by *A* from this order (*B* being represented and opposing *A's* appeal as the hearing) was dismissed on the 2nd October 1877. On a

I. L. R. 5 Calc. 595

72. ——— *Appellate order in execution* The holder of a decree for possession and partition of a share of certain immoveable property, dated the 19th January 1878, applied for execution on the 2nd February 1878 An order was

property should be effected by lots, and remanded

applied, with reference to the order of the Appellate Court dated the 18th September 1878, to have lots drawn in accordance with that order.—*Held*, on the question whether this application was barred

Court, dated the 18th September 1878, was itself

I. L. R. 5 All 236

73. ——— *"Decree"—Order rejecting memorandum of appeal for deficiency of Court-fee.* An appeal from a decree, dated the

of Court-fee, was equivalent to a decree, and therefore the application, being made not more than three years from the date of that order, was not barred by limitation. RUP SINGH *v.* MUKHRAJ SINGH . . . I. L. R. 7 All. 887

74 ——— *Application for*

plied to set aside the decree, on the ground that he had had no notice of the suit, and an order was made staying the execution of the decree. The defendant's application was rejected on the 15th of November 1876, and an appeal by the defendant,

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made more than three years after the decree, and the plaintiff was not entitled to any deduction of the time during which the execution was stayed by

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I. L. R. 8 Calc. 248: 10 C L. R 143

75 ——— *Execution of decree.* Art. 179, cl. (2), of the Limitation Act (XV

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LIMITATION ACT (XV OF 1877)—*contd*

Schedule II—*contd.*

——— Art 179—*contd*

2. PERIOD FROM WHICH LIMITATION RUNS—*contd.*

(c) WHERE THERE HAS BEEN AN APPEAL—*contd*

(1884) 135, relied on NUR-UL-HASAN *v* MUHAMMAD HASAN . . I L. R 8 All 573

76 ——— *Adjudication that execution is barred by limitation—Finality of order—Civil Procedure Code, s 208—Amendment of decree* An application to execute a decree passed

first instance to amend the decree under s 206 of the

referred to TARSI RAM *v* MAN SINGH I. L R. 8 All 492

See DAYA KISHOR *v.* NANKI BEGAM. I L. R. 20 All 304

77 ——— *Execution of decree—Injunction* The decree-holder obtained a decree for rent on the 12th January 1892, and made an application for execution on the 10th March 1892, which was dismissed on the ground of in-

LIMITATION ACT (XV OF 1877)—*contd.*

Schedule II—*contd.*

——— Art. 179—*contd*

2 PERIOD FROM WHICH LIMITATION RUNS—*contd.*

(c) WHERE THERE HAS BEEN AN APPEAL—*concld.*

decree which had been executed should be set aside. The suit was decreed by the first Court, but on appeal it was dismissed, and the injunction was discharged on the 20th May 1897.—*Held*, that the

BHUYAN *v* WATSON (1901) . 6 C. W. N 735

78. ——— *Commencement of period of limitation for application to execute portion of decree not appealed against, where portion has been appealed against—Commencement of period of limitation under s 230 (a), Civil Procedure Code, for application to execute portion of decree not appealed against* Under Art 179 of Sch. II to the Limitation Act when a portion of a decree has been ap-

pealed against runs, under s 230 (a) of the Code of Civil Procedure, from the date of the decree on appeal. *Muthu v. Chellappa, I. L R. 12 Mad. 479*, dissented from. KRISTNAMA CHARIAR *v.* MANGAMMAL (1902) . . . I. L. R. 26 Mad 91

79. ——— *Execution of decree—Limitation—Appeal—Appeal not pressed—*

Husen v Raj Bahadur, I. L. R. 20 All. 124, distinguished FAZL-UR-RAHMAN *v.* MUHAMMAD KHAN (1908) . . I. L. R 30 All. 385

(d) WHERE THERE HAS BEEN A REVIEW.

80 ——— Cl 3. The provision of the article where there has been a review is opposed to the decisions of CHOWDHRY JUNMENJOY MULLICK *v.* BISSAMBHAR PANJAH . . 5 W. R. Mis. 45

GOUR MOHUN SHAHA *v.* GOUR MOHUN GHOSE 5 W. R. Mis. 11

but in accordance with most of the decisions.

81. ——— *Rejection of application for review—Time during which review was pending—Application for refund of moneys levied*

LIMITATION ACT (XV OF 1877)—*contd.*

Schedule II—*contd.*

——— Art. 179—*contd.*

2. PERIOD FROM WHICH LIMITATION RUNS—*contd.*

(*d*) WHERE THERE HAS BEEN A REVIEW—*contd.*

under decree reversed on appeal. Where a review

Limitation Act. *Semble* An application for refund of moneys levied in execution of a decree subsequently reversed on appeal is not governed by Art 179, but by Art. 178, of Sch. II of the Limitation Act. KURUPAM ZAMINDAR *v.* SADASIVA I L R. 10 Mad. 66

82. ——— *Order allowing amendment of a decree—Review of judgment—Code of Civil Procedure (Act XIV of 1882), ss 623, 624, and 206.* An order granting an application for amendment of a decree under s. 206 of the Code of Civil Procedure is an order passed upon review of judgment within the meaning of Art 179 Sch. II

All. 137, referred to. KALI PROSUNNO BASU ROY *v* LAL MOHUN GUHA ROY . I. L. R 25 Calc 258 2 C. W. N. 219

83 ——— *Calculation of time where decree has been wrongly varied.* Per SUBRAMANIA AYYAR, J.—That where a decree which is at variance with the judgment is brought into conformity with the latter under s. 206 of the Code of Civil Procedure, the date of the rectification is immaterial with reference to the calculation of the

84. ——— *Order amending decree—Compromise after decree—Subsequent application for execution of amended decree.* After a

LIMITATION ACT (XV OF 1877)—*contd.*

Schedule II—*contd.*

——— Art. 179—*contd.*

2. PERIOD FROM WHICH LIMITATION RUNS—*contd.*

(*d*) WHERE THERE HAS BEEN A REVIEW—*concld.*

decree against the three defendants, other than the third, as to the proportionate part of the property

compromise was beyond the powers of the High Court and was without operation either in favour of or against those defendants who had not been parties to the petition for that amendment. *Held*, also, on the decree-holder's petition for execution of the decree, that the period of limitation commenced from the date of the primary, and not of the amended, decree of the High Court. Execution was therefore barred by limitation Instead of attempt-

VENKATA SUBBAMMA RAO *v.* VELLANKI VENKATA RAMA RAO . . . I L R. 24 Mad 1 L R. 27 I A 197 4 C W. N 725

85. ——— *Civil Procedure Code (Act XIV of 1882), s. 206—Limitation Act, Sch II, Art. 179 (3).* A decree was passed on 31st December 1892, and no appeal was presented by either party therefrom. Defendant No 2, however, filed a petition for amendment of the decree in re ... granted on 6th October

(*e*) WHERE PREVIOUS APPLICATION HAS BEEN MADE

86. ——— cl 4—*Decree not liable to be enforced.* S. 20, Act XIV of 1859, was not applicable to a decree until the liability under it has become enforceable by process of execution. GOPALA SETTY *v.* DAMODARA SETTY . 4 Mad 173

87 ——— *Application for execution of decree—" Suit."* Per GARTH, C. J., and MARKBY and AINSLIE, JJ. (KEMP AND MACPHERSON, JJ., dissenting)—The periods of limita-

LIMITATION ACT (XV OF 1877)—*contd.*

Schedule II—*contd.*

——— Art. 179—*contd.*

2. PERIOD FROM WHICH LIMITATION RUNS—*contd*

(*e*) WHERE PREVIOUS APPLICATION HAS BEEN MADE—*contd*

tion prescribed in Sch. II of Act IX of 1871 are to be computed subject to the provisions contained in the body of the Act. *Per curiam* —The word " suit " as used in the Act does not include " application " DHONESSUR KOOER *v* ROY GOODER SAHOY
I L R 2 Calc 336

88 ——— *Application to* ...

...

The contrary was held under Act XIV of 1859, s. 2.

See RAMANUJA AIYANGAR *v* VENKATA CHARRY . . 4 Mad. 260

89. ——— *Application by* ...

...

90 ——— *Application for execution of decree—Presentation of application to enforce decree. Held* by the Full Bench, that the date on which an application for the execution of a decree is presented, and not any date on which such application may be pending, is " the date of applying " within the meaning of Art. 167, Sch II of Act IX of 1871. FAKIR MUHAMMAD *v* GHULAM HUSAIN . . . . I L R. 1 All. 580

91 ——— *Application for execution of decree* If a decree has once been allowed to expire, no subsequent application, although made *bonâ fide*, can revive it. MUNGOL PRASHAD DICHIT *v.* SHAMA KANTO LAHORY CHOWDHRY . . . . I L R 4 Calc 708

s c. ISHANA DABIA *v.* GRIJA KANT LAHIRY CHOWDHRY . . . . 3 C L R. 572

But held by the Privy Council in appeal that, ...

...

92 ——— *Admission of previous application by competent Court.* In an application for execution of a decree, it was held that, ...

...

Grija Kant Lahiri, I. L. R. 8 Calc. 51 L. R. 8 I. A. 123, referred to. NORENDRA NATH PAHARI *v.* BHUPENDRA NARAIN ROY I. L R 23 Calc. 374

93 ——— Application for ... hree ... Act ... *nkar* ... *Bom.* 19, *held* not to apply. GIRI DHAREE SINGH *v* RAM KISHORE NARAIN SINGH . . 1 C. L R 252

... ABDUL HEKIM *v* ASSEEUTOOLLAH 25 W. R. 94

NILMONEY SINGH DEO *v.* RAMJEEBUN SURKEL 8 C L. R. 335

WODOY TARA CHOWDHRAIN *v.* ABDOOL JUBBUR CHOWDHRY . . . 24 W. R. 339

94. ——— *Civil Procedure Code (Act XIV of 1882), s. 230* On 15th February 1872 the plaintiff obtained against the defendant a decree for possession upon his mortgage, and in ...

...

95. ——— *Application for ... made within time of a previous barred appli-* ...

...

LIMITATION ACT (XV OF 1877)—*contd.*

Schedule II—*contd.*

——— Art. 179—*contd.*

2. PERIOD FROM WHICH LIMITATION RUNS—*contd.*

(e) WHERE PREVIOUS APPLICATION HAS BEEN MADE—*contd.*

execution was allowed to issue on such application. GOPAL GOVIND *v.* GANESHDAS TEJMAL

8 Bom A. C 97

such circumstances be a valid application, or one which under the Act would give the execution-creditor a fresh period of limitation. SHUMBHUNATH SHAHA *v* GURUCHURN LAHIRI

I. L. R. 5 Calc 894
6 C. L R. 437

applicant. The *third application was made in* 1893 :—*Held,* that the second application having been made at a time when it was barred by reason of the three years' period having been exceeded, the third was barred, though presented within three years of the second The phrase "in accordance with law" in Art 179 of the Limitation Act was adjectival not only to the words "to the proper Court for execution," but also to the words "to take some step in execution." BHAGWAN JETHIRAM *v.* DHONDI . . I. L R 22 Bom 83

98. ——— *Decree for posses-*

September 1893 :—*Held,* on review, reversing a previous order, that the defendant's application was not barred by limitation. JEDDI SUBRAYA VENKATESI SANBAG *v* RAMRAO RAM CHANDRA MURDISHVAR . I. L. R. 22 Bom. 998

LIMITATION ACT (XV OF 1877)—*contd.*

Schedule II—*contd.*

——— Art 179—*contd*

2 PERIOD FROM WHICH LIMITATION RUNS—*contd.*

(e) WHERE PREVIOUS APPLICATION HAS BEEN MADE—*contd.*

99 ——— *Time runs from making of application, not from hearing of it and*

made on the same day :—*Held,* that a subsequent application for execution on the 21st of February 1896 was out of time ; the three years' period of limitation should be computed from the 11th January 1893, that is, the date when the application was made, and not from the 3rd of March when the application was heard and order made. *Luchmee Buksh Roy* v. *Runjeet Ram Panley,* 13 *B. L R.* 177 ; *Fakir Muhammed* v. *Ghulam Hossain, I. L R.* 1 *All.* 580, referred to. SARAT KUMARY DASSI *v.* JAGAT CHANDRA ROY

1 C W. N. 260

100 ——— *Execution of de-*

suit to enwould lie.

SABHANATHA DIKSHATAR *v.* SUBBA LAKSHMI AMMAL . . . . I. L. R 7 Mad. 80

101. ——— *Application within time.* Where a Judge finds that an application for execution is within time, and there *is no appeal* ... is not justified in ... B CURVD ... *N.* R. 67

102 ——— *Suit on decree— ... to recover*

BEHARI . . . .

103. ——— *Application for execution of decree.* Application for execution of a decree obtained in 1858 under the old law as to limitation was made in January and disposed of in February 1864 and a subsequent application was made in November 1867 :—*Held,* that the first application was in time, but the second application

LIMITATION ACT (XV OF 1877)—*contd*

Schedule II—*contd.*

——— Art. 179—*contd.*

2. PERIOD FROM WHICH LIMITATION RUNS—*contd*

(e) WHERE PREVIOUS APPLICATION HAS BEEN MADE—*concld*

was barred by s. 20, Art XIV of 1859 VIRABHADRA RAU *v* RAMAIYA *alias* BABPAUTULA 4 Mad 148

104. ——— *Obligation to show application is within time* A decree-holder applying on December 24th, 1864, to execute his decree passed on December ...

SADUT ALI . . . 6 W. R Mis 20

KOOL CHUNDER CHUCKERBUTTY *v* KUMUL CHUNDER ROY . . . 6 W R. Mis 17

105. ——— *Application within time* An application made on the 8th January 1875 to execute a decree, the last preceding application having been made ... 1872, ... t 167, ... OER *v* ... 336

(f) DECREES FOR SALE.

106 ——— *Decree for sale on a mortgage—Order absolute for sale—Transfer of Property Act (IV of 1882), ss 88 and 89* The period of limitation for execution of a decree for sale ...

referred to MAHABIR PRASAD *v* SITAL SINGH I L. R 19 All 520

107 ——— *Decree for sale on mortgage—Order absolute for sale—Transfer of Property Act (IV of 1882), s 89* An application for an order absolute for sale under s. 89 of the ...

... 18 All 278, referred to. *Ranbir Singh* v. *Drigpal Singh, I. L R 16 All 23,* overruled. CHUNNI LAL *v* HARNAM DAS I L R 20 All. 302

108 ——— ...

LIMITATION ACT (XV OF 1877)—*contd.*

Schedule II—*contd*

——— Art. 179—*contd.*

2 PERIOD FROM WHICH LIMITATION RUNS—*concld.*

(f) DECREES FOR SALE—*concld.*

the second Schedule to Act XV of 1877. *Oudh Behari Lal* v *Nageshar Lal, I L R. 13 All 278,* and *Chunni Lal* v *Harnam Das, I. L R. 20 All. 302,* referred to PARMESHRI LAL *v* MOHAN LAL I L R. 20 All 357

(g) CLAUSE 4

109. ——— The time from which limitation runs under cl 4 of Art. 179 of Sch. II to the Limitation Act is the date of applying, and not the date on which the application is disposed of *Fakir Muhammad* v *Ghulam Husain, I. L R 1 All 580; Sarat Kumary Dassi* v *Jagat Chandra Roy, 1 C W N. 260,* followed TROYLOKYA NATH BOSE *v* JOTI PROKASH NANDI (1903) I L R 30 Calc 761

3 NATURE OF APPLICATION

(a) GENERALLY.

1 ——— "*Proceeding*" *under Act XIV of 1859, s 20* The word "proceeding" in s 20, Act XIV of 1859, meant a proceeding not barred by the law of limitation, and under which process of execution might lawfully have issued if the proceeding had been opposed. BISSESSUR MULLICK *v*. DHIRAJ MAHTAB CHAND B. L R Sup Vol 967: 10 W. R F. B 8

RADHOO CHOWDHRAIN *v* HEET LALL ROY 11 W. R 209

2 ——— *Application to* ...

have been taken to enforce the ... it in force ...

VENKATA S... ...

URUPKRISTNA... . . . 4 Mad. 76

KULLYAN SINGH *v* BAHADUR SING Agra F. B 163: Ed. 1874, 122

The proceeding need not be successful. KALEE KISHORE BOSE *v*. PROSONO CHUNDER ROY 10 W. R 248

AKBER GAZEE *v* NUFEEZUN . 8 W. R. 98

ESHAN CHUNDER BOSE *v*. JUGGOBUNDHOO GHOSE 8 W. R. 98

But *see* LALLA BISHEN DYAL SINGH *v*. RAM SUNKUR TEWAREE . . 6 W. R. Mis 38

and JANARDUN DOSS MITTER *v*. RAJAH ROOKMEE BULLUB . . . . . 6 W. R. Mis. 48

LIMITATION ACT (XV OF 1877)—*contd.*

Schedule II—*contd.*

——— Art. 179—*contd.*

3. NATURE OF APPLICATION—*contd.*

(*a*) GENERALLY—*contd.*

The proceedings could be withdrawn when they appeared to be useless, and it was not necessary to prosecute them to a termination KULLYAN SINGH *v.* BAHADUR SINGH

Agra F. B. 163 : Ed 1874, 122

3. ——— *Execution of decree—Limitation—Effect of dismissal of application for execution duly made.* If an application for execution of a decree is duly made so as to satisfy the terms of Art. 179, paras. 4 and 5 of Sch. II of Act XV of 1877, but is dismissed, such dismissal does not prevent the application from furnishing a point of time for the beginning of a new term of limitation. SHANKAR BISTO NADGIR *v.* NARSINGHRAO RAMCHANDRA . . I L R. 11 Bom 467

4 ——— *Civil Procedure Code (Act X of 1877), s. 374* The rule laid down in s. 374 of the Code of Civil Procedure (Act X of 1877), that where a suit is withdrawn with leave to bring a fresh suit, the plaintiff shall be bound by the law of limitation in the same manner as if the first suit had not been brought, applies to applications for execution ; and therefore in counting the time of three years prescribed by the Limitation Act XV of 1877, Sch II, Art. 179, cl. 4, an application allowed to be withdrawn must be discarded as if it had never been presented. PIRJADE *v* PIRJADE . I L R. 6 Bom 681

5. ——— *Execution of decree—Application withdrawn by decree-holder—Limitation—Civil Procedure Code, 1882, ss 374, 647.* The holder of a decree for money, dated the 7th June 1879, applied on the 20th July 1880 for execution thereof, but it appeared that in certain particulars the decree required correction, and it was

LIMITATION ACT (XV OF 1877)—*contd.*

Schedule II—*contd.*

——— Art. 179—*contd.*

3. NATURE OF APPLICATION—*contd.*

(*a*) GENERALLY—*contd.*

Periatambi Shervai, I. L. R. 6 Mad 250, dissented from. *Pirjade* v. *Pirjade, I. L. R. 6 Bom. 681*, referred to. KIFAYAT ALI *v.* RAM SINGH

I. L R 7 All. 359

6. ——— *Application to execute decree—Abandonment of former application.* A decree-holder, having first asked the Court to

7. ——— *Application for execution—Withdrawal of application—Subsequent application for execution more than three years after date of last proceeding—Civil Procedure Code*

... fresh suit the plaintiff ... me manner ... it—does not ... *Pirjade v.* ... nted from.

TARACHAND MEGRAJ *v.* KASHINATH TRIMBAK

I. L R 10 Bom. 63

8. ——— *Application for execution withdrawn by decree-holder—Civil Procedure Code, ss 373, 374, 647.* S. 647 of the Civil ... applicable to

LIMITATION ACT (XV OF 1877)—*contd*

Schedule II—*contd.*

———— Art. 179—*contd*

3. NATURE OF APPLICATION—*contd.*

(*a*) GENERALLY—*contd*

of s. 373 read with s 647 of the Code, the decree-

limitation, with reference to Art 179 of the Limitation Act. SARJU PRASAD *v* SITA RAM
I L R 10 All 71

9 ———— An application

decree. DHEERAJ MAHTAB CHAND *v* MOORLEEDHUR GHOSE . . . . . 15 W R 67

10 ———— *Obligations of Court and creditor to issue execution* Though it is the duty of the Court to issue process after application has been made for execution, yet the law fully intends that when the decree-holder sees that

ROY . . . . . 13 W. R 83

11. ———— *Question of bond fides—Act XIV of 1859, s 20.* Under Act XIV of 1859, no proceeding was effectual unless it was *bond fide* RAM SAHAI SING *v* SHEO SAHAI SING
B L. R. Sup Vol. 492
1 Ind. Jur. N. S. 42

TABBUR SINGH *v.* MOTEE SINGH 8 W. R. 306

s.c. on review . . . . 9 W. R. 443

GOLAM ASGAR *v* LAKHIMANI DEBI
2 B. L R. Ap. 24

GUNGA NARAYAN CHOWDHRY *v.* PHUL MOHAMMED SIRKAR . . . . 2 B L R. Ap. 45

BHAROTEA DEBEA *v* KURRONAMOYEE DOSSIA
10 W. R. 229

KALEE KISHORE BOSE *v* PROSONO CHUNDER ROY . . . . . 10 W. R. 248

It was doubted whether the question of *bond fides* was one of law or of fact. TABBUR SINGH *v.* MOTEE SINGH . . . . 9 W. R. 443

9 W. R. 443

LIMITATION ACT (XV OF 1877)—*contd.*

Schedule II—*contd*

———— Art 179—*contd*

3 NATURE OF APPLICATION—*contd*

(*a*) GENERALLY—*contd.*

DHERAJ MAHTAB CHUND *v* MODHOO SOODUN BONNERJEE . . . 15 W. R. 162

LOOTF ALI *v* ABOO BIBEE . 15 W. R. 203

AMEERUN BIBEE *v.* SHIBPERSHAD THAKOOR
8 W. R 199

SEITH KISHEN CHAND *v.* KOUR ASKUNDER GIR . . 1 N. W. 95 : Ed. 1873, 145

And then, of course, the decree-holder had an opportunity of explaining fully and clearly all his acts. SEETANATH MUNDLE *v.* ANUND CHUNDER ROY
15 W. R. 5

UDDOYTO CHURN SAHOO *v.* RAM DHUN ROY
16 W. R. 286

As to what was evidence of *bond fides* or the contrary —

KRIPA MOYEE DOSSEE *v* POORUN CHUNDER ROY
11 W. R. 403

TITOORAM BOSE *v.* TARINEECHURN GHOSE
15 W. R. 127

RAM SOONDAR *v.* RAM CANTO . 11 W. R. 8

and RAM DHUN GOOR *v.* GOOROODOSSEE DOSSEE
13 W. R. 40

BHAROTEA DEBEA *v* KURRONA MOYEE DASSIA
10 W. R. 229

TARUCK CHUNDER CHUCKERBUTTY *v* HURO CHUNDER CHUCKERBUTTY . . 15 W. R. 473

RAJ COOMAR BABOO *v.* JUDOO BUNGSHEE
14 W. R 112

AMEER ALI *v.* SAHIB SINGH . 15 W. R. 530

In the matter of KALEEDASS GHOSE
15 W. R. 356

KISTO KANT BURAL *v* NISTARINEE DEPIA
8 W. R. 268

In judging of the *bond fides* of proceedings to obtain execution of a decree, the whole course of those proceedings was to be regarded. The fact that

v. BROJENDRO NARAIN ROY
13 B. L. R. P. C. 169 : 21 W. R. 97

s c in lower Court, BROJENDRO NARAIN ROY *v.* BENODE RAM SEIN . . . 11 W. R. 269

Under the present Act, no question of *bond fides* arises

12. ———— *Sufficiency or otherwise of mere applications—Act XIV of 1859, s. 20.* Under Act XIV of 1859, there were contrary decisions as to whether a mere application for

LIMITATION ACT (XV OF 1877)—*contd.*

Schedule II—*contd.*

——— Art. 179—*contd.*

3. NATURE OF APPLICATION—*contd.*

(*a*) GENERALLY—*contd.*

execution was a proceeding to enforce the decree. Cases which held it insufficient were—

CHUNDER COOMAR ROY *v.* SHURUT SOONDERY DEBIA . . . . . 6 W. R. Mis. 37

GOSSAIN GOPAL DUTT *v.* COURT OF WARDS 21 W. R. 418

IDOO *v.* BESHAROOLLA . 2 W. R. Mis. 10

RAJ BULLOB BUYE *v.* TARANATH ROY 3 W. R. Mis. 2

SHEO PERTAB LAL *v.* ISSUR ROY 5 W. R. Mis. 23

See also ABDOOL HEKIM *v.* ASEENTOLLAH 25 W. R. 94

(*Contra*) GOUR MOHAN BANDOPADHYA *v.* TARA CHAND BANDOPADHYA 3 B. L. R. Ap. 17 : 11 W. R. 567

VARADA CHETTY *v.* VAIYAPURY MUDALI 4 Mad. 151

LUCHMUN SINGH *v.* NARAIN . 2 N. W. 185

CHUMUN BHUGUT *v* MUDUN MOHAN 2 N. W. 186

HUR SAHOY SINGH *v.* GOBIND SAHOY 21 W. R. 244

See also TABBUR SINGH *v.* MOTEE SINGH 9 W. R. 443

MAHOMED BAKER KHAN *v.* SHAM DEY KOER 12 W. R. 2

RAJEEB LOCHUN SAHA CHOWDHRY *v* MASEYK 18 W. R. 193

[illegible]

SHOO CHAND CHUNDER *v* GRANT . 7 W. R. 10

An application by a decree-holder for issue of [illegible]

13. ——— and s. 19—*Execution of decree, application for* The mere payment of a Court-fee in connection with execution proceedings, with a view to obtain leave to bid for property then up for sale in execution of a decree, does not constitute "the taking of some step in aid of execution" within the meaning of Art 179, Sch. II of the Limitation Act (Act XV of 1877), so as to prevent the execution of the decree being barred within three years from the date of such payment. TOREE MAHOMED *v.* MAHOMED MABOOD BUX I. L. R. 9 Calc. 730 : 13 C. L R 91

14. ——— *Application made to keep in force decree.* A judgment-creditor, on finding that his judgment-debtor has no property on which he can lay hands for the purposes of execution, can always file an application simply to keep in force his decree. NILMONEY SINGH DEO *v* NILCOMUL TUFFADAR . 25 W. R. 546

[illegible]

due application had been made . . . BEPIGI PATVARDHAN *v.* KASHINATH VIDYADHAR GOSAVI . . . I. L. R. 22 Bom 723

16. ——— *Civil Procedure Code. ss 231, 232, 623—Joint decree holders—* [illegible] decree. [illegible] 1888 [illegible] limitation [illegible]

father by virtue of the decree of 1878 [illegible] application for execution in 1888 was held to be barred by limitation in *Ramasami* v. *Anda Pillai*, *I. L. R. 13 Mad 347.* On review it appeared that the son had applied for execution of the whole decree, stating that his father would not join him in such application, and that notice was given to the father —*Held*, (i) that the son was an assignee by operation of law of one-fifth of the judgment debt in the suit of 1878; (ii) that his application [illegible] Limitation [illegible] the father's [illegible] by limitation. [illegible] the effect of [illegible] the applica- [illegible] transferee of part of the decree, having been an application in

LIMITATION ACT (XV OF 1877)—*contd.*

Schedule II—*contd.*

—— Art 179—*contd.*

3. NATURE OF APPLICATION—*contd*

(*a*) GENERALLY—*contd.*

accordance with law, was sufficient to keep the decree alive RAMASAMI v ANDA PILLAI

I L. R. 14 Mad. 252

Reversing on review the decision in RAMASAMI v ANDA PILLAI . . I L. R. 13 Mad. 347

17. —— *Civil Procedure Code (Act XIV of 1882), ss 232, 248—Application for execution by transferee of decree—Benamidar* The words "in accordance with law" in Art

at the instance of a person to whom a decree has been transferred by an assignment in writing When therefore a decree is transferred (really or nominally) by assignment in writing, and the

accordance with law as between such transferee *and the judgment-debtor, although he may* be merely a benamidar, and such proceedings and application, if made in proper time, are sufficient to keep the decree alive *Denonath Chuckerbutty* v *Lalit Coomar Gangopadhya, I L R 9 Calc 633*, and *Gour Sundur Lahiri* v *Hem Chunder Chowdhry, I. L. R. 16 Calc 355*, distinguished *Abdul Kureem* v *Chukhun, 5 C L R. 253*, referred to *Purna Chandra Roy* v *Abhaya Chandra Roy, 4 B L R App. 10*, and *Nadir Hossein* v *Pearoo Thouldarinee, 14 B L. R. 425 note 19 W R 255*, followed Under the circumstances, application for execution by the transferee of a decree was *held* to be not barred under Art 179 of Sch II of the Limitation Act. BALKISHEN DAS v BEDMATI KOER

I. L R. 20 Calc 388

See MANIKKAM v TATAYYA

I. L R 21 Mad 388

18. —— *Application in accordance with law—Succession Certificate Act (VII of 1889), s 4—Application for execution by* ... *ut certi-* ... a decree ... deceased ... certifi- ... t, 1889 ... "in ... g of Art ... f 1877).

BALKISHAN SHIWA BAKAS v WAGARSING

I. L. R. 20 Bom. 78

LIMITATION ACT (XV OF 1877)—*contd.*

Schedule II—*contd.*

—— Art. 179—*contd.*

3. NATURE OF APPLICATION—*contd.*

(*a*) GENERALLY—*contd*

19. —— *Application in*

the applicants to obtain a certificate, and on their failing to do so, he rejected their application for execution on the 21st January 1890 On the 13th September 1890 the heirs, having obtained a certificate under Act VII of 1889, but not having sub-

CHOWDHRY v ABDOOL AZIZ

I L. R 20 Calc. 755

20. —— *Application for restitution under a decree—Civil Procedure Code, 1882, s 583—Period of limitation* Applications made to obtain restitution under a decree in accordance with Civil Procedure Code, s 583, are proceedings in execution of that decree, and are governed by the Limitation Act, Sch II, Art 179 VENKAYYA v RAGAVACHARLU I L. R 20 Mad. 448

21. —— *Limitation Act (XV of 1877), Sch II, Art 179 (4)—Execution—Payment of bhatta—No fresh starting point.* An ... made and ... *bhatta* ... *Nazir* ... ember, 1897. There was no written application in connection with this payment, nor did it appear that there was any oral application at the time of the payment, except such as might be inferred from the fact of payment :—*Held*, that such a payment of

an application to receive the money, and the payment would be no more than the performance of a condition essential to the order for execution. An *oral application for execution answers the require-*

LIMITATION ACT (XV OF 1877)—*contd.*

Schedule II—*contd.*

——— Art. 179—*contd.*

3. NATURE OF APPLICATION—*contd.*

(*a*) GENERALLY—*contd.*

ments of Art 179. MALUKCHAND RATANCHAND *v.* BECHAR NATHA (1901) . I L. R. 25 Bom. 639

22 ——— *Execution of decree—Application in accordance with law.* A

RAMACHANDRA AYYAR (1902) I. L R. 26 Mad. 197

23. ——— *Execution of decree—Limitation—Application to take some step in aid of execution—Appeal from order in execution proceedings.* The prosecution of an appeal from an order made in the course of proceedings in execution of a decree cannot be looked on as an application in accordance with law to the proper Court for execution or to take some step in aid of execution within the meaning of Art. 179 of the second Schedule to the Indian Limitation Act, 1877. *Kristo Coomar Nag* v *Mahabat Khan, I L. R. 5 Calc 595,* approved NANDA KISHORE *v* SIPAHI SINGH (1904) . I L. R. 26 All. 608

24 ——— *Application in accordance with law.* A decree passed in a redemption suit directed " that the plaintiff do recover possession on payment of R865 :" *Held,* that the payment of the amount was a condition precedent to the making of an order for the delivery of the pro-

25. ——— *Decree—Execution of decree—Application to execute the decree—Application not accompanied by a certified copy of the decree under execution—Application made " in accordance with law"—Step-in-aid—High Court Civil Circulars, Rule 80* On the 3rd February 1900 the decree-holder first applied to execute his decree. In 1902 he again applied to execute his decree ; but this second application was dismissed as it was not accompanied by a certified copy of the decree (High

LIMITATION ACT (XV OF 1877)—*contd.*

Schedule II—*contd.*

——— Art. 179—*contd.*

3. NATURE OF APPLICATION—*contd.*

(*a*) GENERALLY—*contd.*

1877) ; and that, therefore, the third application

the application itself an application in accordance with law, but that it requires something further besides the application itself, an accompaniment extraneous to the application, as a condition precedent to further action by the Court executing the decree. The Limitation Act (XV of 1877) as an enactment of a restrictive character must be strictly construed. *Umiashankar* v. *Chhotalal, I. L. R 1 Bom 19,* followed RAMCHANDRA *v.* LAXMAN (1906) I. L. R. 31 Bom. 182

26. ——— *" Application in accordance with law"—Application by representative of decree-holder, whose name is not brought on the record, is an application in accordance with law —Civil Procedure Code (Act XIV of 1882), ss 232, 365, 366.* A decree dated 26th March 1898, in a certain suit, ordered that plaintiff do recover the

died, his widow who ... applied on the 12th February 1901 to execute the decree The application was dismissed as the fifth defendant's hypothecation was not then discharged, but was only satisfied on the 29th October 1901

meaning of Art. 179 of Sch ... Limitation Act :—*Held,* that the application was in accordance with law. The terms of the decree only precluded recovery of the decretal amount from defendants Nos 1, 2 and 3 and the hypothecated property before the fifth defendant's debt was discharged and such discharge was not a condition precedent to an application for a conditional order directing a sale on plaintiff paying off such debt. On the death of the decree-holder the right to

LIMITATION ACT (XV OF 1877)—*contd*

Schedule II—*contd.*

——— Art. 179—*contd.*

3. NATURE OF APPLICATION—*contd.*

(*a*) GENERALLY—*concld.*

before judgment. *Narayana Naick* v. *Karuppa Pillai, Referred Case No 18 of 1880,* followed ALAGIRISWAMY NAIDU *v* VENKATACHELLAPATHY AYYAR (1907) . . . I L R. 31 Mad. 77

27. ——— *Expl. I— Decree executed against minor judgment-debtors—Saving of limitation against other judgment-debtors* Where a decree was passed against two persons who were minors and others who were majors, but the decree against the minors was subsequently declared to be inoperative, and the decree-holder never took out execution within three years from the date of his decree against his judgment-debtors other than those who were minors: *Held,* that in view of Article 179 (1) of the second Schedule of the Indian Limitation Act the

I L R. 31 All. 309

(*b*) IRREGULAR AND DEFECTIVE APPLICATIONS

28 ——— *Irregular application for restoration of execution case.* Where

29 ——— *Application for execution of decree irregularly made* Where an

not to be a proceeding properly taken to enforce a decree. OODOYCHAND LUSKUR *v* NOBOCOOMAR PORAMANICK . . . . 10 W R. 428

30 ——— *Civil Procedure Code, 1859, s 212—Application to execute decree.*

LIMITATION ACT (XV OF 1877)—*contd.*

Schedule II—*contd*

——— Art 179—*contd*

3 NATURE OF APPLICATION—*contd.*

(*b*) IRREGULAR AND DEFECTIVE APPLICATIONS—*contd*

GOUREE SUNKUR TRIBEDEE *v.* AMAN ALI CHOWDHRY . . . 21 W. R 309

31 ——— *Application for execution of decree—Proceeding to enforce decree* The "application" spoken of in Art 167, cl. 4, of Sch II to Act IX of 1871 is not merely such

enough to include any application to enforce or keep in force decrees or orders, and consequently an application to enforce or keep in force a decree by the attachment of a portion of the property of the defendant will keep the decree alive against *the residue of his property or his person* An order for attachment of a pension in satisfaction of a decree, obtained on the 10th December 1863, was made on 16th April 1869 After the passing of the Pensions Act (XXII of 1871), the Deputy Collector refused to continue paying the pension

presented a fresh application, praying that the attachment of the pension might be continued, and a letter be written to the Collector, directing him to continue to pay the pension to the decree-holder, as directed by the order of 16th April 1869. *Held,*

of 1869 and 1872 JAMNA DAS *v.* LALITRAM I. L. R 2 Bom. 294

32 ——— *"Applying to enforce the decree"—Application " to keep the decree in force"—Act VIII of 1859, s. 212.* The words "applying to enforce the decree" in Act IX of

force" may, within three years from the date of such last-named application, obtain execution

LIMITATION ACT (XV OF 1877)—*contd.*

Schedule II—*contd.*

——— Art. 179—*contd.*

3. NATURE OF APPLICATION—*contd.*

(b) IRREGULAR AND DEFECTIVE APPLICATIONS—*contd.*

of his decree. CHUNDER COOMAR ROY *v.* BHOGOBUTTY PROSONNO ROY
I. L. R. 3 Calc. 235 : 1 C. L. R. 23

PRABHACARA ROW *v.* POTANNAH.
I. L. R. 2 Mad 1

33. ——— *Application for execution of decree—Non-compliance with provision of Civil Procedure Code, 1877, s. 235.* An application for execution of a decree which does not comply in every particular with the requirements of s. 235 of the Code of Civil Procedure, and which, having been returned to the judgment-creditor for amendment, has not been proceeded with, may still suffice, under cl. 4, Art 179 of Sch. II of the Limitation Act, to keep the decree alive. RAMANANDAN CHETTI *v.* PARIATAMBI SHERVAI
I. L. R. 6 Mad 250

34. ——— *Formal defect in*

three years had been defective, by reason of its not containing the particulars required by Civil Procedure Code, s. 235 (f), and had been returned for amendment, but had not been amended. *Held*, that the present application was not barred by limitation. RAMA *v.* VARADA
I. L. R. 16 Mad. 142

35. ——— *Proceedings to*

But *see* GOURMONEE DEBEE *v.* NEEL MADHUB GOOHO . . . . 5 W. R. Mis 3

36 ——— *Application for*

ed on that day from the date of the application in February 1868. *Held*, following *Gouree Sunker* v. *Arman Ali, 21 W. R. 309*, that an informal application, made on 30th September 1871, in the nature of a petition to the Subordinate Judge to give effect to the application of February 1868 by overruling certain objections of the Collector and enforcing execution of the decree, was not an application for the execution of a decree such as could bar limitation under Act IX of 1871. JIBHAI MAHIRPATI *v.* PARBHU BAPU . I. L. R. 1 Bom 59

37. ——— *Application for execution.* A *bonâ fide* application for execution held to be a proceeding within the meaning of s. 20, Act XIV of 1859, even though it had to be amended by order of Court. MAHOMED SAMEE BROOYA *v.* ALAHEE BUKSH CHOWDHRY . 10 W. R. 348

38. ——— *Proceedings to*

39. ——— *Application for execution insufficiently stamped.* An insufficiently stamped application for execution of a decree may, under Art 179 of Sch. II of the Limitation Act, 1877, suffice to keep the decree alive RAMASAMI AYYAN *v.* SESHAYYANGAR . I. L. R. 6 Mad 181

40. ——— *Failure to pro-*

See LAKSHAMMA *v.* VENKATARAGAVA CHARIAR
4 Mad. 89

41. ——— *Application for execution of decree.* An application for execution having been made within three years from the date of confirmation of a decree, and notice served, the case was struck off on account of the decree-holder's default to pay the necessary fees. A second application made within three years of the first application was also struck off, because the judgment-creditor did not send a person to point out the judgment-debtor. A third application was then made within three years of the second.

3. NATURE OF APPLICATION—contd.

(b) IRREGULAR AND DEFECTIVE APPLICATIONS—contd.

Held, that the third application was in time, and that no question of *bonâ fides* arose in the case MARACHO KOOER *v.* CHUTOORBHOOJ SAHOY 24 W R 459

42 ——— *Application under s 232, Civil Procedure Code, 1877* Where an application for execution of a decree made under s 232 of the Civil Procedure Code was disallowed, on the ground that the applicants had not shown, as they alleged, that they were the persons beneficially interested in a transfer of the decree taken in the benami name of a third person, and within three

43. ——— *Application "in accordance with law"—Civil Procedure Code, s. 341—Transfer of Property Act (IV of 1882), s 99* The expression "applying in accordance with law" in Act XV of 1877, Sch II, Art. 179 (4), means applying to the Court to do something in execution which by law that Court is competent to do. It does not mean applying to the Court to do something which, either to the decree holder's direct knowledge in fact or from his presumed

44. ——— *Application for execution of decree—Omission to specify mode of*

cation asked or suggested that a notice should be issued to the judgment-debtor. FRANKS *v.* NUNEH MAL . . . . . . 7 N. W. 78

3. NATURE OF APPLICATION—contd.

(b) IRREGULAR AND DEFECTIVE APPLICATIONS—contd.

45 ——— *Informal application for execution of decree.* An application for execution of a decree having been made on the 26th September 1879 within time, but not in the form

46. ——— *Omission to describe the property to be attached—Civil Procedure Code, 1882, s 245—Limitation.* A decree-holder, on the 8th July 1885, applied for execution of a

lah, 12 C L R 279, followed. MACGREGOR *v.* TARINI CHURN SIRCAR . I L R 14 Calc. 124

See the Full Bench case of ASGAR ALI *v.* TROILOKYA NATH GHOSE . I L R 17 Calc 631

47 ——— *Defective application returned for amendment—Civil Procedure Code, 1882, ss 235 and 245.* In execution of a decree, the judgment-debtor's property was put up to sale on the 15th December 1890, but no sale took place, and the case was struck off. On the 7th October 1893, an application for execution was presented, but all the particulars required under

purpose. The amended application was not put in within the time fixed, but on the 10th January 1894, a fresh application was presented in due

LIMITATION ACT (XV OF 1877)—*contd.*

Schedule II—*contd.*

——— Art. 179—*contd.*

3. NATURE OF APPLICATION—*contd.*

(b) IRREGULAR AND DEFECTIVE APPLICATIONS—*contd.*

of the Limitation Act (XV of 1877), and the execution was barred by limitation. *Kifayat Ali* v. *Ram Singh, I. L. R 7 All. 359*, *Pirjade* v. *Pirjade, I. L. R 6 Bom. 681 ; Asgar Ali* v. *Troilokyanath Ghose, I. L. R 17 Calc. 631*, referred to *Syud Mahomed* v. *Syud Abedoolah, 12 C. L R. 279*, distinguished. *Fuzloor Ruhman* v. *Altaf Hossein, I. L. R. 10 Calc. 541*, commented on. *Rama* v. *Varada, I. L R. 16 Mad. 142*, and *Ramanadan* v. *Periatambi, I. L. R 6 Mad. 250*, dissented from. GOPAL SAH v. JANKI KOER

I. L R 23 Calc. 217

48. ——— *Application for execution of decree not materially defective—Application returned for amendment—Code of Civil Procedure (Act XIV of 1882), ss. 235 and 248.* The

Appellate Court was dismissed by the High Court on 9th July 1888. An application for execution of the decree was made by the plaintiff on 7th July 1891 within three years from the date of the final decree, dated 9th July 1888 The prayer was for

debtors objected that, as the application did not

Troilokya Nath Ghose, I. L. R 17 Calc. 631, and *Gopal Shah* v. *Janki Koer, I. L. R. 23 Calc. 217*, distinguished. GOPAL CHUNDRA MANNA v. GOSAIN DAS KALAY . . I L R 25 Calc 594
2 C.W N. 556

49. ——— *Application for execution giving wrong date of decree—Amendment allowed after limitation—Amendment relating back to former applications.* J obtained a decree on two mortgage-bonds on the 25th November 1885. That decree was set aside, but another decree was passed in his favour on the 21st of September 1886. The decree-holder made several applications to execute the decree, but in each

The application was allowed to be amended, ... the amendment took place after the expiry of limitation. *Held*, that the amendment would relate back to the preceding applications, and execution of the decree was not time-barred. *Ajudhia Ram* v. *Muhammad Munir, All. Weekly Notes (1893) 112*, followed. JIWAT DUBE v. KALI CHARAN RAM . . . I L R. 20 All. 478

50 ——— *Application in accordance with law.* In execution of a decree, dated 7th May 1877, an application was made under a general power-of-attorney from *A* and *B*, the decree-holders on the 19th February 1878. *B* died on the 12th February, but this fact was unknown to the pleaders who made the application The next application was made on the 28th July 1880. On an objection taken that the latter application

DHRANI v. AHSANULLAH CHOWDHRI 13 C L R. 18

51. ——— *Execution of decree—Amendment of revenue record—Application for execution not "in accordance with law"* The holders of a decree made by a Civil Court, which directed, *inter alia*, that they should be maintained in possession of a share of village, by cancelment

that of the judgment-debtor ... share, instead of asking it to send such officer a copy of such decree for his information, with a view to such amendment. *Held*, that such application, not being one in accordance with law within the meaning of *Art. 179, Sch. II* of Act XV of 1877, was not one which would keep such decree in force. MUHAMMAD UMAR v. KAMILA BIBI

I. L. R. 4 All. 34

52. ——— *Informal application for execution.* An application for execution of a decree having been made on the 19th January 1882 within time, but not in the form prescribed

LIMITATION ACT (XV OF 1877)—*contd.*

Schedule II—*contd.*

——— Art. 179—*contd.*

3. *NATURE OF APPLICATION—contd.*

(*b*) IRREGULAR AND DEFECTIVE APPLICATIONS—*contd*

by the Civil Procedure Code, inasmuch as it did not contain the right number of the suit in which the decree was passed, an order was made on the 19th January directing the petitioner to amend the application within four days by giving the correct number. That order was not complied with, and the petition was left on the file of the Court without being disposed of in any way till the 21st September 1882, on which date, more than three years having then elapsed since the date of the decree, it was returned to the vakeel of the petitioner for amendment within eight days. The required amendment was made, and the application again placed on the file of the Court on the 22nd September. On an objection being taken that the decree was barred, and the execution could not issue:—*Held*, following the principles laid down in the case of *Mahomed* v. *Abedoollah, 12 C L R 279*,—viz., that it was the duty of the Court to dismiss

the fact of the application having been returned to the vakil for amendment instead of being amended while on the file of the Court, made no difference to the application of the above principle FUZLOOR RUHMAN *v* ALTAF HOSSEN I L R. 10 Calc 541

53. ——— *Dekkhan Agriculturists' Relief Act, XVII of 1879, s 22—Conciliation agreement—Civil Procedure Code (Act XIV of 1882), s 261—Application for attachment of an agriculturist's property.* A conciliation agreement, dated the 2nd October 1880, between the decree-

...action of the ...anted, ...default decree- ...g that Code ...gment-

LIMITATION ACT (XV OF 1877)—*contd.*

Schedule II—*contd.*

——— Art. 179—*contd.*

3 *NATURE OF APPLICATION—contd.*

(*b*) IRREGULAR AND DEFECTIVE APPLICATIONS—*contd.*

debtor to execute a bond in terms of the conciliation agreement might be made, or that the Court might execute one on his behalf On reference by the

that the present application under s 261 of the Civil Procedure Code (Act XIV of 1882) was therefore too late under cl. 4, Art 179 of Sch. II of the Limitation Act XV of 1877 CHATUR KHUSHALCHAND *v.* MAHADU BHAGAJI I. L R 10 Bom. 91

54 ——— *Application by pleader for execution after decree-holder's death.* Where a decree-holder died without taking out execution of his decree, and two days after his death his pleader made an application for execution on his behalf, this being the first application of the kind.—*Held,* that, inasmuch as the authority of a pleader ceases at the moment of his client's death, the application was invalid, and was not such an

GHANI . . . I L R. 7 All 564

55 ——— ...

however irregular, were not invalid LACHMAN BIBI *v.* PATNI RAM . . I. L R 1 All. 510

56 ——— *Legal representative applying for execution without her name being on the record* A obtained a decree against *B* in June 1879, and in execution thereof some time in

widow of *A*, who had taken out probate, applied to withdraw this money from Court, and on the 1st

LIMITATION ACT (XV OF 1877)—*contd.*

Schedule II—*contd.*

—— Art. 179—*contd.*

3. NATURE OF APPLICATION—*contd.*

(b) IRREGULAR AND DEFECTIVE APPLICATIONS—*contd.*

... the decree ob- ... ution At the ... widow had not ... on the record ... On the 5th January 1884 the widow applied to have her name substituted on the record, and for execution. *Held*, that the application was barred, as the previous applications were not, under the circumstances, steps in aid of execution. GUNGA PERSHAD BHOOMICK *v.* DEBI SUNDARI DABEA

I. L. R. 11 Calc. 227

57. —— *Applications for execution made without any representative of the deceased judgment-debtor being brought on to the record—Civil Procedure Code, 1882, ss. 234 and 248.* Applications for the execution of a decree made after the death of the judgment-debtor, and without either any representative of the judgment-debtor being brought upon the record, or there being any subsisting attachment of the property against which execution is sought, are not good applications for the purpose of saving limitation. *Sheo Prasad* v. *Hira Lal, I. L. R 12 All. 440,* distinguished MADHO PRASAD *v* KESHO PRASAD

I. L. R. 19 All. 337

58 —— *Application for execution against wrong person—Decree against a minor—Application for execution against minor's mother personally, but not as his guardian.* On ...

... guardian of the minor *N*. That application was granted, and certain property belonging to the ...

... appeal, on the ground that the first application, having been made against a wrong person, could ...

... ought not to be deprived of the fruit of his decree on account of a technical defect in his application of 1880. The minor was substantially and for all practical purposes represented by his mother. HARI *v.* NARAYAN

I. L. R. 12 Bom. 427

LIMITATION ACT (XV OF 1877)—*contd.*

Schedule II—*contd.*

—— Art. 179—*contd.*

3. NATURE OF APPLICATION—*contd.*

(b) IRREGULAR AND DEFECTIVE APPLICATIONS—*contd.*

59. —— *Application for relief outside the decree—"Step in aid of execution"* The application for execution contemplated in clause (4) of Art 179 of Sch II of the Limitation ...

... and that, on receipt of this sum, the plaintiff should execute a deed of sale to the defendant The decree was dated 29th January 1881. The first application for execution was made on the 24th January 1884, but dismissed for plaintiff's default. The plaintiff made a second application, dated 22nd January 1887, praying to be put in possession of a certain house which was not awarded by the decree. This application was rejected. On the 23rd June 1887, the plaintiff made a third application for execution of the decree *Held*, that this application was barred by limitation, having been made more than three years after the date of the first application. The intermediate application was not an application for execution, nor a step in aid of execution, of the decree, inasmuch ... It ...

I. L. R. ... 7

60. —— *Execution of decree.* *Held*, that an application for execution of a decree, which was defective only in that it stated incorrectly the date of a previous application for execution (such date being, under the circumstances of the case, quite immaterial), and which was amended within three days of an order of the executing Court requiring the amendment, could not be treated as an application not in accordance with law, within the meaning of Art 179 of the second Schedule to the Indian Limitation Act, 1877. *Gopal Chunder Manna* v. *Gosain Das Kalay, I. L. R. 25 Calc. 594,* followed. KALKA DUBE *v* BISHESHAR PATAK (1901)

I. L. R. 23 All. 162

61. —— *cl. (4)—Civil Procedure Code, ss 36 and 37—Execution of decree—Limitation—Application not in accordance with law—Application made by general attorney, decree-holder being at the time within the jurisdiction of the Court* *Held*, that an application in execution of a decree was not an application "in accordance with law," within the meaning of Art. 179 of the second Schedule to the Indian Limitation Act, 1877, when it was made by a general attorney of the decree-

LIMITATION ACT (XV OF 1877)—*contd.*

Schedule II—*contd.*

——— Art. 179—*contd.*

3. NATURE OF APPLICATION—*concld.*

(b) IRREGULAR AND DEFECTIVE APPLICATIONS—*concld.*

holder at a time when the decree-holder himself was resident within the local limits of the jurisdiction of the Court executing the decree MURARI LAL v. UMRAO SINGH (1901). I. L. R. 23 All. 499

4 STEP IN AID OF EXECUTION.

(a) GENERALLY

1. ——— *Proceeding to enforce decree by interested party* In order to enforce or to keep in force a decree it was not necessary that the proceeding alluded to in s 20, Act XIV of 1859, should have been taken by the particular party seeking to execute: it was sufficient if any one interested had taken any proceeding NARAIN ROY v. SREENATH MITTER 9 W R. 485

2. ——— *Right to enforce decree.* In order to keep a decree alive, s 20 of

THOVILDARINEE

14 B L. R. 425 note: 19 W. R. 255

3 ——— *Defect in application for execution* Where there has been in fact an

4. ——— *Application not by decree holder in the record—Application to execute decree.* An application not made by the decree-holder at the time on the record cannot be considered to be an application to execute the decree DUBIAO ROY v DOOLLA ROY. 24 W. R. 10

5. ——— *Proceedings to keep decree in force* A decree was obtained on 6th June 1861, and in February 1864 a pretended purchaser of it sought execution. On 15th March

alleged purchaser in order to ascertain which of them was really entitled to execution of the decree,

LIMITATION ACT (XV OF 1877)—*contd.*

Schedule II—*contd.*

——— Art. 179—*contd.*

4 STEP IN AID OF EXECUTION—*contd.*

(a) GENERALLY—*contd.*

and on the 6th March 1867 her representatives got a decree setting aside the alleged purchase, and declaring that they might execute the decree of 6th June 1861 Accordingly, on 31st August 1868, an application was made by her representatives for that purpose Between the 15th March 1864 and 31st August 1868, no proceedings had been taken in execution. *Held*, that the application was not barred by limitation; that no execution

of keeping the decree in force. ABDUL GUNNY v. POGOSE 4 B. L. R. A. C. 1: 12 W. R. 436

6. ——— *Application for execution of decree by benamidar.* An application

7. ——— *Application for*

substituted as decree-holder, and execution taken out against the mortgaged property, *G* was found to be only a benamidar so far as his purchase of the mortgage decree was concerned. *Held*, that, *G* being merely a benamidar, the applications made

179 of the Limitation Act, 1877, so as to prevent the operation of the law of limitation. Execution of the mortgage-decree was therefore barred. *Abdul Kureem v Chukhun, 5 C. L. R.*

decree having become inoperative, the plaintiff *A*, though a purchaser *pendente lite*, was no longer bound by it, and the defendant therefore was not entitled to enforce the mortgage as against him. GOUR SUNDER LAHIRI *v.* HEM CHUNDER CHOWDHURY. GOUR SUNDER LAHIRI *v* HAFIZ MAHAMED ALI KHAN . . I L. R 16 Calc. 355

See BALKISHEN DAS *v* BEDMATI KOER I. L R 20 Calc. 388

8. ——— *Proceeding to enforce decree.* Steps taken towards placing the assignee of a decree in the position of the original decree-holder did not constitute proceedings to enforce, or to keep in force, the decree within the meaning of s. 20, Act XIV of 1859. BROJO LALL PARAMANICK *v.* RAM TARUN GOSSAIN. 10 W. R. 127

9. ——— *Decree—Application to enforce decree—Application by heir of deceased decree-holder to substitute his name on the record* *G* obtained a decree ... ndant on ... exe- cut ... r *G's* death, his son made an application, on the 10th March 1871, praying for substitution of his name in the place of his deceased father, and that the money due under the decree should be recovered and paid to him as heir of the original plaintiff. On the 3rd January 1874 ...

tion, having been made more than three years after the first application of the 23rd July 1870, and that consequently the subsequent applications were barred. On appeal to the High Court ...

ary 1874. GOVIND SHANBHOG *v.* APPAYA I L R. 5 Bom 246

10. ——— *Dispute between purchaser of decree and third party.* A dispute between the purchaser of a decree and a third party, and the proceedings connected therewith, cannot be taken to be proceedings within the purview of s. 20, Act XIV of 1859. NARAIN ACHARJEE CHOWDHRY *v.* MOHAMOYA DABEE CHOWDHRAIN 10 W. R. 240

(*a*) GENERALLY—*concld.*

See BRIJONAUTH CHOWDHRY *v.* LALL MEEAH MUNNEEROOREE . . . 14 W. R 391

The proceeding must be one against the judgment-debtor. JADO LALL *v.* RADHA KISSEN MITTER 17 W. R 99

11. ——— *Civil Procedure Code (Act XIV of 1882), ss 235, 274 and 287—Step in aid of execution—Failure by purchaser to secure possession of property purchased in execution—Execution incomplete.* A decree was passed in favour of the plaintiff in a suit on 20th October, ...

application was made for further execution of the ...

execution. *Sarataoolla* ... I. L. R. 27 *Calc.* 709, referred to. LAKSHMANAN CHETTIAR *v* KANNAMAL (1900) I. L. R. 24 Mad. 185

12. ——— *Application for* ... *of exe-* ...

ment of a sum of money belonging to the judgment-debtor, but which was in the hands of a Government Department There was no prayer in the petition that the money should be paid to the petitioner. An order, purporting to be made under s 272 of the Code of Civil Procedure, was made on 19th November 1895 requesting the Depart... to the Court On 20th ... Collector ... due to the ... 1898, the judgment-debtor ... decree-holder petitioned the Court, under ss. 268 and 272 of the Code, that the said balance might be sent for and paid to him. *Held*, that the application was not barred, and that Art. 179 of Sch. II to the Limitation Act was not applicable to the case. VENKATA RAMANAMMA *v.* PURUSHOTTAM (1900) . . . I. L. R. 24 Mad. 183

(*b*) STRIKING CASE OFF THE FILE, EFFECT OF

13. ——— *Striking case off the file—Proceeding to enforce decree.* Striking a case off the file is not an effectual proceeding to keep

LIMITATION ACT (XV OF 1877)—*contd.*

Schedule II—*contd.*

——— Art. 179—*contd*

4. STEP IN AID OF EXECUTION—*contd.*

(b) STRIKING CASE OFF THE FILE, EFFECT OF—*contd*

a decree in force under the Law of Limitation. MUDUN BHUKUT v. DOOAR BHARATEE
8 W. R. 320

14. ——— ——— *Striking case off the file.* The mere pendency of an execution case struck off the file for want of prosecution, or the

1 Ind. Jur N S 421 : 6 W R Mis 98

15. ——— *Consent to striking case off the file* Consent of the decree-holder to the striking off of an attachment not a proceeding to enforce a decree, but a relinquishment TETLEY v. PEET SINGH
Agra F. B., Ed. 1874, 117

16. ——— *Striking off execution-proceedings.* A District Judge having held that an application to execute a decree did not prevent the operation of s. 20 of Act XIV of 1859,

May 1861 and August 1862, and the usual orders

Affirming the decision of the High Court in SUTTO CHURN GHOSAL v. BHYRUB CHUNDER BROHMO . . . . . . 9 W. R 565

18.——— *Striking off execution-proceedings—Bonâ fides proceedings to keep decree in force.* A decree was obtained on 16th

LIMITATION ACT (XV OF 1877)—*contd.*

Schedule II—*contd.*

——— Art. 179—*contd.*

4 STEP IN AID OF EXECUTION—*contd.*

(b) STRIKING CASE OFF THE FILE, EFFECT OF—*contd.*

19. ——— *Striking off exe-*

decree alive. ADINA BIBI v. SUBUBUNNISSA BIBI
3 B. L. R Ap 142

20. ——— *Striking off exe-*

I. L. R 2 All. 285

21. ——— *Striking off execution-proceedings—Application for execution of*

the debtor applied for two months' time, and the

LIMITATION ACT (XV OF 1877)—*contd.*

Schedule II—*contd*

——— Art. 179—*contd.*

4. STEP IN AID OF EXECUTION—*contd.*

(b) STRIKING CASE OFF THE FILE, EFFECT OF—*concld.*

of 1877, Sch. II, Art 179, cl. 4, within time. RAJLUKHY DASSEE v. RASH MUNJURY CHOWDRAIN
5 C. L R 515

22. ——— *Application to strike off pending execution with liberty to make fresh application—Application made before Act VI of 1892. Held,* that an application made before the passing of Act VI of 1892 by a decree-holder to the Court executing the decree to strike off a pending application for execution with liberty to make a fresh application for execution of the same decree was an application in accordance with law to take a step in aid of execution of the decree within the meaning of Act XV of 1877, Sch II, Art 179, cl. 4 RAM NARAIN RAI v BAKHTU KUAR
I L R. 16 All 75

(c) RESISTANCE TO LEGAL PROCEEDINGS

23. ——— *Proceedings to enforce decree.* Resistance to legal proceedings taken by another person counted as a proceeding for the purposes of s. 20, Act XIV of 1859. KALEE KISHORE BOSE v. PROSONO CHUNDER ROY
10 W. R 248

24. ——— *Continuance of contest between parties* So long as an actual *bona fide* contest was going on in Court between a decreed-holder and the judgment-debtor as to the judgment, there was a pending "proceeding" within s. 20, Act XIV of 1859, and the period of limitation was to be computed from the Court's decision The decision in the case of *Ram Sahai Singh* v. *Sheo Sahai Singh, B L. R Sup Vol 492,* commented on and approved of DHIRAJ MAHTAB CHUND v BULRAM SINGH BABOO
5 B L. R 611 : 14 W R P. C 21
13 Moo. I A. 479

CHOTAY LAL v. RAM DYAL . **2 N W. 402**

MODHOO SOODUN MOOKERJEE v KIRTEE CHUNDER GHOSE . . . . **18 W R. 7**

25. ——— *Resisting claim* [illegible]

WAHED . . . . **I. L R. 11 Calc 55**

26. ——— *Resisting appeal against decree.* Resisting appeal against a decree (which appeal was eventually compromised) was a proceeding, within the meaning of s 20, Act XIV of 1859, taken to enforce or keep alive the decree SYUD KHAN v. JUMAL BIBEE **5 W R. Mis. 19**

LIMITATION ACT (XV OF 1877)—*contd.*

Schedule II—*contd.*

——— Art. 179—*contd.*

4 STEP IN AID OF EXECUTION—*contd*

(c) RESISTANCE TO LEGAL PROCEEDINGS—*contd.*

See BUKRONATH CHUCKERBUTTY v. NILMONEE SINGH DEO . . . . **18 W. R 7**

RAM RUTTUN BANERJEE v AMEEROOLNOIX BUNWAREE GOBIND . . **6 W. R. Mis 95**

27. ——— *Opposing application for leave to appeal.* An appeal prosecuted to a decree was a proceeding to enforce a decree within the meaning of s 20 of Act XIV of 1859. Also [illegible] on the judg- [illegible]

ROY v. BURRODA CAUNT SINGH ROY
10 B. L R 101 : 17 W. R 293
14 Moo. I. A 465

s. c. in Court below, KISHEN KISHORE GHOSE v. BURODA KANT ROY . . **8 W R. 470**

28. ——— *Appeals against* [illegible] the Court charged [illegible] the effect of [illegible] her proceed- [illegible] the terms of [illegible] DA KOONDOO [illegible] v NUGENDRO CHUNDER GHOSE . [illegible] W R. 299

29. ——— *Appeal from order setting aside attachment.* So also was an appeal from an order setting aside an attachment. KALLYPERSAUD SINGH v JANKEE DEO NARAIN.
7 W. R 9

30. ——— *Opposing application for review or petition of appeal.* If, after a decree upon an application for review of judgment [illegible] the person in whose favour the [illegible] erson (whether [illegible] to oppose the [illegible], or does anything for the purpose of [illegible] the Appellate Court or the Court of review from setting the judgment aside, such an act being an act of the person in whose favour the judgment has been given for the purpose of preventing its being set aside, is an act done for the purpose of keeping the judgment in force. BHUBANESWARI DEBI v MAHENDRANATH CHOWDHRY . . . **8 B L R. Ap 33**

KAILA CHAND PAUL v. DHIRAJ MAHATAB CHAND
13 W. R. 190

31. ——— *Opposing application for appeal or review—Decree for costs.* Where the original suit is pending in appeal, the decree-holder is not obliged to execute his decree for costs until the proceedings are set at rest by the Appellate Court ; and if application is made for a review of the order made in appeal, an attempt made to support the original order must be regarded as a

LIMITATION ACT (XV OF 1877)—*contd.*

Schedule II—*contd.*

——— Art. 179—*contd.*

4. STEP IN AID OF EXECUTION—*contd.*

(c) RESISTANCE TO LEGAL PROCEEDINGS—*contd.*

proceeding to keep it alive MAHOMED BUSSEEROOLLAH v RAM KANT CHOWDHRY
16 W. R. 266

32. ——
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judgment w
decree-holde
DOSS GOSSAIN v. CHUNDER SIKUR BHUTTACHARJEE
B. L. R. Sup Vol. 718
2 Ind Jur N S 248
7 W. R 521

LUTEEFUN v. RAJROOP SINGH
10 B L R 361 : 19 W. R. 185

33. ——— *Opposing application for review.* But there is such a proceeding if he appear to oppose the application, or does any act to prevent the decree being set aside BIPRO DOSS GOSSAIN v CHUNDER SIKUR BHUTTACHARJEE
B. L. R. Sup. Vol. 718 : 2 Ind. Jur. 248
7 W. R. 521

34. ——— *Appearance as respondent in appeal* The appearance of the person in whose favour a judgment was given as respondent on an appeal was not an act done for the purpose of keeping the judgment in force within the meaning of s 20, Act XIV of 1859 VIRASAMY MUDALI v. MANNOMMANY AMMAL 4 Mad. 32

35. ——— *Decree for moveable and immoveable property—Appeal in respect of the moveable property—Application for execution as regards immoveable property* S M, on 24th

moveable property. S M

force The execution of the decree in respect of the land was barred. SRINATH MAZUMDAR v. BRAJANATH MAZUMDAR
4 B. L. R. Ap. 99 : 13 W. R. 309

36. ——— *Appearing as respondent in appeal.* In this case certain proceed-

37. ——— *Proceedings to enforce decree—Opposing right of third party to attached property* A decree-holder having sold certain property in execution and purchased it

circumstances, perfectly equitable, to count the time spent by the decree-holder in that litigation as spent in *bonâ fide* carrying on execution ROMA NATH JHA v. LUCHMIPUT SINGH 19 W. R. 418

38. ——— *Defence to suit.* A party (*M*), having lent money on the security of land, obtained a decree against the borrower for principal and interest, execution being stayed for six months, and plaintiff's lien on the land maintained A year after the decree-holder applied for execution, and the estate was attached with a view to sale. Thereupon one *K* claimed the estate as his property, and, the claim being disallowed, commenced a suit in a Civil Court to establish his title, paying in shortly after, under protest, the sum

in virtue of which *M* was ordered to refund the

DER ROY v. MOOKOOND PERSHAD ROY.
11 W. R. 210

39. ——— *Application for execution of decree—Step in aid of execution.* An application by a decree-holder praying that the objections taken by the judgment-debtor to the sale of property belonging to him in execution of

I. L. R. 5 All. 576

LIMITATION ACT (XV OF 1877)—*contd.*

Schedule II—*contd.*

——— Art. 179—*contd.*

4. STEP IN AID OF EXECUTION—*contd.*

(c) RESISTANCE TO LEGAL PROCEEDINGS—*concld.*

40. ——— *Application by decree-holder for rejection of petition of judgment-debtor objecting to sale, and for confirmation of sale.* An application by a decree-holder, praying that a

[illegible]

execution of the decree made within three years from such a former application is not barred. *Kewal Ram v. Khadim Husain, I. L. R. 5 All. 576,* followed. GOBIND PERSHAD *alias* GOBIND LAL *v.* RUNG LAL . . . I. L. R. 21 Calc. 23

41. ——— *Application to take a step in aid of execution—Opposing application to set aside sale in execution of decree.* The appearance of a decree-holder by his pleader to oppose an application made by the judgment-debtor to set aside a sale in execution of the decree is not an application within the meaning of Art. 179 of Sch. II of the Limitation Act to take a step in aid of execution. The application contemplated by that article is an application to obtain some order of the Court in furtherance of the execution of the decree. UMESH CHUNDER DUTTA *v.* SOONDER NARAIN DEO . . . I L R. 16 Calc. 747

42. ——— *"Step in aid of execution of decree."* *R,* in a suit against *S* and other persons, obtained a decree on the 24th December

[illegible]

(d) SUITS AND OTHER PROCEEDINGS BY DECREE-HOLDER.

43. ——— *Proceedings to keep decree in force.* Where a decree-holder is referred to a civil suit by the Court to which he

[illegible]

LIMITATION ACT (XV OF 1877)—*contd.*

Schedule II—*contd.*

——— Art. 179—*contd.*

4. STEP IN AID OF EXECUTION—*contd.*

(d) SUITS AND OTHER PROCEEDINGS BY DECREE-HOLDER—*contd.*

alive. RADHA GOBIND SHAHA *v.* BROJENDRO COOMAR CHOWDHRY . . 15 W. R. 207

44. ——— *Application for*

[illegible]

Limitation Act, 1871. GOPILANDBU *v.* DOMBURU I. L. R. 11 Mad. 336

45. ——— *Application for return of a copy of a decree.* An application to the

[illegible]

I. L. R. 23 Bom.

46. ——— *Application to withdraw a pending proceeding for execution with leave to institute another—Code of Civil Procedure,*

[illegible] An application to withdraw a pending

[illegible]

Kuar, I. L. R. 10 All. [illegible] CHUNDER SEN *v.* GYANADA SUNDARI. I. L. R. 23 Calc. 817

47. ——— *Civil Procedure Code, s. 206—Application to bring decree into conformity with judgment.* The granting of an application under s. 206 of the Civil Procedure Code [illegible] conformity with the judg- [illegible] of a fresh [illegible] ee-holder; [illegible] execution [illegible] II of the [illegible] *Sahai v.* [illegible] *Collector of Allahabad, I. L. R. 4 All. 137,* distinguished. KALLU RAI *v.* FAHIMAN I. L. R. 13 All. 124

48. ——— *Application dismissed for non-payment of process-fees.* A decree was passed in 1884 against the Valiya Rajah of [illegible] since deceased. In 1886 the [illegible] execution for [illegible] but he did not [illegible] pplication was [illegible] dismissed on that ground. [illegible] at that application was a step in aid of execution within the meaning of Limitation Act, Sch. II, Art. 179. KERALA VARMA VALIYA RAJAH *v.* SHANGARAM. I. L. R. 16 Mad. 452

49. ——— *Application for lists of properties attached.* An application by

LIMITATION ACT (XV OF 1877)—*contd.*

Schedule II—*contd.*

——— Art. 179—*contd.*

4. STEP IN AID OF EXECUTION—*contd.*

(*d*) SUITS AND OTHER PROCEEDINGS BY DECREE-HOLDER—*contd.*

BALARAMASAMI CHETTI . I. L. R. 21 Mad. 400

50. ——— *Application to amend decree under s. 206, Civil Procedure Code, 1882—Application to "the proper Court."* An

492 and *Kallu Rai* v. *Fahiman, I. L. R. 13 All. 124*, referred to. DAYA KISHAN *v.* NANHI BEGAM.
I. L. R. 20 All. 304

51. ——— *Suit to set aside order under s. 246, Civil Procedure Code, 1859.*

CHOWDHRY *v.* BROJESSUREE CHOWDHRAIN
6 W. R. Mis. 14

KASHEE PERSHAD ROY *v.* SHIB CHUNDER DEB
2 W. R. Mis 3

of 1859, is liable to attachment in execution of his decree, was a proceeding to keep a decree in force within the meaning of s. 20, Act XIV of 1859. KANGELEE CHURN GHOSAL *v* BONOMALEE MULLICK. MAHABEER PARSAD *v.* PRANPUTTY KOER
B. L. R. Sup. Vol. 709 : 7 W. R. 515

DEEGENDUR NARAIN GHOSE *v.* HURKISHORE DUTT . . . . . 8 W. R. 88

LIMITATION ACT (XV OF 1877)—*contd.*

Schedule II—*contd.*

——— Art. 179—*contd.*

4. STEP IN AID OF EXECUTION—*contd.*

(*d*) SUITS AND OTHER PROCEEDINGS BY DECREE-HOLDER—*contd.*

53. ——— *Suit under s. 246, Act VIII of 1859—Proceeding to enforce decree.*

the land *A* thereupon brought a regular suit,

v. GOPESSUR MOSTOFEE
I. L. R. 3 Calc. 716 : 2 C. L. R. 220

54 ——— *Suit to set aside order in a claim case—Execution of decree—Application in continuation of a previous application for execution* Cl 4, Art. 179, Sch. II of the Limitation Act, 1877, does not include a suit to set aside an order passed in a claim case *R* and *L* obtained a decree against *B* on the 7th March 1881, and in execution of that decree certain property belonging to *B* was attached on the 11th June 1883

55. ——— *Proceeding to enforce decree.* A suit for a declaration of plaintiff's

LIMITATION ACT (XV OF 1877)—*contd.*

Schedule II—*contd.*

——— Art. 179—*contd.*

4. STEP IN AID OF EXECUTION—*contd.*

(*d*) SUITS AND OTHER PROCEEDINGS BY DECREE-HOLDER—*contd.*

right to assess certain lands as mal having been decreed, some of the defendants applied under s 119, Act VIII of 1859, and prayed the Court to set aside the decree. The remaining defendants were made parties, and the decree was materially modified. *Held*, that, as the decree-holder was taking steps for the purpose of preserving the original judgment intact, he was taking a proceeding to keep the decree alive. POORNANUND SURKHEL *v* HURO SOONDEREE DEBIA . 13 W. R. 208

56. ——— *Procuring attachment and advertising for sale.* Where a decree-holder expended money in procuring attachment of his debtor's property and advertising the same for sale, the proceeding was presumed, nothing to the contrary being shown, to be a *bonâ fide* proceeding within the meaning of s. 20, Act XIV of 1859. JUTTADHAREE SINGH *v.* WUZEER SINGH 12 W. R 357

judgment-debtor in execution of that process. JOYKISHEN SHAHA *v* BISHOKA MOYEE CHOWDRAIN 17 W. R. 355

ESHAN CHUNDER BOSE *v.* JUGGOBUNDHOO GHOSE 8 W. R. 98

(*Contra*) JUNARDUN DOSS MITTER *v* RAJAH ROOKNEE BULLUB . . . 6 W. R Mis 48

59. ——— *Unsuccessful application to substitute names as heirs of decree-holder.* The petitioners applied for the substitution [illegible]

enforce or keep in force a decree within the meaning of s. 20. LALLA BISHEN DYAL SINGH *v.* RAM SUNKUR TEWAREE . . 6 W. R. Mis. 38

60. ——— *Taking out proceeds of previous sale in execution* The act of taking out the proceeds of a previous sale in execution of a decree was *held* not to be a proceeding to keep the decree in force. KISHEN MOHUN JUSH *v.* CHUNDER KANT CHUCKERBUTTY . 6 W. R. Mis. 49

LIMITATION ACT (XV OF 1877)—*contd.*

Schedule II—*contd.*

——— Art. 179—*contd.*

4. STEP IN AID OF EXECUTION—*contd.*

(*d*) SUITS AND OTHER PROCEEDINGS BY DECREE-HOLDER—*contd*

61. ——— *Taking out money deposited in Court* The taking out by a decree-holder of money deposited in Court by his judgment-debtor was an effectual proceeding under s 20, Act XIV of 1859, to keep the decree in force. JOGESH PROKASH GANGOOLY *v.* KALEE COOMAR ROY 8 W. R. 274

62. ——— *Conduct of sale* [illegible]

RAJ COOMAREE DOSSEE . [illegible]

63. ——— *Application to* [illegible] *Bonâ fides* An execution [illegible]

[illegible]

Reversing MODHOOMUTTY DEBIA *v.* DHUNPUT SINGH . . . . . 13 W. R. 164

64. ——— *"Steps in aid of execution"—Application for sale-proceeds.* An ap[illegible]

SINGH . . . . [illegible]

65. ——— *Application to take money out of Court.* An application made by a judgment-creditor to take out of Court certain moneys there deposited by his judgment-debtor cannot be considered to be an application to the Court to take a step "in aid of execution," and is not therefore within the meaning of cl. 4 of Art. 179, Sch. II of Act XV of 1877. *Bunsee Singh v. Nazaf Ali Beg, 22 W. R. 328*, distinguished. HEM CHUNDER CHOWDHRY *v.* BROJO SOONDURY DEBEE I. L. R. 8 Calc. 89: 10 C. L. R. 272

LIMITATION ACT (XV OF 1877)—*contd.*

Schedule II—*contd.*

——— Art. 179—*contd.*

4. STEP IN AID OF EXECUTION—*contd*

(*d*) SUITS AND OTHER PROCEEDINGS BY DECREE-HOLDER—*contd*

66. — —
from Court.
the Court afte
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WODOY TARA CHOWDHRAIN *v.* ABDOOL JUBBUR CHOWDHRY . . . . 24 W R 339

67. ——— *Application to take out money deposited in Court* An application made by a judgment-creditor to take out of Court certain moneys, the sale-proceeds realized by the sales of certain properties of his judgment-debtor in a previous execution, cannot be considered to be an application to the Court to take a "step in aid of execution," and is not therefore within the meaning of cl. 4, Art 179, Sch II of Act XV of 1877 *Hem Chunder Chowdhry* v *Brojo Soondury Debee*, *I L R. 8 Calc 89*, *Venkatarayalu* v *Narasinha*, *I. L R 2 Mad 174*, dissented from FAZAL IMAN *v* METTA SINGH . I. L R. 10 Calc 549

68 ——— *Request for payment of money realized in satisfaction of a decree.* A

an application for, or step in aid of, execution depends upon the nature of the act rather than the time at which it may possibly be done. *Hem Chunder Chowdhry* v *Brojo Soondury Dabee, I L R 8 Calc 89*, qualified KOORMAYYA *v* KRISNAMMA NAIDU . I. L. R 17 Mad 165

69

of 1877) BAPUCHAND JETHIRAM GUJAR *v.* MUGUTRAO . . . . I. L. R. 22 Bom 340

70

71. ——— *Payment out of Court to plaintiffs of money collected by receiver, but not under decree* The question whether an application to enforce execution of a decree was barred by limitation depended upon whether a payment out of Court to plaintiffs of money collected by a receiver constituted (with the application alleged to have preceded it) a step in aid of execution within the meaning of Art 179 of Sch. II to the Limitation Act The receiver had been appointed during the pendency of the suit, which was by mortgagees for possession of the mortgaged land and for mesne profits accrued prior to the date of plaint. The receiver remained in possession of the land for a period of six months after decree, when he handed it over to the plaintiffs ; and the payment out of Court above referred to was of

It consisted of current profits of the estate, in de-

I. L R. 22 Mad. 440

72 ——— *Proceedings in execution as to mesne profits—Decree for costs.* Proceedings in execution of a decree as to mesne profits were *held* to be an effectual proceeding within the meaning of s 20, Act XIV of 1859, to enforce the same decree as to costs. OOPENDUR MOHUN MUSTAFEE *v* TRIPP . 5 W. R. Mis. 40

73 ——— *Decree for possession and mesne profits—Separate applications for execution* The holder of a decree for possession

KISORE DUTT . . . . . 8 W. R. 99

JOGESH PROKASH GANGOOLI *v* KALEE COOMAR ROY . . . . . . 8 W. R 274

74 ——— *Application in aid of execution—Possession—Wasilat.* Where a decree is one for possession with wasilat from the date of dispossession to the date of suit an applica-

LIMITATION ACT (XV OF 1877)—*contd.*

Schedule II—*contd.*

——— Art. 179—*contd.*

4. STEP IN AID OF EXECUTION—*contd.*

(*d*) SUITS AND OTHER PROCEEDINGS BY DECREE-HOLDER—*contd.*

tion for wasilat, if not made within three years from the first application in execution, is barred. HEM CHUNDER CHOWDHRY *v.* BROJO SOONDURY DEBEE I. L. R. 8 Calc. 89 10 C. L. R. 272

75. ——— *Application for execution of decree—Application for execution of portion of decree.* Where a decree-holder, in the execution of a decree for the possession of land, mesne profits, and costs, applied for and obtained possession of the land and costs, and afterwards, within three years, applied in execution of the decree for mesne profits, the execution of the decree for mesne profits was not barred by limitation by reason of more than three years having elapsed from the date of the decree RAM BAKSH SINGH *v.* MADAT ALI . . . . 7 N. W. 95

76. ——— *Application not "in accordance with law"—Step in aid of execution—Subsequent application for execution—Objection to the previous application—Estoppel—Res judicata.* An application for partial

CHAND BHUDAR *v.* BAI SHIVKOR I. L. R 15 Bom. 242

KALIDAS MANCHAND *v.* VARJIVAN RANGJI I. L. R. 15 Bom. 245

NEPAL CHANDRA SADOOKHAN *v.* AMRITA LAL SADOOKHAN . . I. L. R. 26 Calc. 888

77. ——— *Proceedings to assess mesne profits.* Act XIV of 1859, s. 20, applied only to such decretal orders as were complete in themselves and ready to be enforced, and not to so much of a decretal order as directed proceedings to be taken in order to assess the amount of wasilat to be recovered by the judgment-creditor, which were merely a prolongation of the trial, and not proceedings to enforce the decree. FUZEELUN *v.* KEERAMUT HOSSEIN. . 21 W. R. 212

BUNSEE SINGH *v.* NUZUF ALI BEG 22 W. R. 328

LIMITATION ACT (XV OF 1877)—*contd.*

Schedule II—*contd.*

——— Art. 179—*contd.*

4. STEP IN AID OF EXECUTION—*contd.*

(*d*) SUITS AND OTHER PROCEEDINGS BY DECREE-HOLDER—*contd.*

78. ——— *Decree for possession and mesne profits—Application for execution for mesne profits, which had been omitted in execution of decree—Civil Procedure Code, 1877, s. 230.* Where a party obtains a decree for possession and mesne profits under which he obtains possession but fails to prosecute his suit for mesne profits and the execution case is struck off for default :—*Held*, that it is very doubtful if, in any case, the effect

79. ——— *Application for ascertainment of mesne profits—Decree for posses-*

delivery of possession of land decreed and for ascertainment of mesne profits was made in 1892, more than three years after a previous application for the same purpose, and was "struck off" for

barred. *Puran Chand* v. *Roy Radha* ... *R. 19 Calc. 132*, followed *Bunsee Singh* v. *Nuzuf Ali Beg*, 22 W. R. 328, distinguished. ... SINGH *v.* RAJU SINGH I. L. R. 25 Calc. 203

80. ——— *Default in payment of instalments due under decree—Application to make decree absolute under s. 89 of Transfer of Property Act (IV of 1882).* On the 21st October 1894 the plaintiff and the defendant entered into an amicable agreement before a conciliator for payment of a mortgage-debt due to the former by annual instalments. The agreement was forwarded to the Court on the 21st December 1894, to be filed under s. 44 of the Dekkan Agriculturists' Relief Act (XVII of 1870). Default having been made in the payment of the instalment, the first of which became due on the 25th January 1895, and which also was not pay the plaintiff applied for execution by sale of the mortgaged property. The application was made on the 6th September 1897, and it was struct off the file for some formal defect on the 18th November 1897. Subsequently on the

LIMITATION ACT (XV OF 1877)—*contd.*

Schedule II—*contd.*

——— Art. 179—*contd.*

1. STEP IN AID OF EXECUTION—*contd*

(*d*) SUITS AND OTHER PROCEEDINGS BY DECREE-HOLDER—*contd*

10th October 1898, the plaintiff having applied for an order absolute for sale under s. 89 of the Transfer of Property Act (IV of 1882):—*Held*, that Art 179, Sch. II of the Limitation Act (XV of 1877) applies to applications under s. 89 of the Transfer of Property Act. *Held*, further that in the present case the application of September 1897 should be treated as a step in aid of execution. BHAGAWAN RAMJI MARWADI *v* GANU I. L. R 23 Bom 644

81. ——— *Proceedings to execute decree for costs* Having obtained possession of property in satisfaction of a decree, the decree-holder had to meet proceedings initiated by a third party under Act VIII of 1859, s. 230, and delayed to execute his decree as far as it related to costs:—*Held*, that the proceedings in question could not be taken to keep alive the decree or save limitation in respect to the costs BABOONATH JHA *v* KHUGPUT DOSS 19 W. R. 226

82 ——— *Transmission by Court of decree for execution* The transmission by

83

of the decree, was an application to enforce or keep in force the decree within the meaning of Art. 167, Sch II of Act IX of 1871. HUSAIN BAKHSH *v.* MADGE . . . I. L. R. 1 All 525

84 ——— *Application for execution where transfer is only effectual mode—Civil Procedure Code, 1859, s 285* An application for the execution of a decree to the Court by which it was passed, where the decree could only have been effectually executed in manner provided by s. 285, Act VIII of 1859, was not an application which would save limitation FRANKS *v.* NUNEH MAL . . . . 7 N. W. 79

85 ——— *Application for transfer of decree* *Held*, that an application to the

I. L. R. 2 All. 284

86. ——— *Application for transfer of decree under s. 223 of Civil Procedure Code, 1877.* An application for the transfer of a decree under the provisions of s 223 and the

87. ——— *Application for transfer of decree—Civil Procedure Code, 1882*

explained. *Collins* v. *Maula Baksh, I. L R. 2 All 284*, and *Latchman Pundeh* v. *Muddan Mohun Shye, I. L. R 6 Calc 513*, referred to and followed. CHUNDRA NATH GOSSAMI *v.* GURROO PROSUNNO GHOSE . . . I. L. R. 22 Calc. 375

88 ——— *Application for transfer of decree* An application to the Court which passed a decree for its transfer to another

89 ——— *Application to retransfer decree for execution—Civil Procedure Code, 1877, s. 223.* Where a decree has been trans-

90. ——— *Transmission of decree for execution—Application for execution of attached decree—Civil Procedure Code, ss. 223, 228, 273* A decree was passed on the 20th February 1878 by the Munsif of M. In November 1878 it

... was made to the Munsif of J, who thereupon issued an order for the attachment of some immoveable property belonging to the judgment-debtor, and also for the attachment of three decrees standing in his Court in favour of the judgment-debtor against other persons. On the

LIMITATION ACT (XV OF 1877)—*contd.*

Schedule II—*contd.*

——— Art. 179—*contd.*

4. STEP IN AID OF EXECUTION—*contd.*

(*d*) Suits and other Proceedings by Decree-holder—*contd.*

18th March 1882, the decree-holder applied to the Munsif of J to execute one of these decrees in his behalf, and he further asked that whatever might be realized in such execution should go to the account of the decree which had been trans-

n, dated arred by attached of the

original decree within the meaning of Art. 179, Sch. II of the Limitation Act, inasmuch as its object is to obtain money in order to pay off the judgment-debtor. Lachman *v* Thondi Ram

I. L. R. 7 All. 382

91. ——— *Application for transmission of decree.* Where a decree-holder applied to the Court to transmit the decree to another Court for execution, and on a subsequent date paid into Court postage stamps for the transmission of the records :—*Held,* that, if when the postage stamps were paid into Court an application was made to take some step in aid of execution, such application would be sufficient to give a new period of limitation. Vellaya *v* Jaganatha

I. L. R. 7 Mad. 307

92. ——— *Application for transmission of decree.* On the 2nd March 1887 *S* in the Court th Septem- on the 7th November 1887 the mortgaged property was sold by the Hajipore Court On appeal on the 2nd

to the Muzaffarpore Court. *L,* who had meanwhile purchased the mortgaged property from *P*

v. Joy Kishen Pershad *alias* Joy Lal

I. L. R. 20 Calc. 29

93. ——— *Proceedings to get Privy Council decree sent down for execution—Act XXV of 1852, s. 2.* Proceedings had in the High Court for the purpose of getting a Privy Council order sent down to the lower Court for execution, whether strictly legitimate or not with reference to Act XXV of 1862, s. 2, if *bonâ fide* efforts made by the judgment-creditor to carry into effect that order, must be taken to be proceedings keeping the decree alive. Lethbridge *v.* Prohlad Sen . . . . . . **19 W. R. 301**

94. ——— *Attempt to settle accounts.* An attempt at settlement of accounts in Court is sufficient to keep a decree alive Fuzil-utoonissa *v.* Chutter Daree Singh

6 W. R. Mis. 43

95. ——— *Application for execution after decision of case on solehnamah* Where parties to a suit which had been decreed, entered after remand into compromise, and filed a solehnamah, in accordance with which the case was decided :—*Held,* that an application to execute the solehnamah was not a proceeding taken on the basis of the decree, and, being therefore illegal, could not keep the decree alive. Preo Madhub Sircar *v.* Bissumbhur Sircar . **15 W. R. 514**

96.——— *Proceedings in execution to enforce barred decree—Compromise of*

of the original decree had been . . . limitation, could not avail to keep the decree alive. Stowell *v.* Billings . **I. L. R. 1 All. 350**

97. ——— *Application for execution of decree—Partial satisfaction under arrangement made through Court A,* a judgment-debtor, being arrested in execution of a decree applied in the year 1873, under s. 273 of Act VIII of 1859 for his discharge. The Court refused to entertain the application except on condition that *A* should pay into Court a certain fixed sum of money per month on behalf of the judgment-creditor. *A,* accepting these terms, was thereupon discharged, and the execution-proceedings struck off the file. *A,* in compliance with the directions of the Court, made regular payments into Court until October 1875 when he discontinued payment :—*Held,* on an application made in June 1877 by the judgment-creditor

LIMITATION ACT (XV OF 1877)—*contd.*

Schedule II—*contd.*

——— Art. 179—*contd.*

4. STEP IN AID OF EXECUTION—*contd.*

(*d*) SUITS AND OTHER PROCEEDINGS BY DECREE-HOLDER—*contd.*

for a warrant of further arrest against *A*, that inas-

LALL GHOSE
I. L. R. 4 Calc. 877 : 3 C. L. R. 161

98. ——— *Application to enforce arrangement made through the Court* Where the decree-holder sought to enforce the arrangement made by the Court for satisfaction of the decree, limitation was *held* not to apply RADHA KISSORE BOSE *v.* AFTAB CHANDRA MAHATAB
I. L. R. 7 Calc. 61

99 ——— *Kistbandi—Ex-*

the parties filed a kistbandi, whereby they agreed that the amount due under the decree should be payable by instalments, the first instalment to fall

KRISHNA KAMAL SINGH *v* HIRU SIRDAR
4 B. L. R. F. B 101

S C KRISTO KOMAL SINGH *v* HUREE SIRDAR
13 W. R. F. B. 44

100. ——— *Receipt of instalment under compromise out of Court.* The receipt

101. ——— *Application reporting adjustment by parties* An application by a

judgment-debtor stating that the proceedings in execution had been adjusted and he had paid the decree-holder R10 and would pay him the balance

within the meaning of Art 179, Sch II, of Act XV of 1877. GHANSHAM *v.* MUKHA
I. L. R. 3 All. 320

102 ——— *Execution of decree—Certificate by decree-holder of payment out of Court—Civil Procedure Code, ss 257, 258. Held,* following *Tarini Das Bandyopadhya v. Bishtoo Lal Mukhopadaya, I. L R 12 Calc 608* (TYRRELL, *J.*, doubting), that an application made by decree-holder, the object of which is that the receipt of certain sums of money paid out of Court may be certified, is a "step in aid of execution," such as will keep the decree alive, within the meaning of the Limitation Act (XV of 1877), Sch II, Art. 179 (4) *Gansham v. Mulha, I. L. R 3 All. 320,* referred to. MUHAMMAD HUSAIN KHAN *v.* RAM SARUP . . . . I. L. R. 9 All. 9

103 ——— *Application to record certificate of payment by judgment debtor in part satisfaction.* An application by a judgment-creditor to bring an execution-proceeding on the file, and to record his certificate of the payment

104. ——— *Application by decree-holder under Civil Procedure Code, s. 258, to enter up payment made under decree* The expression "step in aid of execution" in Act XV of

part satisfaction of the decree. *Per* MAHMOOD, *J.*—Provided that the payment asserted in the application was actually made. SUJAN SINGH *v.* HIRA SINGH . . . . I. L. R. 12 All. 399

105. ——— *Application to record certificate of payment by judgment debtor in part satisfaction—Civil Procedure Code, 1882, s. 258.* An application made by some of the judgment-debtors (and signed by the decree-holder) to have

LIMITATION ACT (XV OF 1877)—*contd.*

Schedule II—*contd.*

——— Art. 179—*contd.*

4. STEP IN AID OF EXECUTION—*contd.*

(*d*) SUITS AND OTHER PROCEEDINGS BY DECREE-HOLDER—*contd.*

certain payments, which were made out of Court, certified under s. 258 of the Civil Procedure Code, and that time be allowed to pay the balance of the decree, the attachment put upon their property continuing, is "step in aid of execution" such as will keep the decree alive within the meaning of the Limitation Act, Art. 179, cl. 4. WASI IMAM *v.* POONIT SINGH . . I. L. R. 20 Calc. 696

106. ——— *Application for*

decree was a mistake as the amount exceeded R2,000, and the decree was returned to the subordinate Court on the 5th July 1888 On the 20th February 1889, an application was made to the

Causes should be deducted in the computation of ... cation ... *d*, by ... not ... resent ... reason ... 1889 ... ow *v.*

JAVERCHUND SETT . I. L. R. 19 Mad. 67

107. ——— *Application for time—Application to review the order striking off the execution case and to restore it to file.* A decree which directs the realization of the decretal amount by sale, in the first instance, of the mortgaged properties, and afterwards from the persons and other properties of the defendants, is a mortgage decree,—and not "a decree for the payment of

LIMITATION ACT (XV OF 1877)—*contd.*

Schedule II—*contd.*

——— Art. 179—*contd.*

4. STEP IN AID OF EXECUTION—*contd.*

(*d*) SUITS AND OTHER PROCEEDINGS BY DECREE-HOLDER—*contd.*

for its restoration to the file is undoubtedly a step in aid of execution within the meaning of the Limitation Act (XV of 1877), Sch. II, Art. 179 KARTICK NATH PANDEY *v.* JUGGERNATH RAM MARWARI . . . I. L. R. 27 Calc. 285

108. ——— *Agreement to suspend* ... An agreement to suspend execution ... within ... MEHER- ... I. L. R. 396

109. ——— *Application to stay execution.* *Held*, that an application by the ...

I. L. R. ...

110. ——— *Application by decree-holder to release portion of property from attachment and have case struck off the file.* In ... was attached ... ved Prior ... o the Court ... of the pro- ... he had, st ... ided not to ... sale might proceed with the sale, and ... the file: the ...

apart from the other prayers ... merely the effect of leaving things precisely as they were, and did not advance the execution in any respect whatsoever. ABDUL HOSSEIN *v.* FAZILUN . . . I. L. R. 20 Calc. 255

111. ——— *Application to continue attachment, but to stay sale.* Under the Civil Procedure Code (Act VIII of 1859), an application to the Court to continue the attachment of immoveable property, but to stay the sale of it, held to be a proceeding to keep in force the decree. NUKANNA *v.* RAMASAMI I. L. R. 2 Mad. 218

LIMITATION ACT (XV OF 1877)—*contd.*

Schedule II—*contd.*

——— Art. 179—*contd*

4 STEP IN AID OF EXECUTION—*contd.*

(*d*) SUITS AND OTHER PROCEEDINGS BY DECREE-HOLDER—*contd*

112 ——— *Application by decree-holder for postponement of sale—Application to take some step in aid of execution of decree* An application by a decree-holder for the postpone-

step in aid of execution, of the decree," within the meaning of Art 179, Sch II, Act XV of 1877, and limitation cannot be computed from the date of such an application. MAINATH KUARI *v.* DEBI BAKHSH RAI . . . I L R. 3 All 757

113. ——— *Application to postpone sale.* Certain lands having been attached in execution of a decree, the judgment-debtor applied to the Court to postpone the sale of some of the lands until others had first been sold The vakil for the decree-holder consented in part to this application, but insisted that certain other

See VELLAYA *v* JAGANATHA I L R 7 Mad. 307

114 ——— *Application to postpone sale on consent of parties* Application for execution of a decree was made on the 22nd November 1875, and in pursuance of such application certain property belonging to the judgment-debtor was advertised for sale on the 27th March 1876. On the latter date the parties to such decree made a joint application in writing to the Court, wherein it was stated that the judgment-debtor had made a certain payment on account of such decree, and the decree-holders had agreed to give him four months' time to pay the balance thereof, and it was prayed

relevancy to the present case ; but inasmuch as the proceedings of the 27th March 1876 might be considered as properly constituting a " step in aid of execution " within the meaning of Art. 179 (*4*), the application of the 17th January 1879 was within time. SITLA DIN *v.* SHEO PRASAD I L R 4 All. 60

115. ——— *Oral application for proclamation of sale* An oral application, on a sale of immoveable property in the execution of a decree having been adjourned for the fixing of a

See AMBICA PERSAD SINGH *v.* SURDHARI LAL I. L. R. 10. Calc. 851

116. ——— *Application for proclamation of sale—Step in aid of execution.* An application to a Court to issue a proclamation of sale in respect of property already attached in execution of a decree is an application within the meaning of cl. 4 of Art 179, Sch II of Act XV of 1877, " to take some step in aid of execution of the decree " *Chunder Coomar Roy* v. *Bhogobutty Prosonno Roy, I L. R 3 Calc. 235 : 1 C. L. R. 23*, explained AMBICA PERSHAD SINGH *v.* SURDHARI LAL . . . I L R. 10 Calc. 851

117. ——— *Verbal application for the sale of attached property* An application to the Court to order the sale of property which has been attached is an application to take some steps in aid of execution ; and as the Civil

I L R 10 Bom. 405

118. ——— *Application to execute decree—Application for sale of property*

ation Act. An application, therefore, for the sale of property under attachment is an application merely in aid of an execution then proceeding. CHOWDHRY PAROOSH RAM DAS *v.* KALI PUDDO BANERJEE . . . I. L. R. 17 Calc. 53

119. ——— *Application to sell attached property subject to a mortgage.* A

mortgagee, and on the 10th August 1882 the judgment-debtor admitted the claim and applied that the property might be sold subject to the claimant's mortgage, and the proceeds, if any, paid over to him in part satisfaction of his decree. On the 20th June 1885 another application was made for execution, and on the 29th November 1886 a third application was made. To the latter application objection was taken, and it was contended that the decree was barred by reason of more than three years having elapsed between

execution of the decree within the meaning of Art. 179, Sch. II, Act XV of 1877, and that execution of the decree was therefore not barred LALBADDI MULLICK *v.* KALA CHAND BERA

I. L. R. 15 Calc. 363

120. ——— *Application by transferee of decree for sale of hypothecated property—Non-registration of deed of assignment—Civil Procedure Code, s. 232.* On the 13th November 1886 the assignee of a decree for sale on hypothecated property applied, under s. 232 of the

the assignee when he made his application on the 10th November 1886 was that he was unable to prove that there was a title by assignment in himself

FAIZULLAH . . . I. L. R. 15 All.

121. ——— *Application by decree-holder for leave to bid at sale.* The making

Art. 179, Sch. II of the Limitation Act (XV of 1877). BANSI *v.* SIKREE MAL

I. L. R. 13 All. 211

122. ——— *Application by decree-holder for leave to bid.* An application by the decree-holder for leave to bid at the sale in execution of the decree is not a step in aid of execution within the meaning of the Limitation Act, Sch. II, Art. 179. *Toree Mahomed* v. *Mahomed Mabood, I. L. R. 9 Calc. 730,* and *Ananda Mohan Roy* v. *Hara Sundari, I. L. R. 23 Calc. 196,* referred to. *Bansi* v. *Sikree Mal, I. L. R. 13 All 211,* dissented from. RAGHUNUNDUN MISSER *v.* KALLYDUT MISSER . . . I. L. R. 23 Calc. 690

123. ——— *Application by decree-holder for leave to bid at the auction-sale.* An application by a decree-holder for leave to bid at the sale of his judgment-debtor's immoveable property is an application to the Court to take a step

imitation Art

DESHMUKH

I. L. R. 21 Bom. 331

124. ——— *Application by the decree-holder for leave to bid at a sale in execution of his decree—Civil Procedure Code, 1882,* application for leave to bid at a sale

of Civil

step in aid

meaning of

the Indian

Mal, I. L.

Misser

LIMITATION ACT (XV OF 1877)—*contd.*

Schedule II—*contd.*

———— **Art. 179**—*contd.*

4. STEP IN AID OF EXECUTION—*contd.*

(*d*) SUITS AND OTHER PROCEEDINGS BY DECREE-HOLDER—*contd*

v. *Kallydut Misser, I L. R. 23 Calc 690*, dissented from. DALEL SINGH v. UMRAO SINGH
I. L. R. 22 All. 399

125. ———— *Application to receive poundage fee—Application for the return of a decree partially executed by the Court where transferred for execution—Civil Procedure Code, 1882, s. 223.* Neither an application, by a decree-holder to receive poundage fees from him in respect of some of his judgment-debtor's property purchased by himself, nor an application for the return to the decree-holder of a decree made to a Court to which it has been transferred for execution, and by which it has been partially executed, is a

126. ———— *Application to receive poundage fee—Application to set off the purchase-money against the decree, instead of paying*

I. L. R 23 Calc. 196

128. ———— *Payment of bhatta—Payment of process-fee. Quære*: Whether the payment of bhatta is sufficient proof of an application to the Court to take the step in respect of which the bhatta is paid. Mere payment of a process-fee under circumstances from which no application can be inferred does not satisfy the requirements of the article. TRIMBAK BAPUJI PATVARDHAN v KASHI NATH VIDYADHAR GOSAVI
I L R. 22 Bom 722

129. ———— *Payment of process-fee.* The mere payment of process-fee for the

LIMITATION ACT (XV OF 1877)—*contd.*

Schedule II—*contd.*

———— **Art. 179**—*contd.*

4 STEP IN AID OF EXECUTION—*contd.*

(*d*) SUITS AND OTHER PROCEEDINGS BY DECREE-HOLDER—*contd.*

issue of notice for the purpose of an inquiry under s. 287 of the Code of Civil Procedure, or the payment of costs for the issue of a proclamation of sale, un-

Lall, I. L R. 9 Calc. 614, dissented from. THAKUR RAM v KATWARU RAM
I. L R 22 All 358

130. ———— *Payment of deficient Court-fee.* An application for execution of a decree was presented on the 17th July 1890. A notice under s. 248 of the Code of Civil Procedure (Act XIV of 1882) was issued on the 18th July

additional Court fee was not "a step in aid of execution of a decree" within the meaning of cl. 4, Art. 179, of Sch. II of the Limitation Act (XV of 1877). DWARKANATH APPAJI v. ANANDRAO RAMCHANDRA . . I L. R 20 Bom 179

131. ———— *Applications to be substituted on the record as a party and for notice of execution to issue to representative of judgment-debtor—Civil Procedure Code, 1882, s 230—Application for execution of decree—Continuous proceedings.* *A* obtained a decree against *B* upon an award, which directed that the sum of R1,840 awarded to *A* should be recovered with interest by attach-

a sale
operty
Octo-
ee and
tached

LIMITATION ACT (XV OF 1877)—*contd.*

Schedule II—*contd.*

——— Art. 179—*contd.*

4. STEP IN AID OF EXECUTION—*contd.*

(*d*) SUITS AND OTHER PROCEEDINGS BY DECREE-HOLDER—*contd.*

not be executed against him. *D* did not appear,

application was time-barred under Art. 179 of the Limitation Act (XV of 1877) —*Held*, that the application of 1892 was not barred by limitation,

year's payment received by the decree-holder was but a partial step in aid of execution of the

PITAMBERDAS TRIBHUVANDAS
I. L. R. 19 Bom. 261

132. ——— *Application for substitution of the heirs of the deceased judgment-debtor—Application in accordance with law—Code*

disallo
law.

133. ——— *Application by decree-holder to be put in possession of property which he has purchased at a sale in execution of*

Singh, I. L. R. 12 All. 399, referred to. MOTI LAL *v.* MAKUND SINGH . I. L. R. 19 All. 477

SARIATOOLLA MOLLA *v.* RAJ KUMAR ROY
I. L. R. 27 Calc. 709
4 C. W. N. 681

LIMITATION ACT (XV OF 1877)—*contd.*

Schedule II—*contd.*

——— Art. 179—*contd.*

4. STEP IN AID OF EXECUTION—*contd.*

(*d*) SUITS AND OTHER PROCEEDINGS BY DECREE-HOLDER—*contd.*

134. ——— *Execution of decree—Limitation Act (XV of 1877), Sch. II, Arts. 178, 179—Limitation—Interruption of execution proceedings—Revival of previous application for execution.* The circumstances under which execution-proceedings are struck off will usually be questions of fact, and must be determined upon the facts. Where a decree-holder has made an application within time, and has obtained an order ... of that ... which the ... e can get ... t may be ... removed that obstacle he returns to the Court and prays that the order which he got years ago may now be carried to completion; his application is not a fresh application, but one praying the Court to revive the suspended order and permit it to be pushed

Tuhobildarinee v. Syud Nazir Hossein, ... *183; Kalyanbhai Dipchand v. Ghanashamlal Jala-nathji, I. L. R. 5 Bom. 29; Basant Lal v. Batul Bibi, I. L. R. 6 All. 23; Baikanta Nath Mittra v. Aughore Nath Bose, I. L. R. 21 Calc. 357; Chandra Prodhan v. Gopi Mohun Saha, I. L. R. 11 Calc. 385,* and *Raghunath Sahay Singh v. Lalji Singh, I. L. R. 23 Calc. 397,* referred to THAKUR PRASAD *v.* ABDUL HASAN (1900)
I. L. R. 23 All. 13

135. ——— *Application in execution more than three years after previous application—Omission on part of judgment-debtor to set up bar by limitation—Adjudication on application—Subsequent application in execution—Objection on ground that previous application was barred—Res judicata.* A decree was obtained on 16th March, 1893, and a petition in execution was presented on 8th February, 1894. The next petition in execution was presented on 2nd July, 1897, when the judgment-debtor, though he had ... defence of limitation ... issue of ... and the ... years of ... execution ... application was made, when it was objected ... cation in 1897 had been presented more than three years from the previous application in 1894, it was barred, and that in consequence the present appli

LIMITATION ACT (XV of 1877)—*contd.*

Schedule II—*contd.*

——— Art. 179—*contd.*

4 STEP IN AID OF EXECUTION—*contd.*

(*d*) SUITS AND OTHER PROCEEDINGS BY DECREE-HOLDER—*contd*

cation must also be barred :—*Held*, that it was not

e the

arred

had

been

ordered in pursuance of it, which was an adjudication on the application; that order was acted on, and an appeal was preferred against it The question whether the application of 1897 was barred was therefore *res judicata* As the Court which had ordered the execution had jurisdiction to determine whether the decree was barred, and had made an order in execution of the decree, it must be considered to have determined that it was not barred *Mungal Pershad Dichit* v *Grija Kant Lahiri Chowdhry, L R 8 I. A 123,* followed LAKSHMANAN CHETTI *v.* KUTTAYAN CHETTI (1901)

I. L R 24 Mad 669

136. ——— *Decree directing execution of muchalka, and costs—Recovery of costs in execution—Application to enforce execution of*

being made as to costs. The Appellate Court affirmed the decree, and also awarded costs These

1894, 1895 and 1897. The last two applications had been for the recovery of costs incidental to

137. ——— *Transfer of Property Act (IV of 1882), ss. 88, 89—Decree for sale under s 88—No order absolute under s 89—Application by decree-holder for sale under Civil Procedure Code—Order as asked—No further applications in execution for more than three years—Then, application for order absolute, under s. 89—Bar by previous order.* A decree for sale of mortgaged property was passed on 30th August, 1895, under s. 88 of the Transfer of Property Act. No order absolute for

sale was asked for or made under s. 89 of the Trans-

that, as such an order had never been made, he

decree-holder to apply now for an order under

I. L. R. 24 Mad 669

138. ——— cl. (4)—*Application to take some step in aid of execution—Order for rateable distribution—Application to withdraw money to be found due upon such distribution—Ministerial order—Civil Procedure Code (Act XIV of 1882), s 295* Where, upon application made by a decree-holder, an order for rateable distribu-

Calc. 89; Fazal Imam v. *Metta Singh, I. L. R. 10 Calc 549, Ganga Pershad Bhowmik* v. *Debi Sundari Debea, I. L. R. 11 Calc. 227,* and *Ananda Mohan Roy* v. *Hara Sundari, I. L. R. 23 Calc. 196,* distinguished *Santoola Molla* v. *Raj Cumar Roy, I. L R. 27 Calc. 709,* referred to. BAIJ NATH PROSAD *v.* GHANSHYAM DASS (1904)

8 C. W. N. 382

LIMITATION ACT (XV OF 1877)—*contd.*

Schedule II—*contd.*

——— Art. 179—*contd.*

4. STEP IN AID OF EXECUTION—*contd.*

(*d*) SUITS AND OTHER PROCEEDINGS BY DECREE-HOLDER—*concld.*

139. ——— *Application for execution not accompanied by copy of decree sufficient to save bar—Step in aid of execution—Construction of statute.* An application for execution presented on behalf of a party entitled to present it, but not accompanied by a copy of the decree as required by the Civil Rules of Practice, is an application 'in accordance with law' within the meaning of Art. 179, Sch II of the Limitation Act, as the defect has reference only to an extran-

[illegible]

v. POOJALI SEENAN (1905) I L R 28 Mad 557

140. ——— "*Step in aid of execution*"—*A "batta memorandum" praying for* [illegible]

Limitation Act, although an order for the issue of such proclamation might have been made previously. *Maluk Chand* v. *Bechar Natha, I. L. R. 25 Bom. 639*, distinguished. *Ambica Persbad Singh* v. *Surdhari Lal, I. L. R. 10 Calc. 851*, followed. VIJIARAGHAVALU NAIDU *v* SRINIVASALU NAIDU (1905) . . . I. L R. 28 Mad. 399

(*e*) CONFIRMATION OF SALE.

141 ——— *Date from which* [illegible]

142 ——— *Proceeding to keep decree in force.* Where there is a sale in execution, the latest act of the decree-holder to keep his decree in force is the sale which took place at his instance, not the confirmation of the sale. MAHARAJAH OF BURDWAN *v.* LUCKHEE MONEE DEBEE . . . 8 W. R. 359

LIMITATION ACT (XV OF 1877)—*contd.*

Schedule II—*contd.*

——— Art. 179—*contd.*

4. STEP IN AID OF EXECUTION—*contd.*

(*e*) CONFIRMATION OF SALE—*contd.*

JUGGUT MOHINEE BIBEE *v.* RAM CHUND GHOSE 9 W. R. 100

SHIB RAM *v.* BANEE MADHAB MITTER 11 W. R. 117

143. ——— *Proceeding to* [illegible]

v. MULLICK ENAYET HOSSEIN ALI 12 B L R. 500 : 20 W. R. 31

GOBIND CHUNDER CHOWDHRY *v.* JOHURULNISSA BIBEE . . . . . 18 W. R. 156

144. ——— *Proceeding to keep decree in force. Quære:* Whether a mere con- [illegible]

alive. GUNGA BISHEN CHUND *v.* DHIRAJ MAHTAB CHAND BAHADUR 12 B L R 506, note : 10 W R 224

145. ——— *Proceeding to* [illegible] holder takes [illegible]

[illegible] WAHED ALI . . . .

146. ——— *Proceeding to* [illegible] sale in exe- [illegible]

such decree, or to keep the same in force, . . meaning of s. 20, Act XIV of 1859. DHIRAJ MAHTAB CHUND BAHADUR *v.* RAM BRAHMA MULLICK . 4 B. L R A. C. 15 : 13 W. R 38

147. ——— *Application to* [illegible] The mere act [illegible]

148. ——— *Proceeding to enforce decree—Application for copy of decree.* On the 19th of March 1880 a decree for money was passed, and on the 19th of February 1881 certain property belonging to the judgment-debtor was

LIMITATION ACT (XV OF 1877)—*contd.*

Schedule II—*contd.*

——— Art. 179—*contd.*

4. STEP IN AID OF EXECUTION—*contd*

(e) CONFIRMATION OF SALE—*concld*

sold in execution thereof. On the 22nd of April 1881 the Court passed an order confirming the sale On the 10th of January 1882 the decree-holder

The Court of first instance held that execution was not barred on the ground that the passing of the order of the 22nd of April 1881 was sufficient, under the provisions of Art 179, cl 4, of the Limitation Act of 1877, to keep the decree alive. The lower Appellate Court also held that execution was not barred by limitation, but solely on the ground that the application of the 10th of January 1882 was sufficient to keep the decree alive It did not appear that the order of the 19th of February 1881 was passed in consequence of any application by the decree-holder, and neither the ... 1882 nor any ... the present ... High Court, ... as barred by limitation. RAJKUMAR BANERJI *v.* RAJLAKHI DABI . . . I. L R 12 Calc 441

149 ——— *Step in aid of execution—Application by decree-holder purchaser for confirmation of sale, if—Civil Procedure Code (Act XIV of 1882), s 312* An application by a decree-holder, who has purchased a property in

(f) MISCELLANEOUS ACTS OF DECREE-HOLDER.

150. ——— *Step in aid of execution—Leave to bid at sale—Prayer for amount*

151. ——— *cl. (4)—Execution of decree—Limitation—Application to take some step in aid of execution—Payment of process fees.* ***Held,*** that the mere payment of process fees on an application for execution unaccompanied by any application asking the Court to take some specific action will not have the effect of giving a fresh starting-point for limitation within the meaning of Art 179 (4), of the second Schedule to the Limitation Act. *Thakur Ram* v. *Katwaru Ram, I. L. R. 22 All. 358*, followed *Vijiyaraghavalu Naidu* v. *Srinivasalu Naidu, I. L R. 28 Mad. 399*, distinguished. SHEO PRASAD *v.* INDAR BAHADUR SINGH (1908) . . I L. R. 30 All. 179

passed an order as prayed for, and the defendant ... step in aid ... accordance ... clause (4) ... ANNAMALAI MUDALIAR *v* RAMIER (1907)

I. L R 31 Mad 234

153. ——— *Precept to Collector under Beng. Reg. XLVIII of 1793, s 24, cl.*

S C. NAUNHEE KOONWAR *v.* KUSTOOREE KOONWAR . . . . 13 W. R. 141

154. ——— *Confiscation of decree—Correspondence relating to right of Government.* Where a decree had awarded a sum as costs to one who turned a rebel :—*Held*, that corre-

155. ——— *Application for certificate of administration.* The petitioners, as

LIMITATION ACT (XV OF 1877)—*contd.*

Schedule II—*contd.*

——— Art. 179—*contd.*

4. STEP IN AID OF EXECUTION—*contd.*

(*f*) MISCELLANEOUS ACTS OF DECREE-HOLDER—*contd.*

not be granted unless the petitioners obtained a certificate from the District Court under Act XXVII of 1860. In August 1864 an application was made *for a certificate to the Civil Court*, and an order was made refusing the application, and the order was affirmed on appeal. A second application was made for execution in July 1867 :—*Held*, that the right of the petitioners to obtain execution was barred by s 20, Act XIV of 1859. *Quære* Whether a suit on the decree could be maintained. LAKSHAMMA *v.* VENKATARAGAVA CHARIAR . 4 Mad. 89

156 ——— *Application in execution-proceedings to have witnesses summoned.* An application by a decree-holder in the course of an investigation into an objection to the attachment of property to have his witnesses summoned is an application within the meaning of cl. 4, Art 179, Sch II of the Limitation Act, 1877 ALI MUHAMMAD KHAN *v* GUR PRASAD . I. L R. 5 All 344

157. ——— *Application for*

ficate that a copy of a revenue register of the land is necessary to enable him to obtain such copy from the Collector's office, and thereupon to execute the decree by attaching the land, is a step in aid of execution within the meaning of cl. 4, Art. 179 of Sch. II of the Limitation Act, 1877 *Per* INNES, *J* —The right to execute decrees having been curtailed by s 230 of the Code of Civil Procedure, 1877, the provisions of the Limitation Act should be construed as far as possible so as to prevent the defeat of *bonâ fide* endeavours to secure the fruits of a decree once obtained. KUNHI *v.* SESHAGIRI

I L R. 5 Mad. 141

158. ——— *Notice not to pay amount decreed—Deduction of time decree is under*

much less in favour of other judgment-creditors of *B*, with whom *A* had nothing to do. AZMUDDIN *v* MATHURADAS GOVARDHANDAS GULABDAS

II Bom 206

159. ——— *Seal warrant—Application for, in the Presidency Small Cause Court —Whether such an application is an application in accordance with law for execution or to take steps in aid of execution.* An application, for a seal warrant, to the Calcutta Small Cause Court is an application

made in accordance with law for execution or to take steps in aid of execution of a decree JAGANNATH KHAN *v.* BROJONATH PAL (1901)

I. L. R. 29 Calc. 580

160. ——— *Application to postpone sale—Opposition to application of judgment-debtor.* An application by the decree holder to postpone a sale, not with a view to enable him to bring the property to sale more advantageously

followed. The decree-holder's opposition, to an application of the judgment-debtor to sell the properties in an order different from that to which they have already been directed to be sold, is not an application to take some step in aid of execution. *Dharunamma* v. *Subba, I. L. R. 7 Mad* 306, distinguished. TROYLOKYA NATH BOSE *v* JYOTI PROKASH NANDI (1903) I. L. R. 30 Calc. 761

161. ——— *Rateable distri-*

cution is in substance as well as in form a ... ial order. The application for withdrawal which ... made to

162. ——— *Application for leave to bid—Step in aid of execution—Res judicata* Whereupon an application for execution being made the judgment-debtor made an objection that the decree was barred by limitation, and on the

application by the decree-holder ... the sale is not a step taken in aid of execution within Art. 179 of Sch II of the Limitation Act. *Per* MOOKERJEE, *J.*—It cannot be rightly affirmed

LIMITATION ACT (XV OF 1877)—*contd.*

Schedule II—*contd*

——— Art. 179—*contd.*

4. STEP IN AID OF EXECUTION—*concld.*

(*f*) MISCELLANEOUS ACTS OF DECREE-HOLDER—*concld.*

as an inflexible rule of law that the granting of leave to a decree-holder to bid at the sale must in every case or may not in any case, amount to an aiding of the execution. When a decree-holder relies upon a previous application to the Court for leave to bid at the sale, as saving limitation, it is not sufficient for him to show that such application was made, but he must further show that the circumstances under which it was made were such that

163. ——— *Limitation—Execution of decree—Application not "in accordance with law"—Civil Procedure Code, s. 336—Insolvency* Where the judgment-debtor has applied for a declaration of insolvency and proceedings in insolvency are pending on his application, no

of Art. 179 (4) of the second Schedule to the Limitation Act, 1877 *Chatter* v *Nawal Singh, I. L R 12 All 64*, and *Munawar Husain* v *Jani Bijai Sankar, All Weekly Notes (1905) 132*, followed. *Held*, also, that the resistance of the decree-holder

I. L. R. 28 All. 361

5 NOTICE OF EXECUTION

1. ——— cl 5—*Issue of notice under s. 216, Civil Procedure Code, 1859.* The word "proceeding" in s. 20 of Act XIV of 1859, included any *bond fide* application, or the last act

v SHEO SAHAI SINGH. GURUDAS AKHULI *v*. GOBIN NAIK . . B L R. Sup Vol. 492
1 Ind Jur. N. S 421: 6 W. R Mis. 98

TABBUR SINGH *v*. MOTEE SINGH . 9 W. R. 443

RAJEEB LOCHUN SAHA CHOWDHRY *v* MASSEYK 18 W. R 193

MAHOMED BAKER KHAN *v*. SHAM DEY KOER 12 W. R. 2

LIMITATION ACT (XV OF 1877)—*contd.*

Schedule II—*contd.*

——— Art. 179—*contd.*

5 NOTICE OF EXECUTION—*contd.*

SUBHAN ALI *v* SUFDAR ALI . 24 W. R. 227

(*Contra*) TABBUR SINGH *v* MOTEE SINGH 8 W. R. 306

SHAM CHAND BYSACK *v* LUCAS 5 W. R. Mis. 5

GIRJANUND OOPADHYA *v* CHUNDER BINODE OOPADHYA . . . 5 W R. Mis. 5

KISTO KANT BURAL *v* NISTARINEE DEBIA 8 W. R. 268

MAZEDOONISSA BEEBEE *v* FUEZEN BEEBEE 4 W R Mis 6

2. ——— *Civil Procedure*

MAHTAB CHAND BAHADUR *v* LAKHI BIBI 6 B L R Ap. 146

BHUGOBUTTY *v* MOTEE CHAND PUTEEDUNDO 6 W R. Mis 97

OBHOY CHURN DUTT *v* MODHOO SOODUN CHOWDHRY . . . . . 19 W. R. 330

CHILICANY BASKARAYENINGARU *v*. PILEARY SETTY RAJAVULU NAIDU . . 5 Mad. 100

MAKOONDONATH BHADOORY *v* SHIB CHUNDER BHADOORY . . . . 19 W. R 102

3 ——— *Issue of notice under s 216, Civil Procedure Code, 1859* A notice issued within time under Act VIII of 1859, s 216, and actually served upon the judgment-debtor,

SHEO SAHOY SINGH *v* BIRJ BEHARY SINGH 23 W. R. 195

4. ——— *Issue of notice*

ROHINI NUNDUN MITTER *v* BHOGOBAN CHUNDER ROY 14 B. L R. 144 note: 22 W. R. 154

SHURUT CHUNDER SEN *v*. ABDOL KHYE MAHOMED MOHUTESSUR BILLAH . 23 W. R. 327

5. ——— *Issue of notice of execution—Execution partly had under Act XIV*

LIMITATION ACT (XV OF 1877)—*contd.*

Schedule II—*contd.*

——— Art. 179—*contd.*

5. NOTICE OF EXECUTION—*contd.*

of 1859. In an execution case, in which the notice was served before, but the application for execution was made after, the passing of the present law of limitation :—*Held*, that the period within which proceeding should be taken must be reckoned from the date of the notice, and not from the date of application. BEMUL DOSS *v.* IKBAL NARAIN
25 W. R. 249

RUGHOONATH DASS *v.* SHIROMONEE PAT MOHADEBEE . . . . . 24 W. R. 20

6. ——— *Issue of notice of execution.* When proceedings have been taken subsequent to an application to execute a decree and to the issue of notice, limitation does not run from the date of such subsequent proceedings, but from the date of the first application to execute the decree, or from the date of the notice, as the case may be NILMONEY SINGH DEO *v.* NILCOMUL TUPPADAR
22 W. R. 546

7. ——— *Notice to judgment-debtor of execution of decree—Civil Procedure Code, 1859, ss 212, 216.* On the 3rd March 1875,

whether by the arrest and imprisonment of the

against him. Under this application, notice was issued to the judgment-debtor on the 28th March 1875. On the 27th April 1875, the execution case was struck off the file on the ground that the decree-holder did not desire further proceedings to be taken :—*Held, per* PEARSON and OLDFIELD, *JJ.*,

judgment-debtor was issued. *Franks* v. *Nunek Mal, 7 N. W. 79,* impugned *Per* SPANKIE, J. (*contra*). BEHARI LAL *v.* SALIK RAM
I. L. R. 1 All. 676

8. ——— *Service of notice of execution.* Application for execution of a decree was made on the 10th November 1869, and on the 27th November 1869 notice issued under s. 216 of the Civil Procedure Code, 1859. Again, on the 4th February 1873, application was made for execution, and notice was issued on the 19th February

LIMITATION ACT (XV OF 1877)—*contd.*

Schedule II—*contd.*

——— Art. 179—*contd.*

5. NOTICE OF EXECUTION—*contd.*

the plaintiff's right to execution was barred, and

9. ——— *Service of notice of execution—Civil Procedure Code, 1859, s. 216.* On the presentation of the last of a series of applications made for the execution of a decree, the Court is competent to consider the question whether, on the date of making a prior application for execution, the decree sought to be enforced was barred by limitation, and that notwithstanding the fact that notice of such prior application had been served on the judgment-debtor under s. 216 of Act VIII of 1859. UNNODA PERSHAD ROY *v.* KOORPAN ALLY
I. L. R. 3 Calc. 518 : 1 C. L. R 408

10. ——— *Civil Procedure*

issued on a valid or an invalid application for execution. DHONKAL SINGH *v.* PHAKKAR SINGH
I. L R 15 All. 84

11. ———Where an application for notice to issue under s. 248 of the Civil

it kept the decree alive. *Behari* ... *v. Thakur, I. L. R. 1 All. 675,* and *Dhonkal* v. *Phakkar, I. L. R. 15 All 84,* referred to. GOPAL CHUNDER MANNA *v.* GOSAIN DAS KALAY I. L. R. 25 Calc. 594
2 C. W. N. 556

12. ——— "*Date of issuing notice,*" *meaning of the words—Execution of decree—*Art. 179, cl. 5, of the Limitation Act (XV of 1877)

LIMITATION ACT (XV OF 1877)—*contd.*

Schedule II—*contd.*

——— Art. 179—*contd.*

5. NOTICE OF EXECUTION—*concld.*

MUNABAI . . . [illegible]

13. ——— *Issue of notice.* The expression "the date of issuing a notice under the Code of Civil Procedure, s. 248," in Art.

14 ——— *Art 179, cl. (5)*—*Civil Procedure Code (Act XIV of 1882), s 248*—

from the date of the order directing the same: actual service of the notice is not necessary. DAMODAR SHALIGRAM *v* SONAJI (1903)
I. L. R. 27 Bom. 622

15. ——— *Date of "issue of notice" means date of actual issue of notice and not date of order directing issue.* The date of "issue of notice" from which time is to run under cl 5 of Art. 179 of Sch. II of the Limitation Act is not the date on which the issue of the notice is ordered by the Court but the date of the actual issue of the notice. *Govind* v. *Dada, I. L. R. 28 Bom. 416,* dissented from. CHERUVATH THALANGAL BAPU *v.* NERATH THALANGAL KANARAN (1906)
I L. R. 30 Mad. 30

6. ORDER FOR PAYMENT ON SPECIFIED DATE.

1. ——— cl. 6—*Civil Procedure Code, s. 230 (b)*—*Execution of decree*—*Annual payments*—"*Certain date.*" A decree which directs pay-

LIMITATION ACT (XV OF 1877)—*contd.*

Schedule II—*contd.*

——— Art. 179—*contd*

6 ORDER FOR PAYMENT ON SPECIFIED DATE—*contd.*

cation was barred by limitation. YUSUF KHAN *v.* SIRDAR KHAN . . . I. L. R. 7 Mad. 83

2. ——— *Decree for periodical payments.* If it can be gathered from a decree that payments are directed to be made on dates or at periods which are sufficiently indicated by the terms of the decree, the requirement of Limitation Act, Sch II, Art 779, cl. 6, are satisfied. KAVERI *v.* VENKAMMA . I. L. R. 14 Mad. 396

3. ——— *Execution of decree*—*Maintenance*—*Decree for payment of an annuity without specifying date of payment*—*Default in paying such annuity*—*Enforcement of payment by execution of decree*—*Computation of time* A Hindu widow obtained a decree, dated 7th September, 1865, directing that a sum of R36 should be paid to her every year on account of her mainten-

a periodically recurring right Though no precise date was specified in the decree for payment of the annuity, the judgment-debtors were liable to make the payment on the day year from its date, and thenceforward on the corresponding date year after year. The decree was, as to each year's annuity, to be regarded as speaking on the day upon which for that year it became operative, and separately for each year. The right to execute occurring on a particular day, limitation should be computed from that day should the judgment-debtor fail to obey the order of the Court *Sakharam Dikshit* v. *Ganesh Satha, I. L. R 3 Bom. 193,* followed *Subhanatha Dikshatar* v. *Subba Lakshmi Ammal, I L R 7 Mad. 80,* and *Yusaf Khan* v. *Sirdar Khan, I. L. R. 7 Mad. 83,* distinguished. LAKSHMIBAI BAPUJI OKA *v.* MADHAVRAY BAPUJI OKA . . I. L. R. 12 Bom. 65

4 ——— *Application for execution of maintenance decree.* On an applica-

LIMITATION ACT (XV OF 1877)—*contd.*

Schedule II—*contd.*

——— Art. 179—*contd.*

6. ORDER FOR PAYMENT ON SPECIFIED DATE—*contd.*

5. ——— *Decree for redemption—Decree not specifying result of non-payment of mortgage-debt within the time prescribed thereby for payment* Where a decree f…

competent to the decree-holder to execute such a decree at any time within the period of limitation prescribed by Art. 179, Sch. II of Act XV of 1877 BANDHU BHAGAT *v* MUHAMMAD TAQI

I. L. R. 14 All. 350

6. ——— *Decree for redemption—No time fixed in the decree for payment.* On the 27th June 1885 a consent decree …

assessment and enjoy the produce in lieu of interest. On the 27th June 1897 plaintiffs applied for execution of the decree, praying for possession alone on the ground that the …

See GAN SAVANT BAL SAVANT *v.* NARAYAN DHON SAVANT . . . I. L. R. 23 Bom. 467

MALOJI *v.* SAGAJI . I. L. R. 13 Bom. 567

and NARAYAN GOBIND *v.* ANANDRAM KOJIRAM I. L. R. 16 Bom. 480

7. ——— *Civil Procedure Code, 1882, s 210—Time granted to debtor—Decree not altered* On the 26th of June 1878 a judgment-debtor applied, under s 210 of the Code of Civil Procedure, for two years' time to pay the amount of the decree …

was not barred by limitation. TATA CHARLU *v.* KONADALA RAMACHANDRA REDDI

I. L. R 7 Mad. 152

8. ——— *Civil Procedure Code, Act XIV of 1882, s. 210—Petition of judgment-debtor amounting to fresh decree.* On the 23rd February 1878 an application was made for execution of a decree, dated the 3rd December 1877, in which the decree-holder stated that the judgment-debtor had agreed to pay the balance then due on the 13th August 1878 The application was then struck off on the 26th June 1878 On the …

… —*Held* that the … debtor, made on the 11th July 1881, alleging that he had come to an arrangement with the decree-holder for the payment of the amount due by instalments, having resulted in its being registered and the proceedings struck off, amounted to a direction that the decretal amount be paid by instalments as stipulated in the petitions, and that, this being so, there was a decree passed on that date under the provisions of the second paragraph of s. 210 of the Code of Civil Procedure, of which the decree-holder was entitled to have execution. JHOTI SAHU *v.* BHUGUN GIR

I. L. R. 11 Calc. 143

9. ——— *Application for execution of decree—Order on petition to pay by instalments—Civil Procedure Code, s 210.* An application, to execute a decree, dated 30th August 1880, was made on 25th May 1881. While the … debtor pr…

in the petition were endorsed on the decree … of the amlahs of the Court, but it did not appear when or by whose order this was done. In an application for execution in accordance with this arrangement made on 7th March 1885:—*Held*, that the order was not one recognizing or sanctioning the arrangement within the meaning of s. 210 of the Civil Procedure Code, inasmuch as the Court, at the time it made the order, had no power to make any order for instalments, any application for that purpose being then barred by

LIMITATION ACT (XV OF 1877)—*contd.*

Schedule II—*contd.*

—— Art. 179—*contd.*

6. ORDER FOR PAYMENT ON SPECIFIED DATE—*contd*

Art. 175 of Act XV of 1877. The application for execution was therefore barred under Art. 179 as not having been made within three years of 25th May 1881 *Jhoti Sahu* v. *Bhugun Gir, I. L R 11 Calc. 143,* dissented from ABDUL RAHMAN SODAGUR v. DULLARAM MARWARI

I. L. R. 14 Calc. 348

10. —— *Order for payment of decree by instalments.* The provision of s. 20, Act XIV of 1859, applied where there was a present right to execute the decree, and not to cases of an instalment made payable at a future date; in the latter case application might be made within three years from the date of each instalment becoming due, without being barred by limitation provided in the said section. ULTAF ALI KHAN v. RAM LALL . Agra F. B. 83: Ed 1874, 63

11 —— *Decree awarding payment by instalments* When a decree awards payment by instalments to be made at particular specified dates the date when each instalment becomes due is to be deemed the date of the decree in respect of that instalment for the purpose of calculating the time within which execution may be issued to enforce payment of it. UTTAMRAM MANIKRAM v. GIRDHARLAL MOTIRAM

6 Bom A. C. 45

RAM SUDOY GHOSE v. RAJBULLUBH SAHA

15 W. R 547

TINCOWRIE DOSSEE v. UMBICA CHURN ROY CHOWDHRY . . . . . 23 W R 41

SHEO JALUN v GUNESH . 2 Agra 237

PANAMCHAND VALAD SURAJMAL v BHIVRAJ VALAD DASHRAT . . 6 Bom A C. 38

12 —— *Execution of decree for maintenance payable by instalments.* Process of execution cannot always be issued for three years' arrears under a decree directing annual payment of money for a series of years The petitioner, who had obtained a decree for an annual sum for maintenance during her life, alleged satis- [illegible]

[illegible] which the second instalment or subsequent instalments became due. LAKSHMI AMMAL v. SASHADRY AIYANGAR . . . . 4 Mad. 275

See SINTHAYEE v. THANAKAPUDAYAN

4 Mad. 183

LIMITATION ACT (XV OF 1877)—*contd.*

Schedule II—*contd.*

—— Art. 179—*contd.*

6. ORDER FOR PAYMENT ON SPECIFIED DATE—*contd*

13 —— *Execution of decree payable by instalments* The decree provided that the amount should be paid in three instalments, and in default of payment of one instalment the decree holder was empowered to execute his decree for the whole amount When the instalment for December 1865 fell due, the judgment-debtor paid a portion and obtained an extension of time up to December 1866. On application on 21st September 1869 for execution of the decree for the instalments of 1866 and 1867.—*Held,* that the instalment for 1866 was not barred by lapse of time KRISHNA CHANDRA SHAHA v. OMED ALI . 6 B L R Ap 31

S C. KRISTO CHUNDER SHAHA v. OOMED ALI

14 W. R. 414

14. —— *Bond payable by instalments* Upon an application for execution being made, the judgment debtor executed in Court [illegible] ment, the whole of the bond might be realized by [illegible]

[illegible] of that month He did not pay the instalment of January and February 1865 at all, but subsequent [illegible]

[illegible] the time ran from January and February 1865. UPENDRA MOHAN TAGORE v TAKALIA BEPARI

2 B L R A C. 345

S C WOOPENDRO MOHUN TAGORE v. TAKALAIA BEPAREE . . . . . 11 W. R 570

15. —— *Decree payable by instalments—Limitation Act, 1871, Art. 75.* A decree payable by instalments, with a proviso that in default of payment of any one instalment the [illegible]

[illegible] The payment of instalments subsequent to default in payment of the first instalment at the date specified does not give the judgment-creditor a fresh

LIMITATION ACT (XV OF 1877)—*contd.*

Schedule II—*contd.*

——— Art. 179—*contd.*

6. ORDER FOR PAYMENT ON SPECIFIED DATE—*contd.*

starting point. DULSOOK RATTACHAND *v.* CHUGON NARRUN . . . I. L. R. 2 Bom. 356

See GUMNA DAMBERSHET *v.* BHIKU HARIBA I. L. R. 1 Bom. 125

16 ——— *Decree for money payable by instalments—Adjustment of decree—Civil Procedure Code, 1859, s. 206.* A decree for the payment of money by instalments directed that, if the judgment-debtor failed to pay two instalments in succession, the decree-holder should be entitled to enforce payment of the whole amount due under the decree. The decree-holder, alleging that a portion of the ninth instalments was payable, and that the whole of the tenth (the last) instalment was due, applied to enforce payment of the moneys due under the decree:—*Held, per* PEARSON, *J.*, that ... ithin ... and ... rence ... time. SPANKIE, *J.*, refused to interfere in second appeal inasmuch as the lower Appellate Court had found as a fact that there had been no such default in the payment of the former instalments as was contemplated by the decree. KANCHAN SINGH *v.* SHEO PRASAD . . . I. L. R. 2 All. 291

17. ——— *Decree payable by instalments—Default.* Where a decree was passed ...

... der cl. 6, Art. 167, Sch. II of the Limitation Act, 1871. *Held,* also, that the provision as to the whole amount becoming recoverable at once if default was made, did not affect the admissibility of the application for execution, because that provision had not been enforced, and the obligation to pay by instalments was still subsisting. KARAKAVALASA APPAYYA *v.* KARANAM PAPAYYA I. L. R. 3 Mad. 256

18 ——— *Decree for money payable by instalments—Execution of decree. Held,* in the case of a decree for money payable by instalments, with a proviso that in the event of default the decree should be executed for the whole amount, that the decree-holder was strictly bound by the terms of the decree, and not having applied for execution within three years from the date of the first default, the decree was barred. SHIB DAT *v.* KALKA PRASAD . . I. L. R. 2 All. 443

19 ——— and Art. 75—*Decree directing ...* L obtained ...

... long as she might live, an allowance of R15 per mensem, in three instalments of R60 each, the decree for possession should not be executed, but if default were made in payment of three such ...

... fit of the proviso A fresh default was made, and on the 23rd January 1880 *L* applied for possession of such estate:—*Held*, that the provisions of cl. 3, Art. 75, Sch. II of Act XV of 1877, were not applicable ... Schedule ...

... I. L. R. ... 83

20 ——— *Decree payable by instalments—Execution of whole decree—Payments out of Court—Act X of 1877 (Civil Procedure Code), s. 258.* A decree payable by instalments provided that, in default in payment of two instalments, the whole decree should be executed. The decree-holder applied for execution of the whole decree on the ground that default had been made in payment of the third and fourth instalments. The judgment-debtor objected that the application was barred by limitation, as he had made default ... of the first and second instal... ... om the date ... offered to ... n paid out ... o give such ... nt-debtor's ... such pay... ments had not been certified. ... *Chand Dutt v. Madan Mohan Ghose, 4 B. L. R. F. B. 1*, followed. SHAM LAL *v.* KANAHIA LAL I. L. R. 4 All. 316

21. ——— *Decree payable by instalments—Default—Waiver—Estoppel—Application for execution as provided for in case of default—Application to recover instalments.* A decree

LIMITATION ACT (XV OF 1877)—*contd*

Schedule II—*contd.*

—— Art. 179—*contd.*

6. ORDER FOR PAYMENT ON SPECIFIED DATE—*contd*

for the payment of money directed that an amount

received in full all the instalments which had fall-

amount payable thereunder in case of default in payment of the instalments of the smaller amount, the decree-holder was not competent after-

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had

previously sought execution, from the date of which limitation could be computed; and that consequently his application of the 8th September 1881 was barred by limitation *Per Curiam* That the decree-holder was not entitled to recover the balance of the instalment for September 1876, regard being had to the limitation prescribed by Art 179 (6), Sch II of the Limitation Act, 1877. RADHA PRASAD SINGH *v* BHAGWAN RAI

I. L R. 5 All 289

22 —— *Decree payable by instalments—Execution of whole decree—Construction of decree—Payments out of Court—Civil Procedure Code, s 258* A decree passed against

May 1877 (1284 Fasli), and the remaining nine instalments on Jaith Puranmashi of each succeeding Fasli year On the 1st September 1883 the decree-holders applied for execution of the decree, alleging that the first four instalments had been paid, but not any of the succeeding instalments, and they claimed to recover, under the terms of the decree, the fifth and all the remaining instalments in a lump sum. The judgment-debtors contended that the application was barred by limitation, as they had not paid a single instalment, and more than three years had elapsed from the date of the first default; and that, even if the first four in-

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B L. R. F. B. 130, followed ZAHUR KHAN *v.* BAKHTAWAR . . . I L R 7 All 327

23. —— *Decree payable by instalments—Waiver by decree-holder—Payment out of Court—Civil Procedure Code, s 258* An application for execution of a decree payable by instalments was resisted by the judgment-debtor

MITTHU LAL *v.* KHAIRATI LAL

I L R. 12 All 569

24 —— *Debt on decree payable by instalments—Failure to pay—Waiver of default.* The terms of compromise in a suit for

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tire

to

execute the full decree. The decree was dated the 12th June 1875, the first instalment was due in

LIMITATION ACT (XV OF 1877)—*contd.*

Schedule II—*contd.*

——— Art. 179—*contd.*

6 ORDER FOR PAYMENT ON SPECIFIED DATE—*contd.*

July 1875, and the last in October 1877. Default was made in payment of the first three instalments, but the decree-holder did not apply for execution

XV of 1877, began to run on the third default taking place, and that no subsequent payment could stop limitation once begun. ASMUTULLAH DALAL *v.* KALLY CHURN MITTER . I. L. R. 7 Calc 56

25. ——— *Decree payable by instalments.* On an application, dated 10th Aughran 1288, for execution of a decree which provided, on the basis of a kistbundi, that the amount decreed should be paid in four instalments annually, extending over the years 1284, 1285, 1286, 1287, and that, if there should be default in payment of any instalment and that instalment should remain unpaid for six months, the whole of the decree should at once become due, it was objected that the application was barred on the ground that, the instalments for 1284 not having been paid, the whole amount of decree had become payable within six months for the first default. The application was to recover the instalments due for 1285, 1286, and 1287:—*Held*, that the application was not barred, except as to the instalment of 1285, which fell due in Jaith, as it was optional with the decree-holder to realize the whole decree at once upon default being made, or to waive his right to do so and seek to realize instalments as they became due. *Ashmutullah Dalal v. Kally Churn Mitter, I. L. R. 7 Calc. 56*, followed. CHUNDER KOMAL DASS *v.* BISSASURREE DASSIA

13 C. L. R. 243

26 ——— *Decree payable by instalments—Option to execute—Waiver—Construction of decree.* Where a decree is made payable by instalments, and contains a provision that, on failure of any one instalment, the whole is to become due, the question whether the decree-holder may waive the benefit of the provision or must execute his decree within three years from the due date of the first instalment of which default is made in payment is a question purely of construction to be decided on the terms of the whole decree in [illegible] n of a [illegible] that [illegible] n the [illegible] have applied for execution within three years from the date of the first default in payment. JUDHISTIR PATRO *v.* NOBIN CHANDRA KHELA

I. L. R. 13 Calc. 73

27. ——— *Default in payment of instalments—Right of decree-holder to waive*

LIMITATION ACT (XV OF 1877)—*contd.*

Schdule II—*contd.*

——— Art. 179—*contd*

6. ORDER FOR PAYMENT ON SPECIFIED DATE—*contd*

[illegible] A decree

tedly paid the instalments due from him up to [illegible] and a portion of [illegible]

application for execution payments made subse- [illegible] by the decree-

were competent to waive it and claim [illegible] in respect of the instalments that fell due within three years before the date of their application for execution:—*Held*, that this was not the case made out in the Courts below; and further that the proviso could not be said to be waived, as there had been no acceptance of payment subsequent to the first default, nor a mere abstinence on the part of the decreee-holder from seeking the benefit of the proviso, but, on the contrary, there had been an affirmative act done by him showing that he did not waive the benefit of the proviso, but claimed to execute the entire decree. *Mon Mohun Roy v. Durga Churn Gooi*, *I. L. R. 15 Calc. 502*, referred to. BIR NARAIN PANDA *v.* DARPA NARAIN PRODHAN.

I. L. R. 20 Calc. 74

28. ——— *Decree payable* [illegible] *of first instalment* [illegible] *not certi-* [illegible] *VIII of* [illegible] A decree [illegible] provided [illegible] money at [illegible] plaintiff [illegible] ents and [illegible] stalment [illegible] th April [illegible] 30th of

LIMITATION ACT (XV OF 1877)—*contd.*

Schedule II—*contd*

——— Art. 179—*contd.*

6 ORDER FOR PAYMENT ON SPECIFIED DATE—*contd*

the months of Magh and Bysack in the three following years In an application made on 9th February 1892 for execution of the decree, the decree-holder stated that only the first instalment had been paid, and asked for execution for the amount remaining due under the decree, and the judgment-debtors denied having paid any of the instalments —*Held*, that the clause in the decree to the effect that on non-payment of an instalment by the specified date it should be in the power of the decree-holder to realize the full amount, was not intended to give him the option of waiving the default if he pleased, but that it implied nothing more than the usual condition that on non-payment of an instalment the whole decretal amount would become exigible, if therefore the first instalment had not been paid, the application for execution not having been made within three years from the date when the whole amount became due, was barred by Art 179 of Sch. II of the Limitation Act *Chandra Kamal Das* v *Bissessurree Dassia, 13 C. L. R 2 3,* dissented from; and the case was remanded for final decision of the question whether or not payment of the first instalment had been made *Chenibash Shaha* v. *Sridam Mandal, 1 L. R. 5 Calc. 97, Asmutullah Dalal* v. *Kally Churn Mitter, I. L R. 7 Calc 56, Nilmahdub Chuckerbutty* v. *Ramsodoy Ghose, I. L. R 9 Calc. 857, Judistir Patro* v *Nobin Chandra Khela, I L. R 13 Calc 73, Ram Culpo Bhattacharji* v *Ram Chunder Shome, I. L. R. 14 Calc 352, Mon Mohun Roy* v *Durga Churn Gooee, I. L R 15 Calc. 02, and Bir Narain Panda* v. *Darpanrain Prodhan, I L R 20 Calc. 74,* referred to. *Held,* further, that, although under the provisions of s 258 of the Civil Procedure Code the payment in question, if made, could

There is no material difference in this respect between s. 258 of the Civil Procedure Code (Act

29. ——————— *Decree payable by instalments with proviso as to execution of entire decree on default in payment of instalments—Con-*

the decree-holder no option on the happening of a

against him in respect of each instalment separately from the time when such instalment may become due SHANKAR PRASAD v. JALPA PRASAD

I. L. R. 16 All. 371

30. ——————— *Decree payable*

due —*Held,* that proof of a part-payment towards

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BABANDHU . . . I. L. R. 19 Mad. 162

31 ——————— *Transfer of Property Act (IV of 1882), s 90—Application for decree against non hypothecated property—Starting point of limitation* Where in a usufructuary mortgage it was covenated that if the mortgagee was not given possession he should have a right to obtain the sale of the mortgage property, the mortgage-debt meanwhile being payable on a certain specified date *Held*, that in respect of an application under s. 90 of Act IV of 1882, the mortgaged property having been sold under the abovementioned covenant and having proved insufficient to satisfy the debt, limitation began to run from the breach of the covenant to pay on due date, and not from the breach of the covenant to put the mortgagee in possession. SHEO CHARAN SINGH v. LALJI MAL . I. L. R. 18 All 371

32. ——————— *Instalments—*

LIMITATION ACT (XV OF 1877)—*contd.*

Schedule II—*contd.*

——— Art. 179—*contd.*

6. ORDER FOR PAYMENT ON SPECIFIED DATE—*concld.*

at which that immediately succeeding it became due. But he again failed to pay two consecutive instalments, *viz.*, those due in 1896 and 1897, and he paid nothing subsequently. In July, 1899, the plaintiff applied for execution of the decree, contending that his right to execution arose in 1897 under the terms of the decree. The lower Appeal Court held that the plaintiff's right to

parties had been remitted to the same position as they would have been in if no default had then occurred, and that on the subsequent default in 1897 the plaintiff's right to execution arose, and that consequently his application in 1899 was in time *Per* JENKINS, *C J.*—The true view appears to me to be that, though there may be a failure to pay punctually under an instalment decree, still the subsequent conduct of the parties may preclude ay- of is he ra- his

acts intentionally caused the other to believe that the payment was a regular satisfaction of the obligation, and the parties have acted on that belief neither can afterwards deny the regularity. It is a fundamental proposition of law that payment and acceptance of overdue instalments cannot by themselves prove a waiver. The point is one to be determined on the circumstances of each case *Dulsook* v. *Chugon*, *I. L R 2 Bom. 356*, and *Balaji* v. *Sakharam*, *I. L R. 17 Bom 555*, commented on. KASHIRAM *v.* PANDU (1902).

I. L. R. 27 Bom. 1

7. JOINT DECREES.

(*a*) JOINT DECREE-HOLDERS.

The following are the cases decided as to the proceedings in joint decrees under the Acts of 1859 and 1871 :—

NATH ROY CHOWDHRY . . 8 W. R. 100

LIMITATION ACT (XV OF 1877)—*contd.*

Schedule II—*contd.*

——— Art. 179—*contd.*

7. JOINT DECREES—*contd.*

(*a*) JOINT DECREE-HOLDERS—*contd.*

DHANESSUREE *v.* GOODHUR SAHOY 11 W. R. 421

BHOOBUNESSUREE DEBIA *v.* CHUNDER MONEE DEBIA . . . . . . 21 W. R. 243

HURUCK ROY *v.* ZUHOOREE MULL 22 W. R. 468

OUDH BEHARI LAL *v* BRAJAMOHAN LAL 4 B L. R Ap 41; 13 W. R. 128

JOHIROONISSA KHATOON *v.* AMEEROONISSA KHATOON . . . . 6 W. R. Mis. 59

INDURJEET KOONWAR *v* MAZAM ALI KHAN 6 W. R Mis 78

2. ——— *Arrangement by decree-holders amongst themselves.* In the case of a joint-decree, any arrangement made by the decree-holders amongst themselves as to their relative shares in the amount of the decree would not alter its character, and *bonâ fide* proceedings taken by one of the number to execute the decree would keep alive the rights of all the decree-holders. INDURJEET KUNWAR *v.* MAZAM ALI KHAN 6 W. R. Mis 78

BRIJO COOMAR MULLICK *v.* RAM BUKSH CHATTERJI . . . 1 W. R Mis 1

3. ——— *Application after death of some of decree-holders—Civil Procedure Code, 1859, s. 207.* A joint decree for damages was obtained by several plaintiffs in the Court of the Principal Sudder Ameen of Patna in 1854, and was kept alive by endeavours to execute it till 1861. On

Ameen was appointed on the ... and he reversed that order, and required from the present decree-holders a certificate of heirship, which they obtained on the 16th September 1865. On the 20th of the same month an order for execution was made by the Principal Sudder Ameen, but it was reversed by the Judge on appeal, on the ground that the order of the 26th May 1864 was not a proceeding within the meaning of s. 20 of Act XIV of 1859; and therefore the application for execution was too late:—*Held*, that execution might have been obtained under s. 207 of Act VIII of 1859 by the survivors of the original decree-holders for the benefit of all parties interested in it. The order of the lower Appellate Court was reversed. TEJA SINGH *v.* RAJNARAYAN SINGH . . 1 B. L. R. A. C. 62

LIMITATION ACT (XV OF 1877)—*contd.*

Schedule II—*contd.*

——— Art. 179—*contd.*

7. JOINT DECREES—*contd.*

(*a*) Joint Decree-holders—*contd.*

s.c. Teja Singh v. Pokhun Singh
10 W. R. 95

4. ——— *Separate taking out of execution—Civil Procedure Code, 1859, s. 207.* Three persons obtained a joint decree Two of [illegible]

the last proceedings taken jointly by all three :—*Held*, that under s 207, Act VIII of 1859, there was no severance of the decree, and therefore the proceedings taken by the two kept the decree alive. Azizunnissa Khatun v Shashi Bhushan Bose
2 B L R Ap 47: 11 W. R 343

5. ——— *Separate taking out of execution.* In a case in which a certain sum was adjudged to five persons as an entire sum to which all of them were jointly entitled, but one moiety to three of them and the other moiety to the remaining two :—*Held*, that the effect of the adjudication was the same as if two separate and distinct decrees had been pronounced, and that no action taken by the decree-holders to whom one moiety had been assigned could keep the decree alive for the benefit of the others. Chooa Sahoo v Tripoora Dutt . . 13 W. R. 244

6 ——— *Application by one decree-holder for execution* Where one of several joint decree-holders made, under Act VIII of 1859, s. 207, proper application for execution, the date on which the application was made was *held* to constitute a point of time from which would run the limitation of three years provided in Act IX of 1871, Sch. II, Art 167 Huruck Roy v Zuhooree Mul . . . . . . 22 W R 468

7. ——— *Application to execute part of decree.* An application to execute an aliquot part of a decree, though irregular and ineffectual for the purpose, must, if made *bonâ fide* under a misapprehension of the law, be regarded as a proceeding which keeps the decree alive Koylas Nath Ghose v. Nitya Shama Dassee
15 W. R. 449

Shib Chunder Dass v. Ram Chunder Poddar
16 W. R. 29

Pran Kishore Deb v. Kishore Chunder Chowdhry . . . . . 16 W. R. 267

Doya Moyee Dabee v. Nilmonee Chuckerbutty . . . . . . 25 W. R. 70

8. ——— *Application for partial execution of joint decree—Costs.* An application for the partial execution of a joint decree by one of the decree-holders is not an application according to law, and consequently has not the effect of keeping the decree in force. Where a decree of the Sudder Court awarded costs in the lower Court to certain defendants separately, and to eight sets of defendants collectively, and costs in the Sudder [illegible]

awarded to his set of defendants, a subsequent application by him and the other defendants for execution of the decree was *held* to be barred by limitation Ram Autar v. Ajudhia Singh
I. L. R. 1 All. 231

9. ——— *Application by one of two joint decree-holders for part execution of* [illegible]

one of two persons, in whose favour a decree for money had been passed jointly, applied on the 27th April 1880 for execution of a moiety of such decree, and the other of such persons made a similar application on the 30th April 1880, that such applica- [illegible]

of Shahjahanpur v. Surjan Singh
I. L. R. 4 All. 72

10. ——— *Application by two of three joint decree-holders for part execution of joint decree—Acquiescence by judgment-debtor in part execution* A decree for money was passed in [illegible]

LIMITATION ACT (XV OF 1877)—*contd.*

Schedule II—*contd.*

——— Art. 179—*contd.*

7. JOINT DECREES—*contd.*

(a) JOINT DECREE-HOLDERS—*contd.*

11. ——— *Application for partial execution of joint decree.* Although the

decree-holders for execution of the decree in respect of so much of the relief granted to all as he considers appertains to him individually may keep in force the decree as being an application according to law. PONAMPILATH PARAPRAVAN KUTHATH HAJI *v.* PONAMPILATH PARAPRAVAN BAVOTTI HAJI I. L. R. 3 Mad. 79

12. ——— *Application for partition under decree—Decree for partition.* A consent decree for partition made between three parties contained a provision that, if the plaintiffs should not have the property partitioned within two months from the date thereof, any one of the other parties to the suit might obtain partition by executing the decree. One of the parties sued out execution and obtained partition and possession of his own share More than three years after the date of

1877, Sch II, Art 179, expl. 1. MOHUN CHUNDER KURMOKAR *v.* MOHESH CHUNDER KURMOKAR I. L. R. 9 Calc. 568

13. ——— *Decree for partition, application for execution of—Co-sharers.* A

or the other were taken on behalf of both, limitation did not apply. KHOORSHED HOSSEN *v* NUBBEE FATIMA I. L. R. 3 Calc 551 : 2 C. L. R. 187

14. ——— *Application for*

tion of a decree on behalf of all the judgment-creditors was presented in Court by a mooktear. The mooktear had himself appended to such application the names of all of them but one who had

application on behalf of all the judgment creditors sufficient to prevent the operation of the Law of Limitation. AUTOO MISREE *v* BIDHOOMOOKHEE DABEE . . . . I. L. R. 4 Calc. 605

15. ——— and ss. 7, 8—*Civil Procedure Code, 1882, ss. 231, 258—Disability of—Minority—Execution of decree.* A member of an undivided Hindu family and his two minor brothers (who sued by him as their next friend) brought a suit for partition of family property against their father, and joined as defendants certain persons who were in possession of part of the property

entitled under the decree:—*Held*, that the

applicable to the case, the by limitation under Art. 179 of the Limitation Act. RAJAGOPALA *v.* SESHAN *v.* RAJAGOPALA. I. L. R. 13 Mad. 236

16. ——— Civil Procedure

mentioned decree; and reliance to save the bar of limitation

was barred by limitation I. L. R. 13 Mad. 517 PILLAI . . .

This decision was set aside on review, and it was *held* on the facts as then presented to the Court that the decree was not a joint decree, and that no question therefore arose as to the effect of expl. I to Art. 179 of the Limitation Act. RAMASAMI *v.* ANDA PILLAI . I. L. R. 14 Mad. 252

LIMITATION ACT (XV OF 1877)—*contd.*

Schedule II—*contd*

——— Art. 179—*contd*

7 JOINT DECREES—*contd*

(*b*) JOINT JUDGMENT-DEBTORS.

17. ——— *Decree declaring separate liability—Proceeding to keep decree alive* Where a decree was passed against several defendants, each of whom is declared to have a separate liability in respect of a definite amount, execution against one or more of such judgment-debtors keeps the decree in force against all simultaneously MOHESH CHUNDER CHOWDHRY *v* MOHUN LALL SIRCAR . . . . . 8 W R 80

18. ——— *Proceeding against some only of judgment-debtors* A proceeding against certain of a number of joint judgment-debtors, in which, in the presence of certain of them, some are released from execution and some declared liable, is a proceeding within the meaning of s 20, Act XIV of 1859. MOHESH CHUNDER BISWAS *v.* TARAMONEE DASSEE . . 9 W. R. 240

19. ——— *Proceedings against some only of judgment debtors.* The law makes no distinction between the different defendants liable under a decree; the decree is kept [illegible]

[illegible] put into force in execution against the different defendants as if there were separate decrees STEPHENSON *v* UNNODA DOSSEE . 6 W. R Mis. 18

20. ——— *Death of judgment-debtor—Execution—Execution against one of several representatives of a sole debtor—Death of such representative—Subsequent application for execution against other representatives—Practice* An application for execution against one of the representatives of a sole judgment-debtor saves limitation against another representative Accordingly, where the plaintiff, on the death of his sole [illegible]

I. L. R. 12 Bom. 48

21. ——— *Application for execution of decree against legal representatives of deceased judgment-debtor.* An application for execution of a decree against one of the several legal representatives of the deceased judgment-debtor takes effect, for the purposes of limitation, against them all RAMANUJ SEWAK SINGH *v* HINGU LAL I L R 3 All. 157

22. ——— *Decree against two persons specifying period for which each was liable—Execution against one* Where a decree was given for arrears of rent against two persons, and one of them was afterwards declared on appeal to be liable for the rents for a certain period only, and execution was taken out against him only :—*Held*, that the decree must be taken as a separate decree against each defendant for the portion for which each was declared to be liable, and consequently that [illegible]

KHEMA DEBEA *v.* KAMOLAKANT BUKSHI 10 B L. R. 259 note: 10 W. R. 10

23 ——— *Surety—Sepa-* [illegible]

[illegible] execution should have been taken against him from the date when his liability commenced, and that the decree should have been kept alive as against him by proceedings irrespective of those taken against the judgment-debtors. HURKOO SINGH *v.* RAM KISHEN . . . 6 W. R Mis 44

24. ——— *Application for execution against a surety when a step in aid of execution against a principal—Mode of enforcing* [illegible]

LIMITATION ACT (XV OF 1877)—*contd.*

Schedule II—*contd.*

——— Art. 179—*contd.*

7. JOINT DECREES—*contd.*

(*b*) JOINT JUDGMENT-DEBTORS—*contd.*

claimed also interest (R1,635-10-0) and costs (R550-15-4). *D* objected to pay interest or costs, and the High Court held that, as surety, he was

1877) and prevented limitation:—*Held*, that his application was barred by limitation. The application for execution against the surety would not operate to keep alive the order as against the principal debtor unless it was made to enforce a liability which was common to both under the order. But under the order the surety was not liable for interest or costs. His liability was expressly con-

he was not liable under the order could not be regarded as a step in aid of execution against the principal debtor *V*. The mode of enforcing payment against a surety is by summary process in execution, and not by separate suit. KUSAJI RAMJI *v.* VINAYAK RAMCHANDA PANSHU

I. L. R. 23 Bom. 478

25. ——— *Application for execution of decree against some of the joint judgment-debtors, out of time—Realization of a portion of the decretal amount by such execution, effect of,*

accordance with law. A decree was obtained against four persons on the 13th August 1890. An application for execution was made against all of them on the 7th October 1893. A subsequent application was made against two of them on the

person who was not a party to the said proceeding, objection was taken by the latter that the applica-

LIMITATION ACT (XV OF 1877)—*contd.*

Schedule II—*contd.*

——— Art. 179—*contd.*

7. JOINT DECREES—*concld.*

(*b*) JOINT JUDGMENT-DEBTORS—*concld.*

had not the effect of keeping the decree alive. HARENDRA LAL ROY CHOWDHRY *v.* SHAM LAL SEN

I. L. R. 27 Calc. 310

26. ——— *Application for execution against some defendants jointly liable under decree takes effect against all persons jointly liable.* Where a decree awards mesne profits against *A* and

I. L. R. 30 Mad. 203

27. ——— *Sch. II, Art. 179, Expl. I, para. 2—Decree—Jointly passed—Application for execution against surety—Civil Procedure Code (Act XIV of 1882), s. 253—A decree cannot be treated as "jointly passed" as against the judgment-debtor and his surety.* Before the passing of the original suit *N* became liable

since the decree cannot be treated as pa... as against the judgment-debtor and the surety, as against the judgment-debtor and the surety, paragraph ... the meaning of Art. 179, Expl I, paragraph ... Act (XV ... Art. 179 ... le to the ... e decree ... person which is "passed jointly" against ... than one; and do not mean a decree where a joint liability may be deduced by combining the surety bond and the provisions of s. 253 of the Civil Procedure Code, with the decree in dispute. NARAYAN *v.* TIMMAYA (1906) . . I. L. R. 31 Bom. 50

8. MEANING OF "PROPER COURT."

1. ——— Expl. II (1871, Art. 167)—*"Court," meaning of—Application to execute decree.* The term "Court" in Act IX of 1871, Sch. II, Art. 167, means the Court whose business it is, either by transfer or otherwise, to execute the decree. PROKASH CHUNDER LAHORY *v.* POORNO CHUNDER ROY . . . 21 W. R. 410

LIMITATION ACT (XV OF 1877)—*contd.*

Schedule II—*contd.*

——— Art. 179—*concld.*

8 MEANING OF "PROPER COURT"—*concld*

2 ——— "*Court*"—*Con.*

——— Art. 180 (1871, Art. 169; 1859, s. 19)—

1. ——— *Decree of Sudder Court, Calcutta.* The twelve years' limitation was held not to apply to a decree of the late Sudder Court, which was not a Court established by Royal Charter. THAKOOR DOSS GOSSAIN *v.* KASHEE NATH MUNDUL . . . . . 12 W R 73

HURO PERSHAD ROY CHOWDHRY *v* MANICK LUSHKUR . . . . 12 W R 343

2. ——— *Judgment of Judges of Supreme Court sitting as Small Cause Court*

were governed by s. 19. COULTHRUP *v* SMITH 1 Mad. 204

3. ——— *Decrees of High Court.* It was formerly held that the execution of decrees of the High Court was governed as to limitation by s 19, and not s. 20 or 22, of Act XIV of 1859. MAHATAB CHAND *v.* TARUCKNATH MOOKERJEE 6 W. R Mis. 94

ISHAN CHUNDER CHOWDHRY *v.* JUGODISHUREE 8 W. R 267

BAPURAV KRISHNA *v.* MADHARVRAV RAMRAV 5 Bom. A. C. 214

Later rulings, however, are to the contrary—*see infra.*

4. ——— *Decree of Privy Council*

5. ——— *Execution of decree of Privy Council—Court established or not established by Royal Charter—Act XXV of 1852, s. 1.* Per PEACOCK, C J., TREVOR and L. S

LIMITATION ACT (XV OF 1877)—*contd.*

Schedule II—*contd.*

——— Art. 180—*contd.*

XIV of 1859. Therefore that Act does not apply to such decrees S. 1 of Act XXV of 1852 only

6. ——— *Alteration of decree on appeal—Decree of lower Court altered by High Court* Where a decree of lower Court is

under s 19 of Act XIV of 1859 CHOWDHRY WAHID ALI *v.* MULLICK INAYET ALI 6 B. L. R. 52: 14 W. R 288

7 ——— *Execution of decree of High Court on appeal from mofussil.* A decree of the High Court on appeal from the mofussil must be executed within three years under s. 20, Act XIV of 1859 Such decree is not a decree of a Court established by Royal Charter within the meaning of s 19 RAMCHARAN BYSAK *v* LAKHIKANT BANNIK 7 B L R. F. B 704: 16 W. R. F. B. 1

See ARUNACHELLA THUDAYAN *v.* VELUDAYAN 5 Mad. 215

8. ——— *Execution of decree of High Court on appeal from mofussil—Portion of decree relating to costs.* The portion of a decree of the High Court on appeal from the mofussil which relates to costs comes within s. 19, Act XIV of 1859. TAFUZZAL HOSSEIN KHAN *v.* BAHADUR SINGH . 7 B L R 706 note: 11 W. R. 205

9. ——— *Embodiment in final decree of portion affirmed.* Where the High

from, except that it was suggested that in all cases it may be expedient expressly to embody in a decree of affirmance so much of the decree below as it intended of affirm, and thus avoid the necessity of a reference to the superseded decree. *Quære:* Can

17 W. R. 292: 14 Moo.

LIMITATION ACT (XV OF 1877)—*contd.*

Schedule II—*contd.*

——— Art. 180—*contd.*

s c. in lower Court, KISHEN KINKER GHOSE *v* BURODA KANT ROY . . 8 W. R. 470

JOY NARAIN GIREE *v.* GOLUCK CHUNDER MYTEE 22 W. R. 102

10. ——— *Execution of an order of Privy Council—Order in Council confirming a decree.* Although an order of Her Majesty in Council may confirm a decree of the Court below, that order is the paramount decision in the suit;

LUCHMUN PERSHAD SINGH *v* KISHUN PERSHAD SINGH . I. L. R. 8 Calc. 218: 10 C. L. R. 425

BHOOBOONA ALUMBABI KOER *v.* JOBRAJ SINGH 11 C. L. R. 277

11 ——— *Application for execution of decree—Revivor—Order for execution after notice—Writ of scire facias.* The plaintiff obtained a decree in 1864. The first application for execution was made in September 1869 under s 216 of the Civil Procedure Code (Act VIII of 1859); and after notice to the defendant as provided there-

effect of reviving the decree within the meaning of Art. 180, Sch. II, Act XV of 1877, and therefore the decree is not barred by the law of limitation. An order for execution under the Code made after notice to show cause has, on the Original Side of the Court, the same effect as an award of execution in pursuance of a writ of *scire facias* had under the procedure of the Supreme Court,—*i e.*, it creates a revivor of the decree ASHOOTOSH DUTT *v.* DOORGA CHURN CHATTERJEE

I. L. R. 6 Calc. 504: 8 C L. R. 23

12. ——— *Application for execution of decree—Decree of High Court—Civil*

made by the High Court was on the 4th February 1879. In April 1879 the decree was transmitted

In April 1881 the defendant was in Bombay, and *M,*

LIMITATION ACT (XV OF 1877)—*contd*

Schedule II—*contd*

——— Art. 180—*contd*

PREMBHAI *v.* TRIBHUVANDAS JAGJIVANDAS I. L. R. 6 Bom 258

GANAPATHI *v* BALASUNDARA I. L. R. 7 Mad. 540

13 ——— *Execution of*

execution. On the 28th October ... the ground that

March 1888 ... the 28th September 1888, the ... been made on the 28th September 1888, ... application was made on the 19th November 1890, when the judgment-debtor filed an objection on the ground that the decree of which execution was ... limitation:—*Held,* ... enforced was ... within the ... a Act. *Luchmun* ... *Sing, I L. R.* ... *Pitts v La*

8 Calc. 218 ... *Fontaine, L. R. 6 App Cas.* 482, approved. Art. 180 is independent of s. 230 of the Code of Civil Procedure. S. 230 has no application to decrees made by the High Court in the exercise of its

LIMITATION ACT (XV OF 1877)—*contd.*

Schedule II—*contd.*

——— Art. 180—*contd.*

original civil jurisdiction In Art 180, Orders in [illegible]

Following the interpretation of revivor in *Aushootosh Dutt* v *Doorga Charan Chatterjee, I L R. 6 Calc. 504* [illegible]

decree from being barred by Art 180 *Held*, also, that the objection of the judgment-debtor was *res judicata* The same contention was raised in the [illegible]

14. ——— *Application for execution of decree—Transfer of decree for execution—Revivor—Civil Procedure Code, 1882, ss 223, 230, and 248—Insolvent, adverse possession of—Attachment* A obtained a decree against B on the original side of the High Court on the 19th December 1881 On the 11th December 1893 the judgment-creditor applied to the Court under s 223 of the Code of Civil Procedure for "transmission of a [illegible]

24-Pergunnahs The application was headed as an application for execution, and was in a tabular form. Upon this a notice was issued under s 248 (*a*) of the Code, and the judgment-debtor not having shown any cause on the 19th December 1893, a certified copy was ordered to be issued. The certified copy of the decree having been transmitted, the judgment-creditor, on the 1st March 1894, applied for the [illegible]

meaning of Art 180, Sch II of the Limitation Act. There was no necessity for the issue of a notice under s 248 upon the application to transfer the decree under s. 223 of the Code, and on that application execution could not have been obtained upon the order of the 19th

LIMITATION ACT (XV OF 1877)—*contd.*

Schedule II—*contd.*

——— Art. 180—*contd*

December 1893 The first application for execution was that made on the 1st March 1894 to the Court to which the certified copy of the decree was transmitted, and that was not within time. The execution of the decree was therefore barred by limitation *Nilmoney Singh Deo* v. *Biressur Banerjee, I L R 16 Calc. 744,* followed. *Ashootosh Dutt* v. *Doorga Churn Chatterjee, I. L R. 6 Calc. 504,* distinguished SUJA HOSSEIN *alias* REHAMUT DOWLAH *v* MONOHUR DAS

I. L. R. 22 Calc. 921

A review having been granted of this decision the appeal was re-heard, and on the objections of the judgment-debtor that the execution was barred by limitation, and that he having been declared an insolvent, and the properties having vested in the Official Assignee, the attachment was contrary to law:—*Held* (O'KINEALY and HILL, *JJ.*) that the execution was not barred by limitation, as the order of the 19th December 1893 was an order for execution, and operated as a revivor of the decree within the meaning of Art. 180, Sch. II, of the Limitation Act *Held*, also, that the judgment-debtor having been in possession of the property for more than twelve years, the Official Assignee not having taken possession of it, he had a title by adverse possession which was capable of being attached. *Ashootosh Dutt* v. *Durga Churn Chatterjee, I L. R 6 Calc. 504; Futteh Narain Choudhry* v *Chandrabati Chowdhrain, I L R 30 Calc 551,* followed. SUJA HOSSEIN *alias* REHAMUT DOWLAH *v.* MONOHUR DAS . . . I. L. R. 24 Calc. 244

15. ——— *Judgment entered up under s 86 of the Indian Insolvency Act (Stat. 11* [illegible]

R66,40,648 In 1886 it was ascertained by the Official Assignee that certain property belonging to the insolvent's estate was available for the creditors of the estate, and on his application an order for execution against the said property was made on the 5th April 1886 by the Insolvency Court under s 86 of the Insolvency Act It was contended that execution was barred by limitation:—*Held*, that execution on the judgment was not barred. *Per* SARGENT, *C.J*—The policy of the Indian Insolvency Act is that the [illegible]

LIMITATION ACT (XV OF 1877)—*contd.*

Schedule II—*contd.*

——— *Art. 180—contd.*

the Insolvency Act, although a judgment of the

policy of the Insolvency Acts was to make the insolvent perpetually responsible. In England, however, by Stat. 32 & 33 Vict., c. 83, bankruptcy was substituted for insolvency, and all pending cases of insolvency were ordered to be closed within prescribed periods In construing that statute it has been declared that after the given time the

otherwise than as a judgment of the Supreme Court, and, as such, it ranked as a judgment of
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judgments and decrees of the High Court. The principle of perpetual liability to execution can no longer be deemed a principle The English law has discarded it; the Indian law has made all judgments subject to limitation and amongst

Held (on appeal to the Privy Council) that Limitation Act (XV of 1877), Sch. II, Art 180,

LIMITATION ACT (XV OF 1877)—*contd.*

Schedule II—*contd.*

——— *Art. 180—contd.*

by way of special or extraordinary action, but in the exercise of its ordinary original civil jurisdiction. The latter expression in the Charter of 28th December 1865, being opposed to the "extraordinary"

reference to judgments of High Courts exercising

I. L. R. 16 Bom. 520
L. R. 16 I. A. 158

16. ——— *Limitation—Expiration of period for presenting execution petition*

after the period of limitation had
that no valid application for execution had been made before the expiration of the period of limitation, and that the application was barred. The decree-holder referred to above died after the hearing of the appeal in the lower Appellate Court, but before that Court delivered judgment —*Held*, that the judgment should be read as from the date when the Court reserved judgment, and that

101

17. ——— *Revivor—Execution of decree—Notice—Civil Procedure Code (Act XIV of 1882), ss. 232, 248.* Where a notice was issued, under ss. 232 and 248 of the Civil Procedure Code, for the execution of a decree, and further proceedings were dropped until after the period

LIMITATION ACT (XV OF 1877)—*concld.*

Schedule II—*concld*

———— Art. 180—*concld.*

allowed by limitation computed from the date of such decree —*Held*, that, there being no order made by the Court, such notice alone did not operate as a revivor of the decree, within the meaning of Art. 180, Sch II, of the Limitation Act. *Ashootosh Dutt* v. *Durga Churn Chatterjee, I. L. R. 6 Calc. 504*, and *Suja Hossein* v *Monohar Das, I. L R 24 Calc 244*, discussed. MONOHAR DAS v. FUTTEH CHAND (1903)

I. L. R 30 Calc. 979: s.c. 7 C. W. N. 793

18. ———— *Execution of decree—Limitation—Decree of Chartered High Court—Revivor.* A decree was passed by the High Court at Calcutta in 1887. On the 1st of June 1892 an application for the transmission of the decree to the district of Aligarh was made to the High Court. Upon that application a notice under s 248 of the Code of Civil Procedure was issued, and on the 6th of August 1892 the following order was passed thereon :—" Let execution issue as prayed, no cause being shown " *Held* no objection taken,

LIMITATION ACT (IX OF 1908).

———— ss. 1, 31—

———— *S. 31 applies to appeal pending before High Court on remand by*

reversed by the Privy Council and the case

within the latter part of section 1 of the Act and that the plaintiff was entitled to the benefit of s. 31 of the Act SRINIVASA PILLAI v VASUDEVA MUDALIAR (1908) . . I. L. R. 32 Mad 312

———— s. 20—

———— *Appropriation by creditor of payment towards interest—Interest not paid as such—Money paid found by Court to be paid as interest* Under the terms of a mortgage bond executed in 1884 any payments made thereunder

LIMITATION ACT (IX OF 1908)—*concld.*

———— s. 20—*concld.*

was to be applied first in payment of interest and next in payment of principal. The debtor paid several sums from time to time from 1887 to 1899. A suit for sale was instituted in 1902 and decreed. The mortgaged property being insufficient to discharge the mortgage an application was filed by the decree-holder for a decree under s. 90 of the

ments were made on account of interest as such and that the application for a decree under s. 90, Act IV of 1882, was not barred by limitation. *Hanmantmal* v *Rambabai, I. L. R 3 Bom 198*, *Narronji* v. *Mugnirum, I. L R. 6 Bom 103*, and *Surju Prasad* v. *Khuahish Ali, I. L. R. 4 All. 512*, distinguished GOPINATH SINGH v HARDEO SINGH (1909) . . . . I. L R. 31 All 285

LIQUIDATED DAMAGES.

See DAMAGES—MEASURE AND ASSESSMENT OF DAMAGES—BREACH OF CONTRACT.

See INTEREST—STIPULATIONS AMOUNTING OR NOT TO PENALTIES OR OTHERWISE.

LIQUIDATION.

See PRACTICE . I. L. R 30 Bom. 173

LIQUIDATORS.

See COMPANY—*WINDING UP—DUTIES AND POWERS OF LIQUIDATORS.*

See COMPANY—WINDING UP—GENERAL CASES . . I. L. R. 15 Mad. 97

———— Official Liquidator, assignment of lease by—

See LANDLORD AND TENANT—LIABILITY FOR RENT . I L. R. 14 All. 176

———— suit by—

See COMPANY—ARTICLES OF ASSOCIATION AND LIABILITY OF SHAREHOLDERS.

I. L. R. 17 Bom. 469; 472

See PLAINT—FORM AND CONTENTS OF PLAINT—PLAINTIFFS

I. L R. 17 All. 292

I. L. R. 18 All. 198

———— *Indian Companies Act (VI of 1882), ss 177, 185, 189, 191—Order refusing supervision order under s 191 appealable under s. 169—Liquidator, duties of—Where liquidators, appointed under s. 185, misbehave, supervision*

LIQUIDATORS—*concld.*

Court is bound to grant a supervision order on the application of such creditor. KESAVALOO NAIDU *v.* MURUGAPPA MUDALI (1906)
I. L. R. 30 Mad. 22

LIQUOR, SUPPLY OF.

See CANTONMENTS ACT.
I. L. R. 31 Bom. 523

LIS PENDENS.

See FOREIGN COURT, JUDGMENT OF.
I. L. R 19 Mad. 257

See HINDU LAW—WIDOW.
I. L. R 30 All. 95

See INSOLVENCY—CLAIMS OF ATTACHING CREDITORS AND OFFICIAL ASSIGNEE.
I L R. 25 Mad. 406

See MAHOMEDAN LAW—DEBTS
I. L. R. 4 Calc. 402

See MORTGAGE . . **9 C. W. N. 728**

See PARTIES—PARTIES TO SUITS—PURCHASERS . . . **7 W R 225**
11 Bom. 64

See PRE-EMPTION **I. L. R. 30 All. 467**

See SALE . . . **9 C. W. N. 225**

See TRANSFER OF PROPERTY ACT (IV OF 1882), s. 52.

See TRANSFER OF PROPERTY ACT (IV OF 1882), ss. 52, 86 AND 87.
I L R 29 All 76
I. L. R. 31 Calc. 858

See TRANSFER OF PROPERTY ACT, 1882, s. 88 . . . **13 C. W N 1138**

KASSIM SHAW *v.* UNNODAPERSHAD CHATTERJEE
1 Hyde 160

2. ——— The doctrine of *lis pendens* is in force in British India. LAKSHMANDAS SARUPCHAND *v.* DASRAT
I. L. R. 6 Bom. 168

GULABCHAND MANICKCHAND *v.* DHANDI VALAD BHAU . . . . **11 Bom. 64**

3. ——— *Principle of doctrine—Registered and unregistered conveyances.* The doctrine of *lis pendens* rests, as stated by TURNER, L.J., in *Bellamy* v. *Sabine, 1 DeG. & J. 566*, not upon the principle of constructive notice, but upon the fact that it would be plainly impossible that

LIS PENDENS—*contd.*

registered as of an unregistered conveyance. LAKSHMANDAS SARUPCHAND *v* DASRAT
I. L R. 6 Bom 168

4. ——— *English law, ap-*

one of three executors acting as managers; her husband, the deceased executor, being legatee of one-sixth. The alienations were made pending a suit by *the same plaintiff in the Supreme Court* to administer the entire estate, and to expose defalcations and frauds of the managers and executors also, after an injunction issued in that suit prohibiting alienation; and the alienations were set aside by the Court *Quære:* Whether the English doctrine of *lis pendens* is applicable in the mofussil *Ex parte* NILMADHUB MUNDUL 2 Ind Jur N.S 169

5. ——— The doctrine of *lis pendens* applies only to alienations which are inconsistent with the rights which may be established by the decree in the suit. MUNISAMI *v.* DAKSHANAMURTHI . . . . **I. L. R. 5 Mad 371**

6. ——— *Assignment of mortgages—Suit for possession* *N* being mortgagee in possession of five-eighths of a pangu (share) of certain land—Security for a debt of R400 hypothecated his rights to *M* in 1876. In 1878 *K* bought

pleaded that he had a valid mortgage ... *J.*, that if eighths:—*Held*, by MUTTUSAMI AYYAR, *J*, that if the assignment of the mortgage by *N* to *M* was a real transaction, this plea was good *Per* MUTTUSAMI AYYAR, *J.*—The doctrine of *lis pendens* can only be relied on as a protection of the plaintiff's right to property actually sought to be recovered in the suit. BRAHANNAYAKI *v.* KRISHNA
I. L R. 9 Mad 92

7. ——— The effect of a *lis pendens* in India considered. KRISHNAPPA VALAD MAHADAPPA *v.* BAHIRU YADAVRAV
8 Bom A. C 55

SAM *v.* APPUNDI IBRAHIM SAIB . **6 Mad. 75**

8 ——— *Possession of property obtained pending suit.* Possession of property obtained from a defendant while a suit is pending against him in respect of that property must be taken to be the possession of the defendant himself for the purposes of the suit. RAM KISHEN *v.* DOOLEE CHAND . . . **23 W. R 547**

9. ——— *Maxim, "Pendente lite nihil innovetur."* The rule "*Pendente lite*

LIS PENDENS—*contd*

nihil innovetur" is in force in British India. Where the owner of a house, during the pendency of

grantee or vendee of the defendant, becoming such during the pendency of the suit, need not be made a party to the suit, inasmuch as the above-mentioned rule does not rest upon the equitable doctrine as to notice, it is a matter of indifference whether or not, at the time of his becoming grantee or vendee, he had actual notice of the existence of the suit. GULABCHAND MANICKCHAND *v* DHONDI VALAD BHAU . . . 11 Bom 64

10. ———— *Possession under a subsequent mortgage created during the pendency of a suit by a prior mortgagee.* A sale or mort-

mortgage as to which the litigation is pending, or of the litigation itself *Kasim Shaw* v *Unodapershad Chatterjee, 1 Hyde 160*, and *Manua' Fruval* v *Sanagapalli Latchmidevamma, 7 Mad 104*, followed BALAJI GANESH *v* KHUSALJI 11 Bom 24

11 ———— *Sale pendente lite —Right of purchaser—Mortgage* On the 31st August 1863 *A* mortgaged his house to *B*, who

money-decree against *A* —*Held*, that, even if there

12. ———— *Sale in execution of decree—Purchaser, right of.* The purchase of

chaser was not a party. ANANDAMAYI DASI *v* DHARENDRA CHANDRA MOOKERJEE 8 B. L R 122 ; 14 Moo I A 181 16 W. R. P. C 19

LIS PENDENS—*contd*

Affirming the decision of the High Court in ANNUND MOYEE DOSSEE *v.* DHURUNDPO CHUNDER MOOKERJEE . . . . 1 W R 103

13. ———— *Suit for partition—Right of purchaser.* Three brothers, *L M B*, *P K B*, and *G D B*, being jointly entitled in equal shares to an undivided one-third share in certain

1864 a decree was made in the suit, declaring the brothers entitled to a one-third share of the property, and ordering a partition and the taking of accounts, and reserving the question of costs. *R N* was not made a party to this suit On 6th September 1864 the brothers covenanted to mortgage certain property to the plaintiff, including that previously mortgaged to *R N*. On 8th and 9th December the agreement was performed by conveyances, in which *R N* joined, and which recited that he had been paid off; and on 28th November 1866 and 27th March 1867 the three brothers conveyed their equities of redemption to the plaintiff On 15th June 1868 an order was made in the partition suit for the sale of a sufficient portion of the property to pay the costs of the

pendens did not apply, and the plaintiff was entitled to recover possession. KAILAS CHANDRA GHOSE *v* FULCHAND JAHURRI . . 8 B L R 474

14. ———— *Suit for account against executor—Sale by Sheriff in execution of decree—Right of purchaser at Sheriff's sale against purchaser at sale by mortgagee.* In 1855 a decree for an account was passed, in the Supreme Court at Calcutta, against *A*, an executor. *A* died in

which the decree of 1855 and the subsequent order of 1866 were passed, was not such as to warrant

LIS PENDENS—*contd.*

the application of the doctrine of *lis pendens* to the mortgage of the 11th of January 1855. *Kailas*

15. ——————— *Purchase pendente lite—Right of purchaser against mortgagee of property.* Plaintiff purchased at a sale on the District Munsif's Court of Guntur, held on the 22nd of December 1868, the interest of one *F G* in a cotton screw at Guntur. Previous to this, on the

plaintiff objected to the sale and was referred to a regular suit. Accordingly he brought the present suit to set aside the decree in No 16 of 1867 as regards the share of *F G* in the screw at Guntur, to cancel the attachment and sale to second defendant and for possession of the share. First defendant pleaded that plaintiff at the date of his purchase had notice of the pending of the suit No 16 of 1867 and of the mortgage claim The plaintiff denied the fact of the mortgage and its regularity, and issues were framed, the 1st of which was—"whether plaintiff knew that the suit No 16 of 1867 was under hearing when he bought the one-third share, and that there might be declared a hypothecation to the late husband of the first defendant in this suit"

Held, that, as the purchase made by the plaintiff

or had not notice, nor could he in any way question that decree. MANUAL FRUVAL *v.* SANAGAPALLI LATCHMIDEVAMMA . . . . 7 Mad. 104

16. ——————— *Notice—Right of purchaser pendente lite as against person whose lien has been declared in suit to which the purchaser was no party—Notice* Suit to recover possession of a mutah from which plaintiff had been ejected by an order of Court, passed in execution of the decree in a suit to which he was no party. Plaintiff claimed under a deed of sale from *A* (a purchaser from *C* and *D*), dated 11th November 1860, and alleged that he purchased for valuable consideration and without notice of any other claim. Defendant asserted that plaintiff purchased fraudulently with notice of her late husband's right of purchase. It appeared that defendant's husband had sued *C* and *D* and others to enforce a lien upon the mutah, and obtained a judgment of the Privy Coun-

got a decree in his favour, because the Principal Sudder Ameen had said in the original case that *C* and *D* had agreed to sell the mutah. The present plaintiff was turned out of possession under this decree, to the proceedings in which he had in vain

misuse of the Court's process. of *lis pendens* considered. SAM *v.* APPUNDI IBRAHIM SAIB . . . . . . 6 Mad. 75

17. ——————— *Purchase pendente lite—Right of suit.* *T*, having obtained a decree against the heirs of *H*, attached certain

property sold. *P* appealed to the —*Held*, that

BEGUM . . . . . .

18. ——————— *Purchaser under execution sale* In a suit for rent by the auction-purchaser of property which had been sold in execution of a money-decree, the defendant admitted being in possession, but denied the alleged relationship of landlord and tenant, contending that the property had been purchased by himself at a sale in execution of a decree which he had obtained upon a mortgage-bond, *i.e.*, a money-bond with a clause creating a charge upon the property. The suit on this mortgage was commenced after the attachment upon which the property was sold to the plaintiff

LIS PENDENS—*contd.*

but was pending when the plaintiff purchased:—*Held*, that the mortgagors were bound by the proceedings in the suit including the attachment and sale, and the defendant had a good title against the plaintiff in the same manner as against the mortgagors whose interest the plaintiff purchased, even if the certificate of sale was not registered. A purchaser under an execution is bound by *lis pendens*, for it would be impossible that any action or suit could be brought to a successful termination if alienating *pendente lite* were permitted to prevail. RAJ KISHEN MOOKERJEE *v.* RADHA MADHUB HOLDAR . . . . . 21 W. R. 349

19. ———— *Patni lease granted pendente lite.* A patni lease of lands granted by a Hindu widow in possession upheld though made pending an equity suit brought by her against her husband's executors. BISSONATH CHUNDER *v.* RADHA KRISTO MUNDUL

11 W. R. 554

20 ———— *Purchase of property on which there is a decree in suit on a mortgage-bond—Suit for possession against purchaser from mortgagor.* The plaintiff in 1877 obtained a decree on a mortgage-bond, in execution of which property belonging to his debtor was put up for sale and purchased by the plaintiff on 5th May 1878. The defendants had, in execution of a subsequent

[illegible]

21. ———— *Sale in execution of decree—Auction-purchaser—Res judicata.* *A*, the auction-purchaser of certain immoveable property at a sale in execution of a decree, purchased with notice that a suit by *H* and *M* against the judgment-debtor and the decree-holder for a share in such

[illegible]

Whether the doctrine of *lis pendens* applies in the case of a purchase in execution of decree. ALI SHAH *v.* HUSAIN BAKHSH . I. L. R. 1 All. 588

LIS PENDENS—*contd.*

It was *held* it does not. NUFFUR MERDHA *v.* RAM LALL ADHICARY . . . 15 W. R. 308

22 ———— *Sale in execution of decree—Purchaser, rights of—Decree by mortgagee—Incumbrance.* Where a creditor ob-

[illegible]

debtor. LALA KALI PROSAD *v.* BULI SINGH I. L. R. 4 Calc. 789 : 3 C. L. R. 396

23. ———— *Applicability of the doctrine to a Court sale in execution of a decree—Code of Civil Procedure, 1859, ss 240, 270, 271—Effect of a decree obtained by an attaching creditor in a suit against successful intervenors or claimants.* In 1872 the plaintiff obtained a money-decree against two brothers, *Q* and *K*. In execution of that decree, he attached their one-half share in certain fields in 1874. The attachment was

[illegible]

I. L. R. 10 Bom. 400

24. ———— *Presentation in Court of award—Assignment pending such pro-*

LIS PENDENS—*contd.*

ceedings. *P* and his partners mortgaged certain immoveable property to plaintiff on the 11th October 1869. They had then no title to the property,

matter was referred to arbitrators, who, on the 20th

on the 14th February 1874, the property was attached in execution of a money-decree obtained by a creditor of *P* and his partners against them. On

specific performance of the contract of mortgage,

DHANDAS *v.* BAJU . . I L R. 4 Bom. 34

25. ———— *Mortgage by executors—Suit on mortgage—Administration suit—Writ of fi-fa—Sheriff's sale—Sale in execution of decree* In a suit by the representatives of *P D* against his brother *A D*, and after *A D*'s death against his executors, it was found that there was

Court, in execution of which certain property belonging to the estate of *A D* was sold to the defendants on the 18th of July 1867 Previously, however, on the 12th of October 1866, the executors had mortgaged the same property to the plaintiff, who brought a suit on his mortgage on the 10th of June 1867. On the 28th of August 1867 the present defendants were made parties to that suit, and in their written statement they alleged that they had been improperly made parties, and claimed a title superior to that of the plaintiff. That suit was dis-

26. ———— *Sale in execution of decree—Prior attachment.* On the 29th June

LIS PENDENS—*contd.*

1876 the plaintiff obtained a money-decree by consent against *R*, the father-in-law of the defendant. On the 24th of July 1876 the plaintiff attached a house apparently belonging to *R* On the 12th October 1876 the defendant sued *R* for maintenance and alleged that the house in question was the property of her deceased husband and *R*, and she

eject the defendant during her lifetime PARVATI *v* KISANSING . . I. L. R. 6 Bom. 567

27. ———— *Sale pending appeal—Decree reversed—Right of judgment-debtor*

See LATI KOER *v* SOBADRA KOER I L R 3 Calc 724

28. ———— *Perpetual lease—Cultivation of waste land* A decree-holder. who has obtained possession of land in suit pending an appeal, cannot grant a perpetual lease thereof which will be binding on his opponent in the event of the decree being reversed. GAJAPATI RADHIKA PATTA MAHADEVI GURU *v* GAJAPATI RADHAMANI MAHADEVI GURU . . I L R. 7 Mad. 98

29. ———— *Former decree for partition—No return to commission—Mortgage of share—Purchase by a stranger of portion of the lands included in the decree—Suit by him for partition—Res judicata* *A* and *B* were the joint owners in equal shares of certain property. In 1869 *B* mortgaged his share to *A* under a mortgage-deed

LIS PENDENS—*contd*

the partition asked for under the suit of 1881 could not be granted KIRTY CHUNDER MITTER *v* ANATH NATH DEY

I L R 10 Calc 97 : 13 C. L R 249

30 ———— *Mortgage executed during pendency of maintenance suit in which decree is made charging property mortgaged—Transfer of Property Act (IV of 1882), s 52* Where a member of a Hindu family, during the pendency of a suit for maintenance which resulted in a decree charging the house in suit, together with other property with the maintenance claimed, mortgaged the house in suit to the plaintiff —*Held*, that he was entitled so to do, and that the validity of the mortgage was not affected by the doctrine of *lis pendens*. MANIKA GRAMANI *v* ELLAPPA CHETTI

I L R 19 Mad 271

31. ———— *Purchaser at sale in execution of decree—Attachment of property sold ante litem* Where the defendant in an ejectment action had bought the village in question at a sale in execution of a decree obtained by the mort-

fendant bought *pendente lite*, and was bound by the decree so obtained That result could not be

32. ———— *Decree on mortgage—Sale of mortgaged land pending proceedings in execution of decree* On the 22nd August 1882, *Y* and *K* mortgaged certain land to the plaintiff by

LIS PENDENS—*contd*

to the defendant's mortgage of *Y*'s share to the defendant in 1884, but free from the effect of the subsequent sale by *Y* and *K* to the defendant. (iii) As this was a suit for possession, and as *Y*'s share had been mortgaged to the defendant with possession, the plaintiff was only entitled to joint possession of the property with the defendant. He could file a separate suit to redeem defendant SHIVJIRAM SAHEBRAM MARWADI *v.* WAMAN NARAYAN JOSHI . . I L R 22 Bom. 939

33 ———— *Purchase by puisne mortgagee at sale in execution of decree of property with several mortgages on it—Purchases before and during mortgagee's suit and after decree therein how affected by it.* The plaintiff in this suit had succeeded to four, out of five, mortgages subsequent to his own, which had been executed before a decree obtained by a mortgagee. This decree had been purchased by the first defendant, who also bought the property at the execution-sale. The plaintiff had also succeeded to several mortgages executed pending the suit in which the decree was made:—*Held*, that a distinction must be made in respect of whether the mortgages so transferred to the plaintiff had been executed before or after the bringing of the above suit. As regards the mortgages executed before it, the plaintiff, not having been a party to that suit, was entitled to redeem the first defendant, who was purchaser of the decree. As regards the mortgages executed after that suit was brought, the plaintiff was bound by the decree, and his interest in the mortgages, transferred *pendente lite*, passed to the purchaser. On the other hand, persons who have taken transfers of property subject to a mortgage cannot be bound by proceedings in subsequent suit between the prior mortgagee and the mortgagor, to which they have not been made parties UMES CHUNDER SIRCAR *v.* ZABUR FATIMA

I. L R 18 Calc. 164
L R 17 I. A. 201

34. ———— *Suit resulting in proceedings unexpected from its nature and the relief sought—Possibility of appeal—Compromise of suit—Boná fide purchaser without notice—Estoppel.* The plaintiffs in execution of decree

LIS PENDENS—*contd.*

simply that "the case be struck off." The decree not being satisfied, the plaintiffs took out execution, and the properties were put up for sale and purchased by the plaintiffs on 27th November 1882. Subsequently in execution of the decree *R* held against *A*, the properties were again put up for sale and purchased by *R* on 14th November 1884. In a suit against *R* and *A* for declaration of the plaintiff's title and for possession of the properties:—*Held*, that the order of the Court and the compromise in the claim suit were not such proceedings as from nature of the suit and the relief prayed *R* could have expected would result, and that he was therefore not bound by them as a purchaser *pendente lite*. *Kailash Chandra Ghose* v. *Ful Chand Johari*, *8 B. L. R. 474*, and *Kasseemunnissa Bibee* v. *Nilratna Bose*, *I. L. R. 8 Calc. 79*, referred to. *Semble*, Neither the possibility of an appeal nor the consent decree were proceedings by which *R* as a purchaser *pendente lite* would be bound. *Held*, also, that under the circumstances *R* had a good title as *bonâ fide* mortgagee and auction-purchaser without notice, and that the plaintiffs were estopped from questioning that title. *Poresh Nath Mukherji* v. *Anath Nath Deb*, *I. L. R. 9 Calc 265*, followed. KISHORY MOHUN ROY *v.* MAHOMED MUJAFFAR HOSSEIN . . . **I. L. R. 18 Calc. 188**

35. ——— *Auction-purchaser bound by lis pendens.* *K* brought a suit against *P* to recover possession of certain land. Whilst that suit was pending in the Court of first instance, the right, title, and interest of *P* in the land were sold in execution of a decree against him at the instance of a judgment-creditor and purchased by *G*. Subsequent to *G*'s purchase, *K*'s suit was dismissed by the Court of first instance; but *K* appealed, and the Appellate Court reversed the decree of the Court below and gave judgment in *K*'s favour. *G*, who was not made a party to the appeal, thereupon instituted a suit against *K* to eject him and obtain possession of the land:—*Held*, that the doctrine of *lis pendens* applied, and that *G* was not entitled to maintain the suit. *Held*, further, that it made no difference to the application of the doctrine that the decree of the Court of first instance was in favour of *G*'s predecessor in title, for that [illegible] the [illegible] ely a [illegible] purchase was made whilst that suit was pending. *G* was still bound by the decree of the Appellate Court. *Anundo Moyee Dosee* v. *Dhonendro Chunder Mookerjee*, *14 Moo. I. A. 101*: *8 B. L. R. 129*: *16 W. R. P C 19*, distinguished. GOBIND CHUNDER ROY *v.* GURU CHURN KURMOKAR

I. L. R. 15 Calc. 94

36. ——— *"Contentious suit"*—*Transfer of Property Act (IV of 1882), s. 52.* *A*, on the 9th September 1883, sold certain immoveable property to *S* for R98-12 by means of a conveyance which was not registered. On the 29th September 1883 *S* instituted a suit against *A* on

LIS PENDENS—*contd.*

that conveyance to obtain possession of the property. On the 5th October 1883, when that suit was pending, but before the summons was served on *A*, *A*, by a duly registered conveyance, sold the same property to *R* for R198-8. In the suit filed by *S*, *A* filed a written statement, but did not [illegible]

[illegible]

decree was subsequently appealed against and reversed by the Appellate Court:—*Held*, that the doctrine of *lis pendens* applied, as the plaintiffs purchased during the active prosecution of a suit within the meaning of s. 52 of the Transfer of Property Act, although no appeal was actually pending at the time when the purchase was made. *Kasee*- [illegible] *8 Calc. 79*, [illegible] *Churn* [illegible] *Indur*- [illegible] *Chundee* *jeet Koer* v. *Pootee Begum*, *19* [illegible] *20 W.* [illegible] *Koomar Lahooree* v. *Gopee Kristo Gossamee*, [illegible] *Mahomed Mujaffar* [illegible]

[illegible] 4 C. [illegible]

38. ——— *Transfer of Property Act, 1882, s. 52—Transfer pendente lite—Time at which a suit becomes "contentious."* *Held*, that a suit becomes a "contentious suit" within [illegible] of the Transfer of Property [illegible] ons is served [illegible] *mitra* v. *Sib* [illegible] *boy* v. *Anna*- *malai*, *I. L. R. 12 Mad.* [illegible] PARSOTAM SARAN *v.* SANEHI LAL . **I. L. R. 21 All. 409**

39. ——— *Transfer made pending partition suit in which there was a dispute as to shares—Transfer of Property Act (IV of 1882), s. 52.* After the institution of a partition by a

LIS PENDENS—*contd*

member of a joint Hindu family consisting of six

both the transferor and transferee had notice of the partition suit on a question having been raised as to what share of the property the transferee was entitled to:—*Held*, that, inasmuch as both the transferor and transferee had notice of the partition suit at the time of the transfer, and as there was a dispute about the shares, s 52 of the Transfer of Property Act applied to the case. JOGENDRA CHUNDER GHOSE *v* FULKUMARI DASSI I. L R. 27 Calc 77

JOGENDRA CHUNDER GHOSE *v* GANENDRA NATH SIRCAR . . . . . 4 C. W. N 254

40. ———————— *Mortgage—Purchase, without notice, of land declared liable for mortgage-debt by a decree* In 1864 *A* mortgaged

of the land in the plaint mentioned" No steps were taken by the plaintiff to execute this decree for seven years. On the 18th August 1876 *A* sold to the defendant, by a registered deed of sale, a

remained to be executed. There was, moreover, in th

had

durin

and

TESH

41. ———————— *Transfer of Property Act (IV of 1882), s 52—When a suit becomes contentious—Priority of registered mortgage.* As

LIS PENDENS—*contd.*

suit against the mortgagors on an unregistered mortgage of the same land: he obtained a decree and attached the mortgage property:—*Held*, that the registered mortgagee was entitled to priority, and his mortgage was not affected by the rule of *lis pendens*. ABBOY *v.* ANNAMALAI I. L. R. 12 Mad. 180

42. ———————— *Transfer of Property Act (IV of 1882), s. 52—Partition, suit for—Decree by consent* Pending a suit for partition of land, etc, two of the parties to the suit sold part of the land in question to a stranger who was not brought on to the record. After the execution of the sale deed, the parties to the suit entered into a compromise, and a decree was passed by consent accordingly In a suit by the purchaser for possession of the land sold to him:—*Held*, that the purchaser was not bound by the decree passed by consent. VYTHINADAYYAN *v.* SUBRAMANYA I. L. R 12 Mad 439

43. ———————— *Transfer of Property Act, s 52—Lease granted during partition suit.* S 52 of the Transfer of Property Act does not ap-

44. ———————— *Transfer of Property Act, s 52—Mortgage.* Of the three owners

I. L R. 14 Mad. 491

45. ———————— *Transfer of Pro-*

LIS PENDENS—*contd.*

obtained a decree in his favour; but during the pendency of that litigation property B had been transferred to *Y*.—*Held*, that *Y* must take the property subject to *X*'s right to contribution from it in respect of the loss of his share in property A. BALDEO SAHAI *v.* BAIJ NATH

I. L. R. 13 All. 371

46. ———— *Transfer of Property Act (IV of 1882), s. 52—Lease of property in respect of which a decree for sale has been made under s 88.* *Held*, that a lease of property made by a judgment-debtor against whom a decree for sale had been made under s. 88 of the Transfer of Property Act for sale of that property came within the purview of s. 52 of the Transfer of Property Act. THAKUR PRASAD *v.* GAYA SAHU

I L. R. 20 All 349

47. ———— *Involuntary alienation—Execution-proceedings under mortgage-decree—Revenue Sale Law (Act XI of 1859), ss 13, 54—Sale for arrears of Government revenue.* A decree was obtained for the sale of a mortgaged property, being a share of an estate, on the 31st August 1889. In execution of that decree, the property was purchased by the plaintiffs on the 11th December 1891, and the sale was confirmed on the 5th March 1892. Meanwhile, pending the execution-proceedings, a larger share of the estate, including the share mortgaged, was purchased by the defendants at a revenue sale on the 30th September 1891, which sale was confirmed on the 11th March 1892. In a suit instituted by the plaintiffs for the possession of the property purchased by them, the defendants having questioned the validity of the mortgage decree and contended that they were not bound by it, not being parties thereto, and having in the alternative claimed the right

48. ———— *Execution of decree —Sale in execution pending an appeal in a suit under s. 283 of the Code of Civil Procedure—Title of auction-purchaser subject to the result of the appeal.* *J* brought a suit, under s 283 of the Code of Civil Procedure, for a declaration that certain property was the property of the plaintiff, and not liable to be sold in execution of a decree against a third person. Her suit was dismissed by the Court of first instance She thereupon appealed; but, while her appeal was pending, the decree-holder caused the property, the subject of the suit, to be sold, and it was purchased by *S P*, who subsequently transferred a portion of it to *J L*. On appeal *J*'s claim was decreed, and her title to the property established Some considerable time after the passing of the decree in appeal *J* brought a suit against *J L* and *S P* for recovery of the property purchased, as above mentioned, by *S P* at auction sale:—*Held*, that the doctrine of *lis*

LIS PENDENS—*contd.*

[illegible]

v. JAMNA (1900) [illegible]

49. ———— *Transfer of Property Act (IV of 1882), ss. 88, 89—Decree for sale—Decree assigned before the passing of an order absolute—Appeal—Assignee not made a party to appeal until after expiry of limitation—Civil Procedure Code, s. 372.* A decree under s. 88 of the Transfer of Property Act, 1882, being only a decree *nisi* and not a final decree, the suit in which such a decree is passed does not terminate until an order absolute is made under s. 89. Where, therefore, such a decree is assigned before any order absolute is made, the assignee takes subject to all the liabilities resulting from the application of the doctrine of *lis pendens*. Such an assignee, for example, may properly be made a party, under s 372 of the Code of Civil Procedure, to an appeal from the decree preferred against his assignors, and it is not [illegible]

50. ———— *Court-sale—Auction-purchaser—Applicability of the rule of lis pendens to a purchaser at an execution sale.* The rule of *lis pendens* applies to purchasers at execution sales. BYRAMJI JAMSETJI *v.* CHUNILAL LILCHAND (1902) . . **I. L. R 27 Bom. 266**

51. ———— "*Contentious suit*"—*Transfer of Property Act (IV of 1882), s. 52—Limitation—Mortgage—Surplus sale-proceeds—Limitation Act (XV of 1877), Sch. II, Art. 132.* [illegible]

no question as to [illegible] not ap- [illegible]

[illegible] debt out of the sale-proceeds of the [illegible] property sold by the Collector for arrears of Government revenue is governed by Art. 132, Sch. II of the Limitation Act, and not by Art. 120. *Kamala*

LIS PENDENS—*contd*

Kant Sen v. *Abdul Barkat, I L. R 27 Calc 180,* referred to UPENDRA CHANDRA SINGH v. MOHRI LAL MARWARI (1904) . I L R 31 Calc 745

52. ——— *Mortgage decree —Execution proceedings—Purchase at a Court sale under another decree—Pendency of the execution proceedings* On the 6th February 1883, *R* obtained a decree on a mortgage against *B* While exe

sion of the property on the same day. *S* subsequently sold the property to the defendants, who

defendants relied took place during the pendency of the proceedings in execution of the mortgage-decree, it was affected by *lis pendens* and was there-

53. ——— *Decree on mortgage against minors—Sale in execution—Reversal of decree in appeal—Attachment in execution of a money decree—Title of the purchaser in execution of the decree on the mortgage—Stay of execution. Held,* that the doctrine of *lis pendens* does not defeat a purchaser under a decree or order for sale when the *lis pendens* is the very suit in which that decree or order is passed The doctrine rests on the principle

Wigram v *Buckley, 3 Ch 433,* referred to SHIVLAL BHAGVAN v SHAMBHUPRASAD (1905)
I. L R 29 Bom 435

54. ——— *Purchase from heir during administration suit—Rival mortgagees —Priority of title—Purchaser from Receiver in administration suit—Purchaser at sales in execution of mortgage decree—Transfer to benamidar, pendente lite—Transfer of Property Act (IV of 1882), ss 52,*

of administration, have been satisfied. As between the appellant and respondent, who were rival mortgagees of the property of a Muhammadan family, the Judicial Committee, reversing the decision of the High Court, upheld the title of the appellant, who represented a purchaser at sales by the Receiver of the High Court in a suit for administration of the estate of one of the mortgagors, as entitled to priority over that of the respondent, who claimed through a purchaser in execution of the mortgage decree at sales, which took place pending the administration suit, in one case after the order for sale by the Court and in another after the actual sale by the Receiver in that suit The shares of all the heirs to the mortgagor's estate were, pending the suit for administration, purchased at private sales by the appellant in the name of, and were transferred to, a

could not rely on the sales effected in such circum-

entire equity of redemption, and that the respondent, therefore, had not made out any title to redeem the appellant's mortgage, notwithstanding the subsequent sales in his mortgage suit under which he claimed. CHATTERPUT SINGH v MOHARAJ BAHADUR (1905) . I. L. R 32 Calc 108
s c 9 C. W N. 225
L. R. 32 I. A. 1

55. ——— *Lis pendens doctrine of—Sale for arrears of revenue pending proceedings in mortgage suit—Suit for recovery of*

56. ——— *Lis pendens—Contest between prior purchaser under a second mortgage and subsequent purchaser under a first mortgage*

session as a prior purchaser in execution of a decree on a second mortgage of the same property, passed in a suit to which the first mortgagee was not made a party. The second mortgage was executed after

LOCAL GOVERNMENT—*contd.*

are vested in him in Aden by the said Act:"—*Held*, that the provisions of the Aden Act II of 1864, which (as appears from the preamble) deals with the litigation of Aden alone, could not be extended to Perim, without enlarging the subject-matter of the Act. *Held*, also, that the appointment of the Political Resident at Aden as a Sessions Judge and Court of Session for the Island of Perim made under cl. (a) of s. 6 of the Scheduled Districts Act, XIV of 1874, was valid and effectual with reference only to the provisions of the Criminal Procedure Code, and that that portion of the notification which regulates the exercise by the Resident of his powers with reference to Act II of 1864 should be treated as surplusage. QUEEN-EMPRESS *v.* MANGAL TEKCHAND . . I. L. R. 10 Bom. 274

LOCAL INQUIRY.

See LOCAL INVESTIGATION.

See DECREE—CONSTRUCTION OF DECREE—MESNE PROFITS.
I. L. R. 8 Calc. 178
L. R. 8 I. A. 197

See POSSESSION—ORDER OF CRIMINAL COURT AS TO—LOCAL INQUIRY.

——— criminal—

See POSSESSION, ORDER OF CRIMINAL COURT AS TO—LOCAL INQUIRY.

LOCAL INVESTIGATION.

See AMEEN.

See APPEAL—ORDERS . 7 W. R. 425
W. R. 1864, 363

See APPELLATE COURT—EXERCISE OF POWERS IN VARIOUS CASES—SPECIAL CASES . . . 6 B. L. R. 677
15 W. R. 423
18 W. R. 452

See CHUR LANDS . 6 B. L. R. 677
13 Moo. I. A. 607

See COMPLAINT—DISMISSAL OF COMPLAINT—POWER OF, AND PRELIMINARIES TO, DISMISSAL . 6 C. W. N. 295

See LOCAL INQUIRY.

See MAGISTRATE, JURISDICTION OF—GENERAL JURISDICTION.
I. L. R. 19 All. 302
3 C. W. N. 607

See SPECIAL OR SECOND APPEAL—OTHER ERRORS OF LAW OR PROCEDURE—LOCAL INVESTIGATIONS.

See TRANSFER OF CRIMINAL CASES—GROUND FOR TRANSFER.
I. L. R. 21 Calc. 920
I. L. R. 19 All. 302

1. ——— Object of local investigations—*Evidence not obtainable in Court.* Local investigations are had recourse to not so much for the purpose of collecting evidence which can be

LOCAL INVESTIGATION—*contd.*

taken in Court as to obtain evidence which from its peculiar nature can only be obtained on the spot. [illegible] *v.* [illegible]
[illegible]

2. ——— Application for inquiry or local investigation—*Civil Procedure Code, 1859, s. 180.* An application under s. 180, Act VIII of 1859, should be made at the hearing of the suit and not previously. [illegible] & Co. *v.* [illegible] . Bourke C. C. [illegible]

3. ——— Discretion of Court—*Local inquiry.* It is within the discretion of a Judge to order or refuse a local inquiry. [illegible] SINGH *v.* SAHEB ROY . . . [illegible] W. R. [illegible]

GRAHAM *v.* LOPEZ . . . 1 W. R. [illegible]

4. ——— Reference to a Commissioner—*Civil Procedure Code, s. 392.* The local investigation referred to in Civil Procedure Code, s. [illegible] presupposes the existence on the record of independent evidence which requires to be elucidated, and that section does not authorize a Court to delegate to a Commissioner the trial of any material issue which it is bound to try. [illegible] *v.* [illegible]
I. L. R. 16 Mad. [illegible]

5. ——— Power of Court to direct when parties do not ask for it—*Remand* [illegible] *for local investigation.* In a suit for land where the question was as to whether the land lay within the boundaries of the plaintiff' or the defendant's land, the Court of first instance suggested to the parties that the proper mode of determining the case was in the first instance to hold a local investigation, and that such local investigation should be applied for by one or other of the parties. Both parties resolutely refused to make such application, and the Court thereupon dealt with the case upon the materials before it and passed a decree. Upon appeal, the lower Appellate Court remanded the case for the purpose of a local investigation being held at the cost of the plaintiff in the first instance. *Held*, that, inasmuch as neither of the parties desired to have a local investigation, the Court was wrong in remanding the case, and that it was bound to decide it upon the evidence before it. JATINGA VALLEY TEA COMPANY *v.* CHERA TEA COMPANY . . . I. L. R. 12 Calc. 45

6. ——— Notice of local investigation—*Civil Procedure Code, 1859, s. 180.* Though there was no express direction to that effect in s. 180, Act VIII of 1859, yet it was necessary to give notice to parties of the time when a local investigation ordered by the Court was to be held. [illegible]MONEE DEBIA *v.* EGLINTON . 13 W. R. 189

7. ——— Officer to hold local inquiry—[illegible] *Code, 1859, s. 180.* S. 180, Act [illegible] a Court to [illegible] officer of the [illegible] Doss Koer [illegible]
8 W. R. 6
[illegible]DOO *v.* NIL KANTO DHUR .

BYJNATH SINGH *v.* INDURJEET KOER 8 W. R. 331

OCAL INVESTIGATION—*contd*

BAHADOOR ALLY *v.* DOOMNUN SINGH
7 W. R. 27

Instances of improper appointments are given in 'OORGA DOSS CHATTERJEE *v.* GOOROO CHURN ISTREE . . . 6 W. R., Act X, 81

nd TEELUCKDHAREE ROY *v.* MOORLEEDUR ROY
13 W. R. 285

8. ——— Duty of Judge to conduct ocal investigation—*Civil Procedure Code, 882, s. 392.* S 392, Civil Procedure Code, clearly hows that where a Judge can conveniently conduct local investigation in person, he should do so)WARKANATH SARDAR *v* PROSUNNO KUMAR HAJRA
1 C. W. N. 682

9. ——— Question of disputed boundry—*Possession before date of suit* *Held*, that

ACHARJEE *v.* KHETTRO PAL SINGH ROY
17 W. R. 472

See ISWAR CHANDRA DAS *v* JUGAL KISHORE CHUCKERBUTTY 4 B L. R. Ap. 33
17 W. R. 473 note

10. ——— Ascertainment of fact of

11. ——— Power of Judge to order local investigation by Subordinate Judge.

was necessary to take further evidence, he ought to have proceeded as directed by ss. 354 and 355, Act VIII of 1859, and it was competent to him, if necessary, to order an Ameen or any suitable person to make a local investigation under s 180. But a Judge from whose decision an appeal is pending is the most unsuitable person to make such investigation. ROY SOOLTAN BAHADOOR *v.* LALOO KOOER . . . . . 7 W. R 300

LOCAL INVESTIGATION—*contd.*

13. ——— Duty of Ameen to return report to Court ordering investigation.

decree. The Ameen went to the spot and made a map That map was not transmitted to the Court ; but in consequence of certain proceedings in the Subordinate Judge's Court, a second Ameen was

14 ——— Investigation by ameen—*Power of District Judge to interfere with order for—Circular Orders 41 of 1866 and 25 of 1870* In a suit for the possession of land, the boundaries of which were disputed, the Subordinate Judge ordered an ameen to make a local investigation, and reported his order to the District Judge, who refused to allow the investigation to proceed. *Held*, that this was a case coming within the provisions of Circular Order No. 41, dated the 2nd October 1866, which authorizes local investigations by ameens when it is necessary to ascertain by measurement disputed areas of land ; and that the District Judge had no authority to stay the investigation. *Per* PRINSEP, *J* —All that the District Judge was entitled to do under Circular Order No 25, dated 25th August 1870, was to express his opinion as to the propriety or otherwise of the Subordinate Judge's order. NIROD KRISHNO ROY *v.* WOOMANATH MOOKERJEE
I. L. R. 4 Calc. 718 ; 3 C. L. R. 234

15. ——— Non-attendance at local investigation—*Procedure order setting aside a judgment by default* Ss 114 and 180 are to be read together. The words "and persons not attending upon the requisition of the commissioner" in *s 180* are general and apply to parties making default, whether required to give evidence or not The words "like disadvantages" referred to in s. 180 mean that in the case of the non-attendance of a defendant the local investigation is to be proceeded with *ex parte* ; and in the case of the non-attendance of a plaintiff, the suit is to be dismissed with costs. In case of judgment by default for non-appearance before a commis-

commissioner to proceed *ex parte* in the event of the non-attendance of the plaintiff. ESHAN CHUNDER CHUCKERBUTTY *v.* SOOBJO LALL GOSSAIN
1 Ind. Jur. O. S. 3
W. R. F. B. 1 ; Marsh. 139

LOCAL INVESTIGATION—*concld.*

16.——————— *Failure of party to appear on local inquiry.* In a case in which

proper steps before the ameen at the local investigation, and because he omitted to give formal proof of his deed of purchase—confirmed. MAHOMED TUQUE CHOWDHRY *v.* JUDONATH JHA

16 W. R. P. C. 28

17. ——————— Powers of Magistrate in

recorded, if under such circumstance he feels disposed to visit it at all. But where a local enquiry by

I. L. R. 21 Calc. 920

KASHI SINGH . . I. L. R. 16 All. 342

LOCAL SELF-GOVERNMENT ACT (BENG. III OF 1885).

——————— ss. 78, 139—

See ULTRA VIRES . 11 C. W. N. 1099

LOCAL USAGE.

See CUSTOM.

LOCUS PENITENTIÆ.

See CRIMINAL PROCEDURE CODE, s. 110.
I. L. R. 31 Calc. 783

LODGING-HOUSE-KEEPER.

See HOTEL-KEEPER AND GUEST.
3 Bom. O. C. 137

See N.-W. P. AND OUDE LODGING HOUSE ACT, s. 5 (2) . I. L. R. 20 All. 534

LODGINGS LET TO PROSTITUTE.

See LANDLORD AND TENANT—TENANCY FOR IMMORAL PURPOSE.
9 B. L. R. Ap. 37

LORD'S DAY ACT.

See HOLIDAY.

1. ——————— Application of—*British Burma—Abkari rules.* The Lord's Day Act (29 Car. II,

1 B. L. R. A. Cr. 17 : 10 W. R. 500

2. ——————— *Moulmein.* The Lord's Day Act does not apply to Moulmein GEASEMANN *v.* GARDNER . 3 W. R. Rec. Ref. 2

Nor to Madras.

See ANONYMOUS CASE . . 4 Mad. Ap. 62

3. ——————— Application of Act to Madras Presidency—*Arrest of Mahomedan debtor on*

sions of the Lord's Day Act (29 Car. II, c. 7) apply in this country. That even if the substantive provisions of the statute were applicable, it did not follow that s. 6 would be. That if the statute dealt with substantive law, it would be applicable to all the Queen's subjects or none, and that there were ample reasons for saying it was impossible to apply it to all. By KERNAN, J., that as between natives of India, the Lord's Day Act does not apply. PARAM SHOOK DOSS *v.* RASHEED-OOD-DOWLAH . . 7 Mad. 285

4. ——————— Criminal proceedings on Sunday, legality of. Criminal pro-

. necessarily
on a Sunday.

N. W. 177

LOSS OF SERVICE.

See TORT . . 13 C. W. N. 485

LOST GRANT, PRESUMPTION OF.

See PRESCRIPTION—EASEMENTS—GENERALLY—CLAIM TO PRESCRIPTION
15 W. R. 213
1 W. R. 230

See PRESCRIPTION—EASEMENTS—LIGHT AND AIR
3 B. L. R. O. C. 18
6 B. L. R. 85 : 12 B. L. R. 406

LOTTERY

See COMPANY—FORMATION AND REGISTRATION I L. R 20 Mad 68

LOTTERY ACT (V OF 1844)

See PROMISSORY NOTE . 9 B L. R. 441

LOTTERY OFFICE

———— charge of keeping—

See ACT XXVII OF 1870
6 B L R. Ap 98

LOTTERY TICKETS.

See GAMBLING 12 W R Cr. 34

LUNACY.

See EVIDENCE—CIVIL CASES—HEARSAY EVIDENCE . . 6 B. L. R. 509
13 Moo. I A. 519

See HINDU LAW—INHERITANCE—DIVESTING OF, EXCLUSION FROM, AND FORFEITURE OF, INHERITANCE—INSANITY

See HINDU LAW—SUCCESSION
I. L. R 28 All. 247

See INSANITY.

See LUNACY ACT.

See LUNATIC . I L. R 31 Calc 210

See MAHOMEDAN LAW—INHERITANCE.
2 B. L. R. A. C 306

LUNACY ACT (XXXV OF 1858)

See LUNACY.

See LUNATIC.

———— *Power of Court to control* ... udge, ... under ... e an ... his ... ELLA-

I. L. R. 32 Mad 253

———— ss. 3, 9, 10—*Court bound to enquire into existence of property, if denied.* A petition under Act XXXV of 1858 to declare a person a lunatic, and to appoint a proper manager and

LUNACY ACT (XXXV OF 1858)—*concld.*

———— ss. 3, 9, 10—*concld.*

guardian, should not be dismissed without enquiry because the counter-petitioner denies the existence of any property belonging to the lunatic The existence of such property is necessary as a pre-

———— s. 23—

See LUNATIC . I. L. R. 31 Calc. 210

LUNAR MONTH.

See MARINE INSURANCE
I. L. R. 36 Calc. 516

LUNATIC.

See ARREST—CIVIL ARREST
I. L. R. 22 Bom. 961

See CIVIL PROCEDURE CODE, 1882, s. 463.
10 C. W. N. 719
I. L. R. 33 Calc. 1094

See INSANITY.

See LETTERS PATENT, HIGH COURT, NORTH-WESTERN PROVINCES, CL. 12
I. L. R. 4 All. 159

See LUNACY

See LUNACY ACT.

See PRACTICE I. L. R. 33 Calc. 1094

See PRINCIPAL AND AGENT—AUTHORITY OF AGENTS . I. L. R 15 Bom. 177

See REGISTRATION ACT, s. 35.
I. L. R. 1 All. 465
L. R. 4 I. A. 166

———— committee of, under Act XXXV of 1858—

See HINDU LAW—INHERITANCE—DIVESTING OF, EXCLUSION FROM, AND FORFEITURE OF, INHERITANCE—INSANITY . I. L. R 22 Calc. 864

———— estate of—

See RIGHT OF SUIT—INTEREST TO SUPPORT RIGHT . . 13 B. L. R. Ap 14

———— suit against—

See OUDH LAND REVENUE ACT, ss. 175 AND 176 . I. L R 22 Calc 729
L. R. 22 I. A. 90

1. ———— Jurisdiction—*Act XXXV of 1858, s. 2.* A lunatic had been for a number of years in involuntary confinement in Bhowanipore Lunatic Asylum, within the jurisdiction of the Court of the Judge of the 24-Pergunnahs, and was possessed of property out of that jurisdiction. On an application to the Judge to appoint a manager of his property:—*Held*, that, as the lunatic was residing within the jurisdiction of the Court of

LUNATIC—*contd.*

the 24-Pergunnahs, the Judge could, under Act XXXV of 1858, s. 2, inquire into the fact of his insanity and order a manager to be appointed to the estate. DURANT *v.* CHANDRANATH CHATTERJEE
2 B. L. R. A. C. 246

s.c. KALLONAS *v.* COLLECTOR OF BACKERGUNGE
11 W. R. 109

2. ——— **Married daughter of lunatic** —*Act XXXV of 1858, s. 13—Maintenance—"Family," meaning of.* The word "family" in s. 13 of Act XXXV of 1858 (which provides for the

I. L. R. 23 Calc. 512

3 ——— **Lunatic resident in mofussil** —*Act XXXV of 1858, ss. 10, 18, and 22—Residence—Guardian of lunatic's person—Position of guardian towards local Court appointing him—Temporary suspension of guardian—Jurisdiction of District Judge—Irregularity—Superintendence of High Court—Civil Procedure Code, 1882, s. 622.* Although Act XXXV of 1858 contains no express provisions as to the place of residence of a lunatic governed by the Act, it contemplates that he shall reside within the jurisdiction of the Court that has found him to be a lunatic. The guardian of such a lunatic's person is, in matters connected with the guardianship, subordinate to the District Court which appointed him. A guardian, having obtained leave from the District Judge to take the lunatic out of the jurisdiction for a specified time, was, at the expiration of that time, ordered to return with the lunatic to his residence within the local jurisdiction. He failed to comply with the order. Without fur-

the custody of the lunatic to the manager The guardian made over the custody accordingly and

matter of BASHARAT ALI CHOWDHRY
I. L. R. 24 Calc. 133

4. ——— **Application under Act**—*Act XXXV of 1858, ss 2 and 3.* Applications made under sections of the Lunacy Act, XXXV of 1858, must be verified. BUSRUT ALLY CHOWDHRY *v.* ESHAN CHUNDER ROY . . 7 W. R. 267

5. ——— *Act XXXV of 1858, Procedure on inquiry under.* The application for an inquiry under the Lunacy Act, XXXV of 1858, should be verified, and proper notice

him avoided. If also he be a person of rank, exempted from personal appearance in Court in ordinary civil proceedings, his personal appearance in Court in an inquiry into the state of his mind should be dispensed with. JUGGUNNATH SAHEE DEO *v.* BURRA LALL OPENDRONATH SAHEE DEO
5 W. R. Mis. 54

was instituted. *In the matter of the petition of* JUGGERNATH . . . . 7 W. R 246

7. ——— *Appearance of lunatic—Act XXXV of 1858.* A person alleged

R. 13

See BINDABUN CHUNDER KUR CHOWDHRY *v.* KALI DASS SIRCAR . . W. R. 1864, 268

8. ——— *Non-appearance*

the inquiry contemplated by Act
MOORUT KOONWAR *v.* DHURM NARAIN SINGH
2 W. R. Mis. 7

9. ——— *Act XXXV of 1858—Procedure necessary before appointing guardian.* A Court cannot, under Act XXXV of 1858, make over charge of the property and person of an alleged lunatic to a guardian until it has adjudged him to be of unsound mind and incapable of managing his affairs. BHOLANATH MOOKERJEE *v.* GRISH MOHINEE DEBIA . . 15 W. R. 259

10. ——— **Unsoundness of mind**—*Act XXXV of 1858, s. 1—Unsound mind.* The term "unsound mind" in s 1 of Act XXXV of 1858 comprehends imbecility, whether congenial or arising from old age, as well as lunacy or mental aberration resulting from disease. *In re* COWASJI BYRAMJI LILAOOVALA . I. L. R. 7 Bom. 15

11. ——— **Unsoundness of mind, Proof of**—*Act XXXV of 1858—Incapacity to ... state of mind* of mind a person was used capacitate him from managing his affairs; nor, on the other hand, will a person who is incapable of managing his affairs be a lunatic, unless that incapacity is produced by unsoundness of mind. For the purposes

LUNATIC—*contd*

of this Act, the observation of the patient by medi-

12. ——— *Witnesses, evidence of* The bare assertion of witnesses unsupported by any details of the causes, the course and the treatment of the malady, ought not be accepted as satisfactory proof of insanity KALA CHAND GHOSE *v.* SHOOLOCHUNA DOSSIA
22 W. R 38

13. ——— **Inquiry as to fact of lunacy** —*Power of judicial officer—Evidence* On an inquiry as to the fact of lunacy under Act XXXV

the neighbourhood, as to common report for years

[illegible] Moo I. A. [illegible]

14. ——— *Act XXXV of*

members of the family are proper and sufficient parties, but other persons interested may, under special circumstances, be permitted to take part. RAM PUROUSS SINGH *v* AMIR ALI
3 Agra Mis. 3

15. ——— *Act XXXV of 1858.* An inquiry into the state of mind of an alleged lunatic should not be instituted under Act XXXV of 1858 without its being clearly shown to the Court that there is ground for supposing that the person is of unsound mind GUNGA PERSHAD SAHOO *v* WOOMA KOOWER . 18 W. R. 326

16. ——— *Act XXXV of 1858—Procedure—Power of High Court under Act —Onus probandi* Before a Judge can, on the application of a Collector under Act XXXV of 1858, order the property of an alleged lunatic to be placed in

LUNATIC—*contd*

rests on the Collector or the person who makes the allegation. BUSHARUTOOLLA *v.* COLLECTOR OF TIPPERAH . . . . . 3 W. R. 475

17. ——— *Act XXXV of 1858—Inquiry as to state of lunatic's mind.*

under a considerable aberration of mind as a conse-

himself whether the alleged lunatic was capable of managing his affairs irrespective of the cause of such incapacity. HURSAHOY LALL *v* BHUTTUN SINGH . . . . . . 20 W. R. 55

18. ——— *Act XXXV of*

the property to the committee. It was found on the inquiry held under the above Act that the alleged lunatic had for many years now and then been for short periods in such a state of mind as to render it right to detain him at home, and that he now had about him that which, when aroused by the recollection of past losses or by the recurrence of family

19. ——— *Suit by wife as next friend, alleging husband to be a lunatic—Husband not an adjudged lunatic—Civil Procedure Code (Act XIV of 1882), s. 462—Act XXXV of*

20 ——— **Appointment of manager**—*Necessity of preliminary inquiry and adjudication.* It is only when a man has been adjudged a lunatic

LUNATIC—*contd.*

as the result of proceedings, and on inquiry held in due course of law, that the Court obtains the authority to appoint a manager of his estate. GIREEJABUTTY KOOERREE *v.* MONJEE LAL . 20 W. R. 477

21. ——— *Act XXXV of 1858, s. 25—Application by curator bonis appointed in Scotland* A petition was presented through his constituted attorney by a *curator bonis* duly appointed in Scotland to *W*, a doctor in the Bombay Army, absent from India on leave, praying for an order authorizing the petitioner's attorney to recover and give valid receipts for certain moneys belonging to the said *W* and to realize certain shares and bonds also belonging to the said *W*, and to remit the proceeds according to the directions of the petitioner as such *curator bonis* The petitioner stated that th

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bonis was appointed; but there was no evidence that *W* had been found of unsound mind and incapable of managing his affairs, or that the curator had given security, or that funds were required for the maintenance of *W*. The Court refused the order. *In re* WELSH

I. L. R. 8 Bom. 280

22. ——— *Act XXXV of 1858—Guardian for property of lunatic—Lunatic trustee of a mutt.* A guardian may be appointed under Act XXXV of 1858 to the property vested in a lunatic as the head of a mutt SITARAMA CHARYA *v.* KESAVA CHARYA . I. L. R. 21 Mad. 402

23. ——— *Civil Procedure Code, 1882, s 463—Lunatic defendant—Guardian ad litem—Act XXXV of 1858.* A guardian *ad*

I. L. R. 6 Mad. 380

24. ——— *Defendant a lu-*

that he is of unsound mind so as to be unfit to defend the suit. VENKATRAMANA RAMBHAT *v.* TIMAPPA DEVAPPA . . . . I. L. R. 16 Bom. 132

25 ——— *Suit—Act XXXV of 1858—Lunatic, not adjudged to be so, suing through a next friend or defending through a guardian ad litem.* The provisions of Ch. XXXI of the

LUNATIC—*contd.*

Code of Civil Procedure are not exhaustive, and where a person is admitted or has been found to be

where he is a defendant. *Porter v. Porter*, L. R. 37 *Ch. D. 420*; *Venkatramana Rambhat v Timappa Devappa, I. L R. 16 Bom. 132*; *Tukaram Anant Joshi v. Vithal Joshi, I. L R. 13 Bom 656*; *Uma Sundari Dasi v. Ramji Haldar, I. L R. 7 Calc. 242*; and *Jonagadla Subbaya v. Thatiparthi Seradala Buthaya, I. L. R. 6 Mad. 390*, referred to. NABBU KHAN *v.* SITA . . I. L. R. 20 All. 2

26. ——— *Act XXXV of 1858, s. 22—Application for permission to alienate property of lunatic—Objection by a third party that the property does not belong to the lunatic, determination of, whether necessary.* In an application for permission to alienate the property of a lunatic under Act XXXV of 1858, it is not necessary to determine whether such property belongs to the lunatic or to a third party. DINESH CHUNDER BANERJEE *v.* SOUDAMINI DEBI . 4 C. W. N. 526

27. ——— *Act XXXV of* ... *the Lunacy*

provisions of that Act, although he may ... *facto* manager of the family property. A Hindu married woman having a lunatic husband and minor ... the lunatic's estate ... *de facto* ... he family ... art as re... he' mort... s interest ... st of the ... time of ... stral, the ... nily purposes. mortgages were binding if made ... poses. ANNPURNABAI *v* DURGAPA MAHALAPA NAIK

I. L. R. 20 Bom. 150

28. ——— *Act XXXV of 1858, ss. 15, 16, 17, 18, and 20—Hindu lunatic member of joint family—Joint member of the lunatic's family appointed guardian or manager of the lunatic's estate—Liability to account—Manager charged with mismanagement.* The manager of a Hindu lunatic's estate appointed under Act XXXV of 1858, who is in possession with others of joint family property, is not, in his capacity of manager of the lunatic's estate, bound by the provisions of s. 15 of the Act to exhibit an inventory and account of the family property. The lunatic is possessed of no property for which the manager is liable to account. It does not make any difference if the manager is himself a joint owner or not. The Act provides no machinery, nor does it confer any power upon the Court, to deal with the joint family pro-

LUNATIC—*contd*

perty or interfere in the affairs of a joint family. If a manager is charged with mismanagement, he is entitled to some particulars of the charges made against him. In all cases of lunacy in which a guardian or a manager of the lunatic's estate is

I. L. R. 20 Bom. 000

29. ———— *Act XXXV of 1858—Uncertificated guardian, powers of—Manager of joint Hindu family, powers of—Guardian*

B. L. R. 364 19 W R. 163, disapproved KANTI CHUNDER GOSWAMI v. BISHESWAR GOSWAMI

L. R. 25 Calc. 585
2 C. W. N. 241

30. ———— *Beng. Act IV of 1870—Sanction to proceedings—Court of Wards*

8 B. L. R. Ap. 50

s.c. CHUCKUR SURUN NARAIN SINGH v. COLLECTOR OF SARUN . . . . . 17 W R. 180

31. ———— *Act XXXV of 1858, s. 9—Act XIX of 1873, s 195—Court of Wards, power of.* S. 9 of Act XXXV of 1858 and s. 195 of Act XIX of 1873 do not render it imperative on the Court of Wards to take charge of the estate of a person adjudged by a Civil Court, under Act XXV of 1858, to be of unsound mind, but merely confer on that Court a power so to do.

32. ———— *Act XXXV of 1858, ss 2, 7, 9, 10, 23—Guardian of lunatic—"The legal heir"—Wife of lunatic—Mahomedan law—Shia sect.* One *M S*, a Shia Mahomedan, was formally adjudged a lunatic under the provisions of

LUNATIC—*contd.*

J., that under the law applicable to the Shia sect of Mahomedans *Z* was one of the "legal heirs" of *M S* within the meaning of s. 10 of Act XXXV of 1858, and as such was excluded by the terms of the proviso to that section from being appointed guardian of the person of her lunatic husband. In cases under the Lunacy Act (XXXV of 1858), the

entrusted by the Act *Held*, by KNOX, *J*, that upon the general circumstances of the case the wife was not a fit person to be appointed as guardian of the lunatic: *sed quære* whether she was, within

I. L. R. 10 All. 20

33 ———— *Act XXXV of*

CHOWDHRAIN v SHASHI MUKHI CHOWDHRAIN
4 B. L. R Ap. 24 : 12 W. R. 518

34. ———— *Guardian—Mortgage by de facto guardian* A Hindu, who is a

35. ———— Power of manager—*Person appointed manager of lunatic's affairs while he was*

CHAND GHOSE v. SHOOIOCHUNA DOSSIA
22 W. R. 33

36. ———— *Civil Procedure Code, 1882, s. 463—Right to sue—Suit by next friend of a lunatic—Adjudication of lunacy under Act XXXV of 1858.* A suit for partition was brought by *A* as next friend of *B*, a lunatic. Subsequent to the institution of the suit, *B* was adjudged to be of unsound mind under Act XXXV of 1858, and *A* was appointed a manager of the luna-

LUNATIC—*contd.*

tic's estate :—*Held*, that *A* had no right to sue, as next friend of the lunatic, under Ch. XXXI of the Code of Civil Procedure (Act XIV of 1882). The

principles of equity, *A* had no right to sue in respect of the immoveable property of a lunatic. *Held*, further, that the adjudication of lunacy under Act

37. ——————— *Suit by an un-* ... *Wards* ... *Vards*— ... *subject* ... *-Code of Civil Procedure, s. 461.* A Jain, who was subject to the Aliyasantana law, made a will, whereby he disposed of the property of his family in favour of certain persons, and died. The plaintiff, a female, was the sole surviving member of the testator's family, but it was admitted that she was, and for more than fifty years had been, a lunatic,—though she had not been declared to be so under Act XXXV of 1858; it appeared that her lunacy was not congenital. She sued, by the Collector of South Canara, the Agent for the Court of Wards :—*Held*, (i) that the plaintiff was not excluded from inheritance by reason of lunacy under Aliyasantana law, and the will in favour of the defendants was invalid ; (ii) that the Court of Wards had power to take cog-

inherit under the above rulings, certain documents adduced as evidencing partition of the family property were held to evidence merely arrangements for separate enjoyment. SANKU *v.* PUTTAMMA . . I. L. R. 14 Mad. 289

38. ——————— *Guardian of the person of a lunatic—Suit in respect of the lunatic's estate—Right of suit—Civil Procedure Code (Act XIV of 1882), s. 40.* A guardian of the person only of a lunatic has no right to bring a suit in respect of the lunatic's estate. The manager of the

LUNATIC—*contd.*

tion, a person other than the guardian of the estate can also sue with the leave of the Court. BAI DIVALI *v.* HIRALAL . . I. L. R. 23 Bom. 403

39. ——————— *Striking out lunatic plaintiff's name—Authority of pleader or agent for filing suit—Limitation Act (XV of 1877) s. 7—Restoration of name—Suit by person not adjudged to be of unsound mind under Act XXXV of 1858—Right of suit—Guardian—Next friend.* A plaint as originally framed contained the name

K's name was struck out by the pleader and *N*

Court restoring *K*'s name was bad, and that ... was time-barred at the date of that order. On second appeal :—*Held*, reversing the decree, that the pleader and *N* acted beyond their authority in striking out *K*'s name, and that therefore the restoration of his name must relate back to the filing of the suit, which was therefore not barred. but *Quære*. Whether a person of unsound mind, but not adjudged to be so under Act XXXV of 1858, can in this country sue by his next friend. KIRPARAM JHUMEKRAM MODI *v.* MODI DAYALJI JHUMEKRAM . I. L. R. 19 Bom. 135

40. ——————— *Act XXXV of 1858, s. 11—Suit on behalf of minor—Collector* ... Act XXXV of ... lunatic, can... but must ... ...REEVATE *v.* ... WARDS *v.* ... RAIN *v.* COL... 7 W. R. 5

41. ——————— Appeal, right of—Act XXXV of 1858, ss. 3, 4, 22—*Right of suit to recover property.* On an application made by the wife and son of *T H*, an alleged lunatic, under the provisions of Act XXXV of 1858, s. 3, the daughters of the alleged lunatic, who were served with a notice under s. 4 of the same Act, appeared at the hearing of the application, and cross-examined the witnesses examined in support of the application. The Judge found that *T H* was of unsound mind, and appointed his wife, *L*, to be the guardian of his person. The daughters appealed to the High Court :—*Held*, (on an objection being taken that the appellants had no *locus standi*), that the daughters were entitled to appeal under the provisions of s. 22, Act XXXV of 1858. *Sherman v. Schorn*, 24 W. R. 174, referred to. *Quære*: Whether a right to sue to recover a property would be sufficient to confer jurisdiction under Act XXXV of 1858. *In the matter of the petition of* MAHOMED BUSHEERUL HOSSEIN. MUNOHUR *v.* MAHOMED BUSHEERUL HOSSEIN I. L. R. 8 Calc. 283 : 10 C. L. R. 1

LUNATIC—*contd*

the appointment of manager The nephew was held to be disqualified on the ground of misconduct, and the wife was appointed On appeal by the nephew, it was objected that, under Act XXXV of 1858, no manager could be appointed, as the lunatic was a member of a joint family and had no separate property:—*Held*, that the nephew, by claiming to be appointed manager, could not object that the lunatic had no separate property *Quære* Whether a manager can under any circumstances be appointed under Act XXXV of 1858 if the lunatic is a member of joint family under the Mitakshara law and possessed of no separate property. SOOBANSE SINGH *v.* JUGGESSHUR KOER

13 C. L. R. 86

43. ———————— *Act XXXV of 18 8—Member of joint Mitakshara family—Guar-*

appearing that he had remained for sixteen years

and that the lunatic was declared a lunatic under the Act, whether a partition could be had. *In the matter of the petition of* BHOOPENDRA NARAIN ROY. BHOOPENDRA NARAIN ROY *v.* GREESH NARAIN ROY

I. L. R. 6 Calc. 539 : 8 C. L. R. 30

LUNATIC—*contd.*

44. ———— Incapacity of joint owners of property—*Effect of, in favour of managing owners* The incapacity of joint owners confers powers of alienation, in certain cases of necessity, upon the managing owner SHEO PERSHAD NARAIN *v* COLLECTOR OF MONGHYR. GOUREENATH *v.* COLLECTOR OF MONGHYR. COURT OF WARDS *v* RUGHOOBUR DYAL . . . . . 7 W. R. 5

45. ———— Insanity pending award—*Person becoming lunatic before award published.* If a person was in fit condition to manage his affairs down to the time when the proceedings before an arbitrator in which he was interested were substantially concluded, the award will not be invalidated

insane, be-
GOUREE-
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PERSHAD
W. R. 5

46. ———— Power to lease lands of proprietor disqualified from lunacy—*Act XXXV of 1858, s 9—Court of Wards in Oudh.*

that the Court of Wards is authorized to take charge of his estate without a further order of the Civil Court appointing the Court of Wards to be manager. A Civil Court having made an order declaring a talukhdar to be of unsound mind and incapable of managing his affairs, and having at the same time appointed to be manager of his estate the Deputy Commissioner of the

above Act, providing that no manager appointed by the Civil Court under it shall have power to grant a lease for any period exceeding five years. SARABJIT SINGH *v.* CHAPMAN

I. L. R. 13 Calc. 81
L R. 13 I. A. 44

47 ———————— *Civil Procedure Code (Act XIV of 1882), s. 463—Suit against a lunatic not so adjudged—Lunacy (District Courts) Act (XXXV of 1858), ss. 2, 23—Appointment by Court of guardian ad litem to lunatic—Practice.* The plaintiff in a suit against several defendants described the first defendant (a widow, and not a minor) as of unsound mind, and sued her as being represented by her mother and guardian The first defendant had not been adjudged of unsound mind under the Lunacy (District Courts) Act, XXXV of 1858; nor did it appear that the Court of first instance had

[illegible]

[illegible] Held, that the transaction [illegible] although the mother was [illegible] the legal guardian of the minor. [illegible] v. [illegible], I. L. R. [illegible] Chandra [illegible] R. 34 Calc. [illegible] and Majidan [illegible] I. L. R. 26 All. [illegible] lowed. [illegible] Das [illegible] I. L. R. 30 All. 492

[illegible]

MADRAS ABKARI ACT (III OF 1864)— *contd.*

——— **s. 2**—*concld.*

manufacture or sale of liquor, as defined in s. 2, until he had complied with the condition prescribed in s. 9 of the Act. VENKATA KRISTNAIYA v. VENKATACHALAIYAR . . . **5 Mad. 1**

——— **s. 6**—

See DAMAGES—SUITS FOR DAMAGES—BREACH OF CONTRACT.

I. L. R. 14 Mad. 82

——— **s. 8**—*Licensed vendor, sale by agent of.* A license to sell liquor granted to *N* under

continued his former business, paying *M* a certain sum monthly. *N* was convicted of selling liquor without a license:—*Held*, that the conviction was illegal. QUEEN-EMPRESS v. NANJAPPA

I. L. R. 7 Mad. 432

——— **s. 10**—*Revenue Recovery Act (Madras Act II of 1864), ss. 1 to 5, 37, 42, 52—Sale for arrears of abkari revenue—Prior encumbrance not affected.* Where land is sold under the provisions of s. 10 of the Madras Abkari Act, 1864, for arrears due by an abkari renter, the purchaser at the sale does not take the land free of all encumbrances as in the case of a sale for arrears of land revenue under the provisions of the Revenue Recovery Act (Madras Act II of 1864). RAMACHANDRA v. PITCHAIKANNI **I. L. R. 7 Mad. 434**

1. ——— **s. 21**—*Licensed vendor—Possession of arrack.* The Magistrate convicted the accused under s. 21 of Madras Act III of 1864, and directed the confiscation of certain *arrack* found in his possession:—*Held*, that, the accused being a licensed vendor, the *arrack* was not liable to confiscation. ANONYMOUS . **5 Mad. Ap. 41**

2. ——— **and s. 22**—*Licensed vendors where license has expired.* The provision in s. 21 of the Madras Abkari Act limiting the liability of licensed vendors whose license has expired to the case in which they are found in possession of liquor kept for the purpose of sale must be read as an exception to the general provision of s. 22. QUEEN v. RAMAYYA . **I. L. R. 5 Mad. 131**

1. ——— **s. 22**—*Conveyance of liquor without valid permits—Permits made out in names of third parties.* Upon a conviction under s. 22 of

conveyed, but made out in the names of third

MADRAS ABKARI ACT (III OF 1864)— *concld.*

——— **s. 22**—*concld.*

2. ——— *Possession of toddy by servants.* The servants of an Abkari renter of certain villages were convicted under s.

I. L. R. 7 Mad. 161

3. ——— **and V of 1879, s. 23**—*Confiscation of boat used for carrying liquor without permit.* Neither under the provisions of the Madras Abkari Act nor under the provisions of the Abkari Amendment Act, 1879, is an order by a Magistrate confiscating a boat used for carrying liquor without a valid permit legal. The Collector alone can confiscate. QUEEN v. PERIANAN. QUEEN v. NARAINA . . **I. L. R. 4 Mad. 241**

——— **ss. 23, 26, and s. 17**—*Confiscation of animals.* Although a Magistrate may not confiscate animals under s. 23 (*a*) of the Madras Abkari Act, yet the proceeds of whatever has been confiscated by the Collector under s. 17, including animals would be available for distribution in the manner prescribed in s. 26 (*b*). QUEEN v. SAKIYA

I. L. R. 5 Mad. 137

——— **s. 25, and V of 1879, s. 26 (b)**—

——— **s. 26**—*Police-officer—Village policeman—Mohatad.* The term "police-officer" used in s. 26 of the Abkari Act (Madras Act III of 1864) includes a mohatad or village policeman. QUEEN-EMPRESS v. SESHAYA **I. L. R. 9 Mad. 97**

SAHU . . . . . [illegible] Mad. 150

MADRAS ABKARI ACT (I OF 1886).

——— *Restriction prohibiting licensed vendor of toddy from having interest in the sale of arrack—Partnership agreement between licensed vendor of toddy and licensed vendor of arrack—Illegality—Void agreement.* *A* held a license for the sale of toddy, while *B* held a license for the sale of *arrack*. *A* entered into an agreement of partnership with *B* in the business of vending *arrack* and toddy. At the time when this agreement was

MADRAS ABKARI ACT (I OF 1886)—*contd.*

from being interested in the sale of toddy. *A* [illegible]

[illegible] framed under the Abkari Act; that the rule in question was not one merely for the protection of the revenue, but had also for its object the regulation of the liquor traffic in the interests of the public; and that the agreement was, in consequence, void *ab initio*, as being opposed to public policy. Inasmuch as the provisions of the Abkari Act, as a whole, show that every person carrying on abkari business as a principal must be licensed under the Act, such a business cannot be carried on by a partner who does not hold such a license. MARUDAMUTHU PILLAI *v.* RANGASAMI MOOPPAN (1901) . . . . I. L. R. 24 Mad. 401

———— ss. 9, 11, 55.—Under the Madras Abkari Act, 1886, a permit is not necessary where toddy is carried from the licensee's trees to his shop within the limits of his farm, or where, the license having a general permit, the persons carrying the toddy are in his employment. QUEEN-EMPRESS *v.* SAMBOJI . . . I. L. R. 11 Mad. 472

———— s. 24, cl. (c)—*License to sell arrack issued under the Act—Rule contained in license imposing duty on license-holder to obtain Collector's permission to sub-let—Agreement to sub-let and sell arrack to sub-lessee without sanction—Suit on agreement for rent and for price of arrack sold—Contract Act (IX of 1872), s. 23—Unlawful consideration—Void agreement—Maintainability of suit.* Plaintiff being the holder of a license issued under s. 24 (c) of the Madras Abkari Act of 1886, entered into an agreement with the defendants that the latter should sell arrack in plaintiff's licensed shop, and that plaintiff should supply the liquor to be sold. Rule 21 of plaintiff's license imposed a duty on plaintiff to obtain the sanction of the Collector in case he should sub-let. Neither plaintiff nor defendants obtained such sanction. On a suit being filed by plaintiff for a sum of money due under the agreement:—*Held*, that the agreement was illegal, and that plaintiff could not sue on it. THITHI PARKUDASU *v.* BHEEMUDU (1902)

I. L. R. 26 Mad. 430

———— s. 28—

See ATTACHMENT—ALIENATION DURING ATTACHMENT . I. L. R. 16 Mad. 479

———— *Sale for arrears under —Effect on prior encumbrances—'As if they were arrears of land revenue,' meaning of—Limitation Act (XV of 1877), Sch. II, Art. 12.* A sale for arrears of abkari revenue of immoveable properties belonging to the defaulter under s. 28 of Act I of 1886 has not the effect of discharging encumbrances created prior to the sale. *Ramachandra v. Pitchaikanni, I. L. R. 7 Mad. 434*, followed. The words 'as if they were arrears of land revenue' in the new Act have the same meaning as the

MADRAS ABKARI ACT (I OF 1886)—*contd.*

———— s. 28—*concld.*

words 'in like manner as for the recovery of arrears of land revenue' in the old Act. *Chinnasami Mudali v. Tirumalai Pillai and the Secretary of State for India, I. L. R. 25 Mad. 572*, followed. *Kadir Mohideen Marakkayar v. Muthukrishna Ayyar, I. L. R. 26 Mad. 230*, followed. Where lands subject to mortgage are sold under s. 28 of Act I of 1886 the mortgagee's suit to enforce his mortgage right against the purchaser does not fall within Art. 12 of Sch. II of the Limitation Act, when the plaint contains no prayer for setting aside the sale. IBRAHIM KHAN SAHIB *v.* RANGASAMI NAICKEN (1905)

I. L. R. 28 Mad. 420

———— ss. 29, 55 (e)—*Rule forbidding delegation by licensee of authority to draw toddy.* Under s. 29 of the Madras Abkari Act, the Governor in Council made and published a rule on 8th February 1887, whereby it was declared that no license-holder could delegate his authority to draw toddy unless under exceptional circumstances to any person. *B*, the son of a licensee, drew toddy with his father's permission. He was convicted under s. 55 (e) of the Act:—*Held*, that the rule was *ultra vires* and the conviction bad. QUEEN-EMPRESS *v.* BELLARA . I. L. R. 11 Mad. 250

———— ss. 31 and 36—

See PRIVATE DEFENCE, RIGHT OF.
I. L. R. 19 Mad. 349

———— s. 34—

———— *Power of officer in one Circle to arrest offenders in another.* An officer of the Salt and Abkari Department, belonging to Circle A, received certain information and entered Circle B, and, under s. 34 of the Madras Abkari Act, arrested an offender in the latter Circle. The Magistrate who, in due course, tried the offender, held that the officer's powers of arrest were restricted to his own Circle, and acquitted the accused, though he believed the prosecution evidence as to an offence having been committed. Upon an appeal being preferred against the acquittal:—*Held*, that the order of acquittal was wrong, and must be set aside. *Held*, also, that the question whether the officer who effected the arrest was [illegible] the [illegible] with [illegible] . 124

———— s. 43—

See MAGISTRATE, JURISDICTION OF—SPECIAL ACTS—MADRAS ABKARI ACT.
I. L. R. 18 Mad. 48

———— ss. 55 (a), 59—*Rules notified by Government under Abkari Act—Rules for "immediate" removal of toddy.* Toddy-drawers failing to remove their toddy to a shop or distillery "within a reasonable time" after it is drawn are punishable

MADRAS ABKARI ACT (I OF 1886)—*concld.*

——— s. 55—*concld.*

under s. 55 (*a*) of the Abkari Act, though their licenses do not refer to the Government notification made under the Act, prescribing its immediate removal QUEEN-EMPRESS *v.* JAMMU

I. L. R. 12 Mad. 450

——— s. 55, cl. (*g*)—

——— "*Wash*" *fit for distillation*—"*Materials*" *for manufacturing liquor.* A liquid mixture known as "wash," consisting of jaggery and babool bark, and proved to be fit for distillation, constitutes "materials" for the purpose of manufacturing liquor, within the meaning of s. 55 (*g*) of the Abkari Act. QUEEN-EMPRESS *v.* GANGAYYA (1901) . I. L. R. 24 Mad. 417

1 ——— s. 56—*License to keep toddy-shop—Failure to keep shop open—Omission not constituting an act* By s. 56 (*b*) of the Madras Abkari Act, 1886, whoever, being the holder of a license or permit granted under the Act, "does any act in breach of any of the conditions of his license or permit not otherwise provided for in this Act," may be punished with fine or imprisonment or with both. The holder of a license to keep a shop for the sale of toddy having been convicted for failing to keep his shop open, in breach of one of the conditions of the license:—*Held* that, even if the licensee was under an obligation to keep open his shop (which did not appear to be the case), an omission to do so did not amount to an act in breach of the conditions of the license; and that the conviction must in consequence be set aside QUEEN-EMPRESS *v.* VENKATASAMI NAIDU . I. L. R. 23 Mad. 220

QUEEN-EMPRESS *v.* KARUPPAN

I. L. R. 23 Mad. 220 note

2 ——— ss. 56, 64—*Holder of a license and his servants* The words "being holder of a license" in Abkari Act, s. 56, must be taken to include any person in the employ, or for the time being acting on behalf of the holder of a license QUEEN-EMPRESS *v.* MAHALINGAM SERVAI

I. L. R. 21 Mad. 63

MADRAS ACTS

——— 1862—IV—

See GRANT—RESUMPTION OR REVOCATION OF GRANT . I. L. R. 14 Mad. 431

——— 1863—I—

See CONTEMPT OF COURT—PENAL CODE, s. 174 . . 4 Mad. Ap. 51, 52

——— IV—

See MUNSIF, JURISDICTION OF.

2 Mad. 82
3 Mad. 339
4 Mad. 149

——— 1864—II—

See MADRAS REVENUE RECOVERY ACT.

See LANDLORD AND TENANT—MIRASIDARS.
I. L. R. 1 Mad. 205

MADRAS ACTS—*contd.*

——— 1864—II—*concld.*

See MADRAS ABKARI ACT, 1864, s. 10.
I. L. R. 7 Mad. 434

See MADRAS REVENUE RECOVERY ACT 1864.

——— 1864—III—

See MADRAS ABKARI ACT, 1864.

——— 1865—III—

See MAGISTRATE, JURISDICTION OF—SPECIAL ACTS—MADRAS ACT III OF 1865.

——— V—

See FINE . 3 Mad. Ap. 9

——— VII—

See MADRAS IRRIGATION CESS ACT.

——— VIII—

See MADRAS RENT RECOVERY ACT, 1865.

See REGISTRATION ACT, 1877, s. 17.
7 Mad. 234

——— 1865—X—

See RIGHT OF SUIT—SUITS AGAINST MUNICIPAL OFFICERS . 3 Mad. 370

——— s. 108—*Slaughter-house, Using place as.* Slaughtering a sheep in one's own premises for one's own private use is not an offence under s. 108 of Madras Act X of 1865. ANONYMOUS
6 Mad. Ap. 18

——— s. 114—*Continuing of offensive trade in premises already used.* The continuing of offensive trades in premises already used is not an offence under s. 114 of Madras Act X of 1865. The section only applies to the fresh dedication of premises to certain offensive trades ANONYMOUS
5 Mad. Ap. 16

——— 1866—I—

See CANTONMENTS ACT (MADRAS ACT I OF 1866) . . . 7 Mad. Ap. 15
I. L. R. 8 Mad. 428

See CANTONMENT MAGISTRATE.
I. L. R. 8 Mad. 350

See HIGH COURT, JURISDICTION OF—MADRAS—CRIMINAL . 3 Mad. 277

——— 1866—IV—

See MADRAS ENFRANCHISED INAMS ACT.

See RIGHT OF SUIT—OFFICE OR EMOLUMENT . . I. L. R. 8 Mad. 249

——— 1867—VI—

See MADRAS TOWNS LAND REVENUE ACT.
I. L. R. 22 Mad. 100

——— IX—

See MADRAS MUNICIPAL ACT, 1867.

MADRAS ACTS—*contd.*

—— 1869—III—

See CONTEMPT OF COURT—PENAL CODE, s. 174 . . . 5 Mad. Ap. 28
6 Mad. Ap. 44
7 Mad. Ap. 10, 11
I. L. R. 5 Mad. 377
I. L. R. 7 Mad. 197
I. L. R. 12 Mad. 297

See CRIMINAL PROCEDURE CODE, ss. 476, 435, 439 . I. L. R. 29 Mad. 100

See SUMMONS, SERVICE OF.
I. L. R. 11 Mad. 137

—— 1871—III—

See MADRAS TOWNS IMPROVEMENT ACT, 1871.

—— IV—

See MADRAS LOCAL FUNDS ACT, 1871.

—— 1873—III—

See MADRAS CIVIL COURTS ACT, 1873.

—— 1876—I—

See MADRAS LAND REVENUE ASSESSMENT ACT.

—— 1878—V—

See MADRAS MUNICIPAL ACT, 1878.

—— 1879—V—

See MADRAS ABKARI ACT, 1864.
I. L. R. 4 Mad. 231, 241

—— 1882—I—

See SALT, ACTS AND REGULATIONS RELATING TO—MADRAS.

—— V—

See MADRAS FOREST ACT.

—— s. 10—

See VALUATION OF SUIT—APPEALS
I. L. R. 8 Mad. 22

—— 1884—I—

See MADRAS MUNICIPAL ACT, 1878, ss. 103, 105 . I. L. R. 8 Mad. 428

See MADRAS MUNICIPAL ACT, 1884.

—— II—

See MADRAS BOUNDARY MARKS AMENDMENT ACT.

—— III—

See MADRAS REVENUE RECOVERY AMENDMENT ACT.

—— IV—

See MADRAS DISTRICT MUNICIPALITIES ACT.

—— 1884—V—

See MADRAS LOCAL BOARDS ACT.

—— 1885—I—

See MADRAS POLICE ACT, 1859, s. 48.
I. L. R. 9 Mad. 167

—— 1886—I—

See MADRAS ABKARI ACT, 1886.

—— II—

See MADRAS HARBOUR TRUST ACT.

—— 1887—I—

See LANDLORD AND TENANT—BUILDINGS ON LAND, RIGHT TO REMOVE AND COMPENSATION FOR IMPROVEMENTS.

See MALABAR COMPENSATION FOR TENANTS' IMPROVEMENT ACT.

—— 1888—III—

See MADRAS POLICE ACT, 1888.

—— 1889—I—

See MADRAS VILLAGE COURTS ACT, 1889.

—— III—

See DISTRICT MUNICIPALITIES ACT.

See MADRAS TOWNS NUISANCES ACT.

—— IV—

See MADRAS SALT ACT.

—— 1891—I—

See MADRAS GENERAL CLAUSES ACT.

—— 1894—II—

See MADRAS PROPRIETARY ESTATES VILLAGE SERVICE ACT

—— 1895—III—

See MADRAS HEREDITARY VILLAGE OFFICES ACT.

—— 1897—III—

See DISTRICT MADRAS MUNICIPALITIES (AMENDMENT) ACT.

See MADRAS DISTRICT MUNICIPALITIES ACT.

—— 1899—IV—

See MADRAS COURT OF WARDS REGULATION(AMENDMENT) ACT.

—— 1900—I—

See MALABAR COMPENSATION FOR TENANTS' IMPROVEMENTS ACT.

—— 1902—I—

See MADRAS COURT OF WARDS ACT.

MADRAS ACTS—*concld*

———— 1904—III—

See MADRAS MUNICIPALITY ACT.

———— 1908—I—

See ESTATES LAND ACT.

MADRAS BOAT RULES—

1. ———— **Act IV of 1842—Act IX of 1846**—*Jurisdiction of Magistrates—Liability of owner under rule 7—Burden of proof.* Under Act IX of 1846, the Madras Government is authorized to make in respect of ports in the presidency such regulations for the management of boats and such other matters as are provided for by Act IV of 1842 in respect of the Madras roads, being similar in principle to the provisions of the said Act, but varying in detail as local circumstances may require. Act IV of 1842, s. 24, empowers a justice of the Peace of the town of Madras to hear and determine all pecuniary forfeiture and penalties had or incurred under or against that Act *Held* that it was competent to the Government of Madras to provide that cases cognizable under the rules passed in accordance with Act IX of 1846 should be heard and determined by Magistrates not being Justices of the Peace Under rule 7 of the amended rule [illegible]

plying without its proper crew, the absence of proof by the prosecutor that the owner was aware of the fact was no bar to his conviction *In re* ROUTHAKONNI . I. L. R. 9 Mad. 431

[illegible]

I. L. R. 10 Mad. [illegible]

MADRAS BOUNDARY MARKS ACT (XXVIII OF 1860).

See COURT-FEES ACT, SCH II, ART. 17. I. L. R. 4 Mad. 204

See LIMITATION ACT, 1877, s. 14. I. L. R. 11 Mad. 309

———— ss. 21, 25, 28—*Appeal, nature of—Arbitrator's award—Duty of Collector—Irregularity in procedure.* The appeal allowed by s. 28 of the Madras Boundary *Act*, XXVIII of 1860, is one

MADRAS BOUNDARY MARKS ACT (*XXVIII OF 1860*)—*contd.*

———— ss. 21, 25, 28—*concld.*

from a decision recorded in the presence of the parties and duly intimated to them as required by s. 25 of the said Act. The omission by the Collector to pass a decision in accordance with an arbitrator's award and to furnish a copy to the parties as required by s 21 of the Boundary Act is fatal to the award The power given by s. 21 being a judicial power, a Collector must exercise his independent judgment, and should not refer the award for acceptance to the Board of Revenue and Government, nor should he adjudicate when, as agent to the Court of Wards, he represents one of the rival claimants. SESHAMA *v.* SANKARA I. L. R. 12 Mad. 1

———— s 25—

See LIMITATION—QUESTION OF LIMITATION . I. L. R. 19 Mad. 416

See MINOR—REPRESENTATION OF MINOR IN SUITS . I. L. R. 11 Mad. 309

See RES JUDICATA—PARTIES—SAME PARTIES OR THEIR REPRESENTATIVES. I. L. R. 11 Mad. 309

1. ———— *Appeal—Limitation—Special extension of time for appeal.* Under s 25 of the Boundary Act (Madras Act XXVIII of 1860), the decision against which an appeal is allowed in the form of a regular suit is the original decision to the settlement officer, and not that of his superior passed on revision; and unless time is extended by the Governor in Council, the appeal must be brought within two calendar months from the date of the original decision The provisions of the exception to s 5 of the Limitation Act, 1871, do not apply. THIR SING *v* VENKATARAMIER . . . . . I. L. R. 3 Mad. 92

2. ———— *Limitation—Procedure.* Under s. 25 of Act XXVIII of 1860 (Madras Boundary Act), which limits the time within which a suit may be brought to set aside the decision of a settlement officer to two months from the date of the award, time will not begin to run until the date on which the decision is communicated to the parties. As the settlement officer is required to take evidence before coming to a decision under s. 25, a decision based upon the report of a subordinate vitiates the whole proceedings and is not binding on the parties. ANNAMALAI CHETTI *v.* CLOETE . I. L. R. 6 Mad. 189

3. ———— **Power of Government to extend time for appeal.** The proviso contained in s. 25 of Act XXVIII of 1860 gives a [illegible]

4. ———— A suit by way of appeal against a decision of a Revenue Survey officer in 1876, under s. 25 of the Madras Boundary Act, 1860, was dismissed on second appeal in 1881 by the High Court, on the ground that it was barred by

MADRAS BOUNDARY MARKS ACT (XXVIII OF 1860)—*concld.*

——— s. 25—*concld.*

the Governor in Council was not *ultra vires*, and that the second suit was not barred. VENKATRAMANA v. THIR SINGH . . . I. L. R. 7 Mad. 280

MADRAS BOUNDARY MARKS AMENDMENT ACT (II OF 1884

——— s. 9—

See LIMITATION—QUESTION OF LIMITATION . . I. L R. 19 Mad 416

MADRAS CITY CIVIL COURT ACT (VII OF 1892).

——— s. 3—*Jurisdiction—Suit for "breach of promise of marriage"—Contract of marriage between intended bridegroom and parent of intended bride—Cognizable by Small Causes Courts—Presidency Small Cause Courts Act (XV of 1882), s. 19 (q)* The phrase "breach of promise of marriage," which occurs in Art (q) of s 19 of the Presidency Small Cause Courts Act, has reference to the action as understood in English law, that ntract- tended bride. 1892, Court to try all suits of a civil nature except, *inter alia*, suits cognizable by the Small Cause Court. By s. 19 [Art (q)] of the Presidency Small Cause Courts Act, the Small Cause Court has no jurisdiction to entertain suits for compensation

ALI (1901) . . . I. L. R. 24 Mad. 652

MADRAS CITY MUNICIPAL ACT (I OF 1884).

See DEFAMATION . I. L. R. 26 Mad. 43

——— s. 341—

See SANCTION FOR PROSECUTION—WHERE SANCTION IS NECESSARY, OR OTHERWISE. I. L. R. 25 Mad. 15

MADRAS CITY MUNICIPAL ACT (I OF 1884)—*contd.*

——— s. 341—*concld.*

——— *Liability of Government under Taxing Acts, when not expressly mentioned—Prerogatives of the Crown—Indian Councils Act, 1861 (24 & 25 Vict, cap. 67), s. 42.* The Superintendent of the Government Gun Carriage Fac-

prosecuted to conviction by the Municipal Commissioners. *Held*, on revision, that timber brought into Madras by or on behalf of the Government is

very nature of the duty or tax is such as to be inapplicable to the Government. *Per curiam.*—Under the Indian Councils Act, 1861, a Provincial Council has, subject to the same restrictions as those imposed by the Act on the Governor-General's Council, power to affect the prerogative of the Crown by legislation. BELL v. MUNICIPAL COMMISSIONERS FOR THE CITY OF MADRAS (1902) I. L. R. 25 Mad. 457

——— ss. 392, 433 and 458—*Nuisance—Opening of burial and burning ground—"Convenient*

City of Madras Municipal Act, 1884, the Municipal Commissioners "shall . . . . provide a sufficient number and bu limits purpose person sioners Act. factory Madras. In 1896 the defendants, the Municipal Commissioners for the City of Madras, acquired land close to plaintiff's and opened a burial and burning ground thereon. Plaintiff alleged that his premises had, in consequence thereof, become unhealthy, insanitary, and unfit for residential purposes; that he had been unable to work his factory; and that his property had deteriorated in value. He accordingly sued for an injunction restraining the defendants, from using the land acquired by them as a burial and burning ground, and for damages. No negligence was alleged or shown regarding the manner in which the burial ground had been used. There was some evidence that the burning ground was to some extent a source of nuisance to anyone who occupied plaintiff's premises, and that the market value of the premises had been depreciated by the opening of the burial ground. *Held*, that no actionable nuisance

MADRAS CITY MUNICIPAL ACT (I OF 1884)—*concld.*

———— ss. 392, 433 and 458—*concld.*

had been proved. *Per* SIR ARNOLD WHITE, *C J* —Even if an actionable nuisance had been proved, the defendants were protected. *London and Brighton Railway Co* v. *Truman, L. R 11 App Cas. 45,* followed *Metropolitan Asylum District* v *Hill, L. R 6 App Cas 193,* distinguished. The mere fact that a neighbouring landowner has sustained damage from the establishment of a burning and burial ground does not show that the site selected is not "convenient and fitting" The words "within or without the limits of the City" must be read, *secundum subjectum materiam,* and with reference to the requirements of the community in connection with the disposal of corpses, and the general necessities of the case. By s. 433 of the City of Madras Municipal Act, the period of limitation for the commencement of suits against the Commissioners in respect of anything done in pursuance of the powers given by the Act is fixed at six months *Semble. That plaintiff's cause of action, if any,* arose when the site began to be used as a burial ground, namely, in 1896 and that the claim was barred by limitation, under both s 433 of the general law. MUHAMMAD MOHIDIN SAIT v. MUNICIPAL COMMISSIONERS FOR THE CITY OF MADRAS (1901) . . I. L. R 25 Mad. 118

MADRAS CIVIL COURTS ACT (III OF 1873).

See MUNSIF, JURISDICTION OF
I. L. R. 9 Mad 208
I. L. R. 11 Mad. 197

See VALUATION OF SUIT.

———— s 12—

See EXECUTION OF DECREE—TRANSFER OF DECREE FOR EXECUTION, ETC
I. L. R. 7 Mad. 397
I L R. 17 Mad. 309

See MUNSIF, JURISDICTION OF.
I. L R. 11 Mad. 140
I. L. R. 19 Mad. 56

———— s. 14—

See APPEAL TO PRIVY COUNCIL—CASES IN WHICH APPEAL LIES OR NOT—VALUATION OF APPEAL
I. L. R. 15 Mad. 237

———— s. 16—

See MAHOMEDAN LAW—GIFT
I. L R. 24 Mad. 513

———— *Suit by reversioner to recover land granted to Hindu widow—Presumption as to death of widow from absence, not a question of succession or inheritance.* Plaintiff sued as reversioner to recover certain land granted in lieu of maintenance to a Hindu widow. The widow had left her village sixteen years before suit, and had not been heard of since *Held,* that the question whether a presumption arose that the widow was dead was not a question regarding succession or inheritance to be decided according to Hindu law within the meaning of s 16 of the Madras Civil Courts Act, 1873 BALAYYA v. KISTNAPPA
I. L. R. 11 Mad. 448

MADRAS CIVIL COURTS ACT (III OF 1873)—*concld.*

———— s 17—

See DISTRICT JUDGE, JURISDICTION OF.
I L. R. 26 Mad. 595

———— s. 28—

See MUNSIF, JURISDICTION OF.
I. L. R. 19 Mad. 445

MADRAS COURT OF WARDS ACT (I OF 1902).

—— —— *Rules 3 and 7 of rules framed thereunder—Regulation Collector, power of, to reject claims as barred* Where, under the provisions of the Court of Wards Act and the rules framed thereunder, a Regulation Collector and a [illegible]

it is his duty to 'thereupon furnish him (the Decree Collector) with such particulars' If the claim was disputed, it was the duty of the Decree Collector under rule 7 to refer the matter to the Civil Court and the matter that could properly be referred will be whether the claim was legally enforceable at [illegible]

provisions of the Act and rules The reference to the Civil Court is not to be regarded as the [illegible]

[illegible] LECTOR OF UTHUMALAI ESTATE v. SUBBIER (1908)
I. L. R. 31 Mad. 495

[illegible]

MADRAS COURT OF WARDS ACT (I OF 1902)—*concld.*

———— ss. 43, 57—*concld.*

Wards—Right of suit—Real payee. Where the Court of Wards assumes superintendence of the estate of a disqualified proprietor, and, in exercise of the powers conferred by s. 43 of the Court of Wards Act, ousts an usufructuary mortgagee from possession, and the manager of the Court, in the course of his management, takes from the tenants of the property promissory notes payable to himself or order for the rents and profits of the mortgaged premises, it is competent to such mortgagee or his heirs to maintain a suit on such promissory notes when the Court's superintendence comes to an end and it delivers to the mortgagee the promissory notes without however endorsing or otherwise assigning the same in writing. Dispossession of an usufructuary mortgagee under s. 43 of the Act does not convert the usufructuary into a simple mortgage. *Per* MILLER, J.—The position of the Court of Wards on the dispossession of the usufructuary mortgagee, is analogous to that of a receiver for the collection of rents and profits, in respect of such mortgaged properties. The real payee of the promissory note is the landlord by his agent, the manager. Before dispossession the mortgagee was the landlord for the purpose of collecting rents and profits, and subsequent to dispossession, the Court of Wards to such extent was the landlord. When the Court's superintendence terminated, its receivership came to an end and the mortgagee as the landlord was the real payee entitled to sue and recover on the promissory notes. SOWCAR LORD GOVINDA DASS *v.* SEPATI MUNEPPA NAIDU (1908)

I. L. R. 31 Mad. 534

MADRAS COURT OF WARDS REGULATION (V OF 1804 AS AMENDED ACT IV OF 1899).

———— ss. 35, 37—*Power of Local Government to make rules—Such rules may provide for claims not passed into decrees—Rules 6 and 7 do not authorise a reference to the District Court, when no dispute as to fact or extent of liability in regard to principal matter of claim—Civil Procedure Code (Act XIV of 1882), s. 322 (a), (b) and (d).* Under ss. 35 and 37 of Regulation V of 1804, the Local Government has power to make rules in regard to claims which have not merged into decrees and to extend to such claims the procedure laid down in s. 322 (a), (b) and (d) of the Code of Civil Procedure. Rules 6 and 7 of the rules framed under s. 35 of Regulation V of 1804 do not authorise the Decree Collector to make a reference to the District Court in respect of the interest to be allowed to a creditor, unless there is a dispute as to the fact or extent of liability in regard to the principal matter of the claim, and the question of interest arises as accessory, and incidental to the disposal of the main claim. THE REGULATION COLLECTOR OF KALAHASTI AND KARVETNAGAR ESTATES *v.* RAMASAMI CHETTI (1905) . . **I. L. R. 28 Mad. 489**

MADRAS DISTRICT MUNICIPALITIES ACT (IV OF 1884).

———— s. 3 (27)—

See PUBLIC ROAD, HIGHWAY, STREET OR THOROUGHFARE

I. L. R. 25 Mad. 635

———— s. 3 (27), 196, 263—*License not required under s. 169, when verandah or other covering erected within the limits of adjacent property.* A public street as defined in s. 3 (27) of the Madras District Municipalities Act, extends only up to the boundaries of the adjacent property. The special license under s. 169 of the Act which is required in the case of projections 'over pyals and pavements in front of any building or land *in a public street*' is not required in the case of verandahs and other coverings *within* the limits of adjacent property. NARASIMMA CHARI *v.* CHAIRMAN, MUNICIPAL COUNCIL, CONJEEVERAM (1907) . **I. L. R. 31 Mad. 161**

———— ss. 4-B (*1*) (*b*), 4-B (*2*) (*l*) 21, 261—*Supersession of a municipal body under s. 4-B (1) (b) only a suspension—No notice under s. 261 required when the suit is only for injunction—Easements Act (V of 1882), s. 7, ills. (a) and (i)—Right of proprietor on higher level under s. 7, ill. (i), not an easement and does not interfere with the right of lower proprietor to build on his own land under s. 7, ill. (a).* The 'supersession' of a Municipal Council under s. 4-B (*1*) (*b*) of Madras Act IV 1884 is only suspension of such body for a limited period and such supersession is different from and has not the effect of a dissolution under s. 4-B (*1*) (*a*). The 'reconstitution' of such a Council under s. 4-B (*1*) (*b*) is the revival of the old corporation and not the creation of a fresh one and all the rights and liabilities of the superseded Council will devolve on the Council so reconstituted as its rightful successor. The notice required by s. 261 of the District Municipalities Act is not necessary, when the suit is for an injunction. The right of the owner of higher land under s. 7, ill. (i), of the Easements Act, i.e., that the water naturally rising in, or falling on, such land shall be allowed by the owner of adjacent lower land to run naturally thereto is not a right in the nature of an easement and is subject to the right of the owner of such lower land to build thereon under s. 7, ill. (a), of the Act. The owner of the lower land cannot complain of the passage of such water as an injury, but he is not bound to keep open such way and may obstruct it by suitable erections on his land. *Smith v. Kenrick, 7 C. B. 515*, referred to. *Rylands v. Fletcher, L. R. 3 H. L. 330*, referred to. MAHAMAHOPADHYAYA RANGACHARIAR *v.* MUNICIPAL COUNCIL OF KUMBAKONAM (1905) . . **I. L. R. 29 Mad. 539**

———— s. 11—*Interference with a public drain.* The owner of a house in a street at Tanjore removed, without the sanction of the Municipal Council, the masonry covering of a drain in front of his house. *Held*, that the act of the plaintiff did not constitute an interference with the drain within the meaning of

MADRAS DISTRICT MUNICIPALITIES ACT (IV OF 1884)—*contd.*

——— s. 11—*concld*

District Municipalities Act, s. 211. MUNICIPAL COUNCIL, TANJORE *v.* VISVANATHA RAU
I. L. R 21 Mad. 4

——— s 26—*Power of Municipality conferred by the section wider than that conferred by Regulation VII of 1817 on a Revenue Board—Municipality has under s 26 of Act powers of actual management and can maintain the suit on bonds in the name of the superseded trustee without obtaining an assignment* The powers conferred on the Municipality in respect of charitable endow-

under the Act, powers of actual management in addition to the power of superintendence vested by the Regulation in the Board of Revenue It is competent to a Municipality, which has taken action under s. 26 in respect of a charitable endowment, to maintain a suit on a bond standing in the name of the superseded trustee without obtaining an assignment of such bond. MUNICIPAL COUNCIL OF RAJAHMUNDRY *v.* SUSURLA VENKATESWARLU (1907)
I. L. R. 31 Mad. 111

——— s. 41.

See PUBLIC SERVANT
I. L. R. 13 Mad. 131

1. ——— s. 45—*Contract not signed in accordance with section unenforceable* A contract

not so signed, the Municipality cannot be rendered liable on the ground of executed consideration *Young & Co. v The Mayor and Corporation of Royal Leamington Spa, L. R 8 A C 517*, followed RAMASWAMY CHETTY *v* MUNICIPAL COUNCIL, TANJORE (1905) . . I. L. R. 29 Mad 360

2 ——— *Agreement not in*

RAMAN CHETTI *v.* THE MUNICIPAL COUNCIL OF KUMBAKONAM (1907) . I. L. R 30 Mad. 290

1. ——— s. 47 and s. 63—*Land tax—Land unappropriated to buildings* A municipal council under the Madras District Municipalities Act has no power to levy a tax on any land exceeding seven-and

MADRAS DISTRICT MUNICIPALITIES ACT (IV OF 1884)—*contd*

——— s. 47 and s. 63—*concld.*

2. ——— ss. 47, 66 (*1*)—*Tax on houses, a yearly tax—When ownership arises after assessment, such owner liable for whole tax and not only for instalments accruing due after acquisition of ownership* The provisions of s 66 (*1*) and other sections of the Madras District Municipalities Act, show that the tax imposed on houses under s 47 of the Act is a yearly tax, although for the sake of convenience it may be made payable in instalments A person becoming the owner of a house subsequent to such assessment becomes liable as owner for the whole yearly tax and not only for the instalments that

regarding the obligations of buyer and seller in respect of the payment of taxes do not apply as between the Municipality and the subsequent owner CHAIRMAN OF THE MUNICIPAL COUNCIL, NELLORE *v* DWARAPALLY KOTTAMMA (1907)
I. L. R. 30 Mad. 423

——— ss. 49, 50.

See SMALL CAUSE COURT, MOFUSSIL—JURISDICTION—MUNICIPAL TAX.
I. L. R. 13 Mad. 78

1. ——— s 53 and ss 55 and 60—*Wrongful assessment of profession tax.* The Municipality at Tuticorin demanded R50 as profession

decree directing the amount levied to be ... was correct MUNICIPAL COUNCIL OF T... *v.* SOUTH INDIAN RAILWAY CO.
I. L. R. 1[illegible]

2. ——— and ss. 55 and ... *sion tax.* The Bank of Madras carried on ... (among other places) Negapatam ...

MADRAS DISTRICT MUNICIPALITIES ACT (IV OF 1884)—contd.

——— ss. 53 and 60—contd.

Municipality of Tellicherry. *Semble*: The aggregate income derived by the Bank from the exercise of its business in the separate Municipalities should regulate the class under which it would be liable to taxation. MUNICIPAL COUNCIL OF TELLICHERRY v. BANK OF MADRAS . I. L. R 15 Mad. 153

3. ——— and ss 59 and 60—*Profession tax—Trader.* One who makes it his business to sell the produce of his own land for profit is a trader within the meaning of Madras Act IV of 1884, provided the sales are conducted in a shop or place of business. *Held*, by PARKER, *J*, that one who has paid profession tax as a sheristadar in one municipality is not on that account exempted from paying a further tax in respect of a trade carried on by him in another municipality under Madras Act IV of 1884. VENKATA REDDI v. TAYLOR

I. L. R. 17 Mad. 100

4. ——— and Sch. (A)—*Profession tax—District Court pleader—Court situated outside municipal limits* The plaintiff, who was a pleader, lived and had his office and occasionally practised in Courts within the limits of the Municipality of Salem, but he claimed to be entitled to the refund of a sum levied on him for profession tax under the District Municipalities Act for the reasons that he practised as a District Court pleader, and that the District Court was situated outside the municipal limits. *Held*, that the plaintiff was liable to pay profession tax to the Municipality of Salem. RAMASAMI AYYAR v. MUNICIPAL COUNCIL OF SALEM . . . I. L. R. 18 Mad. 183

5. ——— *Profession tax—English Insurance Company carrying on business by agents in India.* The plaintiff was an English Insurance Company which carried on business at Coca- [illegible]

illegally levied, and that the plaintiffs were entitled to a decree for its refund. *Corporation of Calcutta v. Standard Marine Insurance Co., I. L. R. 22 Calc. 581*, followed. MUNICIPAL COUNCIL, COCANADA v. ROYAL INSURANCE CO.

I. L. R. 21 Mad. 5

[illegible] *tax—Suit to recover amount paid—Substantial compliance with the provisions of the Act—Maintainability of suit.* A person who resided within the limits of a municipality procured business and collected premiums for an Insurance Company, and forwarded the moneys so collected to the company at a place outside the municipality. For these services a commission was received, but no office or establishment of the company was kept or managed,

MADRAS DISTRICT MUNICIPALITIES ACT (IV OF 1884)—contd.

——— ss. 53 and 262—contd.

by the person so acting, within the municipality, nor was he empowered to represent the company in matter relating to contracts entered into by them. The municipality levied a sum of money on the company as profession tax, under s. 47 of the Madras District Municipalities Act, 1884; and it was paid under protest. The company then filed a suit to recover the amount so levied, when it was contended in defence that the company carried on a business that was liable to the tax, and that such business was carried on through the company's agent within the limits of the municipality, and that the tax had in consequence been properly levied. It was further contended that, by reason of s 262 of the [illegible]

of the Act had not been in substance and effect complied with. The municipality were therefore not protected from action by s. 262 *Quære*: Whether a company carrying on the business of insurance is liable to be taxed under the Madras District Municipalities Act. MUNICIPAL COUNCIL, COCANADA v. STANDARD LIFE ASSURANCE COMPANY (1900) . . I. L. R. 24 Mad. 205

7. ——— "*Income.*" The word "income" is used in Sch. A of the District Municipalities Act (Madras) as meaning "net income" or profits derived from the business, and not the gross income or receipts. By s. 262 (2) of the Act, no suit shall be brought in any Court to recover any sum of money collected under the authority of the Act, provided that its provisions have been in substance and effect complied with. A municipality assessed a person under s. 53 and Sch. A on his estimated gross income. *Held*, that the word "income" meant "net income," and [illegible]

COUNCIL OF MANGALORE v. THE CODIAL BAIL [illegible] (1901) . . . . I. L. R. 27 Mad. 547

8. ——— s 53, and Sch. A, proviso 4—*Person, carrying on business as a money lender—Liability to pay profession tax.* A person who carries on the business of a money lender, and whose income is less than R30 per mensem, is not chargeable with a tax under s 53 of the District Municipalities Act (Madras), 1884. MUNICIPAL COUNCIL OF CHIDAMBARAM v. VENKATENARAYANA PILLAI (1901) . . I. L. R. 24 Mad. 641

[illegible] —*Officer with* [illegible] fficer, whose [illegible] ity, does not [illegible] ld such office or appointment within the [illegible] ity so as to render himself liable for the payment of profession

MADRAS DISTRICT MUNICIPALITIES ACT (IV OF 1884)—*contd.*

———— s. 55—*concld.*

tax under Madras Act IV of 1884. Accordingly, an officer who is not personally present at his head-quarters in the course of duty for a period of sixty days in the half-year is not liable for the tax under s. 55 of the Act. CHAIRMAN, ONGOLE MUNICIPALITY v. MOUNSEY . I. L. R. 17 Mad. 453

See HAMMICK v. PRESIDENT, MADRAS MUNICIPAL COMMISSION . . I. L. R. 22 Mad. 145

2 ———— *'Day' what is—Circumstances which determine whether particular days are to be reckoned or omitted* The word 'day' in s. 55 of the Madras District Municipalities Act means a duration of 24 hours and the period of 60 days for which the person must have "held office within the limits" must be held to be 60 entire and unbroken periods, in law, of 24 hours each It will depend upon the circumstances whether fractions of a day are to be omitted or to be counted as whole days and the cause and character and duration of absence from Municipal limits will determine whether particular days are to be reckoned or omitted. MUNICIPAL COUNCIL OF CUDDALORE v. SUBRAHMANIA AYYAR (1905)

I. L. R. 29 Mad. 326

1. ———— s. 63—*Sub-ss (2), (3)—Levy of tax—Legality* By s. 63 (2) of the District Municipalities Act (Madras), 1884, it is enacted that, except as provided in sub-s. (3) of that section and in s 63A,

lands at an annual rate, not exceeding four annas for every 80 square yards thereof in lieu of the tax referred to in sub-s. (2) : Provided that no tax shall be levied under the sub-section upon lands used

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I. L. R. 24 Mad. 195

2. ———— *Sub-s. (3)—Madras District Municipalities Amendment Act (III of 1897), s 49—"Lands used solely for agricultural purposes"—Liability to tax.* By sub-s (3) of s. 63 of the Madras District Municipalities Act, 1884, as amended by the Madras District Municipalities

MADRAS DISTRICT MUNICIPALITIES ACT (IV OF 1884)—*contd.*

———— s. 63—*concld.*

as well as pasture lands, are used "solely for agricultural purposes," within the meaning of the sub-section. KING-EMPEROR v. ALLAN (1901)

I. L. R. 25 Mad. 627

3. ———— ss. 63, 262—*House-tax assessed on school building—Suit to recover tax payable under protest.* House-tax and water-tax was levied under the Madras District Municipalities Act, 1884, s. 63, on the school buildings of the Native College, Madura (which were exclusively used for charit-

———— ss 71 (2), 262 (2)—*Notice of intended insertion of name or property on assessment books—Substantial compliance with Act—Action to recover money paid in respect of tax* By s. 71 of the Madras District Municipalities Act, 1884, the Chairman may at any time amend the assessment book in manner therein provided, but no person's name or property shall be inserted, nor any increase of assessment made unless notice thereof has been served on such person not less that thirty days previous to a day to be specified in such notice as the day upon which such notice will be revised By

which was served upon plaintiff by a municipal

JORE v. UMAMBA BOI SAHEB

I. L. R. 23 Mad. 523

1 ———— s. 103—*Procedure to compel payment of tax—Distress.* Under s. 103 of Act IV of 1884 (Madras), a prosecution for default of payment of tax cannot be instituted unless the tax cannot be recovered by distress and sale of moveable property of the defaulter as provided in that section. QUEEN-EMPRESS v O'SHAUGHNESSY

I. L. R. 9 Mad. 429

2. ———— *Attachment of moveable property—Doors of house.* The doors of a

MADRAS DISTRICT MUNICIPALITIES ACT (IV OF 1884)—*contd.*

——— **s. 103**—*concld.*

house are not attachable as moveable property under the Madras District Municipalities Act, s. 103. QUEEN-EMPRESS *v.* IBRAHIM

I. L. R. 13 Mad. 518

3. ——— **and s. 110**—*Doors of house—Distraint notice* A Municipal Council under the District Municipalities Act has, under s. 110, a power to distrain after due notice, besides that given by s. 103, but the property distrained must be that of the defaulter, and the doors of a house cannot be removed in execution of a warrant of distress. PURUSHOTTAMA *v.* MUNICIPAL COUNCIL OF BELLARY . . **I. L. R. 14 Mad. 467**

——— **s. 169**—*Suit for declaration of title against a Municipality* The plaintiff sued a Municipal Council, under the Madras District Municipalities Act, for a declaration of title to a certain structure situated in the limits of the Municipality and of his right to put a roof over it. The structure was found to belong to the plaintiff. *Held,* that the Municipal Council had no discretion under s. 169 of the above Act to prevent the plaintiff from dealing with the structure, provided he did not interfere with the convenience of the public or with any sanitary regulations. KRISHNAYYA *v* BELLARY MUNICIPAL COUNCIL . . . **I. L. R. 15 Mad. 292**

——— **s. 173**—*Obstruction of public street.* S. 173 of the District Municipalities Act, 1884 (Madras), provides that no person shall deposit anything so as to cause obstruction to the public in any street without the written permission of the Municipal Council. *Held,* that the depositing by any person of an article in the street without the permission of the Municipal Council amounted to an obstruction. QUEEN-EMPRESS *v* BOLAPPA

I. L. R. 11 Mad. 343

——— **s. 179**—*Repair of buildings* By s 179, Madras District Municipalities Act IV of 1884, it is provided that "the external roofs, verandahs, pandals, and walls of buildings erected or [illegible]

[illegible] EMPRESS *v* SUBBANNA . **I. L. R. [illegible] Mad. 241**

——— **ss. 180, 264**—*Municipal building license—Building in excess of license—Requisition to demolish building—Magistrate, jurisdiction of* [illegible]

[illegible] The landowner, however, erected a building upon the whole of the land The Municipal Council then called upon her to demolish the building erected on the portion of the land which had not been licensed. This notice was not complied with. The landowner was then prosecuted and convicted under ss 180, 263, and 264 of the Act. *Held,* that neither of the abovementioned orders of the Municipal Council were legal, and consequently that no offence had been committed by the landowner. *Semble:* Madras Act IV of 1884, s. 264, does not empower a Magistrate to impose a fine prospectively in respect of the period during which a person convicted of the offence of omitting to comply with a notice to execute any work may continue to leave such work unexecuted. QUEEN-EMPRESS *v* VEERAMMAL

I. L. R. 16 Mad. 230

——— **s. 188 (n)**—*Not necessary to constitute offence that the cattle should have been kept for purposes of trade—No offence if cattle not habitually kept* An offence under s 188 (*n*) of Madras Act IV of 1884 is committed when a person keeps more than 10 head of cattle in a private place, though not for purposes of trade It is necessary, however, that there must be regular user of the place for keeping more than 10 head of cattle; and a mere temporary user for such purpose will not constitute the offence EMPEROR *v* MAYANDI KONAN (1906) . . **I. L. R. 30 Mad. 220**

1. ——— **ss. 188, 189**—*Keeping a private cart-stand without a license.* In a prosecution for using a place as a cart-stand without a license under the Madras District Municipalities Act, 1884, it was proved that carts resorted daily to the premises of the accused, laden with produce for sale to the general public and not only to the accused, who acted as a broker and permitted the carts to stand on his premises until the sale and removal of the goods was completed. *Held,* that the place was used as a cart-stand within the meaning of s. 188, and that the accused had committed an offence punishable under s 189 of the Act QUEEN-EMPRESS *v.* AYYAKANNU MUDALI . . . **I. L. R. 22 Mad. 455**

2. ——— *Keeping a private cart-stand without a license.* It is not necessary, in order to establish the offence of using a place as a cart-stand without a license under the Madras [illegible]

I. L. R. 21 Mad. [illegible]

——— **s. 191, cl. 2, and s. 262, cl. 2**—*Construction of statutes, observations on—Refund of money obtained under a void agreement—Contract Act (IX of 1872), ss 23, 65—An agreement tending to create a monopoly void as opposed to public policy.* Agreements having for their object the creation of monopolies are void as opposed to public policy under the English Common Law and under s. 23 of the Indian Contract Act The power conferred by s. 191, cl 2 of Madras Act IV of 1884 on

MADRAS DISTRICT MUNICIPALITIES ACT (IV OF 1884)—*contd.*

— s. 191—*concld.*

the Chairman of a municipality to license places for

except from a particular person or persons A power to interfere with the ordinary rights of citizens will not be inferred in the absence of express grant, unless it must be implied as incidental to other powers expressly granted or is indispensable

as to the existence of such powers must be resolved against the Corporation and in favour of the public. Where a municipal body receives license fees under a void agreement, it must, when the agreement is set aside, refund the amount so received under s. 65 of the Contract Act, and a suit to recover such amount will not be barred by s. 262 (2) of Madras Act IV of 1884 Discretionary power to grant licenses conferred by s 191, cl 2, District Municipalities Act, does not empower Municipalities to refuse licenses, unless clear grounds exist for so refusing. SOMU PILLAI v. THE MUNICIPAL COUNCIL, MAYAVARAM (1905) . I. L. R. 28 Mad 520

—— ss 191, 197—*Market, definition of—Use of, as market, what amounts to* Private property is used as a market when it is used as a public place for buying and selling Where a private market had been ordered to be closed, a person using the place for selling fish and flesh after a license had been refused is guilty of an offence under s 197 of the Madras District Municipalities Act or, at any rate, of an offence under s 191 ABU BAKER v. MUNICIPALITY OF NEGAPATAM (1905) I. L. R 29 Mad 185

—— s. 198 and ss 191, 192, 193—*Butcher's licenses—Private market, meaning of.* A Municipal Council, under the Madras District Municipalities Act, refused to give licenses to certain persons keeping butchers' shops not used as slaughter-houses, except on the condition that they should remove to a fixed market. *Held,* that butchers' shops are not "private markets" within the meaning of the Act, and that the action of the Municipal Council was *ultra vires.* QUEEN-EMPRESS v. BAODUR BHAI . I. L. R 10 Mad. 216

1. —— s. 222—*Nuisance—Sewage water.* An occupier of a building who allows sewage water to run into a street within the limits of a Municipality, governed by the Madras District Muni-

2. —— *Section applies to lanes having no side drains or ditches.* The

MADRAS DISTRICT MUNICIPALITIES ACT (IV OF 1884)—*contd.*

—— s. 222—*concld.*

obligation imposed on house-owners by s 222 of the District Municipalities Act, of not letting dirty water pass into the street is not conditional on the existence of drains made by the municipality. The hardship which may be inflicted on house-owners where the municipality has provided no drains is a matter to be considered in graduating the penalty. EMPEROR v NAGAN CHETTY (1906) I. L. R. 30 Mad. 221

—— s. 261—*Limitation—Contract Act (IX of 1872), s 74—Penalty* The Council of a Municipality, under Madras Act IV of 1884, entered into a contract for the lighting of the town whereby it was provided that the deposit made by the contractor should be forfeited on any default made by him in carrying out the terms of the contract One holding a decree against the contractor attached the amount of the deposit in the hands of the Municipal Council, but the Council subsequently passed a resolution in July 1888 declaring that the amount of the deposit had been forfeited The decree-holder, having purchased from the contractor his right to the money in question, sued in 1890 to recover it from the Municipality *Held,* (i) that the suit was not barred by the rule of limitation in the Madras District Municipalities Act, s 261; (ii) that the provision for forfeiture in the contract was penal and unenforceable, and consequently that the resolution of July 1888 was *ultra vires* SRINIVASA v. RATHNASABAPATHI . . . . I. L. R. 16 Mad. 474

—— s. 262—

See ante, ss. 53 AND 262

—— *Suit to recover tax alleged to be illegally levied—Right of suit.* The

illegally levied *Held,* that under the provisions of the District Municipalities Act, s 262, the suit was not maintainable. MUNICIPAL COUNCIL OF NELLORE v RANGAYYA . I. L. R. 19 Mad. 10

1. —— ss 263, 264—*Criminal Procedure Code (Act X of 1882), ss. 16, 350—Bench of Magistrates.* A trial on the charge of making an encroachment upon public land under District

the Municipal Council had passed no resolution under District Municipalities Act, s. 264:—*Held,* that on the facts of the case the conviction under s.

MADRAS DISTRICT MUNICIPALITIES ACT (IV OF 1884)—*contd.*

——— ss. 263, 264—*concld.*

263 was right, and that it was not invalidated by the absence at the end of the trial of two of the Magistrates before whom it had begun. *Quære:* Whether a charge under s. 264 would lie in the absence of a resolution passed by the Municipal Council. KARUPPANA NADAN *v.* CHAIRMAN, MADURA MUNICIPALITY . I. L. R. 21 Mad. 246

2. ——— Bye-law No. 48—*District Municipalities Amendment Act (Madras Act III of 1897)—Covering a drain without Municipal permission.* A bye-law of a Municipality had been framed under the powers conferred by an Act of 1884 as amended by an Act of 1897, and was to the following effect: "No public drain shall be covered without the permission of the Municipal Council." It had come into force in 1890 Prior to its coming into operation, an earlier bye-law had subsisted, in substantially the same terms. An occupier of premises, who had covered a drain during the subsistence of the earlier bye-law, was charged with having committed an offence under the later bye-law and contended by way of defence that he could not be convicted, inasmuch as the act complained of had been committed before the passing of the Act under which the complaint was laid He was convicted by a Bench of Magistrates:—*Held*, that the conviction was right. *Per* ARNOLD WHITE, *C. J.*—The bye-law applies to all drains which existed in a covered state at the time when it came into operation The word "shall" is used throughout the bye-laws in the imperative, and not with reference to time, and this is the sense in which it is used in the bye-law in question. *Per* BENSON, *J.*—A bye-law similar in terms to that under which the accused had been convicted having been in existence under the then Municipal Act at the time when the accused first covered the drain in question, the liability then incurred by him continued, under the General Clauses Act (Madras) unaffected by the passing of the present Municipal Act. The contention that the accused could not be convicted because the act complained of was committed before the present Municipal Act was passed, therefore failed PARIMANAM PILLAI *v.* CHAIRMAN, MUNICIPAL COUNCIL, OOTACAMUND.

I. L. R. 23 Mad. 213

——— s 269—*Madras Act IV of 1884 (as amended by Madras Act III of 1897), s 269—Money due as tax, fee, toll or other payment—Money due on toll contract—Applicability of section.* Money due under a contract intered into with a

[illegible]

pay what is due under such a contract cannot be convicted and fined under that section. ABDUL AZEEZ SAHIB *v.* CUDDAPAH MUNICIPALITY (1902)

I. L. R. 26 Mad. 475

MADRAS DISTRICT MUNICIPALITIES ACT (IV OF 1884)—*concld.*

——— Sch. A—

See ante, s. 53 AND SCH. A, PROVISO 4.

——— *Shopkeeper of trader—District Forest-officer—Depôt for sale of forest produce, conducted by representative of Government—Liability to taxation.* A District Forest-officer, who

[illegible]

keeper." MUNICIPAL COUNCIL OF MANGALORE *v.* SECRETARY OF STATE FOR INDIA (1902)

I. L. R. 25 Mad. 747

MADRAS DISTRICT MUNICIPALITIES ACT (III OF 1889).

——— s. 4—*Allowing offensive matter to flow into a "street"—Discharge into drains not forming part of street—Definition of street.* A defendant was charged under s 4 of the Madras District Municipalities Act with allowing offensive matter to flow from his house into a street. The matter flowed into a drain or ditch constructed along the side of the roadway. On the question as to whether any offence had been committed:—*Held*, that a "street" is any way or road in a city having

[illegible]

(1905) . . . . I. L. R. 28 Mad. 1[illegible]

MADRAS DISTRICT MUNICIPALITIES (AMENDMENT) ACT (III OF 1897).

——— s. 5—

See PUBLIC ROAD, HIGHWAY, STREET OR THOROUGHFARE.

I. L. R. 25 Mad. 635

——— ss. 10, 10-A, 19, 250—

——— *Rules, 6, 34, 35 and 36* [illegible] *250—Election*

[illegible]

under s. 250, a person is disqualified from [illegible] appointed or elected a Councillor if, before his election, he is convicted of an offence, which, in the opinion of the Governor in Council, disqualifies him from being a Councillor, even though such opinion of the Governor in Council is arrived at after the election. The refusal by the Governor in Council to remove a Councillor under s. 19 for such

MADRAS DISTRICT MUNICIPALITIES (AMENDMENT) ACT (III OF 1897)—*concld.*

——— s. 10—*concld.*

a conviction is no bar when such Councillor is subsequently re-elected, to the invalidation of the election on the ground of such conviction. Rules 34, 35 and 36 are not *ultra vires*. The rules were validly made in exercise of the powers conferred by s 250 (1); and even if not so, the power to prescribe conditions conferred by s 10, empowers the Governor in Council to make such rules Rules 35 and 36 prescribe the procedure to be followed when a petition contesting the election is presented. The word "then" in rule 35 means "after such petition is presented to the Collector" and not "after the Governor in Council has taken action under rule 34" The Governor in Council taking action under rule 34 is not confined to putting the Collector in motion under rule 35, but can pass orders himself. Such power is not taken away by the powers conferred on the Collector under rules 35 and 36, but only by an order of the Collector duly passed under those rules on a petition presented to him. The Governor in Council may take action under rule 34, whether a petition has been

do not warrant the validity of an election being questioned on the ground that the person elected was likely to bring the municipal administration into contempt without such enquiry as is provided by the rules, and the pronouncement of such disqualification by the Governor in Council under rule 34 without such enquiry cannot be supported SECRETARY OF STATE FOR INDIA *v.* VENCATESALU NAIDU (1906) . . . I. L. R. 30 Mad. 113

——— s. 49—

See MADRAS DISTRICT MUNICIPALITIES ACT (MAD ACT IV OF 1884), s. 63. I. L. R. 25 Mad. 627

MADRAS DISTRICT POLICE ACT (XXIV OF 1859).

See MADRAS POLICE ACT.

MADRAS ENFRANCHISED INAMS ACT (IV OF 1866).

See INAM . I. L. R. 30 Mad. 434

MADRAS FOREST ACT (V OF 1882).

See ONUS OF PROOF—POSSESSION AND PROOF OF TITLE. I. L. R. 19 Mad. 165

1. ——— s. 2 and ss. 3, 4, 6, 8, 9, 50—*Destroying cairn erected by Forest Department.* The accused, who were servants of the shrotriemdar of an agraharam, destroyed a cairn erected by the

MADRAS FOREST ACT (V OF 1882)—*contd.*

——— s. 2—*concld.*

Forest Department on the shrotriem land along the boundary line of a proposed forest reserve. No notice under Forest Act, s. 6, was proved to have

[illegible] *Held*, (i) that the provisions of the Act did not apply to the shrotriem land; (ii) that the right of a forest officer to enter upon and demarcate land under s. 9 is limited to the purpose of the inquiry directed by s 8; (iii) that the conviction was wrong. QUEEN-EMPRESS *v.* JANGAM REDDI . . . I. L. R 14 Mad 247

2. ——— ss 2, 43—*Rules 10, 13, 23—Logs*

[illegible] . . . I. L. R. 8 Mad. 373

——— s. 4 and ss 2, 10, and 14—*Claim to percentage of forest income—Pensions Act (XXIII of 1871), s. 4—"Civil Court"—Jurisdiction of Forest Settlement Officer—Jurisdiction of Appellate Court—Consent of parties to jurisdiction* A claim

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a claim is made, and such a suit brought by discharged forest karnams is barred by s 4 of the Pensions Act. A Forest Settlement Officer is a "Civil Court" for the purposes of the Pensions Act If a Court of limited jurisdiction exceeds its powers and adjudicates on a claim over which it has no jurisdiction, the Court (if any) which exercises appellate jurisdiction over it is bound

diction cannot give a Forest Settlement Officer jurisdiction in a case where he has no inherent jurisdiction SECRETARY OF STATE FOR INDIA *v.* VYDIA PILLAI . . I. L. R. 17 Mad. 193

——— s. 6—

See TITLE—EVIDENCE AND PROOF OF TITLE—LONG POSSESSION. I. L. R. 15 Mad. 315

——— *Tree pottah—Occupier of land.* The holder of a tree pottah is a known occupier of land within the meaning of s. 6 of the

MADRAS FOREST ACT (V OF 1882)—*contd.*

——— s. 6—*concld.*

Madras Forest Act. REFERENCE UNDER THE MADRAS FOREST ACT . I. L. R. 12 Mad. 203

——— s. 10—

See APPEAL—MADRAS ACTS.
I. L. R. 11 Mad. 309

See JURISDICTION OF CIVIL COURT—STATUTORY POWERS, PERSONS WITH
I. L. R. 12 Mad. 105

See VALUATION OF SUIT—APPEALS.
I. L. R. 8 Mad. 22

——— ss. 10 and 11—*Claim by riparian*

Act, jurisdiction to decide a claim by a riparian owner to the uninterrupted flow of the water of a natural stream. SANGILI VEERA PANDIA CHINNA TAMBIAR *v.* SUNDARAM AYYAR
I. L. R. 20 Mad. 279

——— ss. 14 and 39—*Limitation Act (XV of 1877), ss. 5, 6—Period of Limitation—Power to excuse delay.* Delay in preferring an appeal under the Madras Forest Act beyond the period prescribed by s 14 of that Act may be excused under s 5 of the Indian Limitation Act, 1877. REFERENCE UNDER MADRAS FOREST ACT
I. L. R. 10 Mad. 210

1. ——— s. 21—*Tree pottah—Trespass.* The holder of pottah of certain trees on land which had been declared a reserved forest was convicted of trespass under the Madras Forest Act on proof that he continued to gather the produce of the trees. *Held*, that the conviction was bad for want of proof that the petitioner's claim had been duly disposed of or that he had not preferred his claim within the period required by law. QUEEN-EMPRESS *v* RAMI REDDI . I. L. R 12 Mad. 226

2. ——— and ss. 4, 7, 16—*Making fresh clearing, offence of—Omission of order pro-*

appeal be re-heard. Pending the re-hearing, a lessee of the claimant felled trees on the land, and was charged under s 21 (*a*) with the offence of

3. ——— *Grazing cattle in a forest reserve.* The owner of cattle found grazing in a forest reserve cannot be convicted under Madras Forest Act, s. 21 (*d*), in the absence of evidence that he either pastured the cattle or permitted them to trespass in the reserve. QUEEN-EMPRESS *v.* KRISHNAYYAN I. L. R. 15 Mad. 156

MADRAS FOREST ACT (V OF 1882)—*concld.*

——— s. 21—*concld.*

——— s. 21, cl. (a)—"*Clearing*"—*Removal of trees or shrubs—Conviction where no evidence of such removed—Validity.* The word "clearing," as it is used in s. 21 (*a*) of the (Madras) Forest Act of 1882, means something in the nature of the removal of trees or shrubs. *Certain accused were convicted* of an offence under the section but there was no evidence on the part of the prosecution to show that there had been any removal of trees or shrubs by the accused, or that cultivation of the land in question could not have been carried on without such removal. *Held*, that there was no evidence that the accused had committed an act prohibited by s. 21. EMPEROR *v.* VENKANNA PRABHU (1902)
I. L. R. 26 Mad. 470

——— s. 26—*Cutting trees without permit—Canara Forest Rules, Nos 7, 12, 23.* The accused, not having a permit, cut certain classified trees on the kumaki adjoining his land and used the wood in his still as fuel; and upon these facts he was convicted of an offence against rules 7, 12, and 23. *Held*, that the conviction was illegal. QUEEN-EMPRESS *v* SHEREGAR . I. L. R. 13 Mad. 21

——— s. 33—"*Jointly interested*"—*Possession of forest under a mortgage.* The Government having possession of a forest under a mortgage is jointly interested therein with the mortgagor within the meaning of the Madras Forest Act, s 33. ASHTAMURTHI *v.* SECRETARY OF STATE FOR INDIA . . . . I. L. R. 13 Mad 322

——— Rule 12 of rules under Forest Act—*Removal of leaves from classified trees* The mere removal of leaves from classified trees on unreserved land does not constitute a breach of rule 12 of the Madras Forest Act, 1882. QUEEN-EMPRESS *v* SIVANNA . I. L. R. 11 Mad. 139

MADRAS GENERAL CLAUSES ACT (I OF 1891).

See MADRAS RENT RECOVERY ACT, s 51.
I. L. R. 22 Mad. 179

——— s. 8—*Appellate jurisdiction of High Court in cases instituted under enactments in force at time of institution of suit but repealed before hearing* ... Act XIV of 1882). ... a District ... claim was ... r, 1897, a ... adras Pro- ... d. Act II of 1894), the effect of which was that, as from the ... XXV of ... ased to ... heard the

MADRAS GENERAL CLAUSES ACT (I OF 1891)—*concld*

———— s. 8—*concld*

notification,
preferred,
no juris-
had juris-

brought under the said Regulations. In cases where the Court of first instance had jurisdiction to entertain the suit when it was instituted, and the parties had a right of appeal when the suit was instituted, the appellate jurisdiction of the High Court is saved by s. 8 of the Madras General Clauses Act, 1891, unless the right of appeal is expressly taken away. SADASIVA PILLAI v. KALAPPA MUDALIAR (1900) . . I. L. R. 24 Mad. 39

MADRAS HARBOUR TRUST ACT (II OF 1886).

See BILL OF LADING
I. L. R. 19 Mad 169

———— ss. 70, 87—*Immunity from action—Breach of contract—Contract Act (IX of 1872), ss 151, 152—Liability of bailees for hire for loss of goods—Negligence—Onus of proof—Bye-laws, validity of* When goods which have been entrusted to bailees for hire are lost, it lies on the bailees to show that they have taken as much care of the goods as a man of ordinary prudence would, under similar circumstances, have taken of his own goods of a similar kind, and that the loss occurred notwithstanding *such care* *If they fail to satisfy*

the provisions of a statute does not prevent it from entering into a contract; and the section does not apply in a case where the party aggrieved complains of the breach of such a contract on the part of the Board. By s. 70 of the Madras Harbour Trust Act, 1886, the Board is empowered to make bye-laws

MADRAS HARBOUR TRUST ACT (II OF 1886)—*contd.*

———— s. 70—*concld.*

TRUSTEES OF THE HARBOUR, MADRAS v. BEST & CO.
I. L. R. 22 Mad. 524

———— s. 87 and s. 61—*Maintenance of harbour causing encroachment on seashore—Liability of a public body for maintaining works authorized by statute—Common law liability where not expressly excluded by statute—Limitation.* A harbour, which was in the first instance constructed by Government, was, by the Madras Harbour Trust Act, 1886, vested in trustees, together with the foreshore *within the limits of the port* *Prior to the* date of the Act, an erosion, by the action of the sea, of a portion of the foreshore had commenced, in

in 1895 the result of the continuous encroachment of the sea was that a part of the said revetment

no provision for the payment of compensation by the trustees By s. 61, the trustees are empowered to perform all works necessary to carry out the objects of the Act Plaintiff sued the trustees to recover *damages for the injury caused to his land*

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cause
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n 13th
September 1898 On the day upon which the six

MADRAS HARBOUR TRUST ACT (II OF 1886)—conc'd

———— s. 87 and s. 61—concld.

the expiry of one month from the date thereof, legal proceedings would be instituted to recover the damage without further notice. The second letter, dated 11th May 1898, referred to further damage suffered, and called upon defendants to

of the sea was the result of the harbour groynes by which

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mainta

causing the encroachment, and that by so doing they had caused the foreshore vested in them to be washed away and the sea to be let in to the plaintiff's premises, thus causing the damage complained of which defendants had taken no steps to prevent *Held, per* SHEPHARD, J, that the plaintiff must be deemed to have commenced the suit in due time

shall be liable in damages for any act *bona fide* done

MADRAS . . . I. L. R. 23 Mad. 389

MADRAS HEREDITARY VILLAGE OFFICES ACT (III OF 1895).

MADRAS HEREDITARY VILLAGE OFFICES ACT (III OF 1895)—concld.

———— s. 3(3)—concld.

by Government—Jurisdiction of Civil Court to entertain suit. A suit was brought to recover lands which formed the emoluments of the office of *Ambalam in a certain village.* It was found on the

as it was not one of the offices therein exempted, and was an office in a "proprietary estate," namely, an *Inam* village the grant of which had been confirmed by the Government The suit was therefore not cognizable by a Civil Court. SOUNDARA PANDIA THEVAN *v.* VELATHIAPPA THEVAN (1902)
I. L. R. 26 Mad. 490

1. ———— s. 5——*Attachment of growing crop.* By s 5 of the Madras Hereditary Village Offices Act, the emoluments of village offices are not to be liable to attachment. *Held,* that an attachment by a decree-holder of a crop growing on certain lands in a zamindari, which were the inam service lands held by the judgment-debtor as a village servant, had been rightly set aside. KANNAM NAIDU *v.* LATCHANNA DHORA
I. L. R. 23 Mad. 492

2 ———————— *Emoluments of village office—Non-liability to attachment of soil*

directions for sale of inam lands granted as emoluments for the performance of duties connected with the offices referred to in that section. A decree directing the sale of such lands is *ultra vires.* RAJA OF VIZIANAGRAM *v* DANTIVADA CHELLIAH (1905)
I. L. R. 27 Mad. 84

———— s. 13—

See RES JUDICATA. I. L. R. 30 Mad. 320

———— ss. 13, 21—

See JURISDICTION . I. L. R. 30 Mad. 126

———— s. 21—

See MADRAS REVENUE RECOVERY ACT, s. 52 . . I. L. R. 23 Mad. 571

MADRAS IRRIGATION CESS ACT (VII OF 1865).

See MADRAS RENT RECOVERY ACT, s 4
I. L. R. 7 Mad. 182

1. ———— s. 1—*Water-cess—Overflow from Government works—Water supplied or used for* ... from Govern-

MADRAS IRRIGATION CESS ACT (VII OF 1865)—*concld.*

——— s. 1—*concld.*

of 1865:—*Held*, that the water was not supplied or used for purposes of irrigation within the meaning of Act VII of 1865, s. 1, and the plaintiffs were not liable to pay the water-cess. VENKATAPPAYYA v. COLLECTOR OF KISTNA . I. L. R. 12 Mad. 407

2. ——— *Lands irrigated under Kistna anicut—Water-cess—Optional or compulsory use of water* A raiyat occupying land in the Kistna delta made no application for the supply of water, but water from the irrigation channels flowed from time to time on to his land from irrigated lands of a higher level, and he had no option as to whether to accept or refuse the supply No increased benefit was derived from the water by the raiyat. A sum having been levied from him on account of water-cess, he now sued to recover the amount:—*Held*, that the plaintiff was entitled to recover. *Venkatappayya v. Collector of Kistna I. L. R 12 Mad 407*, followed KRISHNAYYA v. SECRETARY OF STATE FOR INDIA

I. L. R. 19 Mad. 24

——— s. 4—

See MADRAS RENT RECOVERY ACT, s. 11

I. L. R. 15 Mad. 47

MADRAS LAND REVENUE ASSESSMENT ACT (I OF 1876).

——— *"Parties to alienation," who are—Means only the parties to the particular alienation in respect of which the application is made.* The "parties to an alienation" whose concurrence is necessary for separate registration and sub-division by the Collector under Madras Act I of 1876, are the parties to the particular alienation in respect of which the application is made and not the parties to any transaction which may form a link in the alienor's title The provisions of the Act are not confined to alienations by the registered proprietor only COLLECTOR OF SALEM v PEER BATCHA SAHIB (1906)

I. L. R. 30 Mad. 108

1. ——— s. 2—*Separated registration and assessment of revenue—Suit for declaratory decree—Consequential relief—Specific Relief Act, s. 42—Misjoinder of parties—Madras Regulation, XXV of 1802, s 8. Want of concurrence of parties*

MADRAS LAND REVENUE ASSESSMENT ACT (I OF 1876)—*contd.*

——— s. 2—*contd.*

upon the proper construction to be put on grant

village of Kondagar . . . . of my zamindari . . . .

MADRAS LAND REVENUE ASSESSMENT ACT (I OF 1876)—*contd.*

———— s. 2—*contd.*

lector for separate registration and assessment of the said village, but on notices being sent to the zamindar and the lessees, they filed objections which, after due enquiry, were overruled by the Collector, who ordered separate registration and fixed the assessment. On appeal, the Board of Revenue supported the action of the Collector. Whereupon the lessees appealed to the Government of Madras on the 21st September 1891, and the Government of

order of the Madras Government, dated the 14th November 1891, directing the Collector to cancel

Specific Relief Act, inasmuch as the order had been already carried out. *Held*, also, that, if the general words of the prayer "for such other relief as the circumstances of the case may require" were to be taken as including a prayer for consequential relief, then the suit was bad for misjoinder, inasmuch as the zamindar and the lessees who were interested parties were not joined. *Held*, also, that not only the person applying under Act I of 1876, s 2, for separate assessment and registration must be entitled thereto, but also that the parties to the alienation must concur in the application. FISCHER *v.* SECRETARY OF STATE FOR INDIA. ORR *v.* FISCHER . . . I. L. R. 19 Mad. 292

Held, by the Privy Council, reversing the above decision, that by the effect of ss 5 and 6 of the Madras Act I of 1876 the decision of the Collector, in a case within his jurisdiction, whether for or against separate registration of a portion alienated

the Board of Revenue, and power is reserved to the Governor in Council to order re-adjustment of the separate assessment if fraud or material error should

MADRAS LAND REVENUE ASSESSMENT ACT (I OF 1876)—*concld.*

———— s. 2—*concld.*

directed the cancellation of the Collector's order, after sanction by the Board for the separate registration of the village:—*Held*, that this declaration should be decreed The objection that the suit was contrary to the law enacted in s. 42 of the Specific Relief Act, 1877, was not sustainable. No further relief could have been required by the plaintiff. The effect of the declaration itself for which he had sued would be sufficient to maintain the Collector's original order, which was valid in law, while the order of the Government directing its cancellation was not legal and was void. Nor was the suit defective for want of parties Another suit heard on appeal with the above, having been brought by the lessees of the entire zamindari, against the same grantee, raised the question,—what was the obli-

zamindari:—*Held*, that he was only liable, after the registration and assessment, for burdens lawfully incident to the separate holding, and that they were to be discharged by direct payment by him to the Collector FISCHER *v.* SECRETARY OF STATE FOR INDIA. ORR *v.* FISCHER . I. L. R. 22 Mad. 270
L. R. 26 I. A. 16
3 C. W. N. 16

2. ———— ss. 2 and 6—*Suit for declaration of right to separate registration and assessment—Madras Regulation XXV of 1802, s 8—*

1876. A Court has power to order separate registration and assessment under s. 6, although all the parties concerned do not concur in applying within the meaning of s. 2. KAMALAMMAL *v.* RAJU NAICKER . . . I. L. R. 19 Mad. 308

———— s. 6—*Madras Regulation XXV of 1802, s. 9, Madras Regulation XXVI of 1802, s 2.* An application to a Collector to grant separate

MARAZU *v.* SESHAMMA . I. L. R. 22 Mad. 138

———— s. 7—

See LIMITATION—STATUTES OF LIMITATION—MADRAS ACT I OF 1876, s. 7.

MADRAS LOCAL BOARDS ACT (V OF 1884).

See LOCAL BOARDS ACT (MADRAS).

1. ———— s. 27 and ss 128, 156—*Suit against Taluk Board—Suit framed erroneously—Plaint, frame of—Compensation for wrongful act*

MADRAS LOCAL BOARDS ACT (V OF 1884)—*contd.*

——— s. 27—*concld*

committed under the Act—Special period of limitation In a suit brought against, among others, the President of a Talukh Board constituted under Local Boards Act, 1884 (Madras), to recover land on which the panchayat of a Union within the talukh had erected a public latrine, it was pleaded that the suit as against abovementioned defendant was wrongly framed, and also that it was barred by the special rule of limitation contained in s 156 of that Act The plaintiff asked for no amendment, but proceeded to trial :—*Held*, that the suit was not maintainable under the Madras Local Boards Act, 1884, s 27, on the ground that it was not brought against the Talukh Board. *Quære* Whether s. 156 is applicable to suits other than suits for compensation for wrongful acts committed under colour of the Act AMEER SAHIB *v.* VENKATARAMA I. L. R. 16 Mad. 296

2. ——— and s. 156—*Notice of action —Form of suit—Plaint, frame of—Injunction against Talukh Board.* The plaintiff built a

——— s. 43—*Public servant—Sanitary Inspector.* A Sanitary Inspector appointed by the Local Board is a public servant within the meaning of Local Boards Act, Madras, 1884, s. 43. QUEEN-EMPRESS *v.* TIRUVENGADA MUDALI

I. L. R. 21 Mad. 428

——— ss. 57, 64 and 149—*Wrongful collection of land cess from inamdar—Suit for its*

the credit of the District Fund under s. 149 of the said Act. The *inamdar* filed a suit against the President of the District Board, to recover the amount on the ground that it had been illegally collected from him. There was no claim for damages On its being objected that the suit was

MADRAS LOCAL BOARDS ACT (V OF 1884)—*contd.*

——— s. 57—*concld.*

wrongly brought against the President of the District Board :—*Held*, that the suit was not maintainable. The assessment and the collection of which plaintiff complained were not the acts of the defendant, who could not be called upon to make good the amount said to have been wrongly collected merely because it had eventually been paid over to the credit of the District Board HARISCHANDRA DEVU *v.* PRESIDENT, DISTRICT BOARD OF GANJAM (1900)

I. L. R. 24 Mad. 114

——— ss. 64, 73—*Tax payable on land—Favourable tenure—Claim by landholder of more than one half of the tax from tenant—Invalidity of custom for tenant to pay whole tax* A tenant paid an annual rent of R64 to the landholder, the tenure being of a nature dealt with by sub-s. (iii) of s. 64 of the Local Boards Act (Madras), 1884. The landholder distrained on the tenant's property in respect of the whole amount of local cess payable in respect

rent" in s 64, sub-s (iii), of the Act mean rent

the house-register not having been completely

I. L. R. 21 Mad. 296

——— s. 87, cl. 3—*Government stores and equipages—Non-liability to tolls.* Stores and carts

MADRAS LOCAL BOARDS ACT (V OF 1884)—*concld.*

——— s. 87—*concld.*

I. L. R. 20 Mad. 16

——— s. 95—*This Act throws on Local Boards the duty of making necessary improvements*

and maintain roads casts on them by necessary implication the duty of constructing and maintaining the necessary culverts and tunnels under them. This implied power to construct and maintain such culverts and tunnels is not merely permissive, to be exercised only when no injury will be caused to others thereby, but an imperative duty cast on the Board by the Act. No suit for injunction or damages will lie against the District Board for any injury caused by the construction or improvement

Mad. 72, distinguished. AIYASAMI AIYAR *v.* THE DISTRICT BOARD, TANJORE (1907)
I. L. R. 31 Mad. 117

——— ss. 98 and 100—

See PENAL CODE, s 188.
I. L. R. 20 Mad. 1

——— s. 128 and s. 156—*Suit for malicious prosecution against officers of Panchayat Union—*

MADRAS LOCAL FUNDS ACT (IV OF 1871)

——— Tolls where leviable. Under the Local Funds Act (Madras Act IV of 1871), tolls are only leviable at toll-bars, and tolls are not leviable

MADRAS LOCAL FUNDS ACT (IV OF 1871)—*concld.*

on carts which enter a circle by a public road on which there is no toll-bar. *Quære.* Whether toll would not be leviable on a cart approaching a toll-bar, and, to evade payment, making a detour otherwise than by a road available to the public. GOVINDARAJULU *v.* LAKSHUMAN
I. L. R. 6 Mad. 37

MADRAS MUNICIPAL ACT (IX OF 1867)

——— s. 142—*President of Municipality,*

MADRAS MUNICIPAL ACT (V OF 1878).

——— ss. 103, 105, sch. A, class I—*Madras Act I of 1884, sch A, class I—Professional tax—Half-yearly payments.* Although the tax levied on professions under s. 103 of the City of Madras Municipal Act, 1878, is described as a yearly tax, a half-yearly liability is incurred in respect thereof by the tax-payer. W, having been assessed under class I, Sch. A of Act V of 1878, Madras, to profession tax at the yearly rate of R150, paid a moiety thereof for the first half of the year 1884 as provided in s 105 of the said Act. When the tax for the second half-year became due, Madras Act I of 1884 had come into force, and W was assessed for

1\. ——— s. 119—*Place of public worship*

I. L. R. 6 Mad.

2\. ——— and ss 120, 123—*Waste*

(not exceeding ... per ground)
priated to any building, or occupied by native huts with their appurtenances AHMED UNNISSA BEGAM SAHIBA *v.* ARUNDEL I. L. R. 7 Mad. 63

——— s. 123—*Tax on buildings—Hospital built by Government—Standard of hypothetical rent.* Under s. 123 of the City of Madras Municipal Act, the gross annual rent at which a building might reasonably be excepted to let from month to

MADRAS MUNICIPAL ACT (V OF 1878)—*contd.*

———— s. 123—*concld.*

month, or from year to year, is, for the purpose of assessment to house-tax under the Act, to be deemed

the Magistrates on appeal, reduced the assessment, finding that R7,920 would be a reasonable rent

assessed on the rent, which, on the property being

valued and assessed on the highest reserve rent

tention of the Municipality was correct. SECRETARY OF STATE *v.* MADRAS MUNICIPALITY

I. L. R. 10 Mad. 38

———— s. 192, case referred under—*Right of Municipal Commissioners to levy water-tax—Condition precedent—Independent power—Construction of statutes.* The Madras Municipal Act is not a "private" Act. When a public body is entrusted by the Legislature with the duty of making public improvements, and powers are entrusted to it for such purpose, those powers will not be subject to a restrictive construction, though they interfere with private rights. A statute is not to be construed like a contract. The power to impose a tax is not contractual and needs no correlative

introduced by the Municipal Commissioners. The Commissioners levied a water-tax on *B* in respect of his premises. *B* appealed under s. 189 to the President and two Commissioners, who decided that he was liable to pay the tax. On a case

upon the Commissioners to supply water. BRANSON *v.* MUNICIPAL COMMISSIONERS, MADRAS

I. L. R. 2 Mad. 362

———— ss. 317, 318—*President of Municipal Commissioners—Discretion as to necessity of cleansing tank likely to prove injurious to health.* By s. 317 of the City of Madras Municipal Act, 1878, the President of the Municipal Commissioners was invested with a discretion as to the necessity of cleansing and filling up tanks and wells and draining off stagnant water likely to prove injurious to the

provided for the collection of taxes. No appeal was allowed by the Act against the President's decision. *Held,* in a suit by the Municipal Commissioners to recover from the defendants the cost of draining

———— s. 433—*Water rate—Liability of Commissioners to a suit for compensation for not supplying water and collecting rate.* By the provisions of the City of Madras Municipal Act, 1878, if a water rate is levied by the Commissioners, they are bound to supply water for house service to every rate-payer who desires and provides the necessary works to connect his premises with the main, which ought to be within 150 yards of his premises, and the rate-payers are bound to pay water-rate whether or not they avail themselves of the privilege of house service. If the Commissioners do not perform this duty, the rate-payer has a remedy by action and may recover compensation, either under the provisions of s. 433 (which provides that a person aggrieved by the failure of the Commis-

tion. The Legislature intended the water rate to be a payment for a benefit conferred, and the tax should not be levied till water can be supplied. If in part of the city the Commissioners are able to supply

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MADRAS MUNICIPAL ACT (I OF 1884)

1. ———— s. 103 and s. 110—*Profession tax—Liability of member of a firm to pay separate tax in respect of a Government appointment, his qualification for such appointment (Government Solicitor) being the profession which he also carries on jointly with the firm—Meaning of "person" under the Act.* A member of a firm of Attorneys-at-

MADRAS MUNICIPAL ACT (I OF 1884)—*contd.*

———— s. 103—*concld.*

Law and Notaries Public, which paid the profession tax leviable under s. 103 of the City of Madras Municipal Act, 1884, also held the appointment of Government Solicitor. He practised no other profession or business than that exercised by his firm; and the duties of Government Solicitor could not be performed by any person other than a practising attorney. The Municipality of Madras having demanded profession tax in respect of the appointment of Government Solicitor in addition to the tax paid by the firm of which the holder of the appointment was a member:—*Held*, that the tax was rightly levied. BARCLAY *v.* PRESIDENT, MUNICIPAL COMMISSION, MADRAS
I. L. R. 23 Mad. 529

2. ———— and s. 190—*Profession tax—Inspector-General of Police* The Inspector-General of Police, whose official place of business with the main body of clerks is in Madras, went on tour, and during his absence the Assistant Inspector-General in Madras signed letters for him:—*Held*, that the Inspector-General was not assessable to profession tax under the City of Madras Municipal Act in respect of the period when he was absent on tour. HAMMICK *v.* PRESIDENT, MADRAS MUNICIPAL COMMISSION . . . I. L. R. 22 Mad. 145

See CHAIRMAN, ONGOLE MUNICIPALITY
I. L. R. 17 Mad 453

3. ———— and ss. 190, 192—*Profession tax—Liability of members of a firm—Extent of appeal allowed against decision of President of Municipality—Magistrate, jurisdiction of.* A member of a firm in Madras, another member of which was absent, was assessed under the Madras Municipality Act to pay a certain sum for the tax on arts, professions, trades, and callings as agents in charge of the business of the absent member of the firm.

4. ———— and Sch. A, class 1 (A), (B)—*Exercise of calling—Investment of funds of society—Benefit Society.* The business of investing the funds of a society for interest is a calling within the meaning of s. 103 of the Madras Municipal Act, 1884 A society established to provide by the subscriptions of its members for pensions for their widows and children is a benefit society within the meaning of Sch A, class 1 (A), of the said Act.

MADRAS MUNICIPAL ACT (I OF 1884)—*contd*

———— s. 103—*concld.*

Where the context discloses a manifest inaccuracy, the sound rule of construction is to eliminate the inaccuracy and to execute the true intention of the Legislature. JENNINGS *v.* PRESIDENT, MUNICIPAL COMMISSION, MADRAS . I. L. R. 11 Mad. 253

———— s. 307—*Prohibition against depositing stable refuse in a street—Deposit of stable refuse in a dust-bin—Liability of person so depositing.* By the first clause of s 307 of the City of Madras Municipal Act, 1884, the President of the Municipality "shall provide in the streets of the city suitable and sufficient dust-bins for the temporary

"whoever, after such provision has been made, deposits any of the said matters or any building, stable or garden refuse in any street, pavement or verandah of any building" . . . . . is rendered liable to fine. Petitioner, having deposited stable refuse in one of the dust-bins provided in accordance with the Act, was charged before a Magistrate and fined under the latter clause of the said section:—*Held*, that the dust-bin was not a part of the street, and that the throwing of stable refuse

FOR THE CITY OF MADRAS I. L. R. 23 Mad. 164

1. ———— s. 433—*Statement of cause of action—Address of intending plaintiff—Sufficiency of notice of action.* In a suit against the Municipal Commissioners of the City of Madras for damages

recover such loss or damage as I may have sustained," and added "kindly consider this as notice of claim under s. 433 of Municipal Act (I of 1884)," and that the plaintiff's attorneys, in a subsequent letter, demanded payment of R1,000, "being the

read together; (ii) that the cause of action was stated sufficiently in the second of the above letters; (iii) that the plaintiff's address was sufficiently given in the first of the above letters There was therefore a sufficient notice of action under s. 433 of the Madras Municipal Act, 1884. EALES *v.* MUNICIPAL COMMISSIONERS OF MADRAS
I. L. R. 14 Mad. 386

MADRAS MUNICIPAL ACT (I OF 1884)—*concld.*

———— s. 433—*concld.*

2. ———— *Notice of action.* In a suit against the President of the Municipal Commission, Madras, to recover damage for the demolition of a house which had been built by the plaintiff without previous notice given by him under the Madras Municipal Act, 1884, s. 265, the plaintiff proved, by way of notice of action, the delivery of a letter signed by him and dated from his place of residence, which did not state where the house in question had stood, nor the date of its demolition, nor state positively that an action would be brought. *Held*, that the letter was not a sufficient notice of action DEVALJI RAU *v.* PRESIDENT, MUNICIPAL COMMISSION, MADRAS

I. L. R. 18 Mad 503

———— Sch. A—*Liability of Mutual Assurance Company to taxation* The investment for interest of the funds of a Mutual Insurance Company by its Directors constitutes "carrying on business for gain," and the premia paid by insurers and the profits from investments thereof constitute the "capital" of the Company within the meaning of Sch. A of the City of Madras Municipal Act, 1884. MADRAS EQUITABLE ASSURANCE COMPANY *v.* PRESIDENT, MUNICIPAL COMMISSION, MADRAS

I. L. R. 11 Mad. 238

———— Sch. B—*Vehicle tax —Bicycle—Vehicle with springs.* A bicycle with pneumatic tires, having two metal springs under the saddle, is liable to taxation as a vehicle with springs under the City of Madras Municipal Act, 1884 WILSON *v.* MADRAS MUNICIPALITY . I L. R. 19 Mad 83

MADRAS MUNICIPAL ACT (III OF 1904).

———— s. 176, and Sch. V—*The word "capital" does not mean nominal capital, but only paid-up capital—Construction of statutes—Reference under s 176 of Act must state all necessary facts.* On a reference by the Magistrate under s 176 of the Madras Municipal Act III of 1904 as to the meaning of the word "capital" in Sch. V of the Act:—*Held*, that in the absence of any statutory definition of the word applicable in construing the Act, the word must be taken to be used in its ordinary and popular meaning, and so construed, it means the amount of money actually used in the business, *i e*, the paid-up capital. The fact that the word, in the Indian Companies Act, is used in the sense of nominal capital is no argument for so construing it in the Municipal Act, as the two Acts are not in *pari materia* The underlying principle of Schedule V of the Act is that taxation should be roughly proportionate to the professional incomes of individuals. The word "capital" is used in the same sense in Sch. V of Act III of 1904 and in Sch. A of Act I of 1884. In construing fiscal Acts, the construction most beneficial to the subject ought to be adopted. Maxwell on the 'interpretation of Statutes' 4 Ed., pp. 2, 56, 430 referred to. *Venkatarama Chetti v. Emperor, I. L. R. 28 Mad. 17,*

MADRAS MUNICIPAL ACT (III OF 1904)—*concld.*

———— s. 176—*concld.*

referred to. In making references under s 176 the Magistrate ought to state all the facts necessary for the decision of the particular case MYLAPORE HINDU PERMANENT FUND *v.* CORPORATION OF MADRAS (1908) . . I. L. R. 31 Mad. 408

MADRAS MUNICIPAL ACTS.

See MADRAS CITY MUNICIPAL ACT.

See MADRAS DISTRICT MUNICIPALITIES ACT.

See MADRAS DISTRICT MUNICIPALITIES (AMENDMENT) ACT.

MADRAS POLICE ACT (XXIV OF 1859).

———— ss. 10 and 44—*Departmental punishment and prosecution under the Act.* In the absence of any rules framed by Government under s 10 of the Madras Police Act, a departmental punishment inflicted under that section is no bar to a prosecution under s. 44 of that Act QUEEN-EMPRESS *v.* FAKRUDEEN . . . I. L. R. 17 Mad. 278

———— ss. 21 and 49—*Procession likely to cause breach of the peace—Powers of police—Removal of banners from persons in the procession—Trespass.* A procession of Hindus carried certain banners and the Superintendent of Police was of opinion that a breach of the peace would be occasioned if these banners continued to be displayed, and in good faith, for the purpose of preventing such breach of the peace, he took away the banners from certain persons in the procession:—*Held*, that the action of the Superintendent of Police was not justified by the Madras Police Act, 1859, ss. 21 and 49, and that he was accordingly liable for the trespass. RANGANAYAKULU *v* PRENDERGAST

I. L. R. 17 Mad. 37

———— s. 44—

See REVISION—CRIMINAL CASES—EVIDENCE AND WITNESSES . 6 Mad. Ap. 45

———— *Police constable not returning to duty after expiry of leave, guilty of offence under.* A police constable, who, having obtained casual leave does not return to duty on the expiry of such leave and stays away without obtaining fresh leave, is guilty under s. 44 of Act XXIV of 1859 of the offence of "ceasing to perform the duties of his office without leave." EMPEROR *v.* RAMASAWMY RAJU (1906)

I. L. R. 29 Mad. 192

1. ———— ss. 44 and 10—*Sentry going to sleep on duty—Ceasing to perform duties.* Accused, [illegible]

Held, that the accused was not guilty of the particular species of offence of which he was convicted: he was, however, guilty *primâ facie* under the

MADRAS POLICE ACT (XXIV OF 1859)—*contd.*

——— s. 44—*concld.*

section. Going to sleep while on guard is an offence punishable under s. 10. ANONYMOUS
6 Mad. Ap. 31

2. ——— *Sentry going to sleep on duty.* Accused, a police constable, was on duty at the outer gate of a central jail. Quitting his post beside the gateway and leaving the gate open, he went to sleep outside. For this violation of duty he was convicted and sentenced under s 44 of Act XXXIV of 1859:—*Held*, that the conviction was legal ANONYMOUS . . 7 Mad. Ap. 7

3. ——— and ss 8, 10, 11—*Village kavalgars.* S. 44 of Act XXIV of 1859 applies

7 Mad. Ap 4

——— s. 48—

See BENCH OF MAGISTRATES
I. L. R. 13 Mad. 142

See FINE . . . 3 Mad. Ap. 9

See JURISDICTION OF CRIMINAL COURT—EUROPEAN BRITISH SUBJECTS.
5 Mad. Ap. 25

See MAGISTRATE, JURISDICTION OF—TRANSFER OF MAGISTRATE DURING TRIAL . I. L. R. 15 Mad 132

See SENTENCE—IMPRISONMENT—IMPRISONMENT GENERALLY 5 Mad Ap. 35

See SENTENCE—IMPRISONMENT—IMPRISONMENT AND FINE. . 7 Mad. Ap. 22
3 Mad Ap. 9

1. ——— *Spreading fishing-nets by the side of public thoroughfare.* To spread

I. L. R. 4 Mad. [illegible]

2. ——— *Power of Local Government to define "town."* There is no Act of Legislature which empowers either the District Magistrate or the Local Government to define a "town" for the purpose of s. 48, Act XXIV of 1859. ANONYMOUS . . 6 Mad. Ap. 34

3 ——— *Reckless riding in streets—Riding untrained bullock.* Accused was convicted under cl. 1, s 48 of the Police Act, XXIV of 1859 The facts found were that he rode an untrained bullock, which he could not control, in the public street:—*Held*, that the evidence warranted the conviction. ANONYMOUS
7 Mad. Ap. 10

4 ——— *Madras Act I of 1885—Dung-heap kept in a town* By cl 5 of s. 48 *of Act XXIV of 1859 (Madras)*, as amended by Act I of 1885 (Madras), any person who, within the

MADRAS POLICE ACT (XXIV OF 1859)—*concld.*

——— s. 48—*concld.*

limits of a town, "throws or lays down any dirt, filth, rubbish or any stones or building materials; or who constructs a cow-shed or stable without the bounds of any thoroughfare, or who causes any offensive matter to run from any dung-heap into the street" is punishable. *A* was convicted and fined for having kept a manure-heap in a town, but not in a street:—*Held*, that the conviction was bad. QUEEN-EMPRESS *v.* APPATHORAY
I. L. R. 9 Mad. 167

——— s. 50—

See MAGISTRATE, JURISDICTION OF—SPECIAL ACTS—MADRAS ACT III OF 1865
4 Mad. Ap. 54

——— s. 53—

See ESTOPPEL—ESTOPPEL BY CONDUCT
5 Mad 466

See RIGHT OF SUIT—MONEY HAD AND RECEIVED . . . 5 Mad. 466

MADRAS POLICE ACT (III OF 1888).

——— ss. 42, 45, and 47—*Seizure of* ... In the Madras

... used or intended to be used for the purpose of gaming. QUEEN EMPRESS *v.* BHASHYAM CHETTI
I. L. R. 19 Mad. 209

——— s. 71, cls. 11 and 15—*Crowd collected by music—Obstruction of street—Music performed in private place.* Members of the Salvation Army were found by the Magistrate to have played tambourines and sung "at the angle" of a street in Madras, and thereby collected a crowd which thronged the street, and they were convicted of offences under the City of Madras Police Act, s. 71, cls 11 and 15:—*Held*, on revision, that, since the intention of the accused was to collect a crowd in the street, the conviction under cl. 11 was right, whether or not the place where the accused played and sang was a private place; but that, if it was a private place, the conviction under cl 15 was wrong. QUEEN-EMPRESS *v.* SUKA SINGH
I. L. R. 14 Mad. 223

MADRAS PROPRIETARY ESTATES VILLAGE SERVICE ACT (II OF 1894).

... of lands form- ... right to ... Mere ... of a Kurnam, ... does not give ... franchisement of lands, forming the emoluments of the office, *in the name of one*, who is the actual heir of the deceased office-holder in respect of his other pro-

MADRAS PROPRIETARY ESTATES VILLAGE SERVICE ACT (II OF 1894)—*concld*

———— s. 13—*concld.*

perties. *Venkata* v. *Rama, I. L. R. 8 Mad. 349*, referred to. DEVAGUPTAPU PEDA SATYANARAYANA v. GOGULAPATI NARASAMMA (1908)
I. L. R. 31 Mad. 526

MADRAS REGULATIONS.

———— 1802—II—

See LIMITATION—STATUTES OF LIMITATION—MADRAS REGULATION II OF 1802.

See LIMITATION ACT, 1877, ART 149.
I. L. R. 9 Mad. 75

———— s. 17—

See ENGLISH LAW—EQUITABLE MORTGAGE . . 9 Moo. I. A. 303

———— s. 18—

See LIMITATION ACT, 1877, ART 144—ADVERSE POSSESSION
I. L. R. 13 Mad. 467

———— 1802—III, s. 6—

See OATH . . 4 Mad. Ap. 3

See OATHS ACT, 1873, s 11
I. L. R. 2 Mad. 356

———— III, s. 16, cl. 7—

See APPEAL—ORDERS
I. L. R. 24 Mad. 95

———— XVII, s. 3—

See REGISTRATION—MADRAS REGULATION XVII OF 1802 . 2 Mad. 108

———— XXV—

See COLLECTOR . 3 Mad. 35

[illegible]

See HINDU LAW—INHERITANCE—IMPARTIBLE PROPERTY.
I. L. R. 13 Mad. 406
L. R. 17 I. A. 134

See JURISDICTION OF CIVIL COURT—REGISTRATION OF TENURES . 3 Mad. 35

See LANDLORD AND TENANT—PROPERTY IN TREES AND WOOD ON LAND.
I. L. R. 26 Mad. 252

See MADRAS RENT RECOVERY ACT, 1865, s 1 . . I. L. R. 8 Mad. 351

See TAX . . I. L. R. 9 Mad. 14

1. ———— *Mad. Reg. XXXI of 1802, Rights of zamindars under—Proprietary possession—Construction of statute—Preamble.* The affirmative words of Madras Regulation XXV of 1802, s 2, the preamble thereto form-

MADRAS REGULATIONS—*contd.*

———— 1802—XXV—*contd.*

[illegible]

dars, independent talukdars, and others, who pay the revenue assessed upon their estates immediately to Government " So also the words " proprietary possession," in the recital of Regulation XXV of 1802, mean the possession of a person who is a proprietor according to the technical meaning of the term. According to the true construction of Madras Regulations XXV and XXXI of 1802, the Legislature recognizes the right of private property, and does not assert a right on the part of Government to deprive or dispossess zamindars in their life time, or their heirs after their deaths, independently of any considerations connected with the realization of the public revenue. It provides for the protection of the revenue from invalid lakhiraj grants, and for the mode of trying the validity of the titles of persons claiming so hold their lands exempt from the payment of revenue OOLAGAPPA CHETTY v. ARBUTHNOT. COLLECTOR OF TRICHINOPOLY v LEKHAMANI. PEDDA AMANI v. ZAMINDAR OF MARUNGAPORE
14 B. L. R 115 : 21 W. R. 358
L. R. 1 I. A. 268 ; 282

2. ———— *Alienation by zamindar—Limitation.* In a suit brought by a zamindar to recover either assessment at the rate of R5,000 per annum, or a pergunnah, part of the plaintiff's zamindari, the defendant pleaded that he had held the pergunnah as his own before and ever [illegible]

[illegible] to bring the suit [illegible]

3. ———— *Settlement—Mistake in settlement papers—Grant by zamindar before*

MADRAS REGULATIONS—*contd.*

——— 1802—XXV—*contd.*

Permanent Settlement. Tenants are not concluded by a mistake in settlement papers, nor does Regulation XXV of 1802 provide for forfeiture of rights by parties who by carelessness or accident allow their land to be misdescribed in settlement proceedings. [illegible] a zamindar [illegible] or were nc [illegible] Lordships' [illegible] tive side of the alternative, but as the question was not raised in the Courts below, it was not considered to be open to the appellants in the appeal to the Privy Council. VYRICHERLA RAZ BAHADOOR *v.* NADMINTI BAGAVAT SASTRI . 25 W. R. P. C. 3

4 ——— *Alienation of proprietary rights.* Regulation XXV of 1802 strictly restrains the alienations of proprietary rights except in manner therein provided, and invalidates a disposal or transfer of such rights as against the Government and the heirs and successors of the proprietor making the disposal or transfer. *Semble*. Such alienation would be valid against the proprietor himself. A permanent lease is as much within the operation of Regulations XXV and XXX of 1802 as an absolute transfer by gift or sale. SUBBARAYULU NAYAK *v.* RAMA REDDI

1 Mad. 141

——— ss. 4, 12—*Zamindar's sanad, assets mentioned in—Quite-rent on an agraharam village—Inam title-deed, rate mentioned in—Joint liability of agraharamdars—Rent, rate of.* The plaintiff was a zamindar holding his estate under a sanad dated 1802. This sanad followed almost verbatim the language of Regulation XXV of 1802, s. 4, and where it referred to "lands paying a small quit-rent," added "which quit-rent unchangeable by you is included in the assets of your zamindari." The suit was brought to recover arrears of jodi or quite-rent accrued due on an agraharam village in the zamindari. The defendants, who were the agraharamdars, had divided the village and held it in separate shares. They pleaded that they were not liable to pay jodi in excess of the rate fixed by the Inam Commissioner and specified in the inam title-deed granted by him for the village in 1869. *Held*, (i) that the decision of the Inam Commissioner did not affect the zamindar's claim, and that the question to be determined was what was the jodi payable in respect of the village at the time of the permanent settlement on which the peishcush of the zamindari was fixed [illegible]

[illegible] rate, or had paid R6 under coercion, the Court presumed that that was the rate at the time of the Permanent Settlement. SOBHANADRI APPA RAU *v.* GOPALKRISTNAMMA . I. L. R. 16 Mad. 34

MADRAS REGULATIONS—*concld.*

——— 1802—XXV—*contd.*

——— s. 8—

See KARNAM . I. L. R. 20 Mad. 145

See MADRAS LAND REVENUE ASSESSMENT ACT . I. L. R. 19 Mad. 292; 308
I. L. R. 22 Mad. 270
L. R. 26 I. A. 16

1. ——— *Perpetual lease—Transfer.* A perpetual lease of a distinct portion of [illegible]

2. ——— *Alienation by zamindar—Limitation.* Where a zamindar alienated [illegible] that the defendant and his father having held the land for a lengthened period on a claim of right, the plaintiff's suit was barred by the Statute of Limitations. ALI SAIB *v.* SANYASIRAZ PEDDABALIYARA SIMHULU . . . . 3 Mad. 5

See SETA RAMA KRISTNA RAYUDAPPA RANGA RAO *v.* JAGUNTI SITAYAMMA GARU . . . . 3 Mad. 67

3. ——— *Right of grantee of proprietor against purchaser from his successor.* A zamindar granted part of his zamindari absolutely and died. His grantee was then dispossessed by a purchaser from his successor:—*Held*, that, as the conditions specified in Regulation XXV of 1802, s. 8, had not been observed by the former zamindar, the grant was voidable on the determination of his interest, and that consequently the disposition was legal. PITCHAKUTTICHETTI *v.* PONNAMMA NATCHIYAR . . 1 Mad. 148

4. ——— *Alienation not registered—Permanent lease.* A permanent lease of a village in a muttah by the muttahdar (plaintiff's father) was held to be not invalidated by s. 8 of Regulation XXV of 1802, although the lease had not been registered as required by that section. *Subarayalu Nayak* v. *Rama Reddi, 1 Mad. 141*, overruled. KONDAPPA NAIK *v.* ANNAMALAY CHETTY

4 Mad. 396

5. ——— *Permanent lease by zamindar.* A perpetual or permanent lease at a low fixed rent, made by a zamindar who obtained [illegible] NATCHIYAR . . . . . 4 Mad. 133

——— s. 9—*Mad Reg. XXVI of 1802, s. 2—Madras Land Revenue Assessment Act (Mad. Act I of 1876)—Application to Collector to grant*

MADRAS REGULATIONS—*contd.*

——— 1802—XXV—*concld.*

——— s. 9—*concld.*

[illegible]

——— s. 11—

See KARNAM . I. L. R. 20 Mad. 145

See MUNSIF, JURISDICTION OF
I. L. R. 12 Mad. 188

——— *Srotriyamdar—Suit to dismiss karnam.* Under Regulation XXV of 1802, a srotriyamdar cannot sue for the dismissal of the karnam of his village. THURGA RAMACHANDRA RAU *v.* APPAYYA . I. L. R. 7 Mad. 128

——— s. 12—

See SALE FOR ARREARS OF REVENUE—PURCHASERS, RIGHTS AND LIABILITIES OF . I. L. R. 13 Mad. 479

——— 1802—XXVI—

See MADRAS RENT RECOVERY ACT, ss. 3 AND 80 I. L. R. 26 Mad. 589

See POSSESSION—ADVERSE POSSESSION
I. L. R. 20 Mad. 6

——— s. 3—

See MADRAS REVENUE RECOVERY ACT, ss. 5, 25 AND 44 I. L. R. 26 Mad. 521

——— 1802—XXVII—

See RESUMPTION—EFFECT OF RESUMPTION . . 3 Mad. 59

——— XXVIII—

See SMALL CAUSE COURT, MOFUSSIL—JURISDICTION—RENT . 2 Mad. 22

——— XXIX—

——— *Karnam—Incapacity of next heir—Minority—Appointment by landholder of successor without proof before Zillah Court of incapacity of heir.* A karnam in a zamindari [illegible]

MADRAS REGULATIONS—*contd.*

——— 1802—XXIX—*contd.*

——— s. 3—*concld.*

where the incapacity arose from minority about which there was no dispute, an appointment by a landholder, made without proof before the Court of the incapacity of the heir, was valid. VENKATANARAYANA *v.* SUBBARAYUDU I. L. R. 9 Mad. 214

——— s. 5—

See KARNAM . I. L. R. 20 Mad. 145

——— ss. 5, 7, 10, 16, 18—

See MUNSIF, JURISDICTION OF.
I. L. R. 12 Mad. 188

——— s. 7—

See MUNSIF, JURISDICTION OF.
I. L. R. 22 Mad. 340

1. ——— "*Heirs,*" *mean-* [illegible]

2. ——— "*Heirs of pre-* [illegible]

3. ——— The office of karnam in a zamindari village having been held by three brothers jointly in hereditary rights, the [illegible] ment was invalid VENKAYYA *v.* SUBBARAYUDU
I. L. R. 9 Mad. 283

4. ——— *Office of karnam* [illegible] woman cannot hold the office of karnam; (ii) that, when the immediate heir is incapacitated, the nearest male sapinda of the deceased karnam is entitled to succeed to the office CHANDRAMMA *v* VENKATRAJU . . I. L. R. 10 Mad. 226

5. ——— *Karnam in zamindari village—Title to office.* The holder of a karnam's office in a zamindari village, being incapaci-

MADRAS REGULATIONS—*contd.*

——— 1816—XI—*concld.*

——— s. 10—*contd.*

——— *Confinement of Native Christian in stocks—Legality of order.* By s. 10 of Mad. Reg. XI of 1816, heads of villages are given summary powers of punishment in cases of a trivial nature, such as using abusive language, and if the offenders "shall be of any of the lower castes of the people, on whom it may not be improper to inflict so degrading a punishment," they may be put in the stocks. A person who was a *Mala*, or Hindu *pariah*, by birth, and who had become a convert to Christianity, was convicted of having used abusive language, and sentenced to two hours' confinement in the stocks under the said Regulation. His profession was that of a weaver, but he, in fact, worked as a coolie. On the question of the legality of the sentence being referred to the High Court:—*Held*, that, to render a person liable to confinement in the stocks under the Regulation, there must be a concurrence of two circumstances, *viz.*, (i) he must be a person belonging to one of the lower castes of the people, and (ii) he must be a person on whom, from his social standing or otherwise, it may not be improper to inflict so degrading a punishment. The test is not what is the offender's creed, but what is his caste. *Semble* That a person who has changed his creed but continues to belong to his caste may be within the purview of the Regulation if the caste is of the nature therein referred to; but if he abandons his caste he cannot longer be said to "belong to one of the lower castes of the people" and punishment by confinement in the stocks would no longer be legal *The Queen* v *Nabi, I. L R. 6 Mad 247,* discussed RATTIGADU v. KONDA REDDI (1900) . I. L. R. 24 Mad. 271

——— 1816—XII—

See COLLECTOR . . 4 Mad. Ap. I. L. R. 8 Mad. 569

See MADRAS REGULATION V OF 1822. 1 Mad. 230

See PANCHAYAT I. L. R. 8 Mad. 569 I. L. R. 15 Mad. 1

——— XIII—

See STAMP—MADRAS REGULATION XIII OF 1816 . I. L. R. 7 Mad. 440

——— XIV—

See PLEADER—APPOINTMENT AND APPEARANCE . . 4 Mad. Ap. 43

See PLEADER—REMUNERATION. 1 Mad. 369

——— XV—

——— *Procedure—Pleading—Allegation of division* According to Regulation XV of 1816 of the Madras Code, in a suit for possession of joint family property in which the title of the plaintiff depended on the fact of a division having taken place in the family, a distinct averment of division must be made in the cause, and a direction given by the Court for the production of evidence in proof of such an averment. VIJYA RAGANADHA BODHA GOOROO SWAMY PERRIA WOODAI TAVER v. ANGA MOOTOO NATCHIAR 6 W. R. P. C. 50 3 Moo. I. A. 278

MADRAS REGULATIONS—*contd.*

——— 1816—XV—*concld.*

——— s. 10—*concld.*

——— 1817—VII—

See ACT XX OF 1863 . 5 Mad. 334 7 Mad. 77 I. L. R. 17 Mad. 95; 212 I. L. R. 22 Mad. 223

See ENDOWMENT . . 7 Mad. 306

See HINDU LAW—ENDOWMENT—SUCCESSION IN MANAGEMENT I. L. R. 7 Mad. 499

See JURISDICTION OF CIVIL COURT—ENDOWMENT . . 7 Mad. 117

See JURISDICTION OF CRIMINAL COURT—GENERAL JURISDICTION I. L. R. 1 Mad. 55

See LANDLORD AND TENANT. 8 C. W. N. 545

——— s. 12—

See RIGHT OF SUIT—ENDOWMENTS, SUITS RELATING TO . I. L. R. 13 Mad. 277

——— s. 13—*Board of Revenue may appoint hereditary trustees—Religious Endowment Act XX* [illegible] cannot inter- [illegible]

[illegible] ay do so It is not [illegible] Act XX [illegible] e temple [illegible] and to [illegible] e or all [illegible] of 1863 [illegible] qualified [illegible] trustees [illegible] even if [illegible] addition may be made only for just and sufficient cause, which should be fully stated in the Proceedings of the Committee The negligence or mismanagement of old trustees or any pecuniary benefit to the temple by the new appointments are not just and

MADRAS REGULATIONS—*contd*

——— 1817—VII—*concld.*

——— s. 13—*concld.*

sufficient causes Such appointments ought not to be temporary. GANAPATHI AYYAR *v* VEDAVYASA ALASINGA BHATTAR (1906) I. L. R. 29 Mad. 534

——— 1818—VIII—

See APPEAL TO PRIVY COUNCIL—STAY OF EXECUTION PENDING APPEAL. 6 Moo. I. A. 309

——— 1821—IV—

See MAGISTRATE, JURISDICTION OF—SPECIAL ACTS—MAD. REG IV OF 1821 I. L. R. 5 Mad. 268

——— 1822—IV—

See LANDLORD AND TENANT—PROPERTY IN TREES AND WOOD ON LAND I. L. R. 26 Mad. 252

——— V—

See LANDLORD AND TENANT—LIABILITY FOR RENT . . 1 Mad 3

See RES JUDICATA—COMPETENT COURT —*REVENUE COURTS* 2 Mad. 22; 475

See SMALL CAUSE COURT, MOFUSSIL—JURISDICTION—RENT 2 Mad. 22; 475

——— *Mirasidar* Regulation V of 1822 is inapplicable to land held under a mirasidar or any ordinary proprietor YANAMANDRAM VENKAYA *v.* SHILLAKURU VENKATA NARAINA REDDY . . . 1 Ind. Jur. O. S. 131

S C. ENAMANDARAM VENKAYYA *v.* VENKATA NARAYANA REDDI . . . 1 Mad. 75

——— s. 8—*Proprietor of permanently-settled estates* Regulation V of 1822, s. 8, only applies to zamindars and other proprietors of estates permanently settled under the Regulations of 1802 NALLATAMBI PATTAR *v.* CHINNA DEYVANAGAYAM PILLAI . . . 1 Mad. 109

——— 1822—IX—

See COLLECTOR . . 2 Mad. 322

——— s. 5—*Sale of land to recover fine*

I. L. R. 9 Mad. 247

MADRAS REGULATIONS—*concld.*

——— 1822—IX—*concld.*

——— ss. 29, 35—*Remedy confined to parties to suit* The remedies provided by s. 35 of Regulation IV of 1816 against Village Munsifs are confined to persons who are parties to suits before such Village Munsifs. RAMAN *v.* PAKRICHI I. L. R. 9 Mad. 385

——— 1825—II—

See STAMP—MADRAS REGULATION II OF 1825 . . I. L. R. 16 Mad. 419

——— 1828—VII—

See COLLECTOR . . 2 Mad. 322 I. L. R. 7 Mad. 420

——— VIII, s. 3—

See MADRAS RENT RECOVERY ACT, s 11 I. L. R. 28 Mad. 456

——— 1831—IV—

See ATTACHMENT—SUBJECTS OF ATTACHMENT—ANNUITY OR PENSION 4 Mad. 277

See GRANT—CONSTRUCTION OF GRANTS. 12 W. R. P. C. 33 13 Moo. I. A. 104

See GRANT—RESUMPTION OR REVOCATION OF GRANT I. L. R. 14 Mad. 431

See INAM COMMISSIONER . 2 Mad. 341

——— VI—

See HEREDITARY OFFICES REGULATION MAD. REG VI OF 1831

——— X—

See DISTRICT JUDGE, JURISDICTION OF. I. L. R. 6 Mad. 187

——— ss. 1, 2, 3—

See SALE FOR ARREARS OF REVENUE—*SETTING ASIDE SALE—OTHER GROUNDS.* I. L. R. 10 Mad. 44

——— XI—

See TREASURE TROVE . 7 Mad. 15

——— 1833—III—

See VALUATION OF SUIT—SUITS. 6 Mad. 151

MADRAS RENT RECOVERY ACT (VII OF 1865).

See APPEAL—MADRAS ACTS, MADRAS RENT RECOVERY ACT. . 4 Mad. 227; 251 I. L. R. 4 Mad. 167

See JURISDICTION OF CIVIL COURT—POTTAHS . I. L. R. 12 Mad. 481 I. L. R. 13 Mad. 361 I. L. R. 14 Mad. 441 I. L. R. 17 Mad. 1

MADRAS RENT RECOVERY ACT (VIII OF 1865)—*contd.*

See JURISDICTION OF REVENUE COURT—MADRAS REGULATIONS AND ACTS.

See LANDLORD AND TENANT.

See LEASE—CONSTRUCTION.
6 Mad. 164; 175

See LIMITATION ACT, SCH. II, ART 10.
8 C. W. N. 162

See POSSESSION—ADVERSE POSSESSION.
I. L. R. 20 Mad. 6

See REGISTRATION ACT, 1877, s 17.
7 Mad. 234

See RES JUDICATA—COMPETENT COURT—REVENUE COURTS.
I. L. R. 17 Mad. 106

See REVIEW—ORDERS SUBJECT TO REVIEW . . . . 4 Mad. 251

See SMALL CAUSE COURT, MOFUSSIL—JURISDICTION—MOVEABLE PROPERTY.
I. L. R. 11 Mad. 264

See STATUTES, CONSTRUCTION OF
6 Mad. 122

———— distraint under—

See PENAL CODE, s. 424
I. L. R. 25 Mad. 729

———— *Exchange of patta and muchilika not necessary between zamindar and inamdar to enable former to take proceedings under Act.* No exchange of patta and muchilika is necessary to enable a zamindar to take summary proceedings against an inamdar as his tenant under Madras Act VIII of 1865, even when such inamdar has the *kudivaram* right in the land held by him. *Lakshmi Narayana Pantulu* v *Venkatarayanam, I. L. R. 21 Mad 116*, referred to. *Krishnama Charlu* v. *Rengachariar, 16 Mad. L J. 489*, referred to. ZAMINDAR OF CHALLAPALLI *v.* KUCHI JAGGAYYA (1907) . . . . I. L. R. 30 Mad. 493

1. ———— s. 1—*Inamdar—Mad. Reg. XXV of 1802.* S. 1 of Madras Act VIII of 1865 does not confine the term "inamdar" to such inamdars as are registered :—*Held*, therefore, that the purchaser of an inam village, who had not got his name registered as inamdar, was not thereby debarred from enforcing the provisions of the Act against a tenant for arrears of rent *Valamarama* v. *Virappa, I L R. 5 Mad. 145*, observed upon. SUBBU *v.* VASANTHAPPAN . . I. L. R. 8 Mad. 351

2 ———— *Landholder—Poligar of unsettled polliem.* The definition of the word "landholders" in Madras Act VIII of 1865, s. 1, includes the poligar of an unsettled polliem. Such a landholder is therefore entitled to sue under the Act to compel the acceptance of pottahs by his tenants CHAUKI GOUNDEN *v.* VENKATARAMANIER
5 Mad. 208

3. ———— and s. 2—*Inamdar—Quit-rent.* An inamdar entitled to receive a jodi or quit-

MADRAS RENT RECOVERY ACT (VIII OF 1865)—*contd.*

———— s. 1—*contd.*

rent from other inamdars may have recourse to the summary remedies provided by Act VIII of 1865 (Madras) for the recovery of the quit-rent APPASAMI *v.* RAMA SUBBA . I. L. R. 7 Mad. 262

4. ———— *Landholder—Distraint.* V leased certain fields to S at a single rent. Of these fields some were held by V under a raiyatwari pottah, but the pottah for the rest stood in the names of V's vendors. V distrained [illegible]

was illegal. SUBBA *v.* VENKATA
I. L. R 8 Mad. 9

5. ———— and s. 3—*Zamindar delegating powers to mortgagee* Where a zamindar exe- [illegible] of his [illegible] all his [illegible] VIII of [illegible] rtgagee [illegible] pottahs under the provisions of the Rent Act. GUNDA REDDI NARAYANA REDDI *v.* KRISTNA DOSS BALA MUKUNDA DOSS . . I. L. R. 5 Mad. 87

6. ———— and s. 79—*Landholder—"Farmer"—Assignee of landholder—Mortgagee of landholder, position of.* A mortgagee of a "landholder," as defined in Madras Act VIII of 1865, s 1, may exercise the powers of landholder under the Act—(i) as a "farmer" if it is a condition of the mortgage that the mortgagee shall take possession of the estate in whole or in part and give credit or account for a sum certain to the proprietor on account of the collection; or (ii) as an assignee of a landholder [illegible]

ordinary mortgage. VELLAYAN CHETTI *v.* [illegible] VAKONE . . . I. L. R. 5 Mad. 76

7. ———— *Landholder—As-* [illegible]

I. L. R. [illegible]

8. ———— *Landholder—As-* [illegible] interest of B in [illegible] obtained on [illegible] execution of a [illegible] ed his interest [illegible] VIII of 1865

MADRAS RENT RECOVERY ACT (VIII OF 1865)—*contd.*

——— s. 1—*concld.*

(Madras) by plaintiff to compel defendant to accept a pottah, defendant objected that plaintiff had no right to enforce acceptance of a pottah under the Act :—*Held*, by the Full Bench [TURNER, *C.J.*,

49, dissented from GOUSE *v.* SUNDARA
I. L. R. 8 Mad. 394

9. ——————— *Landholder—Manager of estate and until debt is paid—Increase of rent for garden cultivation and second crops* An instrument authorizing a creditor to manage an estate, recover rent and pay certain disbursements, and retain possession until a certain debt amongst other debts to him was paid, does not create to the creditor a landholder within the meaning of Act VIII of 1865 VAYTHENATHA SASTRIAL *v.* SAMI PANDITHER . . I. L. R. 3 Mad. 116

10. ——— and s. 13—*Inamdar—Tenant—Right of distraint—Inam Commissioner.* A zamindar, holding his estate under a sanad, which included, among the assets of the zamindari, the jodi payable by an inamdar, proceeded under the Rent Recovery Act to recover arrears of jodi by distraint.

I. L. R. 16 Mad. 40

11. ——— ss. 1, 38, 39—*Intermediate landholder tenant for purposes of ss. 38, 39.* An intermediate landholder liable to pay rent to a

in conflict with this view. The true effect of the reference in s. 38 to landholders specified in s. 3 is to exclude landholders specified in the second

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ance by the landlord of covenants in the lease. MUTHUSAMI PILLAI *v* ARUNACHELLAM CHETTIAR (1905) . . I. L. R. 29 Mad. 79

MADRAS RENT RECOVERY ACT (VIII OF 1865)—*contd.*

2. ——————— *Limitation* In a

of limitation prescribed by Rent Recovery Act, s 2, for proceedings by the landlord was the aggregate rent in arrear at the end of the Fasli. APPAYASAMI *v.* SUBBA . . I. L. R. 13 Mad. 463

3. ——————— *Attachment by*

Appayasami v. *Subba, I. L R 13 Mad 463*, dissented from CHINNIPAKAM RAJAGOPALACHARI *v.* LAKSHMIDOSS (1904) . I. L. R. 27 Mad. 241

4. ——— ss. 2, 76—*Pottah—Suit—Rent Recovery Act* The fact that the pottah, which has been tendered, was a varam pottah is no objection to a suit being sustained under the Rent Recovery Act by the landlord, even if it be found that the proper rates were only money rates. Nor is an agreement to pay a money rent to be implied from the mere circumstance that rent has been paid in money for a series of years, but at varying rates. *Kavipurapu Rama Rao* v. *Dirisavalli Narasayya*,

in a pottah requiring the tenant to be responsible

PARTHASARATHI APPA ROW *v* CHEVENDRA CHINA SUNDARA RAMAYYA (1904) I. L. R. 27 Mad. 543

1. ——— s. 3—*Purchaser of zamindari village without separate assessment—Landholder.* A zamindar having mortgaged one of his zamindari villages to *V*, a proportionate amount of the peshkush due by the zamindar was paid to the

MADRAS RENT RECOVERY ACT (VIII OF 1865)—*contd.*

——— s. 3—*contd.*

treasury by *V* by agreement. Having sued the zamindar, and brought to sale and purchased the village at the Court sale, *V* continued to pay the peshkush as before to the treasury, although the village was never separately assessed under s. 8 of Regulation XXV of 1802:—*Held*, that *V* was not entitled to enforce the acceptance of a pottah under the provisions of the Rent Recovery Act. VALAMARAMAYYAN *v* VIRAPPA KANDIAN

I. L. R. 5 Mad. 145

2. ——— *Purchaser of four shares in shrotriyam village—Landholder.* Where the holders of shares in a shrotriyam village have not received or agreed to receive the rent separately from the tenants according to their shares, the several shareholders constitute one landholder under the Rent Act, and one sharer is not entitled to enforce acceptance of a pottah by the tenants in respect of the proportionate rent payable to him KRISHNAMACHAN *v* GANGARAU REDDI

I. L. R. 5 Mad. 229

3. ——— *Landholders—Mulgar Quære* Whether a mulgar is within the class of landholders defined in the Madras Rent Recovery Act, s. 3. KRISHNA *v.* LAKSHMINARANAPPA . . . I. L. R. 15 Mad. 67

4. ——— *Registered zamindar—Zamindari held in co-parcenary—Co-sharers, right of one of several to sue.* A registered holder of a zamindari sued under the Madras Rent Recovery Act to enforce the acceptance of a pottah and execution of a muchalka by the defendant, a tenant on the estate. It was pleaded in defence that the zamindari was the undivided property of the plaintiff [illegible]
pottah [illegible]
Held, t[illegible]
zamind[illegible]
AYYAPP[illegible]

[illegible] Mad. 464

5. ——— and ss. 4 and 7—*Contents of pottah—Date of tender of pottah.* A landlord within three days of the end of the Fasli tendered to a tenant by way of pottah a document containing a statement of account of rent payable in respect of the current Fasli:—*Held*, that the document tendered was a good pottah, and that under local custom a valid tender of a pottah may be made at the end of the Fasli. NARAYANA *v.* MUNI

I. L. R. 10 Mad. 363

6. ——— and ss. 4, 9—*Landlord and tenant—Right to enforce acceptance of pottah.* The renter of a zamindari, to whom the right to collect the kuttubadi or quit-rent on inam lands and the road-cess payable to Government was delegated sued to compel the inamdars to accept pottahs and execute muchalkas for the amounts due:—*Held*, that the inamdars, not being cultivating tenants, were not bound, under Act VIII of 1865 (Madras), to accept a pottah. *Ramasami* v. *Collector of Madura, I. L. R. 2 Mad. 67*, referred to. RAMA *v.* VENKATACHALAM . I. L. R. 8 Mad. 576

7. ——— and ss. 8, 9, and 11—*Agreements between landlords and tenants.* The pottahs and muchalkas mentioned in s. 3, Madras Act VIII of 1865, must be understood to embrace [illegible]

the Act provides in ss 8 and 9 can only be made available where the relation of landlord and tenant, or a holding of some sort, already exists upon such a basis that the landlord or the tenant, as the case may be, can come into Court and claim to have a writing granted to him *Semble* · If a lease granted by a zamindar to an intermediate holder could be considered a pottah within the meaning of s. 3 of [illegible]

rate than that generally payable on such lands, and not for the purposes mentioned in the said proviso. RAMASAMI *v.* BHASKARASAMI. RAMASAMI *v.* COLLECTOR OF MADURA . I. L. R. 2 Mad. 67

8. ——— and s. 9—*Mokhassa-inamdars paying kattubadi to the zamindar—Obligation to* [illegible] who hold lands [illegible]

[illegible]

9. ——— *Mad Reg XXV of 1802, s 8—Non-registration of landholder—Subsequent registration of undivided brother of land-*[illegible] Suits for ex-[illegible] Fasli 1306 [illegible] in the Sub-[illegible] the ground that the plaintiffs were not the registered landholders. Pottah had been tendered in June 1897. Plaintiffs appealed. Subsequent to the filing of such appeals, namely, in December 1897, the Collector registered the undivided brother of the [illegible] and it was [illegible]

that Act. The original defect of title was not cured by the subsequent registration of the landholder in the name of the plaintiffs' undivided brother. *Valamarayyan* v. *Virappa Kandian, I. L. R. 5 Mad. 145*, and *Ayyappa* v. *Venkata-*

MADRAS RENT RECOVERY ACT (VIII OF 1865)—*contd.*

——— s. 3—*concld*

Krishnamarazu, I. L R. 15 Mad. 484, followed. RAGHAVA REDDI *v.* KANNI GRAMANI

I. L. R. 23 Mad. 221

10. ——— and 80—*Tender of patta and process to recover rent, by holder of jaghir, before registration as jaghirdar—Validity—" Proceedings "* The holder of a *jaghir* is entitled to tender a *patta* under the Rent Recovery Act, and to proceed under that Act for the recovery of rent before he is registered as *jaghirdar* under Mad Reg XXVI of 1802. The word "proceedings," in s. 80 of the Rent Recovery Act, does not include tender of *patta*. The "proceedings" referred to in that section are limited to summary proceedings for arrears of rent. *Subbu* v. *Vasanthappan, I. L. R. 8 Mad 351*, approved. DHARMAKARTA OF TINNANORE TEMPLE *v.* LUCHIMI DOSS (1903)

I. L. R. 26 Mad. 589

——— s. 4—

See LEASE—CONSTRUCTION

I. L. R. 11 Mad. 200

1. ——— *Suit for rent—Summary suit to enforce acceptance of pottah.* A suit for rent is maintainable where a pottah in the form required by s. 4, Madras Act VIII of 1865, and such as the defendant was bound to accept, has been tendered to the defendant, although no attempt has been made by a summary suit before the Collector to enforce its acceptance. HARAJAI KUMARA VANKATA PERUMALRAJ *v* KANNIAPPAH ZEMINDAR OF KARVATINUGGAR *v.* KANNIAPPAH

4 Mad. 149

2. ——— *Pottah for palmyra palm trees* Under Madras Act VIII of 1865, a landlord may compel a tenant to accept a pottah for palmyra trees MUTTUSAMY MUDALY *v.* SADAGOPA GRAMANY . . . **4 Mad. 398**

3. ——— *Landlord and tenant—Exchange of pottahs.* The pottahs and muchalkas required by Madras Act VIII of 1865

more than that the pottahs should mention the rate and proportion of the produce to be given, and not the specific quantity or number of measures. SESHADRI AYYANGAR *v.* SANDANAM

I. L. R. 1 Mad. 146

4. ——— *Water-tax col-*

MADRAS RENT RECOVERY ACT (VIII OF 1865)—*contd*

——— s. 4—*contd.*

5. ——— and ss. 7 and 87—*Form of pottah necessary for tender by landholder.* A pottah which professes to make the tenant liable to the person tendering it for lands not held as well as for lands held, of such person, is an improper one, and not one which the tenant is bound to accept. ALAGISISAMI NAIKER *v.* INNASI UDAYAN

I. L. R. 3 Mad. 127

6. ——— and s. 11—*Acceptance of pottah not in accordance with the Act.* A tenant having accepted a pottah (which did not give the particulars described in s 4 of the Madras Rent

RAU *v* VIRANNA . **I. L. R. 13 Mad. 271**

7. ——— *Validity of pottah—Omission to sign by landholder.* A suit was brought to set aside a sale of lands on the ground, among others, that a pottah which had been tendered was illegal. One of the clauses objected to in the pottah contained an erroneous reference to punja lands which had inadvertently not been erased; another provided only in an indirect manner for the rent payable in respect of any other land that might be cultivated. The pottah was not signed or sealed *Held*, that the clauses referred to were unobjectionable: and the fact that the pottah tendered had not been signed by the landlord did not necessarily render it invalid. ESWARA DOSS *v* RAJAN . . **I. L. R. 22 Mad. 353**

8. ——— *Patta containing name of tenant's father and not mentioning tenant—Death of the father before tender of patta—Tender of patta without alteration—Validity. Patta* for land was tendered to *A*, but stood in the name of *A's* father. It appeared that *A's* father was really the tenant for the *Fasli* in respect of which the *patta* had been tendered, but had died after that *patta* had been prepared and signed by the landholder. *Held*, that the tender was legal. SUBBIEN *v.* RAMASAMI CHETTY (1902) . **I. L. R. 26 Mad. 363**

9. ——— *Res judicata—Contract to pay tax on improvements legal—Previous decision in summary suit binding in subsequent*

fasli, is *res judicata* between the parties in subsequent suits in the same Courts. *Venkatachalapati* v. *Krishna, I. L. R. 13 Mad. 287*, referred to. S 11

MADRAS RENT RECOVERY ACT (VIII OF 1865)—*contd.*

——— s. 4—*concld.*

of the Madras Rent Recovery Act contemplates rents being fixed by contract and it is only in the absence of contracts, express or implied that resort

section and is not opposed to anything in the proviso. *Gopalasawmy Chetti* v. *Fisher, I. L. R. 28 Mad. 328,* referred to. NATESA GRAMANI v. VENKATARAMA REDDI (1907)

I. L. R. 30 Mad. 510

——— s. 6—*Signing and registration of pottahs and muchalkas.* Madras Act VIII of 1865, s 6, imposes upon village karnams the duty of signing and registering pottahs and muchalkas exchanged under the Act. Where such pottahs

——— s. 7—

See LIMITATION ACT, 1877, ART. 12.

I. L. R. 20 Mad. 33

See LIMITATION ACT, 1877, ART. 131.

I. L. R. 15 Mad. 161

1. ——— *Tenant having no saleable interest in the land* S. 7 of Madras Act VIII of 1865 applies to cases where the landlord is the exclusive proprietor of both the melwarum and the mirasiwarum, and the tenant has no saleable interest in the land. RAMASAMI AIEN v. MANJEYA PILLAI . . . . . . 6 Mad. 61

2. ——— *Suit for arrears of rent—Tender of Pottah.* Plaintiff sued for certain arrears of rent. The suit was dismissed as to Faslis 1271, 1272, and 1275, on the ground that no pottahs had been tendered for those Faslis On special

3. ——— *Tender of pottah through the post* Tender of a pottah through the post to a tenant is invalid under the provisions of Madras Act VIII of 1865 VENKATACHELLAM CHETTI v. KADUMTHUSI . I. L. R. 4 Mad. 145

4. ——— *Suit for rent dismissed—Suit for use and occupation barred.* A landlord who has failed in a suit for rent under the Rent Recovery Act cannot bring a fresh suit for use and occupation ALI KHAN v APPADU

I. L. R. 7 Mad. 304

5. ——— and ss. 9 and 10—*Pottah tendered within Fasli—Suit after Fasli, when pottah amended—Maintainability of suit.* A landholder tendered a pottah within the Fasli. After the

ment set aside, on the ground that, as no proper pottah had been tendered within the Fasli, and the suit which resulted in the rectification of the pottah had been filed after the close of the Fasli, the landholder was precluded from enforcing his claim:—*Held*, that, inasmuch as judgment had been obtained, fixing the terms of the pottah, the tenant could not plead, in answer to an action for rent, the incorrectness of the pottah originally tendered

for that Fasli beyond all dispute. NAIDU v. PERUMAL REDDI I. L. R. 23 Mad. 616

6. ——— *Tender of pottah—Unreasonable condition* A tenant is not bound

SAMI MUDALI . . I. L. R. 4 Mad.

7. ——— *Tender of pottah*

I. L. R.

8 ——— *Pottah—Rate of rent*

wet crops on dry land, you must pay settled according to the highest nanjai assessment of neighbouring land. If you occupy land in excess of that entered in this pottah, you must pay the

MADRAS RENT RECOVERY ACT (VIII OF 1865)—*contd.*

——— s. 7—*contd.*

appropriate assessment, or if the assessment has not been fixed, then such assessment as our Sirkar may settle." *Held,* that the pottah was not one which the tenant was bound to accept VANKATA RAMANJULU NAYUDU *v.* RAMACHANDRA NAYUDU
I. L. R. 7 Mad. 150

9. ——— *Landlord and tenant—Acceptance of muchalka without delivery of pottah—Presumption* When a muchalka has been taken from a tenant under the Rent Recovery Act (Madras Act VIII of 1865), but no pottah granted, this is some evidence that the tenant dispensed with the delivery of a pottah, and legal proceedings

THACHARI *v.* BALU NAICKEN
I. L. R. 3 Mad. 255

10. ——— *Landlord and tenant—Exchange of pottah and muchalka* Under s. 7 of Madras Act VIII of 1865, the agreement to dispense with the exchange of pottah and muchalka, need not be express, but it must appear that this provision of the law was present to the minds of the contracting parties, and that they deliberately elected not to act upon it The mere existence of a verbal lease is insufficient to raise the presumption that the exchange of pottah and muchalka has been dispensed with KOMIREDDI VARAHA NARASIMHAM *v* CHEVALA RAMASAMI NAYUDU
I. L. R. 5 Mad. 136

11. ——— **and ss. 3 and 13**—*Suit for recovery of rent—Exchange of pottahs and muchalkas—Tender of pottah* Suits for the recovery of rent cannot be maintained in the Civil Courts by the landholders described in s 3 of Madras Act VIII of 1865, unless pottahs and muchalkas have been exchanged between the landholder and the tenant as required by s 7 of the Act, or some one of the other conditions of the section has been complied with So *held* by MORGAN, *C J*, INNES, *J*, and KINDERSLEY, *J.* (HOLLOWAY, *J., dissentiente*) But such suit may be maintained by the landholders described in s. 13 of the Act without complying with the requirements contained in s 7. So *held* by MORGAN, *C. J.* (KINDERSLEY, *J., dissentiente*). *Held,* also, that, in cases where pottahs must be ten-

VENKATASAMI NAIK *v.* SITUPATI AMBALAM
7 Mad 359

12. ——— **ss. 7, 9, 10, 11, 14**—*Proceedings by landlord to determine rent—Period from which limitation runs* The sections of the Madras Rent Recovery Act (Madras Act VIII of 1865) relating to recovery of arrears of rent apply to ascertaining

MADRAS RENT RECOVERY ACT (VIII OF 1865)—*contd.*

——— s. 7—*contd.*

rents, not to rents at rates which have yet to be ascertained In Art 110 of Sch II of the Limitation Act (XV of 1877), "arrears of rent" means arrears of ascertained rent, which the tenant is

rent is payable *Sobhanadri Appa Rau* v *Chalamanna, I. L R 17 Mad 225,* approved *Sriramulu* v *Sobhanadri Appa Rau, I L R 19 Mad 21,* overruled There is no distinction in this respect between cases in which, in the proceedings to ascertain the rent, the Courts have approved of the pottah tendered by the landlord and those in which they have modified it. RANGAYYA APPA RAO *v* BOBBA SRIRAMULU (1904) **I. L. R. 27 Mad. 143**

13. ——— **ss. 7, 9, 72**—*Tender of pottah—Landlord's right to sue.* Where the pottah which has been originally tendered prior to summary suit under s. 9 of the Rent Recovery Act was one which

originally tendered, was not such as the tenant was bound to accept and if it has been modified by a judgment in a summary suit, and if before the expiry of the Fasli to which it relates the landlord has tendered the pottah as amended, the landlord can also maintain a suit for rent under s 7, relying on such tenders But if no such tender has been made (and even in a case where it could not have been made by reason of the expiry of the Fasli before the

ant himself the tenant cannot be said to have

14. ——— **ss 7, 38, 39, 40, 78**—*Landlord's right to sell by summary process—Dependent on observance of special provisions of Act—Infringement of tenant's rights at common law which special*

MADRAS RENT RECOVERY ACT (VIII OF 1865)—*contd.*

——— s. 7—*concld.*

provisions not observed—Tenant's right of action—Effect of the statute on that right. Under the common law, a landholder has no right to sell his tenant's interest in the land for arrears of rent in a summary way. That right is given only by the Rent Recovery Act, and prior to exercising it the landholder must have complied with the special provisions of the Act as to tender of proper pottah and exchange of pottah and muchlaka. Where a landholder, who has not complied with these provisions, summarily sells his tenant's interest in the [illegible]

even if the only right to object to an attachment were that which is given by that Act These remedies are clearly available where the right is one at common law *Mahomed* v *Lakshmipati, I L. R. 10 Mad 368,* commented on *Ramayyar* v. *Vedachella, I. L. R. 14 Mad 441,* approved. The question of limitation discussed. Where the purchaser of a tenant's interest in land takes, without demur, a pottah in the name of his vendor, it will be open to him to object to that pottah (in a suit for a declaration that an attachment was invalid), unless he has given timely notice to the landlord claiming that his own name should be entered in the pottah *Elambara Ayyar* v *Meenatchi Ammal, I. L. R. 27 Mad. 401,* and *Sree Sankarachari Swamiar* v *Zarada Pillai, I. L. R. 27 Mad. 332,* referred to. ZAMINDAR OF ETTAYAPURAM v SANKARAPPA REDDIAR (1904) . **I. L. R. 27 Mad. 483**

——— s. 8—

See THEFT . **I. L. R. 16 Mad. 364**

1. ——— *Suit to enforce tender of pottahs—Suit brought after expiration of Fasli.* A tenant is not entitled to bring a suit under Rent Recovery Act, 1865, s. 8, to enforce the tender of a pottah by his landlord after the expiration of the Fasli to which the pottah relates. RAMASAMI MUDALIAR v RATHNA MUDALIAR **I. L. R. 21 Mad. 148**

2. ——— *Landlord and tenant—Insertion of unreasonable terms in pottah.* Where a tenant disputes the validity of a transfer [illegible]

tenant recognising the rights of the transferee will be unreasonable . ORR v. RAKKUMARATHI (1905) **I. L. R. 29 Mad. 83**

MADRAS RENT RECOVERY ACT (VIII OF 1865)—*contd.*

——— s. 9—

See JURISDICTION OF REVENUE COURT—MADRAS REGULATIONS AND ACTS. **I. L. R. 17 Mad. 140**

See RES JUDICATA—COMPETENT COURT—REVENUE COURTS. **I. L. R. 13 Mad. 287**

1. ——— *Tender of pottah* [illegible]

148, explained. PAPAMMA v. SUBBANNA **I. L. R. 22 Mad. 318**

2. ——— **and s. 51**—*Refusal by tenant to accept pottah—"Cause of action"—Period within which summary suit must be brought.* On 17th June 1897 a landholder tendered a pottah [illegible]

3. ——— *Rate of rent where rate is disputed.* Before a dispute regarding the rate of rent can be decided in a suit brought under s 9 of Madras Act VIII of 1865, merely on the ground of what appears to be just, the Court must consider the reasonableness of the rate according to [illegible]

4. ——— *Landholder. Tender of pottah—Notice—Zamindar and raiyat.* [illegible]

s. 9 of Madras Act [illegible] that he has tendered a pottah [illegible] notice [illegible] ient to [illegible]

LAKSHMANA AIYANGAR . **I. L. R. 1 Mad. 45**

5. ——— *Joint shrotriyamdars—Distinct Contract by tenant in respect of a share.* The plaintiff was one of two joint shrotriyamdars. In Fasli 1288 the defendant accepted a pottah from, and executed a muchalka to, him in respect of the half share of the plaintiff. The plaintiff sued to enforce acceptance of a pottah and execution of a muchalka for Fasli 1290 and for arrears of rent :—*Held*, that the suit lay without

MADRAS RENT RECOVERY ACT (VIII OF 1865)—*contd.*

———— s 9—*contd*

joinder of the other joint shrotriyamdar. PURUSHOTTAMA v RAJU . I. L. R. Mad. 11

6. ———— *Copy of pottah—Tender of pottah* A landholder tendered to his tenant a notice stating that his pottah, of which the particulars were given, had been prepared, and calling on him to come within a month to the zemin cutchery to fetch the pottah and execute the muchalka :—*Held*, that there was sufficient tender of a pottah to support a suit under s. 9 of the Madras Rent Recovery Act. MARUTHAPPA v. KRISHNA I. L. R. 12 Mad. 253

7. ———— *Tender of pottah by post—Landlord and tenant* A landlord sent a pottah by post to his tenant, who declined to receive it :—*Held*, the tender of the pottah by post was not sufficient to support a suit under s 9 of the Madras Rent Recovery Act. SAMINATHA v VIRANNA . . . I. L. R. 13 Mad. 42

8. ———— *Omission to tender a pottah—Rent claimed by landlord not having tendered legal pottah* A landlord, not having tendered a legal pottah to his tenant, made a demand on him as for rent, and, on his refusal to pay, attached his holding. The tenant, to release the attachment, paid the sum demanded under protest on 23rd September 1885 On 22nd March 1886 the tenant filed a suit on the small cause side of the District Munsif's Court to recover the amount so paid : that suit was dismissed for want of jurisdiction on 2nd September 1886. On the last-mentioned date the tenant filed the present suit on the same cause of action :—*Held*, that the landlord, not having tendered a legal pottah, was not in a condition to establish any right to recover rent directly or by way of set-off. KULLAYAPPA v LAKSHMIPATHI . . I. L. R. 12 Mad. 467

9. ———— and s 7—*Demand of pottah* The Rent Recovery Act does not require that a tenant demanding a pottah shall apply in writing to the landholder specifying the lands and the Fash for which the pottah is required. SRINIVASA v NARAYANASAMI . I. L. R. 8 Mad. 1

10. ———— and ss 10, 7—*Suit to enforce terms of tenancy—Suit to determine terms of tenancy—Pottah—Jurisdiction of Revenue Court.* A suit under s. 9 of Madras Act VIII of 1865 to enforce the acceptance of a pottah is not a suit to enforce the terms of a tenancy within the meaning of s 7 of the same Act, but a suit to determine those terms ZAMINDAR OF DEVARACOTA v. VEMURI VENKAYYA . . . I. L. R. 1 Mad. 389

11. ———— and ss. 10, 11. A summary suit by landlord to enforce the acceptance of a pottah under the Madras Rent Recovery Act should not be dismissed on a finding by the Appellate Court that the pottah tendered was not a proper pottah. The Appellate Court ought to pass the

MADRAS RENT RECOVERY ACT (VIII OF 1865)—*contd.*

———— s. 9—*contd.*

decree which the Court of first instance should have passed. NAGARAJA v. KASIMSA I. L. R 11 Mad. 23

12. ———— and ss. 10, 11—*Improper stipulations in pottah—Claim of tenants to hold over land after expiry of lease—Civil Procedure Code, s. 511* In summary suits brought by a landlord to enforce acceptance by his tenants of pottahs tendered by him for the current Fash it was pleaded that the pottahs were improper in that they did not comprise certain land of which the tenants were in possession and in which they claimed permanent occupancy-rights, and also in that they contained various terms which the plaintiff was not entitled to impose on the defendants, providing, *inter alia*, (i) that interest should be payable on the several instalments of rent as they became due ; (ii) that the defendant should not fell certain trees except for agricultural purposes ; (iii) that the defendants should not reap their crops without previously obtaining the plaintiff's permission ; (iv) that on a change made without the plaintiff's permission from dry to wet cultivation, the tenancy should be forfeited in case of default made by the defendants in paying the amount of Government assessment, and also an undetermined sum then to become payable by the defendants to the plaintiff in addition to the rent. The defendants failed to prove the permanent occupancy-rights claimed

issued for ten years. The Revenue Court modified the terms of the pottahs and passed decrees that the pottahs as modified be accepted against which some

pottahs in favour of the defendants who had not

I. L. R. 1[illegible] Mad. 2[illegible]

13. ———— and ss. 79, 80—*Yeomiah lands—Unregistered holder rendering service and granting pottahs—Estoppel by acquiescence of*

MADRAS RENT RECOVERY ACT (VIII OF 1865)—*contd.*

———— s. 9—*concld.*

persons entitled to the yeomiah holding. A yeomiahdar died, leaving a brother, who was then out of India. Shortly before his death, he made an invalid

that the assignee was entitled to collect rent from them until the assignment was questioned by the plaintiff, and notice of his title given to him KHADAR *v.* SUBRAMANYA . I. L. R. 11 Mad. 12

14. ———— *Landlord and tenant—Right to issue patta for unassessed house-site.* It being common in this country to have trees in backyards forming part of unassessed house-sites, such a circumstance does not amount to a conversion of such site enjoyed free of rent into cultivated land for which rent is payable and no pottah can be tendered in respect of such lands. ELUMALAI CHETTIAR *v* NATESA MUDALIAR (1905)

I. L. R. 29 Mad 81

———— ss. 9, 10, 11—*Suit to compel acceptance of pottah—Provision in pottah for payment of rent in kind—Power of Court to amend pottah by providing for payment in money—"Rent."* The term "rent," as used in s. 11, paragraphs (*1*) and (*2*) of the Rent Recovery Act, includes rent of every description, whether payable in kind or in money. *Polu* v *Ragavammal, I. L R. 14 Mad 52,* explained. Where rent is payable in money, but a pottah has been tendered, which provides for the payment in kind, the Court has power to amend the pottah. *Mahasingavastha Ayya* v. *Gopaliyan, 5 Mad. H C. 425,* approved. Whether a contract in terms to the effect that rent is payable in money but at a rate to be determined by the Court as reasonable would be a contract within the meaning of s. 11 (*1*). *Quære* Rent had been paid in money from Fasli 1288 to Fasli 1308, at rates which had varied. On its being contended that the Court could find, from the mere fact of these past payments, that there was an implied contract between the parties that rent was to be payable in money at a rate to be determined by the Court :—*Held,* that such an implied contract could not be found. To warrant such a finding, the circumstances should be such as to suggest an agreement to pay at some definite rate. KAVIPURAPU RAMA *v.* RAO DIRISAVALLI NARASAYYA (1904) . I. L. R. 27 Mad. 417

———— s. 10—

See JURISDICTION OF CIVIL COURT—POTTAHS . . I. L. R. 17 Mad. 1

MADRAS RENT RECOVERY ACT (VIII OF 1865)—*contd.*

———— s. 10—*contd.*

See JURISDICTION OF CIVIL COURT—REVENUE COURTS—ORDERS OF REVENUE COURTS . I. L. R. 9 Mad. 39
I. L. R. 21 Mad. 482

See JURISDICTION OF REVENUE COURT—MADRAS REGULATIONS AND ACTS.
I. L. R. 17 Mad. 140

See LIMITATION ACT, *1877,* ART. *110.*
I. L. R. 17 Mad. 225
I. L. R. 19 Mad. 21
I. L. R. 22 Mad. 248, 249 notes, 250 note

See SUPERINTENDENCE OF HIGH COURT—CIVIL PROCEDURE CODE, s 622.
I. L. R. 16 Mad. 451

1. ———— *Power of Collector to enforce ejectment for default—"Default," meaning of. Quære :* Whether a Collector can enforce ejectment for the default specified in s. 10 of the Rent

2. ———— and s. 69. A landlord having sued his tenant under the Rent Recovery Act to

Court to eject, the tenant under s. 10 of the Rent Recovery Act for not accepting the pottah and executing a muchalka, and six months after the date of that decree the Revenue Court ordered the tenant to be ejected :—*Held,* that s. 10 of the Rent

I. L. R. 7 Mad. ...

3. ———— *Purchase at Court-sale of former tenant's interest in land—Liability of purcha*
sale.
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force the acceptance by defendant of *patta* for Fasli 1309, being the year commencing on 1st July, 1899, and ending on 30th June, 1900 By the terms of the *muchlikas* which had been executed by the former tenant, rent was payable in four equal instalments on 1st October, 1st February, 1st April and 1st May.

MADRAS RENT RECOVERY ACT (VIII OF 1865)—*contd.*

——— s. 10—*concld.*

Held, that the defendant was liable for the instalments which fell due subsequently to the confirmation of sale, namely, on 1st April and 1st May, 1900. *Held*, also, that it was immaterial (in regard to his liability for rent), when he recovered actual possession of the land RAMASAMI MUDALIAR *v.* ANNADORAI AYYAR (1901) . I. L. R. 25 Mad 454

4. ——— *Suits to enforce acceptance of patta—Necessity for tender of patta after judgment, where patta originally tendered is either upheld or amended* Where a tenant has been ordered by a judgment passed under s 10 of the Rent Recovery Act, *to accept the patta which has been* tendered to him or such amended patta as the judg- [illegible] the date of the judgment, not exceeding ten days therefrom, he tendered to the tenant the *patta* as approved, or as amended by the Court, and that the tenant did not accept the same and execute a *muchalka* before the expiration of the said period of ten days. *Court of Wards* v *Darmalinga, I. L R 8 Mad 2*, commented on SHANMUGA MUDALY *v* PALNATI KUPPU CHETTY (1902)

I. L R. 25 Mad. 613

1. ——— ss. 10, 41—*Incumbrances by tenant and subsequent ejectment—Effect of ejectment on mesne incumbrances.* The ejectment of a tenant, [illegible] created by the tenant A tenant gave a usufructuary mortgage over his land and covenanted to repay the amount. About two years thereafter the shrotriemdar obtained a decree against the tenant directing him to accept a pottah as settled by the judgment On his failure to do so the tenant was ejected The mortgagee now sued the tenant and the shrotriemdar, claiming a personal decree as [illegible]

2. ——— ss. 10 and 69—*Adjudication that plaintiff has failed to prove default by defendant —"Judgment"—Appeal.* An order passed under s. 10 of the Rent Recovery Act, which amounts to [illegible]

VENKATA PAPAYYA RAO *v.* VENKATA SUBBAYYA (1901) . . . I. L. R. 25 Mad. 453

MADRAS RENT RECOVERY ACT (VIII OF 1865)—*contd.*

1. ——— s 11—*Water-cess—Tenants—Cultivation improved by water taken from landlord's tank.* A landlord has a right to charge water-cess when his tenant cultivates a wet crop on dry land or a second wet crop on wet land by means of water taken from the landlord's tank. THAYAMMAL *v.* MUTTIA . . . I. L. R. 10 Mad. 282

2. ——— cls. 1, 2, 3, 4—*Improvements effected by tenant—Enhancement of rent—Sanction of Collector.* The sanction of the Collector required by the proviso to cl. 4, s. 11 of the Rent Recovery Act, as a condition precedent to the enhancement of rent when the landlord has improved the land or has had to pay additional assessment to Government, is not requisite, when, improvements having been made by the tenant, the landlord seeks to enhance the rent *Per* MUTTUSAMI AYYAR, *J* —The proviso to cl. 4 of s. 11 of the Rent Recovery Act implies that, when the tenant has improved the land at his own expense, the landlord is not entitled on that ground to enhance the rent *Semble* Cl. 1 of s 11, which provides that all contracts for rent, express or implied, shall be enforced, cannot be so applied as to deprive a tenant of the benefit of improvements made at his own expense. *Per* HUTCHINS, *J.*—When improvements have been made by the tenant, the proper rate of rent has to be determined with reference to the several provisions of s 11, quite irrespective of the improvements. VENKATAGIRI RAJA *v.* PITCHANA

I. L. R. 9 Mad. 27

3 ——— Rule 3—*Rate of rent, Deter-* [illegible]

4. ——— ——— *Implied contract* Where a landlord, having for many years accepted rent at "dry rates" from a tenant for certain land, sued the tenant to enforce acceptance of a pottah at "garden" rates, on the ground that the tenant had raised a crop with water taken from a well constructed by the tenant:—*Held*, that there was an implied contract within the meaning of s. 11 of the Rent Recovery Act to accept rent at "dry" rates, and that plaintiff was therefore not entitled to enhance

MADRAS RENT RECOVERY ACT (VIII OF 1865)—*contd.*

——— s. 11—*contd.*

the rate of rent, the improvement having been effected at the expense of the tenant. KRISHNA *v.* VENKATASAMI . . . I. L. R. 8 Mad. 164

5. ——— *Provision in pottah for increasing rate of assessment for garden cultivation.* A provision in a pottah for increasing the

I. L. R. 3 Mad. 118

6. ——— *Enhancement of rent—Custom.* The imposition by a zamindar of garden assessment on land brought under garden cultivat
sinking
might be
varying
raised

I. L. R. 21 Mad. 136

7. ——— Rule 4—*Hindu law—Alienation—Power to make leases* The second proviso contained in rule 4, s 11, Madras Act VIII of 1865, does not apply to a lease which is *bonâ fide*

fraud upon the power of the grantor's successor as manager or to alienations made for the personal benefit of the grantee and to the prejudice of the successor. RAMANADAN *v.* SRINIVASA MURTI

I. L. R. 2 Mad. 80

8. ——— *Change of cultivation—Sanction of Collector* Where a landlord claimed to revert to manjai rates (assessed on irrigated land) of rent on the ground that he had repaired a tank, which for years had been unrepaired:—*Held*, that the sanction of the Collector *was not required by s. 11 of the Rent Recovery Act.* LAKSHMANAN CHETTI *v.* KOLANDAIVELU KUDUMBAN

I. L. R. 6 Mad. 311

9. ——— *Sanction of Collector—Suit for increased assessment on ground of improvements.* In a suit before the Collector under Madras Act VIII of 1865, brought by a zamindar to compel his tenant, the defendants, to accept a pottah at enhanced rates of assessment, on the ground

tion precedent to such a suit. *Semble* That the right of the plaintiff to recover was dependent on the further condition that an additional revenue was levied on him consequent upon the improvement made. KATTASAWMY *v.* SANDAMA NAIK

5 Mad. 294

MADRAS RENT RECOVERY ACT (VIII OF 1865)—*contd.*

——— s. 11—*contd.*

10. ——— *Implied contract as to rates of rent—Customary fees—Restraint on building—Landlord and tenant.* In order to support the inference of a contract under the Madras Rent Recovery Act, s. 11, from payment of the same rent for a given number of years, the intention that the same rent is payable in future years must be clear and unequivocal: it is unsafe to imply such a contract from a single lease for five years. A pottah is not unenforceable by reason of its providing for the payment of fees to village artizans in a ... or by reason of ... ng buildings ... limited to ... agricultural character of the holding. LAKSHMANA *v.* APPA RAU

I. L. R. 17 Mad. 73

11. ——— *Assignee of revenue—Suit to enforce acceptance of pottah by raiyat—Terms of pottah.* An inamdar, who was assignee of the revenue of land, sued to compel a raiyat to accept a pottah for the land at varam rates under the provisions of s. 11 of the Rent Recovery Act:—*Held*, that the only pottah which the defendant was bound to accept was a pottah prescribing payment of the revenue charge on the land. PALANIAPPA *v.* RAYA . . I. L. R. 7 Mad. 325

12. ——— *Reduction of as-*

which the tenant had already a ... ing the rent at the reduced rate R40. The document provided " this sum of R40 you are to pay perpetually every year per kistbandi in the mitta catcheri." It appeared that the rent fixed was less than what was payable upon the lands previous to the date of the pottah and also less than that payable upon neighbouring lands of similar quality and description:—*Held*, that the reduction in the rate of rent was not invalidated by Rent Recovery Act, 1865, s. 11. FOULKES *v.* MUTHUSAMI GOUNDAN . . . I. L. R. 21 Mad. 503

13 ——— *Reduction of rent—Improvements by tenant—Whether grant of reduction binding on successors* Where a landholder has granted a reduction of rent otherwise properly payable in respect of land, the mere fact that the

14. ——— and s. 9—*Condition of pottah—Established rate of rent—Rent in kind* The zamindar of Vallur sued certain raiyats in his ... to enforce the acceptance ... ions, that ... gs at the ... ndered to

MADRAS RENT RECOVERY ACT (VIII OF 1865)—*contd.*

——— s. 11—*contd.*

them, that they should pay half the cost of repairs by a cess proportioned to the wet rate, that if they irrigated dry land they should pay a wet rate to the zamindar, as well as the water rate due to Government, that they should not cut crops without

of a newly-assessed peishcush in 1862, a date when the present defendants were already in occupation of their respective holdings In the interval, Government collected village rents in money. The pergunnah was not surveyed, and a money assessment fixed prior to 1859 The District Judge expunged the conditions in the pottah above referred to, and held that the zamindar was entitled to collect by way of rent from the raiyats respectively, the quota of the village rents which each raiyat paid in 1861 He found, however, that there was no contract, express or implied, as to the rent to be paid; and that prior to 1851 the raiyats held their lands under the zamindar on the sharing system, and that for the first year after the restoration of the pergunnah the arrangement enforced by Government had remained in force, but that from 1863 to 1870 the sharing system was in force, and varam was paid by the raiyats, after which for five years individual money rents were collected, and then there were two leases with money rents each for a period

15. ——— *Suit to assess proper rate of rent—Determination of rate of rent.* In a suit by the plaintiffs as inamdars to compel the

parties as to the rent to be paid, nor was there any

16. ——— *Contract to pay a certain rent implied from payment in past years.* S 11 of the Rent Recovery Act provides that in the decision of suits involving disputes regarding

MADRAS RENT RECOVERY ACT (VIII OF 1865)—*contd.*

——— s. 11—*contd.*

rates of rent which may be brought before Collectors under ss 8, 9, and 10, all contracts for rent, express or implied, shall be enforced. *Held,* that payment of rent in a particular form at a certain rate for a number of years is not only presumptive evidence of the existence of a contract to pay rent in that form or at that rate for those years, but is also presumptive evidence that the parties have

17. ——— *Enhanced rent on irrigated land—Sanction by Collector of enhanced rent—Customary contribution to a temple—Implied contract—Landlord and tenant.* A zamindar tendered to raiyats on his estate pottahs providing, *inter alia,* for the payment of (i) certain fees to a Hindu temple, (ii) rent in which the land assessment was consolidated with a water-cess in respect

had not been sanctioned by the Collector under the Madras Rent Recovery Act, s 11, but it was found that both had been paid by the raiyats for many

temple fee was *prima facie* voluntary, and should not be treated as a payment which the zamindar could compel a raiyat to make, and consequently that the pottah tendered to him was an improper pottah; (ii) that the finding as to the existence of an implied contract to pay the second of the above items was a correct finding, in accordance with the ruling in *Venkatagopal* v *Rangappa, I L. R 7 Mad. 365* The first proviso to the Madras Rent Recovery Act, s 11, is not restricted in its application to rates of original rent as contradistinguished from its enhancement on account of improvements SIRIPARAPU RAMANNA *v.* MALLIKARJUNA PRASADA NAYUDU . **I. L. R. 17 Mad. 43**

18. ——— *Enhanced rent on irrigated land—Sanction by Collector of enhanced rates of rent—Implied contract to pay rent at a certain rate—Landlord and tenant* In a suit

obtained. *Held,* that such sanction could not be implied from the fact that the Collector, as such receiver, had caused the provision in question to be

MADRAS RENT RECOVERY ACT (VIII OF 1865)—*contd.*

——— s. 11—*contd.*

the facts of the present case, that no such contract could be inferred. With reference to the Full Bench decision in *Venkatagopal* v. *Rangappa, I. L. R. 7 Mad. 365,* the Court stated what was the ... her be ... v. LAKSHMINARAYANA . I. L. R. 17 Mad. 50

19. ——— *Enhanced rent on irrigated land—Sanction granted by Head Assistant Collector—Customary rent—Implied contract—Restraint on building—Landlord and tenant.* A Head Assistant Collector is competent to grant a sanction for the enhancement of rent under the Madras Rent Recovery Act, s 11 The granting of such sanction is a judicial and not a merely administrative act, and such sanction should not be granted without first giving notice to both the landlord and the tenant, and hearing and considering the contentions of both parties. In a suit by the landlord to enforce the exchange of a pottah and muchalka, the tenant objected to the rate of rent imposed on part of the land, which was dry land converted into wet :—*Held,* that the finding of the lower Appellate Court that there was an implied contract to pay rent at such rate was not open to any ... his own cost and also comprised a stipulation that the raiyat should not build on his holding. The Court of first appeal held that the special rate of rent above referred to was customary, and had been followed for many years. *Held,* that there was no ...

20. ——— *Implied contract as to rent—Land irrigated under Kistna anicut—Collector's sanction to increase of rent.* Land in a zamindari in the Kistna delta was newly irrigated from anicut channels. The zamindar tendered ... stipulation in the previous lease binding the tenants to pay such increased rates in case of future irrigation did not bind the tenants after the term of that lease expired. NARASIMHA NAIDU v. RAMASAMI . . . . I. L. R. 14 Mad. 44

21. ——— *Lands irrigated from Kistna anicut—Madras Act VII of 1865, s 4—Restriction as to felling trees—Implied contract as to rent.* A zamindar holding lands irrigated by the Kistna anicut, from whom no extra peishcush is on that account levied by Government, is not entitled to impose on his tenants a "wet rate" of rent without the permission of the Collector under s 11 of Madras Act VIII of 1865. The fact that the tenants have paid rent at such a ... trees without his consent. APPARAU v. NARASANNA . . . . . I. L. R. 15 Mad. 47

22. ——— *Form of pottah—Form of rent determined by implied contract—* ... *amount varied.* The tenant was described in the cowle as a sukavasi raiyat, and the defendants also claimed to be sukavasi tenants. *Held,* that it was unnecessary to determine the cause of the variations in the amount of rent, and that an agreement that the rent should continue to be paid in money should be implied, and the landlord accordingly was not entitled to impose a pottah providing for payment of rent in kind POLU v. RAGAVAMMAL . . I. L. R. 14 Mad. 52

23. ——— *Cl. 4—Sanction by Deputy Collector of enhanced rent—Cancellation of sanction by Collector—Validity—Mad. Reg. II of 1803, s. 9—Mad. Reg. VII of 1828, s 3—Powers of supervision vested in Collector—Tender of patta within Fasli—Order sanctioning enhanced rent, passed after termination of Fasli—Effect on patta.* The ... Collector ... cl. 4, of the Rent Recovery Act, sanctioning ... increase in the consolidated rent payable by tenants. A landholder must tender patta to his tenant within ... *Pattas were tendered* ... espect of *Fasli* ... 93. In those ... nt which was ... er acre. The

MADRAS RENT RECOVERY ACT (VIII OF 1865)—*contd.*

———— s. 11—*concld*

enhancement was justified on the ground (among others) that the Government had added a corresponding increase to the water-rate and that the Deputy Collector had under s. 11, cl 4, of the Rent Recovery Act sanctioned the enhanced rent Such an order had, in fact, been passed, but it had been cancelled by the Collector, who remanded the matter to the Deputy Collector to make inquiry and to pass a fresh order, without retrospective effect. The Deputy Collector passed a fresh order on 29th August, 1898—nearly two months after the close of the *Fasli* 1307, for which the *pattas* had been tendered That order sanctioned an enhancement of 2 annas 3 pies per acre. On suits being filed to enforce acceptance of *pattas* containing enhanced rent at the rate of one rupee per acre:—*Held*, that the Collector had power to cancel the order sanctioning the enhancement at the rate of one rupee per acre, which, in consequence, could not be enforced, and that an enhancement of even 2 annas 3 pies could not be claimed, as the *pattas* were bound to be and had been tendered prior to 30th June, 1898, in respect of *Fasli* 1307, which ended on that date, and the tenants were not bound to accept *pattas* in which an enhanced rate not sanctioned by the Deputy Collector till 29th August was charged ZAMINDARNI OF NIDAVOLE *v.* SAGIRAZU KRISHNAM RAZU (1902)
I. L. R. 26 Mad. 456

24. ———— *Agreement to pay special rate for particular crops is not an enhance-*

———— s. 12—

See JURISDICTION OF REVENUE COURT—MADRAS REGULATIONS AND ACTS
7 Mad. 53

See LANDLORD AND TENANT—ABANDONMENT, RELINQUISHMENT, OR SURRENDER OF TENURE . I. L. R. 13 Mad. 124
I. L. R. 15 Mad 67

MADRAS RENT RECOVERY ACT (VIII OF 1865)—*con'd.*

———— s. 12—*contd.*

See ONUS OF PROOF—LANDLORD AND TENANT . I. L. R. 16 Mad. 271

1. ———— "*Tenants*"—*Term not restricted to agricultural tenant.* S. 12 of the Rent Recovery Act provides that tenants ejected without due authority by landholders may bring a summary suit before the Collector to obtain reinstatement with damages *Held*, that the word "tenants" is not restricted to agricultural tenants only, but includes the permanent lessee of a mitta. SUBBARAYA *v.* SRINIVASA . I. L. R. 7 Mad. 580

See BASKARASAMI *v.* SIVASAMI
I. L. R. 8 Mad. 196

2. ———— *Issue of pottah, effect of—Receipt of rent—Suit for possession—Ejectment* On the true construction of s 12 of the Madras Rent Recovery Act (Madras Act VIII of 1865) the issue of a pottah is not intended to do more than prevent the arbitrary ejectment of tenants, and does not give them a right of permanent occupancy; and it did not therefore prevent a plaintiff, though he had issued pottahs to the defendant, from recovering the lands from him, and he was not bound merely to receive rent SATHIANAMA BHARATI *v.* SARAVANABAGI AMMAL
I. L. R. 18 Mad. 266

3. ———— *Right of tenants to relinquish their lands at end of year—"Tenants"—*

varam, were farmers under an inamdar, and be-

karasami, I. L. R. 27 Mad. 67, followed. *Subbaraya* v. *Srinivasa, I. L. R. 7 Mad. 580; Appasami* v. *Rammasubba, I. L. R. 7 Mad 262; Ramchandra* v. *Narayanasami, I. L. R. 10 Mad. 229; Baskarasami* v. *Sivasami, I. L. R. 8 Mad. 196* (so far as they proceed on the supposition that the word "tenant" as defined in s 1 of the Rent

MADRAS RENT RECOVERY ACT (VIII OF 1865)—*contd.*

——— s. 12—*concld.*

Recovery Act, is applicable to an intermediate landholder, who has to pay rent to a superior landholder), dissented from. *Per* the offg. C. J. and RUSSELL, J. (after the decision of the Full Bench) —According to the Indian Common Law relating to Hindu religious institutions of the kind before the Court, the landed endowments thereof are inalienable. Though proper derivative tenures conformable to custom may be created with reference to such endowments, they cannot be transferred by way of permanent lease at a fixed rent, nor can they be sold or mortgaged. The revenues thereof may alone be pledged for the necessities of the institutions *Prosanna Kumari Debya* v. *Golab Chand Baboo, L. R. 2 I. A. 14*5, referred to. NALLAYAPPA PILLAU *v.* AMBALAVANA PANDARA SANNADHI (1904) . . . . I. L. R. 27 Mad. 465

——— s. 13—*Persons entitled to proceed under Act—Attachment, validity of. A* granted two villages in perpetuity to *B* under a deed ... a certa... vered "... The rer... obtained an attachment for the whole arrear under the Madras Rent Recovery Act *Held,* (i) that *A* was entitled to proceed as landlord under the Madras Rent Recovery Act; (ii) that the attachment held good for such amount of rent as was recoverable under that Act. *Ramasami* v. *Collector of Madura, I. L. R. 2 Mad. 67,* discussed. RAMACHANDRA *v.* NARAYANASAMI

I. L. R. 10 Mad. 229

1. ——— s. 14—*Suit for rent—Limitation.* ...

I. L. R. 21 Mad. 413

2. ——— ... Demand ...

in respect of rent. The demand was not complied with, and, as a consequence of such non-compliance, the holding was attached and sold. *Held,* that, inasmuch as the sale had been held by reason of a demand which was not shown to be correct, it must be set aside PICHUVAYENGAR *v.* OLIVER (1902)

I. L. R. 26 Mad 260

——— s. 15—

See SMALL CAUSE COURT, MOFUSSIL—JURISDICTION—WRONGFUL DISTRAINT.

I. L. R. 22 Mad 457

——— ss. 15, 17. Where a landlord has distrained for rent, and the distraint has been set aside under the provisions of the Rent Recovery

MADRAS RENT RECOVERY ACT (VIII OF 1865)—*contd.*

——— s. 15—*concld.*

Act ... aking ... of the ... MA *v.* ... 429

——— ss. 15, 17 and 18—*Statement of place* ...

...tainer *Held,* that, with regard to property of this description, the statement was sufficient. *Quære* Whether the failure to state the place where property which has been distrained is kept is a ground for a suit under s. 18 of the Rent Recovery Act to set aside the distraint. VIRARAGHAVA AYYANGAR *v.* KANAGAVALLI AMMAL (1901)

I. L. R. 25 Mad. 503

1. ——— s. 17—*Attachment and sale of the tenant's interest in the land for arrears of rent—Declaration of invalidity of attachment.* When default has been made in the payment of rent, and the saleable interest of the defaulting tenant in the land is attached, the attachment cannot be declared invalid in a summary suit under s. 17 of the Rent Recovery Act. THAYAMMA *v.* KULANDAVELU . . . I. L. R. 12 Mad. 465

2. ——— and ss. 18, 49—*Suit to recover produce illegally distrained for rent—Wrongful distraint.* The defendants, the landlords, distrained certain produce, the property of plaintiff, their lessee, in view to selling it for alleged claims for rent. The Sub-Collector finding that the formalities required by the Act had not been observed, removed the attachment and directed the restoration of the property. The defendants having refused to restore the property, the plaintiff brought this suit under Madras Act VIII of 1865 to recover the value of the produce:—*Held,* that such ... being an act ...

...PILLAI . . . . . I. L. R. ... Mad. ...

3. ——— and s. 20—*Summary suit for wrongful distraint—Limitation—Cause of action.* A refusal to restore property improperly distrained under the Rent Recovery Act (Madras Act VIII of 1865) after the attachment has been set aside and the property ordered to be restored ... a cause of action upon ...

to restore, the property are only aggravations of the wrong. *Semble:* A summary suit under s. 17

MADRAS RENT RECOVERY ACT (VIII OF 1865)—*contd.*

——— s. 17—*concld.*

would lie under such circumstances for loss or dam-

period of limitation for a suit under s 17 must be computed, if not from the date of the distress, at any rate from the date the distress was declared illegal. BHAGIRATHI PANDA v PADALA GOPALUDU

I. L. R 3 Mad. 121

——— s. 18—

See SALE FOR ARREARS OF RENT—SETTING ASIDE SALE—IRREGULARITY

I. L. R 20 Mad 498

——— *Seven days required by the section means seven clear days—Limitation Act (XV of 1877), Art 91—Does not apply to defendants in possession* A defendant in possession is not precluded from setting up the invalidity of a sale, because his right to have it set aside was barred at the date of suit by Art. 91 of Sch II to the Limitation Act The seven days which, in fixing the day for sale under s 18 of the Rent Recovery Act, must be allowed from the time of notice, are seven whole days, and not seven periods of 24 hours calculated from the hour of the day on which the notice was issued. *McQueen* v. *Jackson*, [1903] 2 K B 163, referred to RAMANASARI v MUTHUSAWMI NAIK (1906) . I. L. R. 30 Mad. 248

——— ss. 18, 24, 49—*Excessive distress—Remedy for person aggrieved* Though a person

Act, is a ground on which an appeal against a distraint may be filed under s 8, and if the distress is proved to be excessive, the Collector may allow the appeal and set aside the distraint CHELICAN VENCATA GOPALA RAYNIAM GARU v NARAYANASAMI REDDI (1904) I. L. R. 27 Mad. 210

——— ss. 18, 36, 40—*Insufficient notice of sale—Onus of showing that requirements of Act have been complied with—Irregularity—Civil Procedure Code (Act XIV of 1882), s. 283—Relief "in respect of the same matter"—Joinder of causes of action and parties—Suit against purchasers of*

of sale is not a mere irregularity curable under ss 36 and 40 of the Rent Recovery Act The provisions of s. 36 cannot be imported into s 40 so as to make the former applicable to a sale of land distrained for arrears of rent S. 36 introduces an exception to the general rule that, *primâ facie*

MADRAS RENT RECOVERY ACT (VIII OF 1865)—*contd.*

——— s. 18—*concld.*

non-compliance with the requirements of the Act will vitiate a sale: and this exception is expressly limited to the case of moveable property The

a declaration that the sale was invalid for want of proper notice is not bad for misjoinder of parties and of causes of action. Though in a sense every item sold constitutes a separate sale, the "matter"

of the attached property may be properly joined as defendants in the same suit. DORASAMI PILLAI v. MUTHUSAMY MOOPPAN (1904)

I. L. R. 27 Mad. 94

——— s. 20—

——— *Death of cattle distrained* A landlord distrained cattle, belonging to his tenant, for arrears of rent The distraint was held, in a suit, to be illegal, the judgment being delivered on 7th September, 1898 Out of 17 animals which were distrained, only 11 were restored to plaintiff, the date of their restoration being the 28th November, 1898. Of those which were ... prior ... thirty ... been ... the ... legally

deprived of the services of the cattle, had he so framed his suit JAGANNADHA RAO PANTULU GARU v. NIDAMARTI UMMAYYA (1902)

I. L. R. 26 Mad. 183

——— s. 27—

See APPEAL—DECREES

I. L. R. 13 Mad. 248

See SMALL CAUSE COURT, MOFUSSIL—JURISDICTION—WRONGFUL DISTRAINT.

4 Mad. 401

MADRAS RENT RECOVERY ACT (VIII OF 1865)—*contd.*

——— s. 33—

See SALE FOR ARREARS OF RENT—SETTING ASIDE SALE—OTHER GROUNDS.
I. L. R. 8 Mad. 6
I. L. R. 24 Mad. 307

——— s. 35—

See STAMP ACT, 1869, s 3 . 8 Mad. 112

——— and s. 76—*Sale of tenant's interest—Refusal of Collector to give certificate.* A sale of the tenant's interest in certain land having taken place under *ss. 39 and 40 of the Rent Recovery Act*, the Deputy Collector refused to issue sale certificate to the purchaser, on the ground that the sale had been irregularly conducted :—*Held*, that, under *s. 35 of the Rent Recovery Act*, the purchaser was entitled to a sale certificate. VELLI PERIYA MIRA *v.* MOIDIN PADSHA
I. L. R. 9 Mad. 332

——— s. 38—

See ATTACHMENT—ALIENATION DURING ATTACHMENT . I. L. R. 8 Mad. 573

See MONEY HAD AND RECEIVED.
I. L. R. 25 Mad. 548

See SALE FOR ARREARS OF RENT—INCUMBRANCES . I. L. R. 7 Mad. 31
I. L. R. 2 Mad. 234
I. L. R. 10 Mad. 266

See SALE FOR ARREARS OF RENT—RIGHTS AND LIABILITIES OF PURCHASERS.
I. L. R. 6 Mad. 428

——— *Attachment and sale of the tenant's interest in the land for arrears of rent.* Under s. 38 of the Madras Rent Recovery Act, a landlord cannot attach the saleable interest of a defaulting tenant in the land, until the expiry of the current revenue year THAYAMMA *v.* KULANDAVELU . . I. L. R. 12 Mad. 465

——— ss. 38 and 39—

See LIMITATION ACT, 1877, ART. 12.
I. L. R 20 Mad. 3

——— *Sale on excessive demand illegal—Institution of civil suit for rent after taking summary proceedings no bar to proceeding with the latter—Limitation Act (XV of 1877), Sch.* [illegible]

MADRAS RENT RECOVERY ACT (VIII OF 1865)—*contd.*

——— ss. 38 and 39—*concld.*

the summary proceedings. If the suit is allowed to proceed to judgment, the debt will merge in the decree and further summary proceedings will be illegal, but a sale before judgment will be valid. *Chancellor* v. *Webster, 9 T. L. R. 568*, referred to. A defendant in possession whose right to sue to set aside a sale is barred by Art. 12 of Sch. II of the Limitation Act, may set up the invalidity of such sale as a defence. *Lakshmi Doss* v. *Roop Laul, I. L. R. 30 Mad. 169*, referred to. VENKATACHALAPATHY AYYAR *v.* ROBERT FISCHER (1907)
I. L. R. 30 Mad. 444

——— s. 39—

See MERGER . I. L. R. 30 Mad. 495

See SALE FOR ARRERRS OF RENT—SETTING ASIDE SALE
I. L. R. 24 Mad 307

1. ——— *Sale of immoveable property under—Irregularity in sale, effect of.* A [illegible]

NATTU ACHALAI AYYANGAR *v.* PARIHASARADI PILLAI . . . I. L. R. 3 Mad. 114

2. ——— *Service by affix-* [illegible] *conspicuous* [illegible] *tenant in* [illegible] of the Rent [illegible] tion to sell [illegible] al place of [illegible] hbourhood of the land in respect of which the pottah was tendered, and does not apply when the tenant resides in foreign territory. OLIVER *v.* ANATHARAMAYYAN . . . I. L. R. 18 Mad. 30

3. ——— *Practice—Point not taken in plaint or a settlement of issues—Right to raise it on appeal.* Where a plaintiff in a suit to set aside a sale of land fails to take the objection, either in his plaint or at settlement of issues, that [illegible] 39 of the Rent [illegible] upon him, he [illegible] appeal. SUB- [illegible] 26 Mad. 363

——— ss. 39 and 40—

See RIGHT OF SUIT—LANDLORD AND TENANT, SUITS CONCERNING.
I. L. R. 10 Mad. 368

See SALE FOR ARREARS OF RENT—SETTING ASIDE SALE—IRREGULARITY.
I. L. R 20 Mad. 498

——— s. 40—

See LIMITATION ACT, 1877, SCH. II, ART. 12 . . . I. L. R. 20 Mad. 33

MADRAS RENT RECOVERY ACT (VIII OF 1865)—*contd*

——— s. 40—*concld.*

See SALE FOR ARREARS OF RENT—SETTING ASIDE SALE—IRREGULARITY
I. L. R. 20 Mad. 498

See STAMP ACT, 1869, s 3 8 Mad. 112

——— *Limitation for suits under s 40—Right of attachment, when rent is payable in kind—Validity of attachment for arrears due under patta altered subsequently* S 40 of the Madras Rent Recovery Act must be read with s 51 The word " month " in the former was intended to be equivalent to the 30 days in the latter and suits under s. 40 are within time, if presented within 30 days Attachment proceedings under the Act may be taken when rent is payable in kind Where a patta under which an attachment was made, is altered on appeal subsequently the attachment cannot be upheld even to the extent of the rent in arrears under the altered patta *Ramchandra* v. *Narayanasami, I L. R 10 Mad 229,* not followed. VAMA DAVA DESIKAR v. MURUGESA MUDALI (1905)
I. L. R. 29 Mad. 75

——— ss. 41, 43—

See JURISDICTION OF CIVIL COURT—RENT AND REVENUE SUITS, MADRAS
5 Mad. 289

——— ss. 41, 43, 69—

——— *" Judgment "—Decision of Collector setting aside an order for ejectment under s 41, is a " judgment " and appealable as such* The term " judgment " as used in Madras Act VIII of 1865 must be held to include [illegible]

proper eviction or as an appeal under s. 43 or not, and an appeal lies against such judgment under s 69 of the Rent Recovery Act. Such right of appeal [illegible]

——— s. 44—*Delivery of possession—Appeal—Limitation.* *A* obtained a warrant ejecting *B* for arrears of rent under s. 41 of the Rent [illegible]

MADRAS RENT RECOVERY ACT (VIII OF 1865)—*contd.*

——— s. 49—

See DEPUTY COLLECTOR, JURISDICTION OF.
I. L. R. 16 Mad. 323

——— *Summary suit for damages for wrongful distraint—No proper pottah tendered—Jurisdiction of Summary Court.* A tenant sued his landlords summarily under s 49 of the (Madras) Rent Recovery Act for cancellation of a distraint and for restoration of the property distrained or its value It appeared that there were three landlords who owned the village and that the pottah has been tendered by only two of them for their shares, and was consequently not a proper one:—*Held,* that the defendants were landlords who, had they tendered a proper pottah, would have been entitled to distrain under the Act. The fact that the pottah which had been tendered was not a proper one did not cause the proceedings taken by them under the provisions of the Act to be a proceeding not taken under colour of the Act. *Held,* also, that the suit was one for damages. VELAGALETI RAMAKRISHNAYYA v SUBANENI PAPAYYA APPA ROW (1904)
I. L. R. 27 Mad. 430

1. ——— s. 50—*Petition sent by post—Presentation of plaint.* A petition sent by post is not a substitute for the presentation of a plaint as required by s 50 of Madras Act VIII of 1865. MOPARTI PITCHI NAIDU v. VUPPALA KONDAMMA
6 Mad. 136

2 ——— and s. 69—*Plaint—Amendment—Irregular procedure—Joint petition—Order to file separate plaints—Limitation.* A landlord, having tendered pottahs to his raiyats which were not accepted by them, distrained, for rent due under the pottahs tendered, on the 10th of March 1882. On the 13th of March thirteen raiyats presented a joint petition to the Head Assistant Collector complaining of the landlord's acts. This petition was referred to the Tehsildar for report, and not treated as a plaint under Act VIII of 1865 (Madras); but subsequently, having been brought before the Deputy Collector for orders it was treated [illegible]

ATTIPAKULA MUNAPPA v. DASINANI CHENCHU NAYUDU . . . I. L. R. 7 Mad. 138

MADRAS RENT RECOVERY ACT (VIII OF 1865)—*contd.*

1. ——— s. 51 and s. 18—*Summary suit to set aside distraint—"Within thirty days"—Sunday—General Clauses Act (X of 1897), s. 10 (1)—General Clauses Act (Madras) (Act I of 1891), s. 11.* Suits to set aside a distraint under s. 15 of the Rent Recovery Act (Madras), 1865, were filed on the thirty-first day after the distraint complained of, the thirtieth day being a Sunday, and the Court closed. On objection being taken that the suits were barred under ss 18 and 51 of the Act:—*Held*, (i) that the suits were filed in time; (ii) that the provisions of the Limitation Act do not extend the period of thirty days limited by ss 18 and 51 of the Rent Recovery Act (Madras), 1865, for bringing a summary suit to set aside a distraint; neither does s 10 of the General Clauses Act nor s. 11 of the General Clauses Act (Madras), inasmuch as the latter Acts are not retrospective; and (iii) that there is a generally recognized principle of law under which parties who are prevented from doing a thing in Court on a particular day, not by any act of their own, but by the Court itself, are entitled to do it at the first subsequent opportunity. SAMBASIVA CHARI *v.* RAMASAMI REDDI I. L. R 22 Mad. 179

2. ——— *Presentation of plaint—Acceptance by Court of plaint sent by post.* K sent a plaint by post to a revenue officer, who was on tour, and, in obedience to an order issued by such officer to pay batta within a certain date, presented himself and paid the amount demanded within thirty days from the date of the cause of action. *Held*, that the suit as instituted within the time prescribed by s. 51 of the Rent Recovery Act. *Moparti Pitchi Naidu v. Vuppala Kondamma, 6 Mad. 136*, approved and distinguished SANKARANARAYANA *v.* KUNJAPPA . I. L. R. 8 Mad. 411

3 ——— *Suit to enforce acceptance of improper pottah—Limitation.* A landlord sued his tenants in the Court of a District Munsif to enforce acceptance of pottahs and the execution of muchalkas by them, and to recover arrears of rent. These suits were filed more than thirty days after tender of the pottahs, which were found to contain certain improper stipulations *Held*, that the suit was not barred by the rule of limitation in Madras Rent Recovery Act, s 51. EASWARA DOSS *v.* PUNGAVANCHARI I. L. R. 13 Mad. 361

——— ss. 57, 66—*Ex parte decision. Semble* The terms of s. 57 of Act VIII of 1865 are wide enough to justify a Collector in treating as *ex parte* a defendant not appearing on the day to which the hearing of the suit may have been adjourned under s 66 of the Act SUBBRAMANIYA PILLAY *v.* PERUMAL CHETTY . . 4 Mad. 251

——— s. 69—

See ante, ss 10 AND 69.

See REMAND—CASES OF APPEAL AFTER REMAND . I. L. R. 26 Mad. 518

MADRAS RENT RECOVERY ACT (VIII OF 1865)—*contd.*

——— s. 69—*concld*

1. ——— *Appeal, computation of time for—Time required to file copy of decision.* An appeal under Madras Act VIII of 1865 must be presented within thirty days from the date of the decision appealed against. The appellant is not required to file a copy of such decision with his appeal. *In the matter of the petition of* MOHIDIN HUSSEN SAHEB . . . . 8 Mad. 44

2. ——— and s. 18—*Deduction of time occupied in obtaining copy of judgment appealed against—Limitation Act (1877), s. 12.* A tenant whose property had been distrained for arrears of rent sued under Rent Recovery Act, s. 18, by way of appeal against the distraint. The Revenue Court decided in his favour. The landlord preferred an appeal under s. 69 more than thirty days after the date when the decision was pronounced. He claimed that the time occupied in [illegible]

[illegible]

KANNA (1901) . . I. L. [illegible] 8

1. ——— s. 72—*Refusal to execute muchalka—Suits for rent.* By s. 72 of the Rent Recovery Act when a judgment is given for the delivery of a [illegible]

[illegible] written statement [illegible] that he was not bound [illegible] fusal [illegible] which [illegible] of s. [illegible] had [illegible] SUB- [illegible] 565

BANNA . [illegible]

——— *Decision of Revenue* [illegible] *appeal to* [illegible]

MADRAS RENT RECOVERY ACT (VIII OF 1865)—*contd.*

——— s. 72—*contd.*

that decision being confirmed on appeal by a District Court, is final and binding in all Courts in respect of rent recoverable for that fasli. *Villiammalachie* v *Sree Gulam Gouse Sahib* (Appeal No. 118 of 1900, unreported) followed. VEDACHALA GRAMANI *v* BOOMIAPPA MUDALIAR (1904)
I. L. R. 27 Mad. 65

——— s. 76—

See SUPERINTENDENCE OF HIGH COURT—CIVIL PROCEDURE CODE, s. 622.
I. L. R. 16 Mad. 451
I. L. R. 17 Mad. 298

——— s. 78—

See LIMITATION ACT, 1877, s 14
I. L. R. 12 Mad. 467

See RIGHT OF SUIT—LANDLORD AND TENANT, SUITS CONCERNING.
I. L. R. 10 Mad. 368

See SMALL CAUSE COURT, MOFUSSIL—JURISDICTION—WRONGFUL DISTRAINT
I. L. R. 25 Mad. 540

1. ——— *Limitation—Suit to recover property wrongfully distrained.* The plaintiff sued to recover certain property wrongfully distrained by the defendant, who was his landlord, or in the alternative for its value The defendant had tendered no pottah to the plaintiff, but the distraint had taken place professedly under the Rent Recovery Act The suit was not brought within six months from the date of the wrongful distraint. *Held*, that the suit was not barred under Rent Recovery Act, s 78 GOUNDAN *v* RANGAYA GOUNDAN . . I. L. R. 20 Mad. 449

2. ——— *Six months from date of cause of action—Illegal attachment by landholder of tenant's property—Retention for more than six months—Continuing wrong—Limitation* By s 78 of the Rent Recovery Act (Madras), 1865, a suit may be brought to recover damages in respect of anything professedly done under the authority of that Act, provided that it be instituted within six months from the time at which the cause of action arose. A landholder illegally attached

being a continuing wrong YAMUNA BAI RANI SAHIBA *v.* SOLAYYA KAVUNDAN (1901)
I. L. R. 24 Mad. 339

——— s. 80—

See ante, ss. 3 AND 80.

——— s. 85—

——— S. 85 *empowers*

MADRAS RENT RECOVERY ACT (VIII OF 1865)—*concld*

——— s. 85—*concld.*

duty of granting pattas to tenants and the liability to be sued under the Act for failure to do so. No leave of Court is necessary to enforce the statutory right of suing such receiver conferred by the section. RECEIVER OF AMMAYYANAIKANUR ZAMIN *v* SUPPAN CHETTY (1907) . I. L. R. 30 Mad. 505

MADRAS REVENUE RECOVERY ACT (II OF 1864).

See MADRAS ABKARI ACT, 1864, s. 10.
I. L. R. 7 Mad. 434

See SALE FOR ARREARS OF REVENUE.

——— suit based on action of village officer—

See SECRETARY OF STATE.
I. L. R. 26 Mad. 263

1. ——— ss. 1, 2, 3, 38, 39—*Landholder—Defaulter—Pottah allowed to stand in name of another—Estoppel—Notice—Sale* Where a landholder allows the registry of land to stand in the name of another and the revenue falls into arrears, a sale of the land under the provisions of the Revenue Recovery Act (Madras Act II of 1864), effected after the service of notice upon the person in whose name the pottah stands, will pass the landholder's interest to the purchaser at the revenue sale. ZAMORIN OF CALICUT *v.* SITARAMA
I. L. R. 7 Mad. 405

2. ——— ss. 1, 2, 3, 26 and 42—*Land Revenue—Tax levied on trespasser—"Prohibitory assessment"—Legality* Plaintiff had built a pial

Recovery Act. He was improperly in possession

MADRAS REVENUE RECOVERY ACT (II OF 1864)—*contd.*

———— s. 1—*concld.*

preclude the supposition that any Crown demand is recoverable as land revenue, unless it be something due from one, who is a landholder, as defined by the Act. *Per* BHASHYAM AYYANGAR, *J.*—Civil Courts have jurisdiction to decide whether or not the land or person is at all under liability to be assessed for land revenue If such liability does exist, the rate or amount of assessment fixed by Government cannot be questioned or revised by a Civil Court. In the case of all lands, any demand, which may be made on behalf of the Crown on the occupant with the avowed object of compelling him to surrender or vacate the land, is not the imposition of land revenue, and the machinery provided by the Revenue Recovery Act for the realization of arrears of revenue cannot be resorted to for enforcing such a demand MADATHAPU RAMAYA *v.* SECRETARY OF STATE FOR INDIA (1904)

I L R. 27 Mad. 386

———— s. 2—

See CONTRIBUTION, SUIT FOR—PAYMENT ON JOINT-DEBT BY ONE DEBTOR.

I. L. R. 26 Mad. 686

See LAND-REVENUE

I. L. R. 26 Mad. 730

1. ———— *Remedies of assignee from Government of land revenue—Land security for revenue.* The land revenue payable on certain land

Madras Act II of 1864 the land itself is security for the revenue due on it, and they can therefore bring the land to sale to discharge arrears accrued due. KRISHNASAMI *v.* VENKATARAMA

I. L. R. 13 Mad. 319

2. ———— and ss. 25, 37—*Sale for arrears of revenue—Liability of all fields included in pottah.* By accepting a raiyatwari pottah, the landholder pledges each and every field included therein as security for the whole assessment. Several fields separately assessed to revenue were held under one pottah by *K.* Default having been made by *K* in payment of revenue, one of such fields, of which *N* was the owner, was attached under the Revenue

sale was valid. SECRETARY OF STATE FOR INDIA *v.* NARAYANAN. SITARAMA *v.* NARAYANAN

I. L. R. 8 Mad. 130

———— ss. 5, 25 and 44—

———— *Sale of property of a defaulter for arrears of revenue—Mad. Reg. XXVI of 1802, s. 3—Register of transfer—Act I of 1890, s. (3) ( )—" Entire estate " of defaulter—Lands held under different pattas—Sale of land com-*

MADRAS REVENUE RECOVERY ACT (II OF 1864)—*contd.*

———— s. 5—*concld.*

prised in one patta—No arrears of revenue due—Subsequent sale of same land for arrears of revenue due on other land held under different patta—Validity. First defendant held lands, under two separate

revenue was due in respect of any of first defendant's lands situate in either village. At a date subsequent to plaintiff's purchase at the Court sale, the same land was again sold to second defendant for arrears of revenue. These arrears were not due in respect of the land which was sold, but had accrued due on the other land belonging to first defendant, which was situated in the other village

that the sale to second defendant for arrears of revenue was invalid *Held,* that plaintiff was entitled to the declaration. *Per* MOORE, *J.*—Inasmuch as plaintiff had failed to obtain a transfer of *patta* into his own name after his purchase, the

ing regard to s. 6 (3) (4) of Act I of 1890, the "moveable and immoveable property of a defaulter," referred to in s. 5 of Madras Act II of 1864, must be taken to mean the interest of the defaulter in the land Inasmuch as the interest of the first de-

plaintiff had bought at the Court sale was not liable to be sold under the Revenue Recovery Act, because at the time of sale, there were no arrears of revenue due upon it, and it then ceased to form part of the defaulter's property. The land which, under ss 3, 4, 5 and 25 of the Revenue Recovery Act, is liable

s. 3 of the Regulation can apply, the " revenue due to Government " must be such as had " revenue due to Government " upon it. A *patta* represents an entire estate, and land held under another *patta* forms another estate. NARAYANA RAJA *v.* RAMACHANDRA RAJA (1902)

I. L. R. 26 Mad. 531

———— s. 11—*Attachment of gathered crops belonging to a tenant—Right of Government to distrain*

MADRAS REVENUE RECOVERY ACT (II OF 1864)—*contd.*

——— s. 11—*concld.*

for arrears of revenue. Government can attach for arrears of revenue under s. 11 of Madras Act II of 1864 the gathered products belonging to a tenant, provided that the products are of the land on account of which the arrears of revenue have accrued KRISHNA CHADAGA *v* GOVINDA ADIGA I. L. R. 17 Mad. 404

——— s. 32—

See CONTRIBUTION, SUIT FOR—PAYMENT OF JOINT DEBT BY ONE DEBTOR. I. L. R. 26 Mad. 686

——— *Purchaser of land at Revenue sale—Liability to pay tenant for improvement before obtaining possession.* Where a kanom was granted for R5, the jenmi agreeing to pay the tenant the value of his improvements, and it was not alleged that the rent reserved was lower than the usual rent for such land, and the object of the lease was to bring waste land into cultivation.—*Held,* that, having regard to the small amount of the Panom, the transaction must be regarded as in [illegible]

[illegible] at a Revenue sale was therefore bound to pay compensation to the tenant for improvements before he could obtain possession MEPPATT KUNHAMAD *v* CHATHU NAIR (1904) . I. L. R. 27 Mad. 373

——— s. 35—

——— *Mortgagor, or incumbrancer—Unregistered owner not bound to pay the revenue—Contract Act (IX of 1872), s. 69—Money voluntarily paid cannot be recovered back unless the party for whom such payment is made is bound to pay it—Applies only where party paying is tenant* An action to recover money paid is not maintainable under s 69 of the Indian Contract Act [illegible]

[illegible] can he recover it under s 35 of the Revenue Recovery Act unless he is a tenant, mortgagor or incumbrancer of such land. BOJA SELLAPPA REDDY *v.* VRIDHACHALA REDDY (1906) I. L. R. 30 Mad. 35

——— s. 35, cl. (5) and s. 39—*Certified purchaser at revenue sale can be shown to be only benamidar.* Benami purchases are common in India and effect is to be given to them according to the intention of the parties, except so far as a positive enactment directs a contrary course. Where land has been sold for arrears of revenue under the Revenue Recovery Act and the name of the purchaser has been published under s 39 of the Act, such proclamation does not preclude any one subsequently from contending that such purchaser was only a [illegible]

——— s. 36—*Extension of time by Government for payment of balance of purchase-money.* [illegible]

[illegible] land. SONAYA PILLAI *v.* KALAMEGAM I. L. R. 5 Mad. 130

——— s. 38—

See BENAMI TRANSACTION—GENERAL CASES . I. L. R. 18 Mad. 469

1. ——— *Sale for arrears of revenue—Confirmation of sale after cancellation* When a Collector has passed an order under s 38 of Madras Act II of 1864, setting aside a sale for arrears of revenue, he cannot subsequently confirm the sale. KALIAPPA GOUNDEN *v* VENKATACHALLA THEVAN . . . I. L. R. 20 Mad. 253

2. ——— *Sale for arrears of revenue—Suit by purchaser for possession—Plea that it was a benami purchase* The purchaser at a [illegible]

[illegible] Revenue Recovery Act, s 38, did not debar the defendant from raising this plea, and that, the averments on which it was based having been proved, the suit should be dismissed SUBBARAYAR *v.* ASIRVATHA UPADESAYYAR I. L. R. 20 Mad 494

[illegible]

4. ——— and s. 59—*Sale for arrears of revenue—Purchase by Government—Subsequent sale by Government—Suit by owner of a share in the mittah for cancellation of second sale—Limitation.* The plaintiff was the owner of a share in a mittah which was sold on the 15th February 1886 for arrears of revenue and bought by Government, who, on the 16th June 1886, sold it to

MADRAS REVENUE RECOVERY ACT (II OF 1864)—*contd.*

——— s. 38—*concld.*

the first defendant, notifying the re-sale in the form prescribed under Madras Act II of 1864. The first defendant subsequently resold portions of the mittah to defendants 3 and 5 to 8. The plaintiff sued for cancellation of the second sale so far as his

sale by Government of property that had become its own by reason of the purchase at the prior sale of 15th February; (ii) that even assuming the sale of the 16th June 1886 to have been a sale under s 38 of Act II of 1864, the suit was time-barred under s. 59 of that Act, since it should have been brought within six months from the date of the plaintiff's majority, *viz.*, the 29th November 1888. *Held*, that the limitation prescribed by s 59 of Madras Act II of 1864 is applicable to sales which are illegal by reason of contravening some express law, as well as to sales which are irregular. *Gobin Lal Roy* v. *Ramjanam Misser, I L R. 21 Calc. 70*, referred to. GOUNDAN *v* GOUNDAN

I. L. R. 17 Mad. 134

——— ss. 38 and 39—

——— *Sale of land for arrears of revenue—Proclamation of purchaser's name—Subsequent contention that purchase was benami—Validity.* Where land has been sold for arrears of revenue, under the Revenue Recovery Act of 1864, and the name of the purchaser has been published in pursuance of s 39 of that Act, the effect of such proclamation is to vest the property absolutely in the purchaser as there named, and it will not be open to anyone to contend subsequently that the purchaser was a *benamidar* and that the real purchaser was someone else *Tirumalayappa Pillai* v. *Swami Naickar, I. L R 18 Mad. 469*, and *Subbarayar* v. *Asirvatha Upadesayyar, I. L. R. 20 Mad. 494*, explained. NARAYANA CHETTIAR *v.* CHOKKAPPA MUDALIAR (1901)

I. L. R. 25 Mad. 655

——— ss. 41 and 42—*Sale for arrears of revenue—Land subject to kanam—Purchaser's title not subject to kanam-holder's rights.* Where land subject to a kanam was sold for arrears of revenue due by the pottadar and owner, and the kanam-holder claimed to retain possession as against the purchaser on the ground that his rights were not affected by the sale:—*Held*, that, reading ss. 41 and 42 of *Madras Act II of 1864* together, the purchaser's title was not subject to the kanam. The contracts referred to in s. 41 of the Act are those which do not create a charge on the proprietary right in the land sold KELAN *v.* MANIKAM

I. L. R. 11 Mad. 330

——— s. 42—

See CONTRIBUTION, SUIT FOR—PAYMENT ON JOINT DEBT BY ONE DEBTOR.

I. L. R. 26 Mad. 686

MADRAS REVENUE RECOVERY ACT (II OF 1864)—*contd.*

——— s. 42—*concld.*

See LAND-REVENUE

I. L. R. 26 Mad. 730

——— *Land Improvement Loans Act (XIX of 1883), s. 7, cl. 1 (a)—Revenue Recovery Act—Advance to owner of two pieces of land—Security taken on one alone—Sale of the other piece in respect of advance—Validity.* Held two pieces of land on *patta*, and obtained a loan from the Government, under Act XIX of 1883, for the improve-

its sale, claiming title to it as purchaser, and, in 1897, both *N* and plaintiff applied for a transfer of the *patta* to plaintiff. The transfer was no made as the loan to *N* had not been repaid. The land was ultimately sold by the Government to first defendant, whereupon plaintiff brought this suit for a cancellation of that sale. *Held*, that plaintiff was entitled to the relief claimed. CHINNASAMI MUDALI *v.* TIRUMALAI PILLAI (1901) I. L. R. 25 Mad. 572

——— s. 44—

See ante, SS. 5, 25 AND 44.

——— s. 45—

See LIMITATION—STATUTES OF LIMITATION—MADRAS ACT I OF 1876, s. 7.

I. L. R. 26 Mad 389

1. ——— s 52—*Karnam in a permanently-settled zamindari—Revenue servant* The karnam in a permanently-settled zamindari is a village servant employed in revenue duties within the meaning of the Madras Revenue Recovery Act, s. 52. COLLECTOR OF NORTH ARCOT *v.* NAGI REDDI

I. L. R 15 Mad 35

2 ——— and s. 59—*Madras Hereditary Village Offices Act (Madras Act III of 1895), s. 21—Emoluments due to village officers—Demand for payment under s 52 of Revenue Recovery Act—Payment under protest—Suit to recover amount paid—Legality of demand—Limitation.* By the custom of a zamindari its tenants brought their produce to the threshing-floor, where it was ... among the village servants. The ... direct- ... t to the ... pay the ... anaries. ... the vil-lage-servants complained to the Government revenue officials, who applied to the lessees for payment of the arrears, a demand for the same being ulti-

MADRAS REVENUE RECOVERY ACT (II OF 1864)—*contd.*

———— s. 52—*concld*

mately issued under s 52 of the Revenue Recovery Act (Madras), 1864 The lessees thereupon paid the amount of the arrears under protest, and a year later filed a suit against the Secretary of State to recover the money so paid. *Held*, that the lessees had made themselves liable for the fees, and the Collector was entitled to proceed under s 52 of the Revenue Recovery Act (Madras), 1864, to recover them *Held*, also, that, inasmuch as the suit had not been brought within six months of the time when the alleged cause of action had arisen, it was barred under s 59 of the Revenue Recovery Act (Madras), 1864 ORR v SECRETARY OF STATE FOR INDIA . . . I. L R 23 Mad 571

1. ———— s 59—*Limitation—Sale of land subject to mortgage—Suit by mortgagor* Land which was subject to a mortgage having been sold for arrears of revenue under Act II of 1864 (Madras), the mortgagee's assignee sued to enforce the terms of the bond by sale of the land more than six months after the date of the sale of the land. *Held*, that the suit was barred by s 59 of the said Act. YELLAYA v VIRAYA I L R 10 Mad 62

2 ———— *Suit to set aside a sale for arrears of revenue—Fraud—Limitation Act, 1877, Art 95.* Suit, in July 1885, to set aside a sale of land of the plaintiff, sold in July 1884 as if for arrears of revenue under Act II of 1864 (Madras), on the ground that the sale had been brought about by fraud and collusion between the purchaser and the village officers, the plaintiff had knowledge of the alleged fraud more than six months before suit. *Held*, that the Law of Limitation applicable to the case was s 59 of Act II of 1864, and not Art 95 of the Limitation Act, and that the suit was therefore barred. *Venkatapathi* v. *Subramaya, I. L R 9 Mad 457*, explained *Baij Nath Sahu* v *Lala Sital Prasad, 2 B L. R. F. B. 1*, and *Lala Mobarak Lal* v. *Secretary of State for India, I. L. R 11 Calc. 200*, considered VENKATA v. CHENGADU

I. L. R. 12 Mad 168

3. ———— *Abkari notification referring to that Act—Sale to recover sum due from an abkari renter—Limitation for suits to recover land so sold.* The right of selling toddy at certain places was put up to auction by the Collec-

MADRAS REVENUE RECOVERY ACT (II OF 1864)—*contd.*

———— s. 59—*contd.*

years to sue, and that the sale was *ultra vires.* RAMAN v CHANDAN . I. L R. 15 Mad 219

4 ———— *Sale for arrears of revenue—Irregularity in sale—Want of due notification—Alleged fraud affecting sale—Limitation Act (XV of 1877), s 8—Minor* When there are arrears of revenue so as to give jurisdiction to the Collector to sell under Madras Act II of 1864, the

Nilakandan v *Thandamma, I. L. R. 9 Mad, 460*, followed. The mere fact that one of the plaintiffs, in a suit brought to set aside a sale under Madras Act II of 1864, was a minor, was held not sufficient to save the limitation bar under s 59 of Madras Act II of 1864, when an alleged fraud affecting the sale came to the knowledge of the other plaintiffs who were majors and were jointly interested with the minor more than six months prior to the institution of the suit, s 8 of the Limitation Act being inapplicable to such cases NARAYANAN NAMBUDRI v. DAMODARAN NAMBUDRI

I. L R 17 Mad. 189

5. ———— *Person aggrieved by sale—Date of cause of action—Confirmation of sale and not sale proceedings* Until a sale, held under the provisions of the Revenue Recovery Act, is confirmed, the rights of persons whose interests may be affected by the sale cannot be injured so as to give them a right of action as aggrieved persons, within the meaning of s 59 of the Act. Such a cause of action arises only when the sale has been confirmed *Venkata* v. *Chengadu, I. L. R. 12 Mad. 168*, distinguished. SABAPATHY CHETTY v RENGAPPA NAICKAN (1902)

I. L. R. 26 Mad. 495

6. ———— *Suit by person aggrieved by proceeding under the Act—Limitation—*

MADRAS REVENUE RECOVERY ACT (II OF 1864)—*concld.*

——— s. 59—*concld.*

section. RAMAN NAIDU *v.* BHASSOORI SANYASI (1903) . . . I. L. R. 26 Mad. 638

7. ——— *Regulation VII of 1828—Cause of action to set aside sale under s. 59 arises when sale is confirmed and not from date of Collector's order on revision.* The period of six months allowed for suits to set aside sales under s 59 of the Madras Act II of 1864 must be calculated from the date when the sale is confirmed and not from the date when the Collector on revision under Regulation VII of 1828 passes his final order. The party is aggrieved when the sale is confirmed and the fact that it was open to him to move the Collector does not postpone his cause of action *Sabapathy Chetty* v. *Rengappa Naicken, I L R. 26 Mad. 495,* distinguished. CHINNAMMAL ACHI *v.* SAMINATHA MALAVAROYAN (1907)
I. L. R. 30 Mad. 367

MADRAS REVENUE RECOVERY AMENDMENT ACT (III OF 1884).

——— s. 1, cl. 5—

See BENAMI TRANSACTION—GENERAL CASES . I. L. R. 18 Mad. 469

MADRAS SALT ACT (IV OF 1889).

1. ——— ss. 16, 25, 87—*Limitation—Suit to recover salt pans, when license improperly cancelled* Under ss 16 and 25 of the Madras Salt Act, the Government is empowered on cancelling a license to take possession of the proprietary rights of others in the salt pans Where Government have so taken possession of salt pans, a suit to recover the same brought against the Government and its assignees will be a suit in respect of acts done under the Act and will fall within s 87 of the Act, even when the license has been improperly cancelled and will be barred, if not brought within the period prescribed by that section KURNAM BUTCHAYYA *v* THE SECRETARY OF STATE FOR INDIA (1905)
I. L. R. 28 Mad. 551

2. ——— ss. 16 (a), 18 and 27—*No Compensation under s. 18, when license cancelled under s. 27—Civil Procedure Code (Act XIV of 1882), s 244* Where a license has been cancelled under s 27 of the Madras Salt Act (IV of 1889), the licensee is not entitled to compensation under s 18 of the Act, but only to the value of the proprietary right under s. 16 (*a*) of the Act Where such licensee has obtained a decree for possession of salt pans in default of payment of proper compensation, it is competent to the Court in execution proceedings to determine the amount so payable; and no separate suit need be brought to determine such amount. SECRETARY OF STATE FOR INDIA *v.* SUBRAYA MUDALIAR (1905)
I. L. R. 29 Mad. 181

MADRAS SALT ACT (IV OF 1889) —*concld.*

——— ss. 46 and 47—

See ESCAPE FROM CUSTODY.
I. L. R. 19 Mad. 310

——— ss. 84, 87—*Immunity from action —Period of limitation provided in the section does not apply when the suit is based on contract.* S. 87 of the Madras Salt Act does not apply to a case where the act complained of was neither done nor purported to be done under any section of the Act. The plaintiff brought the suit for recovery of an amount ordered to be deducted by the Commissioner of Salt in virtue of the provisions of a [illegible]

MADRAS TOWN LAND REVENUE ACT (XII OF 1851) AND MADRAS ACT VI OF 1867.

——— XII of 1851, ss. 1, 17—*Mad. Act VI of 1867, ss 4, 31—Penal assessment of revenue—Jurisdiction of Civil Court—Limitation.* The plaintiff was in occupation of certain land in Madras and in May 1895 he received a notice from the Col- [illegible]

pay R1,300, the amount chargeable up to date. The plaintiff, having appealed to the Board of Revenue without success, pa d under protest the penal assessment in various sums amounting together to R3,004-1-0 He now sued to recover that amount and prayed for a declaration of his title. *Held*, by BODDAM, *J.*, that the High Court [illegible] the suit in respect of [illegible] barred [illegible] in six [illegible] *ld*, by [illegible] g the [illegible] onged [illegible] ation [illegible] etent [illegible] order [illegible] est to [illegible] m to [illegible] llegal [illegible] y of [illegible] STATE FOR INDIA . . I. L. R. 23 Mad. 100

MADRAS TOWNS' IMPROVEMENT ACT (III OF 1871).

See ESTOPPEL—ESTOPPEL BY CONDUCT.
I. L. R. 2 Mad. 104

MADRAS TOWNS' IMPROVEMENT ACT (III OF 1871)—*contd.*

See LIMITATION ACT, 1877, ART 120 (1871, ART 118) . **I. L. R. 3 Mad. 124**

———— s 1—*Washerman—Artizan* A washerman is not an artizan within the meaning of Madras Act III of 1871. *Ex parte* POONEN **I. L. R. 1 Mad 174**

———— s 9—*Power of Governor in Council to dismiss elected Municipal Commissioner.* S 9 of the Towns Improvement Act (Madras Act III of 1871) provides that the Governor in Council may remove an elected Municipal Commissioner for misconduct In a suit for damages brought against the Secretary of State by a Municipal Commissioner for wrongful removal from office:—*Held*, that, the defendant not having proved misconduct, the plaintiff was entitled to damages VIJAYA RAGAVA *v.* SECRETARY OF STATE FOR INDIA **I. L. R. 7 Mad. 466**

———— s. 38—*Tax due before approval of Government to Act—Illegal levy of tax—Omission to give notice.* Plaintiff sued the Municipal Commissioners for the town of Bellary for a certain sum, alleged to have been illegally levied by them from him as his trade and profession tax The sanction of the Governor in Council, under s. 38 of Madras Act III of 1871, was obtained on the 4th July 1871, with authority to levy the

that the Act could not have retrospective effect. *Held*, on a reference, that the levy from the plaintiff was illegal. BATES *v.* MUNICIPAL COMMISSIONERS FOR THE TOWN OF BELLARY . **7 Mad. 249**

———— s. 51—*Notice by owner of claim to remission of house-tax* The notice which an owner of property must give in order to entitle himself to a remission of the house tax is an annual notice. PURUSHOTTAMA *v.* MUNICIPAL COUNCIL OF BELLARY . . **I. L. R. 14 Mad. 467**

1. ———— s. 58—*Liability for carriage and horse-tax—Temporary residence—Payment of tax where person resides permanently* The defendant, a Judge of the Small Cause Court at Madura, visited Dindigal once a year and remained there for more than thirty days each year. The

2. ———— **and ss. 59-62**—*Liability to professional tax—Fiscal statutes—Construction of statutes.* In construing enactments creating fiscal obligations, provisions declaring the liability

MADRAS TOWNS' IMPROVEMENT ACT (III OF 1871)—*contd.*

———— s. 58—*concld.*

to the tax are to be distinguished from those providing for its imposition. Machinery for the imposition of the tax may be independent of the obligation of the taxpayer. The duty of paying profession tax under s 58, Madras Act III of 1871, is independent of the obligations of registration and taking out a certificate which precede it in the same section *Per* HUTCHINS, *J*—S. 61 is not to be construed so as to prevent the Commissioners from

———— ss. 61, 62—*Maxim "Quod fieri non debet factum valet."* The Vice-President of a Municipal Commission, purporting to act under the provisions of s 61 of the Towns' Improvement Act, 1871, which empowers the Commissioners to prepare and revise the list of taxpayers, and to issue notices of assessment to persons liable to the prefession tax, issued a notice of assessment to *D*, although no case of emergency existed, within the meaning of s 27 of the Act, enabling the President, or, in his absence, the Vice-President, to exercise the powers vested by the Act in the Commissioners. *Held*, that the insufficiency of the notice of assessment was no answer to a charge under s 62 of the Act against *D* for exercising his profession without paying tax. MUNICIPAL COMMISSIONERS OF MANGALORE *v* DAVIES **I. L. R. 7 Mad. 65**

1. ———— s. 62—*"Person"—Joint trade—Tax* In s. 62 of the Madras Towns' Improvement Act, 1871, the word "person" must be construed to include any company or association or body of persons, whether incorporated or not, where such construction is not repugnant to the context. Where, therefore, two undivided Hindu brothers carried on a joint trade in one shop and tax had been paid by one brother:—*Held*, that no tax was payable by the other brother MUNICIPAL COMMISSIONERS OF NEGAPATAM *v* SADAYA **I. L. R. 7 Mad. 74**

2. ———— **and s. 169**—*Profession tax, non-payment of—Offence, nature of—Prosecution—Limi-*

elapsed since the last payment in respect of the tax became due. *Held*, that the complaint, if laid within three months from the close of the official year, or, if *O* ceased to exercise his profession before the close of the official year, within three months from such date, was not barred by s. 169 of the Act. OOTACAMUND MUNICIPALITY *v.* O'SHAUGHNESSY . . **I. L. R. 9 Mad. 38**

MADRAS TOWNS' IMPROVEMENT ACT (III OF 1871)—*contd.*

——— ss. 64, 72—*Tax on animals—License, extent and limit of.* N having taken out a license under the provisions of the Towns' Improvement Act, 1871, for a bullock, the bullock died and N brought another bullock, but did not take out a second license N was convicted for keeping this bullock without a license. *Held* by TURNER, *C. J.* and HUTCHINS, *J.* (BRANDT, *J.*, dissenting), that the conviction was right. MUNICIPAL COMMISSIONERS OF MANNARGADI *v.* NALLAPA I. L. R. 8 Mad. 327

——— s. 85—*Suit to recover money illegally levied as tax on profession.* S. 85 of Madras Act III of 1871 is not a bar to a suit to recover money wrongfully levied as a tax because such so called

machinery is not applied, no liability to pay such tax can arise. Where the Municipal Commissioners of a town had not determined on the imposition of a tax of that description till 22nd April of the official year for which such tax was imposed, and the list of persons to be taxed for that year was not completed till 14th July of the same year, and notice to A of his assessment under such tax was

for the Town of Bellary, 7 Mad 249, followed. LEMAN *v.* DAMODARAYA . I. L. R. 1 Mad. 158

——— ss. 138, 139—*Street—Encroachment—Possession—Private property—Onus probandi* H owned a house in the town of A, to which the Towns Improvement Act, 1871, was extended in 1879 In 1882 the Municipal Commissioners professing to act under s. 139 of the said Act, removed a pial which projected beyond the main walls of H's house and abutted on a lane which was used by the public. H proved that the pial had existed for fifty years. *Held,* that the action of the Municipal Commissioners was illegal. HANUMAYYA *v* ROUPELL . . I. L. R. 8 Mad. 64

——— s. 154—*Omission to take out licenses—*

are *offences, and regarding which, if committed* within his view, one of two courses is open to him—*viz*, to arrest without warrant, or to lay an information before a Magistrate, and apply for a summons or warrant. If he adopts the latter course, then ss. 43 and 66 of the Criminal Procedure Code require that the information should be reduced to writing, and given on oath or solemn affirmation, before any process is issued thereon. S. 68 of the Code is limited to cases in which no complaint has been made, and the Magistrate,

MADRAS TOWNS' IMPROVEMENT ACT (III OF 1871)—*concld.*

——— s. 154—*concld.*

proprio motu, institutes a prosecution. ANONYMOUS . . . . . . 6 Mad. Ap. 50

——— s. 165—*Penal clause sanctioned by Government with respect to other bye-laws, not with respect to that to which it is attached.* The mere publication of a bye-law with a penal clause at the end which had not been passed by the Municipal Commissioners or approved by the Government as applicable to the bye-law in question, though it was

which Madras Act III of 1871, by specifying the cases in which they shall be required, has impliedly declared they shall not be required, are in violation of the Act. ANONYMOUS . 8 Mad. Ap. 3

——— s. 168—*Suit on a contract against Municipal Commissioners—Notice* A suit was brought to recover from the Municipal Commissioners of Madura the balance of a sum of money due for timber supplied under a contract duly made with them. *Held,* that the plaintiff was entitled to sue on the breach of contract without giving notice, such a suit not falling under the provisions of s. 168 of the Towns' Improvement Act (III of 1871, Madras). MAYANDI *v.* MCQUHAE I. L. R. 2 Mad. 124

——— Sch. B, cl. 4—"*Pleader and Practising vakil*"—*Magistrate's Court vakil.* The words "Pleader and Practising Vakil" used in cl. 4, Sch. B of the Madras Towns' Improvement Act, ... not restricted to persons who have ob-

——— Sch C—*Horse—Pony under thirteen hands.* In the Madras Towns' Improvement Act, ... pony except ... the Sch. ... the

MADRAS TOWNS NUISANCES ACT (III OF 1889).

See BENCH OF MAGISTRATES I. L. R. 18 Mad. 394

——— ss. 3, 6, and 7—*Common gaming-house—Vacant unenclosed site.* The accused were found gaming on a vacant site, the property of the seventh accused. The seventh accused was convicted under the Madras Towns Nuisances Act, ss. 6 and 7, and the other accused under s. 7. *Held,* that the site in question was not a common gaming-house and that the convictions were accordingly wrong. QUEEN-EMPRESS *v.* JAGANNAYAKULU I. L. R. 18 Mad. 46

MADRAS TOWNS NUISANCES ACT (III OF 1889)—*contd.*

——— ss. 3 and 11—

See SENTENCE—IMPRISONMENT—IMPRISONMENT IN DEFAULT OF FINE
I. L. R. 18 Mad. 490
I. L. R. 22 Mad. 238

MADRAS VILLAGE COURTS ACT (I OF 1889).

——— s. 13—

See SMALL CAUSE COURT, MOFUSSIL—JURISDICTION—GENERAL CASES.
I. L. R. 13 Mad. 145

——— proviso 3—"*Land*" *includes* "*house*." In Madras Act I of 1889, s. 13, proviso 3, the word "land" includes land covered by a house, and consequently a suit for house-rent, unless due under a written contract signed by the defendant, is not cognizable in a Village Munsif's Court. NARAYANAMMA *v.* KAMAKSHAMMA
I. L. R. 20 Mad. 21

——— s. 73—

See MUNSIF, JURISDICTION OF
I. L. R. 21 Mad. 363
I. L. R. 24 Mad. 335

"MAFEE BIRT" TENURE.

See GRANT—CONSTRUCTION OF GRANTS
19 W. R. 211

MAGISTRATE.

MAGISTRATE—*contd.*

See BENCH OF MAGISTRATES.

See CALCUTTA MUNICIPAL ACT.
9 C. W. N. 18

See CANTONMENT MAGISTRATE.

See COMPLAINT.

See CONFESSION—CONFESSIONS TO MAGISTRATES.

See CRIMINAL PROCEDURE CODE, ss. 133, 145.

See CRIMINAL PROCEDURE CODES, ss. 436, 438 (1872, ss. 296, 297).
I. L. R. 4 Calc. 16; 647
I. L. R. 9 Bom. 100
2 B. L. R. S. N. 2; 10 W. R. Cr. 35

See DISCHARGE OF ACCUSED.

See EUROPEAN BRITISH SUBJECT.
I. L. R. 36 Calc. 163

See JURISDICTION.
I. L. R. 32 Calc. 552

MAGISTRATE—*contd.*

See JURISDICTION OF CRIMINAL COURT.

See MAINTENANCE, ORDER OF CRIMINAL COURT AS TO . I. L. R. 25 All 545

See NUISANCE.

See POSSESSION, ORDER OF CRIMINAL CORUT AS TO.

See PROSTITUTE . 3 B. L. R. A. Cr. 70
I. L. R. 6 Calc. 163

See RECOGNIZANCE TO KEEP PEACE.

See REFORMATORY SCHOOLS ACT.

See SECURITY FOR GOOD BEHAVIOUR.

See SUMMARY TRIAL
I. L. R. 29 Calc. 409

See TRANSFER OF CRIMINAL CASE—GENERAL CASES . I. L. R. 24 All. 151

See WARRANT OF ARREST—CRIMINAL CASES.

See WITNFSS—CRIMINAL CASES—STATEMENTS OF WITNESS.
I. L. R. 29 Calc. 483

See WITNESS—CRIMINAL CASES—PERSONS COMPETENT OR NOT TO BE WITNESSES
8 Bom. Cr. 126
16 W. R. Cr. 49
20 W. R Cr 76
I. L. R. 2 Calc. 405
I. L. R. 3 All. 573

See WITNESSES I. L. R 32 Calc. 1093

———— appearance of, to show cause—

See PRACTICE—CRIMINAL CASES—RULE TO SHOW CAUSE . I. L. R. 4 Calc. 20
I. L. R. 25 Calc. 798

———— as Court—

See TRESPASS . I. L. R. 36 Calc. 433

———— attestation of—

See EVIDENCE—CRIMINAL CASES—EXAMINATION AND STATEMENTS OF ACCUSED.

See EXAMINATION OF ACCUSED PERSON.

———— cannot split up offences in order to give himself jurisdiction—

See ROBBERY . . 5 C. W. N. 372

———— competence of, to hear appeal—

See JURISDICTION.
I. L. R. 36 Calc. 869

———— discretion of—

See WITNESS—CRIMINAL CASES—SUMMONING WITNESSES.
I. L. R. 30 Calc 508, 508n

———— duty of, to enforce attendance—

See WITNESS . I. L. R. 35 Calc. 1093

MAGISTRATE—*contd.*

———— duty of, to maintain decrees of Civil Courts—

See WRONGFUL RESTRAINT.
5 C. W. N. 215

———— examination of, as witness—

See TRANSFER OF CRIMINAL CASE—GROUND FOR TRANSFER.
I. L. R. 21 Calc. 920

———— jurisdiction of—

See TOLLS . I. L. R. 36 Calc. 986

———— liability of—

See JUDICIAL OFFICERS, LIABILITY OF.

———— of Native State—

See CONFESSION—CONFESSIONS TO MAGISTRATE . I. L. R. 22 Bom. 235

———— personal liability of—

See EPIDEMIC DISEASES ACT, s. 4.
I. L. R. 31 Calc. 829
8 C. W. N. 681

———— powers of—

See APPEAL IN CRIMINAL CASES—ACQUITTALS, APPEALS FROM
I. L. R 26 Mad. 478

See CRIMINAL PROCEDURE CODE, s. 133.
13 C. W. N. 367

See POSSESSION, ORDER OF CRIMINAL COURT AS TO—COSTS.

See RAILWAYS ACT, s. 113.
I. L. R. 18 Bom. 440
I. L. R. 20 Mad. 385

See REFERENCE TO HIGH COURT—CRIMINAL CASES.

See SANCTION FOR PROSECUTION—POWER TO GRANT SANCTION.

See SECURITY FOR GOOD BEHAVIOUR.
I. L. R. 29 Calc. 455

See TRANSFER OF CRIMINAL CASE—GENERAL CASES . I. L. R. 26 Mad. 394

———— powers of Magistrate of the first class—

See CRIMINAL PROCEEDINGS
I. L. R. 24 Mad. 67

———— power of, to make order absolute without taking evidence—

See CRIMINAL PROCEDURE CODE, s. 133.
13 C. W. N. 367

———— re-trial of cases—

See DISCHARGE OF ACCUSED—EFFECT OF DISCHARGE . I. L. R. 29 Calc. 726

MAGISTRATE—*contd.*

——— taking part during police inquiry—

See TRANSFER OF CRIMINAL CASE—GROUND FOR TRANSFER.
5 C. W. N. 864

——— transfer of Magistrates—

See TRANSFER . I. L. R. 35 Calc. 457

1. APPEARANCE OF JURISDICTION ON PROCEEDINGS

——— Magistrate with power to do particular act or make particular order—*Order for maintenance under s. 536, Criminal Procedure Code.* Where the law empowers Magistrates of a particular grade to do a particular act, or make

Code, 1872, cannot be made by a Magistrate of the second class. SOMPEE *v.* JITUN SONAR
22 W. R. Cr. 30

2. COMMITMENT TO SESSIONS COURT.

1. ——— Obligation to commit—

of a proceeding taken under s. 318 of the Code of Criminal Procedure. QUEEN *v.* BULORAM
7 W. R. Cr. 104

2. ——— Power to commit—*Criminal Procedure Code, 1861, s. 171—False evidence—Preliminary inquiry.* A Munsif sent a witness before a Magistrate, in order that the latter might hold a preliminary investigation on a charge of giving

MAHOMED
3 B. L. R. A. Cr. 47 : 12 W. R. Cr. 41

3. ——— *Case sent by Civil Court for investigation under s. 171, Criminal Procedure Code, 1861.* When a Civil or Criminal Court sends a case for investigation to a Magistrate under s. 171 of the Code of Criminal Procedure, the Magistrate to whom the case is sent must himself hold the investigation. ANONYMOUS
6 Mad. Ap. 2

4. ——— *Commitment by Subordinate Magistrate in case not exclusively triable*

MAGISTRATE—*contd.*

2. COMMITMENT TO SESSIONS COURT—*contd.*

by Sessions Court. A commitment by a Subordinate Magistrate to the Sessions Court with respect to offences not exclusively triable by the Sessions Court is good. ANONYMOUS . 6 Mad. Ap. 17

5. ——— *Criminal Procedure Code, 1872, ss. 46, 113—Order—Committal.*

IMPERATRIX *v.* ABDULLA . I. L. R. 4 Bom. 240

6. ——— Power to direct committal

1 Mad. Ap. 51

7. ——— *Commitment by Sessions Judge to Magistrate—Trial by Joint*

8. ——— *Reference to Sessions Court—Criminal Procedure Code, 1861,*

longer necessary to refer such cases of the High Court, as required by the Court's ruling in *Reg* v. *Chanveraya bin Chandasaya, 5 Bom. Cr. 65* REG. *v.* KALA BIN HARI GAMA . 7 Bom. Cr. 72

9. ——— *Criminal Procedure Code (Act VIII of 1869), s. 435—Case dis-*

MAGISTRATE—*contd.*

2. COMMITMENT TO SESSIONS COURT—*contd.*

missed without sufficient inquiry Semble: When a charge is dismissed by a Subordinate Magistrate without inquiry, a Magistrate has no power, under s. 435 of Act VIII of 1869, to order a trial before another Magistrate, but can only order a commitment to the Court of Session. QUEEN *v.* HIRALAL SINGH . **5 B. L. R. Ap. 48 : 14 W. R. Cr. 8**

10. ———— *Power to set aside finding where the Magistrate acted without*

to do so under s. 435 of the Code as amended by Act VIII of 1869 ANONYMOUS . **4 Mad. Ap. 61**

11. ———— *Magistrate and Joint Magistrate, power of—Preliminary enquiry.*

8 W. R. Cr. 61

12. ———— *Power to direct re-trial—Criminal Procedure Code, 1861, s. 435.* Where a Subordinate Magistrate discharges a person accused of an offence not being an offence specified in the seventh column of the schedule to the Criminal Procedure Code as trial by the Court

SUBHANA BIN GANU . . . **9 Bom. 169**

13. ———— *Courts of Head Assistant Magistrate and Deputy Magistrate—Trial of Munsif for extortion—Mad. Reg. VI of 1816, s 8.* The Courts of the Head Assistant Magistrate and of the Deputy Magistrate have jurisdiction to try a District Munsif on charges of extortion in the course of the exercise of his judicial

of Session has been impliedly, though not expressly, repealed. *In the matter of the petition of* NARAYANASAMI AYYAR . . . . . **7 Mad. 182**

14. ———— **Duty of Magistrate to commit**—*Magistrate making enquiry in Sessions case—Discharge of accused—Criminal Procedure Code, 1872, s. 195.* A Magistrate enquiring into a case exclusively triable by the Court of Session is not bound to commit the accused person for trial where the evidence for the prosecution, if believed, would end in a conviction, but is competent, if he discredits such evidence, to discharge the accused LACHMAN *v.* JUALA . . **I. L. R. 5 All. 161**

15. ———— *Enquiry into case triable by Court of Session. Held,* where a Magistrate had tried a case exclusively triable by a Court of Session, and the conviction of the accused person and the sentence passed upon him at such trial were for that reason annulled by the Court of Session, but the proceedings held at such trial were

16. ———— *Criminal Procedure Code, 1898, s. 208—Duty of Magistrate enquiring into a case triable by the Court of Session to take the evidence of all the witnesses produced by the accused.* A Magistrate enquiring into a case under Ch. XVIII of the Code of Criminal Procedure is not empowered to frame a charge or make

17. ———— *Criminal Procedure Code, 1882, s. 253—Duty of Magistrate in dealing with the evidence produced in a case triable by a Court of Session. Held,* that a Magistrate enquiring into a case triable by the Court of Session is not bound to commit simply because the evidence for the prosecution, if believed, discloses a

I. L. R. 21 All. 265

18. ———— *Criminal Procedure Code (Act X of 1882), s 349.* Under s. 349 of the Criminal Procedure Code, a second class Magistrate transmitted a case to the District Magistrate, being of opinion that a more severe punishment was deserved than he was empowered to inflict. The District Magistrate return the record to the second class Magistrate, directing him to commit the case to the Sessions Court. The committal directed was duly made. The High Court refused to interfere in the matter, holding that the proceedings of the second class Magistrate were not illegal, and that there was nothing done which took away the jurisdiction of the second class Magistrate to commit. QUEEN-EMPRESS *v.* CHANDU GOWALA . . **I. L. R. 14 Calc. 355**

See QUEEN-EMPRESS *v.* HAVIA TELLAPA **I. L. R. 10 Bom. 196**

19. ———— *Criminal Procedure Code, 1882, ss. 209 and 210—Discharge of accused—Magistrate, obligation of, to commit when primâ facie case is made out against accused.*

MAGISTRATE—*contd.*

2. COMMITMENT TO SESSIONS COURT—*contd.*

put the party on his trial, and such a case obviously arises when credible witnesses make statements which, if believed, would sustain a conviction. QUEEN-EMPRESS *v.* NAMDEV SATVAJI

I. L. R. 11 Bom. 372

20. ——— *Penal Code, ss. 75, 411—Punishment not within jurisdiction of Magistrate.* Where an offence under s. 411 read

21. ——— *Power of commitment to Sessions Judge—Code of Criminal Procedure, 1882, s. 254—Penal Code (Act XLV of 1860), s. 147—Circular Order No. 9 of 6th September 1869*

a Magistrate committing a case under s. 147 of the Penal Code to the Court of Session, provided he

subject to provisions of the Criminal Procedure Code. QUEEN-EMPRESS *v.* KAYEMULLAH MANDAL

I. L. R. 24 Calc. 429
1 C. W. N. 414

3. DUTY OF MAGISTRATES

See CRIMINAL PROCEEDINGS
5 C. W. N. 252

See EVIDENCE—CRIMINAL CASES—PREVIOUS CONVICTIONS
I. L. R. 28 Calc. 689

See POSSESSION, ORDER OF CRIMINAL COURT AS TO—

LIKELIHOOD OF BREACH OF THE PEACE; . 6 C. W. N. 923

STRIKING OFF PROCEEDINGS
. 6 C. W. N. 923

See REVISION, CRIMINAL CASES—DISCHARGE OF ACCUSED 7 C. W. N. 77

1. ——— Duty in judicial capacity. The necessity of a Magistrate acting in a dispassionate and impartial manner, and not in the spirit of a

MAGISTRATE—*contd.*

3. DUTY OF MAGISTRATES—*contd.*

prosecutor, observed upon *In the matter of* MAHESH CHANDRA BANERJEE QUEEN *v.* PURNA CHANDRA BANERJEE. QUEEN *v.* KALI SIRKAR

4 B. L. R. Ap. 1: 13 W. R. Cr. 1

2. ——— *Acting on private knowledge of accused.* A Magistrate acting judicially should not import into the case before him his

See MEHEROONISSA *v.* BHASHAYE MADHA
2 W. R., Act X, 29

LOPOTEE DOMNEE *v.* TIKHA MOODAI
8 W. R. Cr. 67

3. ——— *Deciding on evidence when collected by police.* Magistrates should clearly understand that, whilst the police

4. ——— *Commitment of accused for trial.* The duty of a committing Magistrate is to ascertain whether by the evidence for the prosecution a *primâ facie* case is made out against an accused. QUEEN *v.* MAHA SINGH 3 N. W. 27

QUEEN *v.* KISHTO DOBA . 14 W. R. Cr. 16

5. ——— *Re-trial—Record*

6. ——— *Trial by Magistrate who as Collector instituted proceedings.* The District Magistrate should not himself try a case in which he instituted the prosecution as Collector. QUEEN *v.* NADI CHAND PODDAR 24 W. R. Cr. 1

7. ——— *Conviction by*

See QUEEN *v.* HIRALAL DAS
8 B. L. R. F. B. 422

MAGISTRATE—*contd.*

3. DUTY OF MAGISTRATES—*concld.*

S C. GOVERNMENT OF BENGAL *v.* HIRALAL DAS 17 W. R. Cr. 39

8. ———— *Conviction of public servant—Sentence.* Where the person in the employment of the Court is convicted of a criminal offence punishable by fine or imprisonment, it is quite competent to the Magistrate in his administrative capacity to dismiss him from his office QUEEN *v.* CHUNDER COOMAR SEN 1 Ind. Jur. N. S. 97: 5 W. R. Cr. 4

9. ———— *Judge—Bias—Magistrate's jurisdiction where complainant is his private servant—Legality of conviction and sentence passed by such Magistrate in such a case* The mere circumstance that a trying Magistrate is

I. L. R. 9 Bom. 172

10. ———— *Translations of findings, record of.* Magistrates are bound to record translations of their findings in criminal cases. REG. *v.* KATUNJI BHUKAN . 1 Bom. 17

11. ———— *Comments on proceedings of Sessions Judge.* Comments by a Magistrate, in the form of a supplementary statement, on the proceedings of the Sessions Judge disapproved of. REG. *v* GOVINDA BIN BABAJI 5 Bom. Cr. 15

12. ———— *Witness—Threatening witness.* In cross-examination before the Court of Session a witness stated that, when she

13. ———— *High Court calling for explanation—Letter of explanation, form of* When the High Court calls for an explanation from a Magistrate, the letter of explanation should be signed by the Magistrate himself, and not by some one purporting to sign on his behalf ROOP LALL DOSS *v.* MANOOK . 2 C. W. N. 572

4 GENERAL JURISDICTION.

1. ———— "Magistrate," meaning of—*Jurisdiction of—Criminal Procedure Code, 1861, s. 119—Meaning of "Magistrate."* The words "a Magistrate" in s. 149 of the Code of Criminal Procedure mean "any Magistrate," and not merely "the Magistrate having jurisdiction" REG. *v.* VAHALA JETHA . . . 7 Bom. Cr. 56

2. ———— "Magistrate"—*Criminal Procedure Code, 1861, s. 1 —Head of the village.* The head of a village is within the definition of a Magistrate as defined in s. 15 of the Criminal Procedure Code. ANONYMOUS . . 4 Mad. Ap. 2

MAGISTRATE—*contd.*

4. GENERAL JURISDICTION—*contd.*

3. ———— "Magistrate of District," meaning of—*Criminal Procedure Code, 1861, s. 61.* Meaning of the words "Magistrate of the District" in s. 61 of the Criminal Procedure Code. ANONYMOUS . . . . 3 Mad. Ap. 29

4. ———— District Magistrate—*Criminal Procedure Code, 1882, s. 488.* The expression "The District Magistrate, a Presidency Magistrate, a

I. L. R. 9 Bom. 40

5. ———— *Criminal Procedure Code (Act X of 1882), s. 488—Complaint by a wife against her husband for maintenance* A complaint under s. 488 of the Criminal Procedure Code (Act X of 1882) falls within the cognizance of the

FAKRUDIN . . . I. L. R. 9 Bom. 40

6. ———— Head Assistant Magistrate—

upon those facts, that the Head Assistant Magistrate had no jurisdiction. ANONYMOUS 6 Mad. Ap. 43

7. ———— Village Magistrate—*Power to issue summons.* A Village Magistrate has authority to issue a summons to persons within, but not without, the local area of his jurisdiction, whose attendance may be required in cases which he is empowered to try. QUEEN *v.* KRISHNAMA I. L. R. 5 Mad. 230

8. ———— Magistrate also Justice of the Peace—*53 Geo. III, c. 155, s 105—Act VII of 1853.* A Magistrate being also a Justice of the Peace had no jurisdiction to try a British born subject under the Penal Code. His jurisdiction in the trial of such subjects was governed and limited by 53 George III, c. 155, s. 105, and Act VII of 1853, neither of which gave him power to award imprisonment in default of payment of a fine. REG. *v.* DIXON . . . . 6 Bom. Cr. 14

9. ———— Trial by District Magistrate for breach of orders of a Reserve Inspector of Police—*Criminal Procedure Code (Act V of 1898), s. 556; (Act X of 1882), s. 555—Police Act*

MAGISTRATE—*contd.*

4. GENERAL JURISDICTION—*contd.*

(V *of* 1861), *s.* 29—*Magistrate not personally interested. Held*, that the Magistrate of a district was not, on account of his being the head of the police of the district, debarred by reason of s. 556 of the Code of Criminal Procedure from trying a person accused under s. 29 of the Police Act, 1861, of a breach of the orders of a Reserve Inspector of Police. QUEEN-EMPRESS *v.* NARAIN SINGH

I. L. R. 22 All. 340

10. ———— Meaning of the term "personally interested"—*Criminal Procedure Code, s. 555—Opium Act (I of 1878), s. 9—Jurisdiction*

Act I of 1878. He is therefore not precluded from exercising jurisdiction in respect of offences against the above-mentioned Act. *In the matter of the petition of* GANESHI . I. L. R. 15 All. 192

11. ———— Disqualification of Magistrate or Judge—*Summary procedure—Bias of Magistrate—Chairman of Municipality trying cases as Magistrate—Criminal Procedure Code, ss. 260, 262, 263, 555—Obstruction in public road.* A Deputy Magistrate, being also the Chairman of

12. ———— Disqualification of Magistrate to try a case in which he is personally interested—*Criminal Procedure Code (Act X of 1882), s. 555—Statements made out of Court.*

tonga driven by the accused passed by. *Held*, that the Magistrate was incompetent to try the case, as he was "personally interested" in it, within the

I. L. R. 14 Bom.

13. ———— Disqualifying interest of Magistrate—*Criminal proceedings—Irregularity—"Personally interested"—Criminal Procedure Code, 1882, s. 555.* Where a District Magistrate, as prosecutor, initiated and directed the proceedings against certain accused persons who were charged by him with having committed offences

with the unlawful assembly and the keeping of armed men, on which evidence the accused were afterwards convicted by himself; and where it also appeared from the judgment of the District Magistrate that he had embodied therein matters which, if irrelevant, showed that he should have been

was disqualified from trying the case himself and that the conviction must be set aside, and a fresh trial held before some other Magistrate. The words "personally interested," as used in s. 555 of the Code of Criminal Procedure, do not merely mean "privately interested" or "interested as a private individual," but include such an interest as the District Magistrate must have had under the *above circumstances in the conviction of the* accused. GRISH CHUNDER GHOSE *v.* QUEEN-EMPRESS . . . I. L. R. 20 Calc. 857

14. ———— Disqualification of Magistrate or Judge—*Personal interest—Criminal Procedure Code, 1882, s. 555—Bombay District Municipal Act (VI of 1873), s. 84—Municipal offence.* The mere fact that a Magistrate is the

cution, as, for instance, by concurring in sanctioning it at a meeting of the managing committee or otherwise, he will be disqualified by reason of the existence of a personal interest, over and above what may be supposed to be felt by every Municipal Commissioner in the affairs of the Municipality. QUEEN-EMPRESS *v.* PHEROZSHA PESTONJI

. I. L. R. 18 Bom. 442

15. ———— Disqualification—*Criminal Procedure Code (Act V of 1898), s. 556—Disqualification of Magistrate to try a case—Directing the*

MAGISTRATE—*contd.*

4. GENERAL JURISDICTION—*contd.*

the matter of the petition of Ganeshi, I. L. R. 15 All. 192; and *Queen-Empress* v *Narain Singh, I. L. R. 22 All. 340,* referred to. QUEEN-EMPRESS *v.* CHENCHI REDDI (1900)
I. L. R. 24 Mad. 238

16. ———— **Disqualification of Magistrate**—*Criminal Procedure Code, 1882, s. 555—Personal interest.* The accused was a compounder in the employ of Treacher & Co. He was tried and convicted by the Presidency Magistrate of criminal breach of trust as a servant in respect of certain goods belonging to the company. It appeared that the Magistrate was a shareholder in the company which prosecuted the accused. *Held,* that the Magistrate was disqualified from trying the case. As a shareholder of the company, he had a pecuniary interest, however small, in the result of the accusation, and was therefore "personally interested" in the case within the meaning of s 555 of the Code of Criminal Procedure (Act X of 1882). The words "personally interested" in the section are not intended to exclude pecuniary as distinguished from a personal interest. *In re* RODRIGUES
I. L. R. 20 Bom. 502

17. ———— *Disqualification of Magistrate—Magistrate holding local investigation*

matter of the petition of LALJI
I. L. R. 19 All. 302

18. ———— **Disqualification of Magistrate to try case**—*Witness—Omission to record statement of accused under Code of Criminal Procedure, 1882, s. 364.* Where a Magistrate before whom an accused person is brought omits to record as provided by s. 364 of the Criminal Procedure Code, statements made by the accused, he does not thereby make himself a witness, and so become disqualified from trying the case QUEEN-EMPRESS *v.* FATTAH CHAND . I. L. R. 24 Calc. 499

FATEH CHAND *v.* DURGA PROSAD
1 C. W. N. 435

19. ———— *Disqualification of Magistrate to try case—Criminal Procedure Code, 1882, ss 202, 540, and 555—Examination of witnesses* Where a Magistrate before whom a complaint was made held an inquiry under s 202 of the Criminal Procedure Code for the purpose of ascertaining the truth or falsehood of the complaint before issuing process, and after, holding such inquiry, summoned the accused, examined witnesses on both sides, and, after a short adjournment, examined a witness called by himself, and found the accused guilty under s. 341 of the Penal Code:—*Held,* that there is nothing in the Criminal Proce-

MAGISTRATE—*contd.*

4. GENERAL JURISDICTION—*contd.*

arrest or collection of evidence against such person. *Held,* also, that the same Magistrate was strictly within his rights under s 540 of the Criminal Procedure Code in receiving fresh evidence after evidence on both sides had been taken and the case adjourned for judgment, inasmuch as the case was still a pending case, when such evidence was taken *In the matter of* ANANDA CHUNDER SINGH *v* BASU MUDH . . . I. L. R. 24 Calc. 167

20. ———— **Disqualifying interest of Magistrate**—*Criminal Procedure Code, 1882, ss. 537 and 555—Investigations preliminary to a trial—"Personally interested"—"Court of com-*

cannot be said, with respect ... Court of competent jurisdiction, and his orders are not covered by the saving provisions of s. 537. QUEEN-EMPRESS *v.* SUDHAMA UPADHYA I. L. R. 23 Calc. 328

21. ———— **Incompetence of Magistrate who is Chairman of Municipality to try municipal cases**—*Criminal Procedure Code, 1882, ss 526 and 555—"Any case," meaning of—Prosecution under Bengal Municipal Act (Ben. Act III of 1884)—Grounds for transfer of case* ...tion under s 217, cl 5. ...t III of ... rate, who ... On an ... er to the ... at, apart ... disquali- ... rocedure ... xpedient Code, the case was one which ... should be transferred to another Court *Per* BANERJEE, J.—S. 555 of the Criminal Procedure Code renders a Magistrate incompetent to try a municipal case if he is the Chairman of the Municipality. The words "try any case" in that section are comprehensive enough to include the hearing of an appeal. NISTARINI DEBI *v* GHOSE
I. L. R. 23 Calc. 44

22. ———— **Magistrate becoming witness, competence of, to try case**—*Local*

MAGISTRATE—*contd*

4 GENERAL JURISDICTION—*concld*

inspection by Magistrate trying case—Information not obtained from inspection. Where a Magistrate visited the scene of occurrence of the alleged offence and not merely noted the various features thereon of importance to a proper decision of the case, both parties being present on the occasion, but obtained

3 C. W. N.

23. ———————— *Magistrate personally interested—Criminal Procedure Code, 1882, s 555—Magistrate giving evidence before himself*

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and had thereby rendered himself incompetent to try it. *Held*, further, that, where a Judge is the sole Judge of law and fact in a case tried before himself, he cannot give evidence before himself or import matters into his judgment not stated on oath before the Court in the presence of the accused. QUEEN-EMPRESS *v.* MANIKAM . I. L. R. 19 Mad. 263

24. ———— **Magistrate expressing opinion in a report after local investigation, competency of, to hold the trial—** *Transfer, ground of—Criminal Procedure Code,*

25. ———— **Transfer—***Jurisdiction—*

5 POWERS OF MAGISTRATES

1.———— **Magistrate of first class—** *Sentence—Appellate Court—Enhancement of punishment.* As an Appellate Court, a first class Magistrate has power to pass any sentence which a Subordinate Magistrate might have passed. ANONYMOUS CASE . . . I. L. R. 1 Mad. 54

MAGISTRATE—*contd*

5. POWERS OF MAGISTRATES—*contd.*

2. ———— **Magistrate of second class—** *Criminal Procedure Code, 1882, s 206, and Sch. III, Arts II, III (7)—Power to commit for trial—Case triable by Court of Session and Magistrate of the first class—Discharge of accused.* A complaint of an offence made punishable by s. 392 of the Penal Code was brought in the Court of a Magistrate of the second class, who had been invested with the powers described in s 206 of the Criminal Procedure Code The Magistrate passed an order directing that the enquiry should be held in his Court, and accordingly an inquiry was held under the provisions of Ch. XVIII of the Criminal Procedure Code, and the accused was discharged *Held*, that powers conferred under s. 206 of the Criminal Procedure Code convey authority to carry into effect any of the provisions of Ch XVIII of the Code; that the procedure to be adopted under Ch. XVIII is not confined to cases exclusively triable by a Court of Session, but is also applicable to cases

in his opinion the case referred to was one which ought to be tried by a Court of Session; and that his order discharging the accused was therefore legal RAMSUNDAR *v* NIROTAM

I. L. R. 6 All. 477

3. ———————— *Penal Code, s. 71—Criminal Procedure Code, ss 39, 235—Rioting, grievous hurt, and hurt—Punishment for more than one of several offences—Powers of Magistrate of first class conferred on Magistrate of second class during trial—Power to sentence as first class Magistrate.* On the 8th August 1884, a Magistrate

ground that the prisoners had committed the

MAGISTRATE—*contd.*

5. POWERS OF MAGISTRATES—*contd.*

BRODHURST, *J.*, dissenting), that the sentences passed by the Magistrate were legal. *Per* OLDFIELD, MAHMOOD, and DUTHOIT, *JJ.*, that, with reference to the terms of s. 39 of the Criminal Procedure Code, a Magistrate of the second class who has begun a trial as such and continued it in the same capacity up to the passing of sentence, and who, prior to

competent to pass sentence as a Magistrate of the first class. *Per* BRODHURST, *J.*, that the sentences passed by the Magistrate were, as a whole, illegal; that if he had convicted the accused under s. 148 of the Penal Code, his order would, under the circumstances, have been legal. QUEEN-EMPRESS *v* PERSHAD . . I. L. R. 7 All. 414

4. ———— Power to send boy to Reformatory School—*Criminal Procedure Code, s.*

authorizes a Magistrate not of the first class to direct that a male juvenile offender be sent to a reformatory, is repealed. *Held*, therefore, when a second class Magistrate directed a boy to be sent to a reformatory under s. 399 of the Code of Criminal Procedure, that the order was illegal. QUEEN-EMPRESS *v.* MADASAMI . I. L. R. 12 Mad. 94

5. ———— Joint Magistrate with powers of Magistrate of district—*Criminal Procedure Code, 1861, ss. 15, 23, and 68* A Joint

6. ———— Subordinate Magistrate—*Power of, to try case on report of police or on complaint.* A Subordinate Magistrate (second class) who is not specially vested with powers under s. 66 (*a*) of the Code of Criminal Procedure, 1861 (as

6 Bom. Cr. 69

7. ———— Magistrate of third class—*Power to entertain charge in police report—Criminal Procedure Code, 1872, s. 123.* A Magistrate of the third class can try a person accused of a cognizable offence who has been forwarded to him by an officer in charge of a police station under s. 123 of the Code of Criminal Procedure REG *v.* LALA SHAMBHU . . . 10 Bom. 70

8. ———— Deputy Magistrate—*Default in appearance of party bailed.* In consequence of

District Magistrate to try the accused under s. 174 of the Penal Code. *Held*, that the Deputy Magistrate had no jurisdiction to try the case, it not having been referred to him "either on complaint preferred directly to the Magistrate or on the report of a police officer." QUEEN *v* TAJUMADDI LAHORY
1 B. L. R. A. Cr. 1: 10 W. R. Cr. 4

9. ———— Power of delegation of authority to receive complaints—*Criminal Procedure Code, 1869, ss. 23 (d) and 66 (b)—Order of Local Government, effect of.* The power of a Magistrate to delegate the receiving of complaints

MACDONALD *v.* RIDDELL .

10. ———— Power to refer case where no jurisdiction to try it—*Power to try case*

OWSARI . . . . 4 Bom.

11. ———— Power to refer case sent for investigation by Civil Court—*Power to try case without complaint.* *Held*, that the Magistrate of a district, to whom a case has been sent for

latter has
risdiction
made to

Bom. Cr. 30

12. ———— Magistrate trying case himself after referring it—*Trial without recording proceeding under s. 35, Criminal Procedure Code,*
district before whom a
complying with
1861, sent the
ty Magistrate

MAGISTRATE—*contd.*

5. POWERS OF MAGISTRATES—*contd.*

[illegible]

without formally recording a proceeding under s. 36 of Act VIII of 1869. QUEEN v. GIRISH CHANDRA GHOSE . 7 B. L. R. 513 : 16 W. R. Cr. 40

13. ———— Order for dismissal of complaint—*Discharge of accused—Code of Criminal Procedure, Act X of 1882, ss 253, 259.* A Magistrate is not competent to pass an order of dismissal or discharge in consequence of the absence of the complainant in warrant cases not coming within s 259 of the Code of Criminal Procedure, except in cases coming within the last clauses of s. 253 of the same Code. GOVINDA DASS v. DULALL DASS

I. L. R. 10 Calc. 67 : 13 C. L. R. 408

14. ——— Removal of case from file of Deputy Magistrate—*Criminal Procedure Code (Act XXV of 1861), s 66—Act VIII of 1869, s. 36—Discretion of Court* Interference by the High Court in a case where the Magistrate had imp[illegible] case fr[illegible] *matter* [illegible]

15. ———— Power to refer to Subordinate Magistrate. A full-power Magistrate has no authority to refer for disposal to a Subordinate Magistrate a complaint made originally to such full-power Magistrate. REG v. PAPIDIO MUTHDO

9 Bom. 167

16. ———— Reference to District Magistrate—*Powers of second class Magistrate—Committal to Court of Session—Criminal Procedure Code, 1882, s. 349* An Assistant Magistrate convicted a person under ss. 406 and 417 of the Penal Code, and referred the case to the District Magistrate for sentence under the provisions of s. 349 of the Code of Criminal Procedure. The [illegible]

the reference under s. 349 was *ultra vires* and illegal On a reference to the High Court:—*Held,* that the Assistant Magistrate was not wholly without jurisdiction, as he was competent to commit the accused to the Court of Session, though not to hold [illegible]

I. L. R. 13 Calc. [illegible]

17. ———————— *Criminal Procedure Code Amendment Act (III of 1884), s. 8 (6)—European British subject—Trial by District Magistrate with a jury—Procedure in a "trial by jury"—Criminal Procedure Code, s. 307—Power of District Magistrate dissenting from verdict to submit the case to High Court* The effect of cl 6 of s. 8 of Act III of 1884 (Criminal Procedure Code Amendment Act) is to confer upon the District Magistrate precisely the same authority as the Sessions Judge has, under s 307 of the Criminal Procedure Code, to submit to the High Court a case in which he disagrees with the verdict of a jury so completely that he considers a reference necessary. The expression "trial by jury," as used in cl. 6 of s 8, does not only refer to proceedings up to the time when the jury pronounce their verdict, but refers generally to cases triable with a jury as contradistinguished from cases tried with the help of assessors or in any other manner mentioned in the Criminal Procedure Code. QUEEN-EMPRESS v. MCCARTHY . . . I. L. R. 9 All. 420

18. ———— Magistrates not Justices of the Peace—*Madras Boat Rules—Act IV of 1842—Act IX of 1846—Liability of owner under rule 7—Burden of proof.* Under Act IX of 1846, the Madras Government is authorized to make, in respect of ports in the presidency, such regulations for the management of boats and such other matters as are provided for by Act IV of 1842 in respect of the Madras roads, being similar in principle to the provisions of the said Act, but varying in detail as local circumstances may require Act IV of 1842, s 24, empowers a Justice of the Peace of the town of Madras to hear and determine all pecuniary forfeiture and penalties [illegible]

passed in accordance with Act IX of 1846 should be heard and determined by Magistrates not being Justices of the Peace. *In re* ROUTHAKONNI

I. L. R. 9 Mad. 431

19. [illegible]

20. ———— Return by Subdivisional Magistrate of case referred to him—*Criminal Procedure Code, s. 349—Order—Committal.* Under s. 349 of the Criminal Procedure Code (Act X of 1882), a second class Magistrate transmitted a case to a Subdivisional Magistrate, being of opinion that a more severe punishment was deserved than he

MAGISTRATE—*contd.*

5. POWERS OF MAGISTRATES—*contd.*

(the second class Magistrate) was empowered to inflict The Subdivisional Magistrate, instead of disposing of the case himself, returned it to the second class Magistrate for committal, and thereupon the latter committed it *Held*, that the action of the Subdivisional Magistrate, in returning the case to the second class Magistrate, was illegal, as he was bound to pass a final judgment, sentence, or order. His order was therefore annulled, and he was directed to dispose of the case himself. QUEEN-EMPRESS v HAVIA TELLAPA

I. L. R. 10 Bom. 196

21. ——— Deputy Magistrate in charge of District Magistrate's office—*Criminal Procedure Code, 1882, s 437* A Deputy

22. ——— Reference to Deputy Magistrate for enquiry—*Criminal Procedure Code, 1861, s. 273.* Where a case was referred to a Deputy Magistrate for enquiry only, that enquiry cannot be regarded as a trial Where a Deputy Magistrate is competent to try a case, it is doubtful whether it is in accordance with the spirit of s. 273 of the Criminal Procedure Code for the Magistrate to refer it to him for enquiry only QUEEN v. BAWUL SINGH . . 1 N. W. Ed. 1873, 306

23. ——— Reference to District Magistrate by Civil Court for enquiry—*Power to refer to Deputy Magistrate* A District Magistrate, to whom a case was sent in which four persons were specially committed by a Munsif for investigation of charges of forgery, perjury, etc, has no power under s. 273 of the Criminal Procedure Code, 1861, to refer it to the Deputy Magistrate. QUEEN v. RUTTRE RAM . . 2 N. W. 21
QUEEN v. ASSUF ALI KHAN 3 N. W. 126

24. ——— Power to transfer case sent for inquiry—*Reference by Civil Court—Order of commitment by Subordinate Magistrate—Criminal Procedure Code, 1869, ss. 273 and 171.* A Small

order of commitment was bad S 273 of the Code of Criminal Procedure is inapplicable to a case referred to a Magistrate under s. 171. ANONYMOUS

6 Mad. Ap. 41

25. ——— Reference by District Ma-

MAGISTRATE—*contd.*

5. POWERS OF MAGISTRATES—*contd.*

proceedings under Ch. XIX of that Code to his subordinates. QUEEN v. ABDOOLLAH

2 N. W. 401

26. ——— Reference to full-power Magistrate—*Subordinate Magistrate—Criminal Procedure Code, 1861, Ch. XVI.* *Held*, that the

Code, refer such case to a full-power Magistrate. A full-power Magistrate, though executively inferior to the Magistrate of the district, was not a Subordinate Magistrate within the meaning of Ch. XVI of the Criminal Procedure Code, nor was he "immediately subordinate" to the District Magistrate within the meaning of s. 434 of the same Code. REG v. KRISHNA PARASHRAM

5 Bom. Cr. 69

27. ——— Power to refer cases for inquiry—*Criminal Procedure Code, 1861, s. 273.* Under s 273 of the Criminal Procedure Code, a full-power Magistrate may refer for enquiry to a Subordinate Magistrate (criminal cases, that is, *primâ facie*, any criminal case) The reference may be for inquiry or for trial by the Subordinate Magistrate, or with a view to commitment either to a Court of Session or the High Court. ANONYMOUS . . . . . 2 Mad. Ap. 40

28. ——— *Criminal Procedure Code, 1869, ss. 68, 273.* S. 273 of the Criminal Procedure Code, 1869, applies only to criminal cases brought before the Magistrate of the district,

the case for enquiry or trial to another Magistrate. S. 68 merely authorizes him to take cognizance of offences without complaint and to issue summons or warrant. ANONYMOUS . 7 Mad. Ap. 2

29. ——— *Criminal Pro-*

30. ——— *Criminal Procedure Code (Act XXV of 1861), s. 273—Grievous hurt.* A Magistrate has no power, under s. 273 of the Code of Criminal Procedure, to refer a case of grievous hurt for trial to a Deputy Magistrate having only the power of a Subordinate Magistrate of the second class. GABIND CHANDRA BISWAS v. HEM CHANDRA BARDER . 6 B. L. R. Ap. 115

31. ——— *Reference of case after initiation to Subordinate Magistrate—Criminal Procedure Code, 1872, ss. 41, 45, 47, 49.*

MAGISTRATE—*contd.*

5 POWERS OF MAGISTRATES—*contd.*

In all cases in which a Magistrate refers a complaint already initiated to a Subordinate Magistrate for inquiry, the procedure adopted for the purpose ought to conform either to s. 44 or s. 49 of the Criminal Procedure Code. RAMZAN ALI *v.* DEBRO KOMILLA . . 24 W. R. Cr. 58

32. ——— *Criminal Procedure Code, 1872, s. 45.* Pending inquiry into a charge of house breaking, the second class Magistrate of B Division was transferred to A Division. The case was transferred to his file by the District Magistrate. In the course of inquiry it appeared to the second class Magistrate that the offence committed was robbery, and therefore not triable by him. Proceedings were accordingly stayed and the case submitted to the Magistrate of the division. The Magistrate of the division, considering he had no jurisdiction as the offence was not committed in

second class Magistrate if there was sufficient evidence. The second class Magistrate accordingly committed the case to the Sessions. *Held*, that the order of the District Magistrate was illegal. QUEEN *v.* ADAPA VENKANNA . I. L. R. 4 Mad. 327

33. ——— **Power of District Magistrate to refer case referred to him for trial** —*Reference to full-power Magistrate—Criminal Procedure Code, 1861, s. 276.* It is competent for

34. ——— *Power of, to pass orders in cases before subordinate Court without transfer to his own Court—Judicial enquiry before issue of process, legality of—Code of Criminal Procedure, ss. 192, 202, 203, and 204.* *Held*, where the complaints were not made to the District Magistrate nor had the cases based on those complaints been withdrawn to his Court by any order, but were in the Court of a Joint Magistrate, who had examined the complainants, that the District Magistrate was not justified in interposing in the trial of the cases, and had no authority under the law to pass any order in those cases. That even if the cases had been removed by the District

MANDAL . . . . I. L. R. 27 Calc. 798

35. ——— *Code of Criminal Procedure (Act V of 1898), ss. 192, cls. (1) and (2), 529 (f), 145—Transfer, order of, made by a Magistrate not empowered by law in that behalf and proceedings taken under such transfer whether*

MAGISTRATE—*contd.*

5 POWERS OF MAGISTRATES—*contd.*

even when duly empowered to transfer cases, can

36. ——— *Reference of case for trial of offence by subordinate Court—Power of District Magistrate to issue warrants for arrest*

with that offence remained with the Subordinate Magistrate, no other Magistrate was competent to deal with it, and that applications for warrants against other persons concerned in that offence should be made to the Magistrate before whom the case was and to no other Magistrate. GOLABDY SHEIKH *v.* QUEEN-EMPRESS I. L. R. 27 Calc. 979

In the matter of GOLABDY SHEIKH

4 C. W. N. 827

37. ——— *Criminal Procedure Code, 1882, ss. 155, 202, and 203—Magistrate's power to direct a local investigation by the police—Complaint of an offence cognizable by a Magistrate—Examination of complainant.* S. 155

38. ——— *District Magistrate, power of, to order further enquiry—Improper discharge—Sessions case, further enquiry directed in—Criminal Procedure Code (Act X of 1882), ss. 436, 437.* It is competent to a District Magis-

of Sessions, on cause being shown to order a further inquiry under the provisions of s. 437. QUEEN-EMPRESS *v.* MANIRUDDIN MUNDUL

I. L. R. 18 Calc. 75

MAGISTRATE—*contd.*

5. POWERS OF MAGISTRATES—*contd.*

39. ———— *Penal Code, s. 228—Insulting a Magistrate—Criminal Procedure Code, s. 195.* The accused intentionally insulted a Village Munsif in the discharge of his magisterial duties: the Village Munsif did not prefer a complaint or sanction a prosecution, but a second

right. QUEEN-EMPRESS *v.* VENKATASAMI
I. L. R. 15 Mad. 131

40. ———— *Criminal Procedure Code, s. 191—Magistrate taking cognizance of an offence on his own personal knowledge—Right of accused to have the case transferred.* Where a Magistrate was found to have taken cognizance of an offence under cl (c) of s. 191 of the Code of Criminal Procedure:—*Held*, that he had no power, on an application being made under the last clause of the section abovenamed, to refuse to transfer the case. QUEEN-EMPRESS *v.* HAWTHORNE
I. L. R. 13 All. 345

41. ———— *Criminal Procedure Code (Act X of 1882), s. 191 (c); (Act V of 1898), ss. 190, 191—Transfer of case or commitment to Sessions Court.* A Magistrate, when a valid objection is taken under Criminal Procedure Code, s. 191, that he cannot try a case, is not bound to transfer it, but may elect to commit the case to a Court of Session. QUEEN-EMPRESS *v* FELIX
I. L. R. 22 Mad. 148

42. ———— *Criminal Procedure Code, s. 454—European British subject—Relinquishment of right to be dealt with as such British subject—Trial by second class Magistrate.*

right to be dealt with as a European British subject. QUEEN-EMPRESS *v.* BARTLETT
I. L. R. 16 Mad. 308

43. ———— *Criminal Procedure Code (Act X of 1882), s. 164—Oaths Act (X of 1873), ss. 4, 5, 14—False evidence.* A Magistrate, acting under Criminal Procedure Code, s 164, has power to administer an oath, and a charge of perjury can be framed with regard to statements made before him on oath when he is so acting QUEEN-EMPRESS *v.* ALAGU KONE
I. L. R. 16 Mad. 421

44. ———— *Criminal Procedure Code, 1882, s. 487—Power of Magistrate to try an accused person for disobedience of a summons issued by him as Mamlatdar—Penal Code, s. 174—Construction of statute.* A Magistrate is not debarred by s. 487 of the Code of Criminal Procedure

MAGISTRATE—*contd.*

5. POWERS OF MAGISTRATES—*contd.*

Magistrate, and these words must be read in connection with all the three classes of offences previously referred to. *Queen-Empress v. Sarat Chandra Rakhit, I. L. R. 16 Calc. 766,* followed. QUEEN-EMPRESS *v.* RAIJI DAJI . I. L. R. 18 Bom. 380

45. ———— *Distress warrant—Claim by third party to the property distrained—Criminal Procedure Code, 1882, s. 386.* A Magistrate, who has issued a distress warrant under s. 386 of the Criminal Procedure Code, is not required by law to try any claim which may be preferred to the ownership of the property distrained. QUEEN-EMPRESS *v.* GASPER . I. L. R. 22 Calc. 935

46. ———— *Criminal Procedure Code, 1882, s 144—Executive powers of Magistrate—Order which might have the effect of interfering with the execution of a decree of a Civil Court.* A District Magistrate has no power,

has he power to make any order which would have the direct effect of interfering with the execution of a decree of a Civil Court. *In the matter of the petition of* RAHMAT-ULLAH . I. L. R. 17 All. 485.

47. ———— *Criminal Procedure Code (Act X of 1882), s. 497—Transfer of case—Bail—Order admitting to bail—Power of District Magistrate to revise order.* An order admitting an accused person to bail made by a Magistrate is not revisable by a District Magistrate. If the latter considers the order wrong, he can refer it to the High Court. QUEEN-EMPRESS *v.* SADASHIB NARAIN JOSHI . . I. L. R. 22 Bom. 549

48. ———— *Criminal Procedure Code (Act V of 1898), s. 190, sub-s. (1), cls. (a) and (c), and s. 191—Taking cognizance of offence by Magistrate upon receiving a complaint of facts—Right of the accused to claim a transfer—Penal Code (Act XLV of 1860), ss. 193 and 195—Sanction unnecessary when offence alleged to have*

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the petition of complaint as well as against the petitioner in this case for an offence other than those mentioned in the said petition. *Held*, the Magistrate took cognizance of the offence as against the petitioner under cl. (a), and not cl. (c) of sub-s. (1) of s. 190, and consequently he was not

MAGISTRATE—*contd*

5. POWERS OF MAGISTRATES—*contd.*

debarred by s. 191 of the Criminal Procedure Code from trying the case. No sanction under s 195 of the Criminal Procedure Code is necessary for taking cognizance of an offence under s 193 of the Penal Code when the alleged false evidence is said to have been fabricated, not in relation to any proceeding pending in any Court, but in the course of an investigation by the police into the matter of an information received by them JAGAT CHANDRA MOZUMDAR v. QUEEN EMPRESS
I. L. R. 26 Calc. 786
3 C. W. N. 491

See QUEEN-EMPEROR *v.* ABDUL RAZZAK KHAN
I. L. R. 21 All. 109

and QUEEN-EMPRESS *v.* FELIX
I. L. R. 22 Mad. 148

49. — Disobedience of Order—*Criminal Procedure Code (Act V of 1898), ss 144, 187—Order to "abstain from a certain act"—Trial by Magistrate, who made the order, of persons alleged to have disobeyed it* On a petition being filed in the Court of a Sub-Divisional First-class Magistrate, setting out that a breach of the peace was likely to arise from the simultaneous use of a certain mosque by members of the *Hanifi* and *Shafi* sects, the Magistrate passed an order, addressed to ten members, who were named, and several others of the *Hanifi* sect, and to three members, who were named and several others of the *Shafi* sect. The order concluded as follows.—"I do order hereby that the following order should be observed in regard to the entry of the said mosque, by any of you or any other Musulmans of the *Hanifi* and *Shafi* sects, for a period of two months from this date, unless in the

each sect might enter the mosque on other days *Held*, that the order was within the powers conferred by s. 144 of the Criminal Procedure Code. Certain members of the *Hanifi* sect having entered the mosque in disobedience to the order hereinbefore referred to, they were charged under s 188 of the Indian Penal Code in disobedience to an order by a public servant. The case was tried by the Magistrate who had passed the order. *Held*, that the Magistrate was not competent to try the case, inasmuch as he had made the order under s. 144. QUEEN-EMPRESS *v.* ABDULLA SAHEB (1900)
I. L. R 24 Mad. 262

50. ——— District Magistrate—*Criminal Procedure Code (Act V of 1898), s. 145—Subordinate Magistrate, refusal to take proceedings—Institution of such proceedings by District Magistrate on some police report—Jurisdiction.* Where,

MAGISTRATE—*contd.*

5. POWERS OF MAGISTRATES—*concld.*

not operate as a bar to such action. *Chathu Rai v. Niranjan Rai, I. L. R. 20 Calc. 729*, distinguished. BAIDA NATH MAJUMDAR *v.* NIBARAN CHUNDER GHOSE (1902) . . I. L. R. 29 Calc. 242
s c. 6 C. W. N. 290

51. ——— Security for keeping the peace—*Magistrate appointed in the district—Limits of jurisdiction—Criminal Procedure Code (Act V of 1898), ss 12 and 107.* A Magistrate appointed to act as a Magistrate in a district has, unless his powers have been restricted to a certain local area, jurisdiction over the entire district. *Held*, therefore, where a Sub-divisional Officer in a district instituted proceedings under s 107 of the Criminal Procedure Code against a person in his

52. ——— Criminal Procedure Code (Act V of 1898), s. 528—*Order by Sub-Divisional Magistrate, transferring case from one*

53. ——— Report by police officer of another district—*Jurisdiction—Report by a police officer of one district; proceedings instituted*

another district in respect of such portions of the land or water mentioned in the report as lie within his jurisdiction. ISHAN CHUNDER DASS *v.* GARTH (1902) . . I L. R. 29 Calc. 885
s.c. 6 C. W. N. 378

6. REFERENCE BY OTHER MAGISTRATES.

1. ——— Power in case referred for enhancement of punishment—*Criminal Pro-*

MAGISTRATE—*contd.*

6. REFERENCE BY OTHER MAGISTRATES—*contd.*

cedure Code, 1872, s. 46—Power to order committal for trial. A Magistrate, to whom a case is referred for enhancement of punishment under s. 46 of the Criminal Procedure Code, may order the committal of the case for trial by the Sessions Court. *In the matter of* CHINNIMARRIGADU **I. L. R. 1 Mad. 289**

2. ——— *Criminal Procedure Code, 1872, s. 46.* A Magistrate to whom a case is referred for enhanced punishment has no power to send the case for enquiry to another Magistrate. QUEEN v VELAYUDUM **I. L. R. 4 Mad. 233**

3. ——— *Criminal Procedure Code, 1872, s 46—Return of case referred under s 46.* It is not competent for a Magistrate, [illegible]

sentence All orders passed after a case has been so returned are illegal DULA FAQUEER v BHAGIRAT SIRCAR . . . **6 C. L. R. 276**

4. ——— *Criminal Procedure Code, 1872, ss 41, 44, 46, and 284—Co*[illegible]

[illegible] public duties. The latter, who had jurisdiction, found the accused person guilty, and considering that the accused person ought to receive more severe punishment than he was competent to inflict, under the provisions of s 46 of Act X of 1872, submitted his proceedings to the former, who thereupon, under the provisions of the same section, passed sentence on the accused person. *Held,* [illegible]

s 284 of Act X of 1872 would not have been applicable, as those provisions do not refer to the illegality of a sentence or to the case of a Magistrate transferring a case who has no power of transfer, but to the invalidity of a conviction for want of jurisdiction. EMPRESS v. KALLU **I. L. R. 4 All. 366**

5. ——— **Power to annul conviction in offence not triable by Subordinate Magistrate**—*Criminal Procedure Code, 1872, s. 284.* Where on appeal [illegible]

no power to annul the conviction and sentence under s 284 of the Code of Criminal Procedure, but should report the matter for the orders of the High Court. REG. v. TUKARAM RAGHO . **12 Bom. 234**

6. ——— **Reference to Magistrate with power to hear appeals**—*Criminal Procedure Code, 1861, s 276—Reference of cases by Subordinate Magistrates. Held,* that a full power Magistrate, though empowered to hear appeals, is not thereby placed in the position of the Magistrate of the district, and that therefore Subordinate Magistrates should not refer cases, under s. 276 of the Code of Criminal Procedure, to such Magistrate, but to the Magistrate of the district, to whom alone they are subordinate. REG. v. BHAGU BIN SHABAJI **5 Bom. Cr. 47**

7. ——— **Reference to Magistrate under s. 277, Criminal Procedure Code, 1861**—*Power to send to Sessions for higher sentence.* Where a case is referred to a Magistrate under s. 277 of the Code of Criminal Procedure, the [illegible]

10 W. R. Cr. 60

8. ——— *Subordinate Magistrate. Held,* that a Subordinate Magistrate [illegible]

11 W. R. Cr. 7

9. ——— *Issue of circu*[illegible]

under the provisions of s. 277 of the Criminal [illegible] on reference by a Ses[illegible]

5 Bom. Cr. [illegible]

10. ——— *Power to dispose of case.* On reference by a District Magistrate, a sentence passed by a full-power Magistrate, [illegible]

the district alone had power to dispose of cases under that section. REG v. KUBERIO RATNO **4 Bom. Cr. 8**

ANONYMOUS . . . **5 Mad. Ap. 43**

11. ——— *Criminal Procedure Code, ss. 195, 476—Reference to "nearest Magistrate of the first class"—Sanction to Prosecution.* A Head Assistant Magistrate sanctioned a prosecution under Criminal Procedure Code, s.

MAGISTRATE—*contd*

6 REFERENCE BY OTHER MAGISTRATES—*concld.*

195, on the charge of preferring a false complaint, and forwarded his proceedings to the Deputy Magistrate of another division of the district who ordi-

NAGAPPA . . . . I. L. R. 16 Mad. 461

7 RE-TRIAL OF CASES

1. ——— Fresh trial after discharge —*Criminal Procedure Code, 1861, ss. 68 and 225—Discharge of accused—Institution of fresh proceed-*

14 W. R. Cr. 65

2. ——— *Orders under s 535, Criminal Procedure Code, 1872—Hearing by*

offered, the District Magistrate is not competent to entertain the complaint *de novo* *In the matter of* JAMOTI *v* GADALO KAMAR . 1 C. L. R. 89

3. ——— *Conviction—Offence exclusively triable by Court of Session—Accused,*

Procedure Code contemplates an order for a re-trial

I. L. R. 29 Calc. 412

MAGISTRATE—*contd.*

8. REVIEW OF ORDERS.

1. ——— Committing order, power to cancel. Where a Deputy Magistrate has once made an order transferring a case for trial to the Magistrate, he has no power to cancel the order and replace the case on his own file. QUEEN *v.* CHUNDER SEEKUR ROY . . . 12 W. R. Cr. 18

2. ——— Power to vary sentence.

3. ——— Power to revive order

August 1881 the Assistant Commissioner reviewed

11 C. L. R. 414

9 SPECIAL ACTS.

1. ——— Act XIX of 1838, s. 13 (Coasting Vessels, Bombay). Only a full-power Magistrate had jurisdiction to convict of an offence under s 13 of Act XIX of 1838. REG. *v* KASAMJI . . . 5 Bom. Cr. 6

2. ——— Act XXVI of 1850 (Towns Improvement, Bombay)—*Infliction of penalty for breach of rule under. Held*, that a subordinate

3. ——— *Municipal Commissioners, Committee of, appointed under* The Managing Committee of Municipal Commissioners appointed under Act XXVI of 1850 have no power to try and convict persons for alleged breaches of rules made in pursuance of that Act. The power to inflict fines for such offences is, by s. 10, vested in the Magistrate. REG. *v.* MAVJI DAYAL. REG. *v.* KALIDAS KEVAL . . . 5 Bom. Cr. 10

4. ——— *Criminal Procedure Code, VIII of 1869—Schedule—Breach*

MAGISTRATE—*contd.*

9. SPECIAL ACTS—*contd.*

Municipal rules under Act XXVI of 1850. By virtue of the last part of the schedule headed "offences against other laws" added to the Code of Criminal Procedure by Act VIII of 1869, a Subordinate Magistrate, second class, can take cognizance of the offence of a breach of the Municipal rules, promulgated under Act XXVI of 1850. Reg. v. Dharmaya valad Sangapa . . 8 Bom. Cr. 12

5. ——— *Municipal Commissioners, power of, to assume judicial powers—Power to try offenders under rules made by Municipal Commissioners.* Municipal Commissioners appointed under Act XXVI of 1850 have not, by that Act, conferred upon them, nor are they entitled to assume, judicial powers with reference to breaches of rules or bye-laws made by them under that Act; and such rules are *ultra vires* in giving them such powers. *Reg. v. Kalidas Keval, 5 Bom. Cr. 10,* approved and followed. The authority to try offen-

[illegible]

Bom. Cr. 12, approved. Reg. v. Yenku Bapuji 8 Bom. Cr. 39

6. ——— **Act XXXV of 1850 (Bom-**

[illegible]

against the Act. Reg. v Prabhakar N. Soman 3 Bom. Cr. 11

7. ——— **Act XXII of 1855 (Ports and Port Dues), ss. 46 and 62**—*Magistrate.* The word "Magistrate" in s. 62 of Act XXII of 1855 includes a Subordinate Magistrate; such Magistrate has therefore power to try the master of a vessel for an offence committed against s. 46 of that Act. Reg. v. Tunga Tuka 5 Bom Cr. 14

8. ——— **Act I of 1858 (Compulsory Labour, Madras), ss. 1 and 6**—*Acts and omissions.* The only acts or omissions over which a Magistrate has jurisdiction under Act 1 of 1858 are those specified in the 1st section. Cases under s. 6 of the Act are not cognizable by a Magistrate. Anonymous . . . . 4 Mad. Ap. 21

9. ——— **Beng. Act III of 1863 (Transport of Native Labourers)**—*Penal Code, ss. 65 and 67. Held,* that a Subordinate [illegible] with [illegible] law [illegible] the [illegible] ison-ment, fine, and fine only, s. 67, and not s. 65, of the Penal Code being applicable to such a case. Queen v Chunder Prosaud Singh 10 W. R. Cr. 30

10. ——— **Bom. Act IX of 1863 (Cotton Frauds), s. 9.** Conviction under s. 9 of Bombay Act IX of 1863, and sentences of one month's rigorous imprisonment, as well as an order for confiscation of cotton, set aside for want of evidence to show that the Deputy Magistrate who tried the case had jurisdiction in the matter over the person convicted, and for want of evidence of fraud. Reg. v. Jivan Usman . 3 Bom. Cr. 12

11. ——— **Bom. Act VIII of 1866 (Poisonous Drugs), s. 11.** Convictions under s. 11 of Bombay Act VIII of 1866 (Poisonous Drugs Act) can only be obtained outside the town and island of Bombay before Magistrates of the first class. Empress v. Imambu I. L. R. 4 Bom. 167

12. ——— **Bom. Act V of 1879 (Bombay Land Revenue Act)**—*Magistrate of first class and second class—Rules made under s. 214, Bom. Act V of 1879 (Bombay Land Revenue Act)—Bom. Act X of 1866, s. 1, cl. 7—Removal of earth from Government land.* The offence committed in contravention of rule 3, cl. 1, item (*d*) of the rules framed under s. 214 of the Land Revenue Code (Bombay Act V of 1879) is exclusively triable by a Magistrate of the first class. Accordingly, a conviction and sentence by a Magistrate of the second class were set aside by the High Court. Queen-Empress v. Shivaram . I. L. R. 8 Bom. 591

13. ——— **ss. 125, 214, and 215**—*Boundary-marks—Rules 101 and 111, cl. 3 (a).* The accused was charged before a second [illegible]

[illegible]

Revenue Code does not give jurisdiction to any Magistrate to try a person accused of injuring a boundary-mark. Queen-Empress v. Irappa I. L. R. 13 Bom. 291

14. ——— **Bom. Reg. XXI of 1827**—*Offence against opium laws—Power of fine.* The District Magistrate (whose Court is the proper tribunal for the trial of an offence relating to the smuggling of opium) has, under s. 21 of the Code of [illegible] power to inflict any fine [illegible] such offence, [illegible] Reg. v. Narayan Gangadhar . . . [illegible] Bom. 343

15. ——— *Illegal posses-*[illegible] of possession above a [illegible]

[illegible]

Reg. v Hira Jiva . . . [illegible] 53

16. ——— **s. 7**—*Offence against opium laws.* The offence of unlawfully being in possession of smuggled opium is an offence exclusively cognizable

MAGISTRATE—*contd.*

9 SPECIAL ACTS—*contd*

preliminary enquiry into, or to try a person accused of, such an offence *Reg v Hira Jiva, 7 Bom Cr. 59*, approved, and the Court's reply No 1231 of 19th August 1867, to the Khandesh Sessions Judge's reference No 702 of 1867, dissented from. REG *v* LAKHU VALAD SAKRU . 8 Bom. Cr. 118

But *see* REG *v* SADU DADABHAI 9 Bom. 166

17. ———— s. 10—*Breach of rules for sale of opium.* A conviction and sentence by a full power Magistrate for breach of the rules for the retail sale of opium under Regulation XXI of 1827 (Bombay), s. 10, annulled for want of jurisdiction, as the Zillah Magistrate alone was empowered to enforce the penalty. REG *v* SADU VALAD PAVADI . . . 3 Bom. Cr. 39

REG. *v.* GANIA BIN BAPU . 3 Bom. Cr. 50

18. ———— Cattle Trespass Act, III of 1857, s. 13—*Act XVII of 1862.* The repealing section of Act XVII of 1862 did not affect the powers of a Subordinate Magistrate under s. 13 of Act III of 1857. REG *v.* KASSAMIA 1 Bom 100

19. ———— *Act XVII of 1862.* The latter portion of s. 13 of Act III of 1857 having been repealed by Act XVII of 1862:—*Held*, that the offences created by that section might be dealt with by the ordinary criminal tribunals, subject to the provisions of the Code of Criminal Procedure. REG. *v.* MATHUR PURSHOTAM 4 Bom. Cr. 13

20. ———— A Magistrate cannot, under s 13, Act III of 1857, punish except for an act of forcible opposition to the seizure of cattle damage feasant HILLS *v.* SREEHUREE ROY . . . . . . 7 W. R. 155

21. ———— s. 18—*Criminal Procedure Code, 1861, s. 21* By virtue of s 21 of the Criminal Procedure Code, a subordinate Magistrate of the first class had jurisdiction to try an offence under s 18 of Act III of 1857 (Cattle Trespass Act), there being no provision in that Act as to the authorities by which offences committed under it were to be tried. REG *v.* GANGA KOM MHASU 5 Bom Cr 13

22. ———— Cattle Trespass Act (I of 1871), ss. 20 and 23—*Special jurisdiction—Criminal Procedure Code, 1882, ss 1 and 192—Transfer of criminal case.* The jurisdiction conferred by ss. 20 to 23 of the Cattle Trespass Act

MAGISTRATE—*contd.*

9. SPECIAL ACTS—*contd.*

23. ———— *Order by a Magistrate other than the Magistrates specified in s 20—Criminal Procedure Code, 1882, ss. 28, 192, 529, and 537—Power of District Magistrate to transfer cases to a Subordinate Magistrate—Compensation, order awarding* S 192 of the Criminal Procedure Code (Act X of 1882) does not authorize a District Magistrate to transfer for trial to a Subordinate Magistrate cases which are not within the powers of that Magistrate to try either under

of Magistrates specified in that section. An order awarding compensation under s 22 of the Act passed by any other Magistrate is illegal, and cannot be cured by the provisions of s. 529 or s. 537 of the Criminal Procedure Code RAGHU SINGH *v* ABDUL WAHAB . . . . I. L. R. 23 Calc. 442

24. ———— Chowkidars—*Maintenance of chowkidar on chakran land* A Magistrate can maintain a chowkidar in the possession of his chakran land (*i e*, land set apart for his subsistence by his zamindar). Any such order of the Magistrate is appealable to the Superintendent of Police. QUEEN *v* ZAMINDAR OF COLGONG 1 W. R. Cr. 12

25. ———— Companies Act (VI of 1882), ss. 35, 252—"*Forfeit*"—"*Penalty*"—*Share warrant not duly stamped—Stamps on share warrants—Criminal Procedure Code (Act X of 1882), s 32—Fine.* There is no distinction between the word "forfeit" as used in s 35 of the Indian Companies Act and the word "penalty" as used in

it was contended that the infliction of such a penalty was beyond the jurisdiction of the Magistrate, which under the provisions of s. 32 of the Code of Criminal Procedure was limited to inflicting a fine of R1,000:—*Held*, that the issue of each of the nine share warrants was a separate offence, and the fact that several offences have been committed, and

26. ———— Illegal confinement—*Deputy Magistrate, power of* The offence of illegal confinement for more than ten days is triable only by the Court of Session or by the Magistrate of the dis-

MAGISTRATE—*contd.*

9 SPECIAL ACTS—*contd.*

trict, but not by a Deputy Magistrate. QUEEN *v* KOMUL MANJEE . . . 7 W. R. Cr. 13

27. ——— **Madras Abkari Act—Mad. Act I of 1886, s. 43**—*Default by persons bailed to appear before the Abkari Inspector—Procedure—Criminal Procedure Code, 1882, s 514.* S. 43 of the Madras Abkari Act gives a Magistrate enforcing a penalty on the application of an abkari inspector jurisdiction to proceed in the same manner and with the same powers as if the default had been made by a person bailed to appear in his own Court. When an abkari inspector therefore, under the Abkari Act, s. 43, forwards a bail bond to a Magistrate in order that payment may be compelled of the penalty mentioned therein, the Magistrate should call upon the person liable to appear and show cause against such order being made, and should otherwise observe the procedure prescribed in Criminal Procedure Code, s 514 QUEEN-EMPRESS *v.* PALAYATHAN . . I. L. R. 18 Mad. 48

28. ——— **Mad. Act III of 1865 (offences against special and local laws)**—*Offences under Act XIII of 1859.* Madras Act III of 1865 authorizes every Magistrate to take cognizance of offences against Act XIII of 1859. ANONYMOUS . . . . 4 Mad. Ap. 64

29. ——— *Criminal Procedure Code, 1869—Schedule—Mad Act III of 1865* The jurisdiction conferred on Magistrates in the Madras Presidency by Madras Act III of 1865 is not ousted by the schedule to the Code of Criminal Procedure as amended by Act VIII of 1869. ANONYMOUS . . . . 7 Mad. Ap. 6

30. ——— *Native Deputy Magistrate—Madras Police Act (XXIV of 1859), s 50.* By Madras Act III of 1865 a Native Deputy Magistrate has power to try police officers above the rank of a private charged with offences under the Madras General Police Act (XXIV of 1859), notwithstanding the proviso in s. 50 of the latter enactment ANONYMOUS . 4 Mad. Ap. 54

31. ——— *Repeal of Act XVI of 1874—Repeal, effect of.* The repeal of Madras Act III of 1865 by Act XVI of 1874 has not deprived Magistrates in the Madras Presidency of jurisdiction over offences created by special and local laws thereby given to them. REG. *v.* KANDAKORA . . . I. L. R. 1 Mad. 223

32. ——— *Criminal Procedure Code, 1872, s. 8—Act XVI of 1874—Special and local laws* Madras Act III of 1865 declared every Magistrate in the Madras Presidency authorized to take cognizance of every offence committed against any special or local law then in force in the said Presidency, notwithstanding any provision to the contrary in any act or Regulation then existing, and also of any offence against any special or local law which might thereafter be passed, unless such law should make the offences to which it might refer punishable by some other authorities therein specially mentioned. The effect of this Act was to remove the restrictions imposed by special or local laws theretofore passed, and to enable Magistrates within the limits of their ordinary powers to deal with offences punishable under any such special or local law, notwithstanding the special or local law indicated a particular tribunal as alone competent to try such offences, and to confer upon them jurisdiction also in the case of any special or local laws that might be passed after the enactment of Act III of 1865, unless jurisdiction was in any such *later law specially conferred upon some other* authority. S. 8 of the subsequent enactment, Act X of 1872 (the Criminal Procedure Code), limited the jurisdiction of Subordinate Magistrates over offences punishable under special and local laws, a third class Magistrate's jurisdiction being restricted to the trial of offences punishable under such laws with less than one year's imprisonment, while a [illegible]

(Criminal Procedure Code) EMPRESS *v.* ACHI I. L. R. 2 Mad. 161

33. ——— **Mad. Reg XI of 1816, s. 10**—*Village Magistrate—Fine for abusive language.* A Village Magistrate has no jurisdiction to impose a fine upon a person who uses abusive language to the village Magistrate in the course of a trial under s. 10, Regulation XI of 1816. ANONYMOUS 5 Mad. Ap. 32

34. ——— **Mad. Reg. IV of 1821**—*Village Magistrate—Sheep-stealing—Mad. Reg. XI of 1816.* Sheep stealing, when the value of the [illegible] Village [illegible] etty [illegible] trate [illegible]

I. L. R. 5 Mad. 268

35. ——— **Merchant Seaman's Act (I of 1859), s. 83**—*European British subject—Criminal Procedure Code, 1872, s 72.* A Magistrate is not empowered to try a European British subject under cl 5, s. 83 of Act I of 1859 (The Merchant Shipping Act). *See* s. 72 of the Criminal Procedure Code, 1872. ANONYMOUS 4 Mad. Ap. 23

ANONYMOUS . . . . 7 Mad. Ap. 33

36. ——— **N.-W. P. & Oudh Municipalities Act (XV 1883), s. 46**—*Issue of distress warrant for recovery of alleged arrears of Municipal tax—Questions as to arrears being due. Held,* that where a Magistrate, acting under s. 46 of Act XV of 1883, issues a warrant for the realization of arrears of municipal taxes alleged to be due, the Magistrate is acting in a ministerial capacity only

MAGISTRATE—*contd.*

9 SPECIAL ACTS—*contd*

and has no jurisdiction to enquire as to whether such arrears are really due or not. ELLIS *v.* MUNICIPAL BOARD OF MUSSOORIE

I. L. R. 22 All. 111

37. ——— Opium Act (I of 1878), s. 9—*Criminal Procedure Code (1882), s 29—Commitment by Magistrate to Court of Session of case exclusively triable by Magistrate* Held, that inasmuch as a conviction of an offence punishable under Act I of 1878 must be by a Magistrate, a Magistrate taking cognizance of such an offence has no power to commit to the Court of Session. *In the matter of Indrobee Thaba, 1 W. R Cr 5*, and *Reg v. Donoghue, 5 Mad. 277*, referred to QUEEN-EMPRESS *v* SCHADE . I. L R. 19 All. 465

38. ——— Penal Code, s. 174—*Offence in contempt of Court* A Magistrate can take cognizance of an offence under s 174, Penal Code, committed against his own court. QUEEN *v* GUGUN MISSER . . . . 8 W. R Cr. 61

39 ——— s. 213—*Subordinate Magistrate—Illegal gratification.* A Subordinate Magistrate of the second class is not competent to initiate a charge, under s 213 of the Penal Code, of accepting an illegal gratification to screen an offender. OMRIT RAM *v* NONAO RAM . 6 W. R. Cr. 90

40. ——— s 392—*Robbery—Deputy Magistrate, power of* A charge of robbery, under s 392 of the Penal Code, is, under Act VIII of 1866, triable only by the Court of Session or by the Magistrate of the district, but not by a Deputy Magistrate MADHUB GHOSE *v.* BULLYE METEA

7 W. R. Cr. 11

41. ——— s. 458—*Deputy Magistrate, power of.* A Deputy Magistrate has no jurisdiction in the case of an offence coming under s 458 of the Penal Code. QUEEN *v* SHADRY 1 W. R. Cr 34

42. ——— ss. 380, 458, 459—*Lurking house trespass by night with aggravating circumstances.* A Deputy Magistrate has no power to convict of theft (s 380, Penal Code), where the offenc [illegible] night with [illegible] 450, Penal [illegible] latter charg [illegible]

9 W. R Cr. 5

43. ——— s. 471—*Forged document—Power to commit for forgery produced before the Collector* Where a forged document is put in evidence before the Collector, the power of commitment rests with the revenue authorities, and does not under any circumstances extend to the Magistrate GOVERNMENT *v.* HUNGESSUR SEIN

1 Ind. Jur. O. S. 11

44. ——— s. 486—*Possession—Goods with counterfeit trade mark not intended to be sold within jurisdiction* A Magistrate has jurisdiction to try an offence under s 486 of the Penal Code if the accused be shown to be in possession of goods

MAGISTRATE—*contd.*

9. SPECIAL ACTS—*contd.*

with a counterfeit trade mark for sale or any purpose of trade or manufacture, though the sale or the trade or the manufacture for the purpose of which the accused has the goods in his possession be not intended to take place within the jurisdiction of the Court in which the complaint is lodged. YUSUF MAHOMED ABARUTH *v* BANSIDHUR SIRAOGI

I. L R. 25 Calc. 639
2 C. W. N. 450

45. ——— s. 509—*Making indecent gestures to annoy* Offences coming under s 509 of the Penal Code are triable by the Magistrate of the district only. KULREE *v.* JHOONOO

7 W. R Cr. 52

46. ——— Police Act (V of 1861)—*Criminal Procedure Code, 1861, s 133—Offence under local Act* A Magistrate is competent, under s 133 of the Code of Criminal Procedure, to direct an enquiry to be made by a police officer into an offence punishable under a local Act such as the Police Act QUEEN *v.* PRANKISTO PAL

14 W. R. Cr. 41

47. ——— s. 29—*Deputy Magistrate—Power of fine.* A Deputy Magistrate exercising the full powers of a Magistrate has jurisdiction under s. 29, Act V of 1861, to fine police officers for violation of duty. ANONYMOUS

4 W. R. Cr. 2

48. ——— *Magistrate—* [illegible]

49. ——— Post Office Act (XIV of 1866), s. 47—*Subordinate Magistrate* A Subordinate Magistrate has jurisdiction to try a prisoner for an offence under s 47 of the Indian Post Office (Act XIV of 1866). REG *v* VITHU BIN MALLU

5 Bom. Cr. 36

50. ——— PostOffice Acts (XVII of [illegible]

RAM VAMAN BHANDARKAR . 3 Bom. Cr. 8

51. ——— Railways Act (XVIII of [illegible]

police officers), and s. 41 of the same [illegible]

MAGISTRATE—*contd.*

9. SPECIAL ACTS—*contd.*

-defining the limits of their jurisdiction), being both repealed by Act XVII of 1862:—*Held,* that a Subordinate Magistrate had no jurisdiction to impose a fine under s. 17 of the Railways Act. Reg v. Tribhuvan Ishwar . . 3 Bom. Cr. 54

52. ——— s. 26—*Mad. Act III of 1865.* Magistrates of all grades are, under Madras Act III of 1865, competent to try persons charged with offences under s 26 of the Railways Act, XVIII of 1854. Anonymous . 4 Mad. Ap. 9
Anonymous . . . . 6 Mad. Ap. 41

The schedule to the Criminal Procedure Code, 1869, made no alteration in this respect. Anonymous . . . . . . 7 Mad. Ap. 8

53. ——— *Conviction by full-power Magistrate. Held,* that a conviction by a Magistrate with full powers under s 26 of the Railways Act was illegal for want of jurisdiction. Reg. v. Lakshman Balaji . . 3 Bom. Cr. 10

54. ——— Railways Act (IX of 1890)

s. 125, cl. 1, the Magistrate is bound to ascertain whether the person charged was himself guilty. Queen-Empress v. Andi I. L. R. 18 Mad. 228

55. ——— Registration Act, 1866, ss. 91 and 95—*Committal to Sessions Judge. Held,*

trav . . . . . 5 Bom. Cr. 7

56. ——— Registration Act, 1877, s. 83—*Criminal Procedure Code, s. 29—Jurisdiction of second class Magistrate.* S. 29 of the Code of Criminal Procedure, 1882, does not affect the jurisdiction given to a second class Magistrate by s. 83 of the Registration Act, 1877, as amended by Act XII of 1879. Queen-Empress v. Krishna I. L. R. 7 Mad. 347

57. ——— Salt laws—*Criminal Procedure Code, 1861, s. 21—Cases under local laws.* A Magistrate is bound, with reference to s. 21 of the Code of Criminal Procedure, to proceed in the investigation of cases arising under a special law (such as the Salt Law), according to all the provisions of the Code of Criminal Procedure. Queen v. Abdool Azeez Khan . . 14 W. R. Cr. 36

58. ——— Stamp Act, 1869, s. 43—*Magistrate authorized by Collector to prosecute.* A Magistrate, who has been authorized by the Collector of a district under s. 43 of the Stamp Act, to prosecute offenders against the stamp laws, is not competent also to try persons whom he prosecutes. The Collector should appoint some person other than a Magistrate to conduct the prosecutions. Empress v. Gangadhur Bhunjo . I. L. R. 3 Calc. 622
2 C. L. R. 179

59. ——— Whipping—*Second class Magistrate—Sentence of whipping—Codes of Criminal Procedure (Act X of 1872 and Act X of 1882), ss. 2 and 32.* A person appointed a Magistrate of the second class under Act X of 1872 is incompetent, since the coming into force of Act X of 1882, to pass a sentence of whipping, unless he is specially empowered so to do according to the provisions of s. 32 of the latter Act. Empress v. Bhagvanta Ravji . I. L. R. 7 Bom. 303

60. ——— Witness—*Money deposited as expenses of witness, order as to—Order to credit money deposited under Criminal Procedure Code, 1861, s. 228, to Government.* A Magistrate has no jurisdiction to order a sum of money, deposited under s 228 of the Code of Criminal Procedure, for the refund of which an application was made, to be credited to Government. Anonymous
6 Mad. Ap. 9

10. TRANSFER OF MAGISTRATE DURING TRIAL.

1. ——— Summary jurisdiction—

Markby, J., on the ground that, by the terms of

office to which Mr. C was appointed ... which he had

Seebsaugor within the meaning of s. 64 of Act X of 1872 *In the matter of* Pursooram Boroa
I. L. R. 2 Calc. 117: 25 W. R. Cr. 53

2. ——— Jurisdiction to complete trial—*Transfer of Magistrate while trying a case.* Mr. M was appointed by the Local Government, under s. 37 of Act X of 1872, a Magistrate of the first class, under the designation of Joint Magistrate, in the district of Meerut. He was subsequently appointed to officiate as Magistrate of the district

MAGISTRATE—*contd*

10. TRANSFER OF MAGISTRATE DURING TRIAL—*contd.*

of Meerut during the absence of Mr. *F* or until further orders. While so officiating, he was appointed by a Government notification, dated the 10th July 1880, to officiate as Magistrate and Collector of Gorakhpur, "on being relieved by Mr *F*." He was relieved by Mr *F* in the forenoon of the 23rd July 1880, and in the afternoon of that day, under the verbal order of Mr *F*, he proceeded to complete a

the accused persons to various terms of imprisonment. *Held* (SPANKIE, *J.*, dissenting), that Mr *M* retained his jurisdiction in the district of Meerut so long as he stood appointed by the Government to that district and no longer, and the effect of the order of the 10th July 1880 was to transfer him

and that therefore the conviction of such accused persons had been properly quashed on the ground that Mr *M* had no jurisdiction. EMPRESS OF INDIA *v.* ANAND SARUP . . I. L. R. 3 All. 563

3. ——— **Order passed by a Magistrate after his successor had entered upon his appointment**—*Criminal Procedure Code, 1882, s. 12.* By an order of the Local Government

of the said order was that Babu Dila Ram ceased to have jurisdiction on the arrival of Kunwar Kamta Prasad; but whether such arrival was his arrival within the limits of the district or at head-quarters was not clear from the order. *Empress of India* v. *Anand Sarup, I. L. R. 3 All 513,* referred to BALWANT *v* KISHEN

I. L. R. 19 All. 114

4. ——— **Change of powers of Magistrate while case is proceeding**—*Notification taking effect retrospectively.* On the 22nd of May 1878 a Deputy Magistrate, invested with third class powers only, sentenced an accused person to three months' imprisonment under s. 417 of the Penal

MAGISTRATE—*contd*

10. TRANSFER OF MAGISTRATE DURING TRIAL—*contd.*

Deputy Magistrate with second class powers, to take

on the 22nd of May. *In the matter of* SURGEE

3 C. L. R. 281

5. ——— **Appointment of Magistrate**—*Time from which order of appointment dates.* An Assistant Magistrate convicted an accused on the 12th August, and by an order of even date such Magistrate was invested with power to act as a

vesting the Assistant Magistrate with further powers, no appeal lay to the District Magistrate. *Held*, that, even supposing the Lieutenant-Governor's order conferred first class powers upon the

trate with first class powers is of any force, or amounts to an authority to exercise such powers, until the order has been officially communicated to the Magistrate. *In the matter of the petition of* MAHOMED ESHAK. CHUNDRO MARWARI *v.* MOHAMED ESHAK . . I. L. R. 6 Calc. 476

See EMPRESS OF INDIA *v.* ANAND SARUP

I. L. R. 3 All. 563

6. ——— **Transfer of a Sub-Registrar invested with powers of a Special Magistrate**—*Criminal Procedure Code, s. 40—Madras Police Act (XXIV of 1859), s. 48.* A Sub-Registrar, having been invested with magisterial powers with reference to offences under Act XXIV of 1859, was transferred from the place where he was

I. L. R. 15 Mad. 122

7. ——— **Head Assistant Magistrate appointed Deputy Magistrate in same district**—*Criminal Procedure Code, 1882, s. 2[illegible]—Part-heard case.* A Head Assistant Magistrate, during the pendency of a criminal case of which

Magistrate. *Held*, that the Deputy Magistrate

MAGISTRATE—*contd.*

10. TRANSFER OF MAGISTRATE DURING TRIAL—*concld.*

could proceed with the trial from the point at which he had arrived as Head Assistant Magistrate. QUEEN-EMPRESS v. AHOBALAMATAM JEER

I. L. R. 22 Mad. 47

11. WITHDRAWAL OF CASES.

1. ——— **Withdrawal of case for trial**—*Criminal Procedure Code, 1872, ss. 45, 47, 328, 329.* The provisions of Act X of 1872, s. 328, only apply when a Magistrate, after hearing part of the evidence in a case, ceases to exercise jurisdiction, and is succeeded by another, who has, and

So s. 329 only

XV, and only

to complete the

enquiry himself. But when a case under trial is removed under s. 47, the whole proceedings must commence *de novo* in the manner provided for in s. 45. QUEEN v. KHAN MAHOMED

24 W. R. Cr. 53

2. ——— **Power to withdraw case**—*Criminal Procedure Code, 1872, s. 47.* Magistrates of districts should exercise the powers conferred on them by s. 47 of Act X of 1872 only when

case from the Subordinate Magistrate trying it and to try it himself, such application not containing

from the Subordinate Magistrate trying it and referred it to another for trial, the High Court set

I. L. R. 3 All. 749

3. ——— *Criminal Procedure Code, 1872, ss. 47, 491—Act XI of 1874,*

MAGISTRATE—*concld.*

11. WITHDRAWAL OF CASES—*concld.*

4. ——— **Transfer of criminal case**

jurisdiction ur

the case from

it to the Mag

ALAGIRI CHET..

5. ——— *Criminal Procedure Code, s. 528—Village Munsif.* A village

6. ——— *Criminal Procedure Code (Act X of 1882), s. 528.* An order

I. L. R. 22 Bom.

7. ——— *Transfer—Withdrawal of case by District Magistrate—Inquiry or trial—Code of Criminal Procedure (Act V of 1898), ss. 253, 258.* Where a case which was being tried by a Deputy Magistrate, who was about to frame

case ought to have been left with the Deputy

MAGISTRATE, SUBORDINATION OF.

——— *Additional District Magistrate and District Magistrate—Criminal Procedure Code (Act V of 1898) ss. 10 (2), 12, 528.* S. 12 of the Criminal Procedure Code does not make an additional District Magistrate subordinate to the District Magistrate, and the latter cannot

relation

ditional

DUTT v.

EMPEROR (1907) alc. 918

MAHARAJA OF BENARES, FAMILY DOMAINS OF.

——— *Court established by authority of Governor-General—Kondh, Court of Native Commissioner of—Benares Family Domains Regulation (VII of 1828)—Benares Family Domains Act (XIV of 1881)—Civil Procedure Code (Act XIV of 1882), ss 229, 229B* The family domains of the Maharaja of Benares are situated within British India as defined in Act X of 1897, s. 3, cl 7, and s. 4, cl 1, and the Court of the Native Commissioner or Subordinate Judge of Kondh within those domains, established under Regulation VII of 1828 amended by Act XIV of 1881, is a Court established by the authority of the Governor General in Council; consequently neither s. 229 nor s. 229B of the Code of Civil Procedure applies to the execution of decree passed by it. PRABHU NARAIN SINGH v. SALIGRAM SINGH (1907)
I. L. R. 34 Calc. 576

MAHOMEDANS.

See MAHOMEDAN LAW

See PARTITION ACT (IV OF 1893), s. 4
I. L. R. 29 All. 308

——— suit by—

See LIMITATION ACT, 1877, SCH II, ART. 127 . I. L. R. 33 Bom. 719

MAHOMEDAN COMMUNITY.

See HINDU LAW—CUSTOM—MAHOMEDANS
I. L. R. 3 Calc. 694

See JURISDICTION OF CIVIL COURT—CASTE
I. L. R. 13 Bo . 429
I. L. R. 20 Bom. 190

MAHOMEDAN LAW.

See EVIDENCE ACT . 10 C. W. N. 33

See GIFT . I. L. R. 29 Bom. 428

See GRANT—CONSTRUCTION OF GRANTS
I. L. R. 18 Mad. 257

See HUSBAND AND WIFE.
I. L. R. 21 Bom. 77

See KIDNAPPING FROM LAWFUL GUARDIANSHIP I. L. R. 32 Calc. 444

See PRE-EMPTION I. L. R. 27 All. 160

See PRESUMPTION OF DEATH
I. L. R. 33 Calc. 173

See PURDANISHIN WOMEN.
I. L. R. 12 Mad. 380

See TRANSFER OF PROPERTY ACT, 1882, s. 53 . . I. L. R. 31 All. 170

——— assignment of undivided share (mushaa) of property—

See DEBTOR AND CREDITOR.
I. L. R. 26 Bom. 577

——— buildings on land compulsorily acquired—

See ZANZIBAR . L. R. 28 I. A. 121

MAHOMEDAN LAW—*concld.*

——— ecclesiastical law—

See RELIGION, OFFENCES RELATING TO.
I. L. R. 7 All. 461

1. ——— Extent of—*Religion.* Although the Mahomedan Law, pure and simple, is part of the Mahomedan religion, it does not of necessity bind all who embrace the Mahomedan creed MAHOMED SIDICK v AHMED ABDULA HAJI ABDSATAR v. AHMED . I. L. R. 10 Bom. 1

[illegible]

the application of legal principles to temporal matters, the opinion of Qazi Abu Yusuf is entitled to the greatest weight. ABDUL KADIR v. SALIMA
I. L. R. 8 All. 149

3. ——— Doubtful point of law—*Rule of interpretation—Practice of Court.* Where by writers of the highest authority on the law of a particular sect a point of law is admitted to be doubtful, regard should be had to the practice of the Courts. DAIM v. ASOOHA BEBEE
2 N. W. 360

MAHOMEDAN LAW—ACKNOWLEDGMENT.

1. ——— Acknowledgment by father [illegible]

[illegible] child and son, unless it is impossible for the son or daughter to be so OOMDA BIBEE v. JONAB Ali
5 W. R. 132 : 1 Jur. N. S 143

FUZEELUN BEEBEE v. OMDAH BEEBEE
10 W. R. 469

WUHEEDUN v WUSFE HOSSEIN 15 W. R. 403

2. ——— *Effect of acknowledgment of son* According to Mahomedan law, the acknowledgment of the father renders the son a legitimate son and heir, whether the mother was or was not lawfully married to the father. NUJMOODEEN AHMED v. ZUHOORUN . 10 W. R. 45

3. ——— *Proof of legitimacy—Inference.* The Mahomedan law allows legitimacy to be inferred from circumstances without direct proof. MAHOMED GOUHUR ALI KHAN v. HARRATOONISSA . . . . 2 W. R. 52

Upheld on the facts by the Privy Council. HABEEBOOLLAH v. GOUHUR ALLY KHAN
18 W. R. 523

4. ——— *Proof of legitimacy—Marriage—Inference.* According to the Mahomedan law, the legitimacy or legitimation of a child of Mahomedan parents may be presumed or inferred from circumstances, without proof, or at least without any direct proof, of a marriage between

MAHOMEDAN LAW—ACKNOWLEDGMENT—*contd.*

the parents, or of any formal act of legitimation. MAHOMED BAUKER HOSSEIN KHAN *v.* SHURFOONISSA BEGUM
3 W. R. P. C. 37 : 8 Moo. I. A. 136

5. ———— *Presumption as to cohabitation—Legitimacy of issue.* The Mahomedan law is very scrupulous in bastardising the issue of any connexion in which it can be shown by presumption that there has been cohabitation and acknowledgment of paternity. ROSHUN JEHAN *v.* ENAET HOSSEIN ENAET HOSSEIN *v.* ROSHUN JEHAN . . . 5 W. R. 5

Affirmed by Privy Council in KHAJOOROONISSA *v.* ROWSHAN JEHAN . I. L. R. 2 Calc. 184
26 W. R. 36 : L. R. 3 I. A. 291

without the father specifically connecting his paternity with any particular woman. To rebut this presumption, the onus of proving the impossibility of the marriage is on the other side ROOK BEGUM *v.* WALAGOWHUR SHAH . . 3 W. R. 187

7. ———— *Legitimacy of son.* An acknowledgment by a Mahomedan that a certain person is his son is not *primâ facie* evidence of the fact which may be rebutted, but establishes the fact

from another. *In the matter of the petition of* NAJIFUNNISSA . . 4 B. L. R. A. C. 55

JAIBUN *v.* NUJEEBOONISSA . 12 W. R. 497
affirming, on appeal, NUJEEBOONISSA *v* ZUMEERUN
11 W. R. 426

8. ———— *Presumption of legitimacy.* In the case of a Mahomedan child born in wedlock, there being no reliable evidence to show why the ordinary presumption should not prevail, it must be deemed the child of the husband JESWUNT SINGJEE UBBY SINGJEE *v.* JET SINGJEE UBBY SINGJEE
3 Moo. I. A. 245 : 6 W. R. P. C. 46

9. ———— *Presumption as to legitimacy of son—Custom of primogeniture* Observations on the law laid down by the Privy Council regarding the presumption of legitimacy which arises, under the Mahomedan law, in the absence of proof of marriage, when a son has been uniformly treated by his father and all the members of the family as legitimate. MUHAMMAD ISMAIL KHAN *v.* FIDAYATUNNISSA . I. L. R. 3 All. 723

10. ———— *Legitimacy of son—Presumption of marriage* Where a son has been uniformly treated by his father and all the members of the family as legitimate, a presumption arises under the Mahomedan law that the son's mother was his father's wife. KHAJOOROONISSA *v.* ROWSHAN JEHAN
I. L. R. 2 Calc. 184 : 26 W. R. 36
L. R. 3 I. A. 291

Affirming decision of High Court in ROSHUN JEHAN *v.* ENAET HOSSEIN ENAET HOSSEIN *v.* ROSHUN JEHAN . . . . . 5 W. R. 5

11. ———— *Acknowledgment*

ment should be presumed or not, depends on the circumstances of each particular case. *Ashrufooddoulah Ahmed Hossein Khan* v. *Hyder Hossein Khan, 11 Moo. I. A. 94,* referred to and followed. MAHAMMAD AZMAT ALI KHAN *v.* LALLI BEGUM
I. L. R. 8 Calc. 422
L. R. 9 I. A. 8

12. ———— *Presumption of*

ordinary rules of evidence. A subsequent marriage so far from raising the presumption of a prior marriage, *primâ facie* at least excludes that presumption. ASHRUFOODDOWLAH AHMED HOSSEIN *v.* HYDER HOSSEIN KHAN
7 W. R. P. C. 1 : 11 Moo. I. A. 94

13. ———— *Illegitimacy of*

Court below found against her alleged conversion to the Mahomedan religion, and also found upon the facts that no marriage of the parents as distinguished from concubinage had taken place. The latter finding was affirmed As to the question whether the son born to them had been legitimated by the father's acknowledgment of him: *Held,* that under the Mahomedan law the legitimation of a son ... may be effected by the ... being ... tion of ... ledgment ... d, viz., ... gnition of paternity. *Ashrufooddoula Ahmed ...* v. *Hyder Hossein Khan, 11 Moo. I. A. 94,* referred

MAHOMEDAN LAW—ACKNOWLEDGMENT—*contd.*

to and followed. ABDUL RAZAK v. AGA MAHOMED JAFFER BINDANIM I. L. R. 21 Calc. 666 L. R. 21 I. A. 56

14. ——— Validity of—Acknowledgment of son. Where in a transaction with a third party *A* describes *B* as his son, and *B* speaks of *A* as his father, the acknowledgment of sonship is complete and formal, and, under the Mahomedan law, conclusive against all parties. NUBO KANT ROY CHOWDHRY v. MAHATAB BIBEE 20 W. R. 164

15. ——— *Legitimation of* [illegible]

I. L. R. 8 Calc. 422, referred to. Whether the offspring of an adulterous intercourse can be legitimated by any acknowledgment is an open question. SADAKAT HOSSEIN v. MAHOMED YUSUF I. L. R. 10 Calc. 663 L. R. 11 I. A. 31

16. ——— *Legitimacy—Effect of acknowledgment of sonship.* *Held*, by PETHERAM, *C.J.*, that, according to the Mahomedan law, the effect of an acknowledgment by a Mahomedan that a particular person, born of the acknowledger's wife before marriage, is his son in fact, though the acknowledger may never have treated him as a legitimate son or intended to give him the status of legitimacy, is to confer upon such person the status of a son capable of inheriting as legitimate, unless conditions exist which make it impossible [illegible]

MAHOMEDAN LAW—ACKNOWLEDGMENT—*contd.*

[illegible]

17. ——— *Inheritance—* [illegible]

conferred cannot be destroyed by any subsequent [illegible]

MAHOMEDAN LAW—ACKNOWLEDGMENT—*contd.*

Hossein Khan v. *Hyder Hossein Khan, 11 Moo. I. A. 94; Muhammad Azmat Ali Khan* v. *Lalli Begum, L. R. 9 I. A. 8; I. L. R 8 Calc. 422;* and *Sadakat Hossein* v. *Mahomed Yusuf, L. R. 11 I A. 31; I. L R. 10 Calc. 663,* referred to MUHAMMAD ALLAHDAD KHAN *v.* MUHAMMAD ISMAIL KHAN . . . I. L. R. 10 All. 289

18. ———— *Legitimacy. Held,* that a Mahomedan could not, by acknowledging him as his son, render legitimate a child whose mother at the time of his birth he could not have married by reason of her being the wife of another man. *Muhammad Allahdad Khan* v. *Muhammad Ismail Khan, I. L. R. 10 All. 289,* followed. LIAQUAT ALI *v* KARIM-UN-NISSA
I. L. R. 15 All. 396

19. ———— *Acknowledgment, effect of, on illegitimate children* The doctrine of acknowledgment is not applicable to a case in which the paternity of the child is known, and it cannot

followed. AIZUNNISA KHATOON *v* KARIMUNNISSA KHATOON . . . I. L. R. 23 Calc. 130

20. ———— *Acknowledgment, effect of—Legitimacy of children—Fornication—Sunni Mahomedans* Under the Mahomedan law, where a child is begotten by a Mahomedan father by a Hindu prostitute living with him, no acknowledgment by the father can confer on the child the status of legitimacy. BHAN BIBI *v.* LALON BIBI
I. L. R. 27 Calc. 801

21. ———— *Mode of acknow-*

22. ———— *Form of acknowledgment—Evidence of marriage.* The acknowledgment need not be of such a character as to be evidence of marriage. WUHEEDUN *v.* WUSEE HOSSEIN
15 W. R. 403

23. ———— *Legitimacy of children—Presumption as to marriage.* Where a Mahomedan lady sued for a declaration of the validity of her marriage with the man with whom she had lived and of the legitimacy of their children, and relied upon the position which her reputed

I. A. 94, that though the presumption of legitimacy "follows from the bed," and legitimacy may be inferred from the treatment shown during lifetime to a woman and her children, yet a Court, in dealing with this subject, would not be justified in making any presumption of fact which a rational view of the principles of evidence would exclude; and that as the force of presumptions of fact must vary with varying circumstances,—and in the present case the circumstances were all such as to throw the Court upon direct evidence rather than upon presumptions,—the Court could not, in the absence of substantive evidence, allow the claim. The appeal was accordingly dismissed. The circumstances above referred to, as throwing the Court upon

v KOOLSOOM. BUTOOLUN *v.* LLYOD
25 W. R. 444

24. ———— *Illegitimate son—Informal acknowledgment* The son of a Mahomedan by a slave girl, if acknowledged by his father, is entitled to the same share as the son of a

2 Bom. 265

25. ———— *Legitimacy of*

26. ———— Acknowledgment by brother—*Brotherhood—Nasab—Illegitimacy.* A man cannot acknowledge a brother so as to establish the *nasab.* SHAHEBZADI BEGUM *v.* HIMMUT BAHADUR 4 B. L. R. A. C. 103: 12 W. R. 512

s c. affirmed on review. HIMMUT BAHADOOR *v.* SHAHAZADA BEGUM . . 14 W. R. 125

27. ———— *Validity of ac-*

died, and after his death his share of the pro- widow and *M* to recover

The acknowledgment by one man of

MAHOMEDAN LAW—ACKNOWLEDGMENT—*concld*

brother is not by Mahomedan law valid so as to be obligatory on the other heirs, but is binding against the acknowledger HIMMUT BAHADUR *v* SHAHEBZADI BEGUM . 13 B. L. R. 182 21 W. R. 113 L. R. 1 I. A. 23

affirming decision of High Court in preceding case .

28 ——— Doctrine of Acknowledgment—*Legitimacy—Name of a person whether indicates the person to be Mahomedan or Hindu* Unless there is an absolute bar or impediment to a valid marriage, acknowledgment has the effect of legitimation according to Mahomedan law, where either

The doctrine of acknowledgment is an integral portion of the Mahomedan family law and the conditions under which it will take effect, must be determined with reference to Mahomedan jurisprudence, rather than to the Evidence Act *Mahomed Allahdad Khan v Mahomed Ismail Khan, I L R. 10 All. 289, Mahatala v Prince Ahmed, 10 C L R. 293,* referred to *Abdul Razack v. Aga Mahomed, L R 21 I. A 56 s c. I. L. R. 21 Calc 666,* distinguished FAZIL-ATUNNESSA *v* KAMARUNNESSA (1905) . . 9 C. W. N. 325

MAHOMEDAN LAW—ARIAT.

29. ——— *Mutation of names—Ariat* A Mahomedan caused mutation

that she had no power to transfer the property in any way, and that she would continue to hold and

I. L. R. 28 All. 264

MAHOMEDAN LAW—BILL OF EXCHANGE

——— Notice of dishonour. Notice of dishonour of a bill of exchange is not necessary by Mahomedan law. GAPINATH *v* ABBAS HOSSEIN 7 B. L. R. 434 note

MAHOMEDAN LAW—CONTRACT.

1. ——— Consideration—*Relationship.* By Mahomedan law an agreement to pay an annuity, though signed and registered, has not the effect of a deed in English law, but requires a consideration to support it The relationship existing between cousins is not a sufficient consideration to support

MAHOMEDAN LAW—CONTRACT—*concld*

such an agreement. JAFAR ALI NIZAM ALI *v.* AHMAD ALI IMAM HAIDARBAKSH 5 Bom. A. C. 37

2. ——— Mortgage—*Redemption of separate mortgagee from debt.* The rule that if the owner of different estates mortgage them to one person separately for distinct debts, or successively to secure the same debt, the mortgagee may insist that one security shall not be redeemed alone, applies to a Mahomedan mortgage. VITHAL MAHADEV *v.* DAUD VALAD MUHAMMAD HUSEN 6 Bom. A. C. 90

MAHOMEDAN LAW—CUSTODY OF WIFE.

See HABEAS CORPUS . 13 B. L. R. 160

——— Rights of mother and husband By Mahomedan law the mother is entitled to the

all living together, to Calcutta *In the matter of* KHATIJA BIBI . . . 5 B. L. R. 557
See In the matter of MOHIM BIBI 13 B. L. R. 160

MAHOMEDAN LAW—CUSTOM.

See CONVERTS . I. L. R. 20 Bom. 53

See JURISDICTION OF CIVIL COURT—RELIGION . I. L. R. 15 Mad. 355

See LIMITATION ACT, 1877, Sch. II, ART. 120 . . I. L. R. 21 Calc. 157 L. R. 20 I. A. 155

See MAHOMEDAN LAW—ENDOWMENT I. L. R. 13 Bom. 555 I. L. R. 22 Calc. 324 L. R. 22 I. A. 4 I. L. R. 19 All. 211

See MAHOMEDAN LAW—KAZI. I. L. R. 18 Bom. 103

See RELINQUISHMENT OF, OR OMISSION TO SUE FOR, PORTION OF CLAIM. I. L. R. 21 Calc. 157 L. R. 20 I. A. 155

——— evidence of—

See MAHOMEDAN LAW—INHERITANCE. I. L. R. 23 All. 20

1. ——— Kazi, appointment of—*Hereditary office, grant of.* In the absence of an established local custom to that effect, the office of

MAHOMEDAN LAW—CUSTOM—*contd.*

Kazi is not hereditary. *Quære:* Whether such a custom would be valid. JAMAL WALAD AHMED *v.* JAMAL WALAD JALLAL . I. L. R. 1 Bom. 633

2. ———— **Custom of right to eject on sale**—*Lease—Sale by lessor.* A Mahomedan resid-

purchaser sued to eject the defendant. The plaintiff tendered evidence to show that by the custom of Zanzibar the defendant's tenancy was determined upon the sale by the landlord. This evidence was refused. *Held,* that the alleged custom, even if proved, was invalid. It was unreasonable, as enabling a man, after having granted a lease, to deprive the lessee of the entire benefit of his lease. DESOUZA *v.* PESTANJI DHANJIBHAI

I. L. R. 8 Bom. 408

3. ———— **Exclusion from inheritance of females by sons**—*Labis—Ravuthans of Palgat—Mahomedan religion—Hindu law of inheritance—Evidence necessary to support valid custom.* A claim by the widow of *S*, Ravuthan, a

Hindu law, females are excluded from inheritance if sons or sons' sons exist. In two instances it was proved that women of this class had obtained shares under Mahomedan law by suits without this plea having been put forward. The District Munsif described these cases as interruptions, and found on the evidence that the custom was proved. On appeal this decree was confirmed by the Subordinate Judge *Held,* that no valid custom was established by the evidence. A custom, to be valid, must be consciously accepted as having the force of law. MIRABIVI *v.* VELLAYANNA . I. L. R. 8 Mad. 464

4. ———— **Division of estate in cases of intestacy**—*Impartible estate—Beng. Reg XI of 1793—Beng. Reg. X of 1800.* The family usage that a zamindari has never been separated, but has

among the heirs of the deceased according to the Mahomedan or Hindu law. Regulation X of 1800 does not apply to undivided zamindaris in which a custom prevails that the inheritance should be indivisible, but only to jungle mehals and other entire districts where local customs prevail, and therefore only partially, and to that extent repeals Regulation XI of 1793 DEEDAR HOSSEIN *v.* ZUHOOROONNISSA . . 2 Moo. I. A. 441

5. ———— **Public worship in mosque**—*Injunction restraining defendants from interrupting religious ceremonies in a musjid—Right of*

imam for officiating in a musjid where those cere-

by the duly authorized imam. On the lower

Mahomedans Nor was there any rule of law that, when public worship had been performed in a

and by proof of their actual practice The judgments in *Empress* v. *Ramzan, I. L R. 7 All. 461,* and *Ataulla* v. *Azimulla, I L. R 12 All. 494,*

MAULA BAKSH . . I. L. R. 16 Calc

L. R. 16 I. A. 59

—*Succession*

MAHOMEDAN LAW—CUSTOM—*concld.*

by her legitimate kindred *Held*, that an "adoption," so called, in conformity with those practices, had not operated to separate her from the family in which she was born The mode in which her property had been acquired was not the subject of the present question, which was only

7 ——— Right of performing rites at the graves—*Graveyard—Land formerly used as graveyard—Bom. Reg IV of 1827, s 12.* Certain land at Dharwar, which had been formerly been used as a graveyard by the Mahomedan community there, but which had been disused as such for twenty or thirty years, was sold by the owner to defendant 4, who thereupon commenced to prepare the foundations of a house which he proposed to build upon it. The plaintiffs, who were Mahomedan residents at Dharwar, brought this suit, alleging that the Mahomedans of Dharwar were accustomed to perform religious rites and ceremonies at the graves in the said land, and praying for a declaration that they were entitled so to do, and for an injunction restraining the defendants from obstructing them *Held*, that they were entitled to the declaration and injunction prayed for. *Per* FULTON, *J*—By the custom of the country, founded on a sentiment which may almost be described as universal, the ground in which human relics are interred is regarded as for ever sacred The members of the family of the dead are in the habit of performing certain religious services at their tombs The ownership of the soil may be vested in others, but

MAHOMEDAN LAW—CUTCHI MEMONS

See HINDU LAW—INHERITANCE—SPECIAL LAWS—CUTCHI MEMONS

1. ——— Hindus—*Hindu Wills Act, s 2—Probate of will.* Cutchi Memons are not Hindus

ISMAIL . . . . I. L. R. 6 Bom. 452

2. ——— Law of inheritance appli-

MAHOMEDAN LAW—CUTCHI MEMONS—*concld*

ABDOOL CADUR HAJI MAHOMED *v* TURNER
I. L. R 9 Bom. 158

MAHOMEDAN LAW—DEBTS.

See DEBTOR AND CREDITOR.
I L. R. 8 All. 178

See REPRESENTATIVE OF DECEASED PERSON.

See SALE IN EXECUTION OF DECREE—DECREES AGAINST REPRESENTATIVES.

1. ——— Decree against heir of debtor—*Effect of decree against one heir* Under Mahomedan law, a decree against one heir of a deceased debtor cannot bind the other heirs SITANATH DAS *v* ROY LUCHMIPUT SINGH . 11 C. L. R. 268

2 ——— Consent decree against one heir, effect of—*Heir of deceased debtor—Intestacy—Succession—Parties—Suit by creditor of intestate Mahomedan—Representation of deceased debtor. Per* GARTH, *C.J*—A decree by consent

framed if all the persons in possession of that particular portion of the estate which it is intended to charge are made parties to it The right of a Mahomedan heir claiming the property of his

3. ——— Creditors of deceased person—*Alienation by her—Purchaser from heir of Mahomedan—Lis pendens* The creditor of a deceased Mahomedan cannot follow his estate into the hands of a *bonâ fide* purchaser for value, to whom it has been alienated by the heir-at-law, whether the

MED WAJID *v.* TAYYUBAN
I L. R. 4 Calc. 402 : L. R. 5 I. A. 211

4. ——— *Alienation by heirs—Rights of mortgagee.* The debts of a deceased Mahomedan are not a charge upon the estate which gives the creditor a priority over all persons who after his death purchase or take a mortgage of his estate. See *Bazayet Hossein* v. *Dooli Chund,*

MAHOMEDAN LAW—DEBTS—*contd.*

L. R. 5 I. A. 211, I. L. R. 4 Calc. 402. LAND MORTGAGE BANK *v.* BIDYADHARI DASI

7 C. L. R. 460

211, followed. LAND MORTGAGE BANK *v.* ROY LUCHMIPUT SINGH . . . 8 C. L. R. 447

6. ——— *Sale in execution of money-decree against the representatives of deceased Mahomedan—Rights of purchaser at execution-sale against mortgagee—Notice.* In execution of a money-decree against the heirs of a deceased Mahomedan for a debt incurred by him, *A* purchased certain property which had been allotted to the widow of the deceased in lieu of dower and of her share of the inheritance. Previously to the purchase, however, the widow had mortgaged the same property to *B*, who, at the time of the mortgage, knew of the debt for which the decree was obtained. In a suit by *B* against *A* on the mortgage, it was not shown that there were not assets in the hands of the heirs-at-law to satisfy the debt due to *A's* vendor. *Held*, that *B* was entitled to recover. *Bazayet Hossein v. Dooli Chund, L R 5 I. A. 211*, followed. NARSINGH DASS *v.* NAJMOODDIN HOSSEIN

I. L. R. 8 Calc. 20 : 10 C L. R. 225

7. ——— *Administration, suit for—Suit by creditor of deceased Mahomedan against his heir—Sale in execution of decree.*

and daughter. In execution of these decrees, portions of the property were sold : thereupon two married sisters of the deceased, who lived with their husbands apart from the widow and daughter,

When a creditor of a deceased Mahomedan sues the heir in possession, and obtains a decree against the assets of the deceased, such a suit is to be looked upon as an administration suit ; and those heirs of the deceased who have not been made parties cannot, in the absence of fraud, claim anything but what remains after the debts of the testator have been paid *Nuzeerun v Ameerooddeen, 24 W. R. 3; Assamathemnessa Bibee v. Roy Lutchmeeput Singh, I. L R 4 Calc. 142; Kishwur Khan v. Jewun Khan, 1 Sel Rep. 25, Khajah Hidayutoollah v. Rai Jan Khanum, 3 Moo. I. A. 295;* and *Bazayet Hossein v Dooli Chand, L. R 5 I. A. 211*, referred to. MUTTYJAN *v.* AHMEDI ALLY

I. L. R. 8 Calc. 370 : 10 C. L. R. 346

8. ——— *Suit by creditor of deceased Mahomedan against his heir—Administration, suit for.* In a suit against the widow of a Mahomedan on the ground that she was in possession of his estate, and where there were other heirs of the deceased, *held*, following the principle laid down in the case of *Mutty Jan v. Ahmed Ally, I. L. R. 8 Calc. 370*, that the suit was properly brought against the widow, and that her liability was to be

subject at her husband's death AMIR DULHIN *alias* MOHAMDI JAN *v.* BAIJ NATH SINGH *alias* BAIJU SINGH . . I. L. R. 21 Calc 311

9. ——— *Suit by creditors against representatives.* Two of the widows of a deceased Mahomedan sold a portion of his real estate to satisfy decrees obtained by creditors of the deceased against them as his representatives. The sale-deed was executed by them on behalf of the plaintiff, a daughter of the deceased, she being a minor, in the assumed character of her guardians. *Held*, if the plaintiff was in possession, and was not a party to, or properly represented in, the suits in

sale was effected. HAMIR SINGH *v.* ZAKIA

I. L. R. 1 All. 57

HENDRY *v.* MUTTYLALL DHUR

I. L. R. 2 Calc 395

10. ——— *Succession—Suit against one of the heirs of a deceased person for debt.* The heirs to a deceased Mahomedan divided his estate among themselves according to their shares under the Mahomedan law of inheritance, a small debt being due from the estate at the time of division. Two of the heirs were subsequently sued for the whole of such debt *Held*, that, inasmuch

for a share of such debt proportion... share of the estate they had taken. *Hamir Singh v. Zakir, I. L R 1 All. 57*, referred to. PIRTHIPAL SINGH *v.* HUSAINI JAN . I. L. R 4 All. 361

11. ——— *Inheritance—Devolution not suspended till payment of deceased ancestor's debts—Decree in respect of debt ... against heirs in possession ... other heirs ... so as to ... in execution—Recovery of possession by other heirs contingent on payment of proportionate shares of debt for which decree was passed.* Upon the death of a Mahomedan intestate, who leaves unpaid debts whether large or small with reference to the value of

MAHOMEDAN LAW—DEBTS—*contd.*

not bind the other heirs who, by reason of absence or other cause, are out of possession, so as to convey to the auction-purchaser, in execution of such a decree, the rights and interests of such heirs as were not parties to the decree In execution of a decree for a debt due by a Mahomedan intestate, which was passed against such of the heirs of the deceased as were in possession of the debtor's estate, the decree-holder put up for sale and purchased certain property which formed part of the said estate. One of the heirs, who was out of possession, and

that the plaintiff was not entitled to recover from the auction-purchaser, in execution of the decree, possession of his share in the property sold, without such recove
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R 54, *Assamathennessa Bibee* v. *Roy Lutchmeeput Singh, I L R 4 Calc 142*, *Mazhar Ali* v. *Budh Singh, I L R. 7 All 297*, *Bachman* v *Bachman, I. L R 6 All 583*, *Hamir Singh* v *Zakia, I L R. 1 All 57*, and *Muttyjan* v *Ahmed Ally, I. L. R. 8 Calc 370*, referred to by MAHMOOD, J. JAFRI BEGAM *v* AMIR MUHAMMAD KHAN

I L R 7 All. 822

12 ———————— *Inheritance—Devolution not suspended till payment of deceased ancestor's debts* A creditor of *A*, a deceased

and, in execution of the decree, the whole estate was sold by auction on the 21st March 1878, and purchased by the decree-holder himself. *J*, another of

immediately upon the death of *A*, the share of his

without payment to the defendant of his proportionate share of the debts of *A*, which were paid off from the proceeds of the auction-sale of the 21st March 1878 *Jafri Begum* v *Amir Muhammad Khan, I L R 7 All 822*, followed. MUHAMMAD AWAIS *v* HAR SAHAI . . I. L. R. 7 All 716

13 ——— ——— ———— *Liability of one of several heirs to pay ancestors' debts, when but for his own action debt would be barred by limitation—Justice, equity, and good conscience, application of principle of—Act VI of 1871, s 21.* *A*, a Hindu and a creditor of *B*, a deceased Mahomedan, sued *C*, *D*, *E*, and *F*, his heirs, to recover a sum of money alleged to be due on a roka, alleging that they were in possession of *B*'s estate, and praying for a decree against the estate upon that footing. It was not disputed that the debt would have been barred by limitation but for a part payment made by *C*, and endorsed by him on the back of the roka *D*, *E*, and *F* were no parties to such payment, and it was found not to have been made with their consent The first Court, considering that collusion existed between *A* and *C*, and having regard to the fact

that appeal *A* then preferred a special appeal to the High Court, making *D*, *E*, and *F* parties.

I. L R 11 Calc 421

14 ———————— *Money due by a deceased Mahomedan—Suit by a creditor against only one of the heirs of the deceased—Right of suit*
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MAHOMEDAN LAW—DEBTS—*contd.*

L. R. 5 I. A. 211, I. L. R. 4 Calc. 402. LAND MORTGAGE BANK *v.* BIDYADHARI DASI
7 C. L. R. 460

5. ———— The creditor of a deceased Mahomedan cannot follow his estate into the hands of a *boná fide* purchaser from his heir, *Bazayet Hossein* v. *Dooli Chund, L. R. 5 I. A. 211,* followed. LAND MORTGAGE BANK *v.* ROY LUCHMIPUT SINGH . . . **8 C. L. R. 447**

6. ———— *Sale in execution of money-decree against the representatives of deceased Mahomedan—Rights of purchaser at execution-sale against mortgagee—Notice.* In execution of a money-decree against the heirs of a deceased Mahomedan for a debt incurred by him, *A* purchased certain property which had been allotted to the widow of the deceased in lieu of dower and of her share of the inheritance. Previously to the purchase, however, the widow had mortgaged the same property to *B*, who, at the time of the mortgage, knew of the debt for which the decree was obtained. In a suit by *B* against *A* on the mortgage, it was not shown that there were not assets in the hands of the heirs-at-law to satisfy the debt due to *A's* vendor. *Held*, that *B* was entitled to recover. *Bazayet Hossein* v. *Dooli Chund, L. R. 5 I. A. 211,* followed NARSINGH DASS *v.* NAJMOODDIN HOSSEIN
I. L. R. 8 Calc. 20 : 10 C. L. R. 225

7. ———— *Administration, suit for—Suit by creditor of deceased Mahomedan against his heir—Sale in execution of decree.* After the death of a Mahomedan, several of his creditors sued his widow and daughter, and obtained decrees against the assets of the deceased, which assets had come into the possession of the mother and daughter. In execution of these decrees, portions of the property were sold: thereupon two married sisters of the deceased, who lived with their husbands apart from the widow and daughter,

heir in possession, and obtains a decree against the assets of the deceased, such a suit is to be looked upon as an administration suit; and those heirs of the deceased who have not been made parties cannot, in the absence of fraud, claim anything but what remains after the debts of the testator have been paid *Nuzeerun* v *Ameerooddeen, 24 W. R. 3;*
Assamathe
I. L. R.
Khan, 1 S
Jan Kha
Hossein v
to. MUTTYJAN *v.* AHMEDI ALLY
I. L. R. 8 Calc. 370 : 10 C. L. R. 346

8. ———— *Suit by creditor of deceased Mahomedan against his heir—Administration, suit for.* In a suit against the widow of a Mahomedan on the ground that she was in possession of his estate, and where there were other heirs of the deceased, *held*, following the principle laid down in the case of *Mutty Jan* v. *Ahmed Ally, I. L. R. 8 Calc. 370,* that the suit was properly brought against the widow, and that her liability was to be measured, not by the extent of her interest in her late husband's property, but by the amount of the assets of his estate which had come into her hands, and which she had not duly disbursed in the discharge of the liabilities to which the estate was subject at her husband's death. AMIR DULHIN *alias* MOHAMDI JAN *v.* BAIJ NATH SINGH *alias* BAIJU SINGH . . **I. L. R. 21 Calc. 311**

9. ———— *Suit by creditors against representatives* Two of the widows of a deceased Mahomedan sold a portion of his real estate to satisfy decrees obtained by creditors of the deceased against them as his representatives. The sale-deed was executed by them on behalf of the plaintiff, a daughter of the deceased, she being a minor, in the assumed character of her guardians. *Held*, if the plaintiff was in possession, and was not a party to, or properly represented in, the suits in

share, but subject to the payment by her of her share of the debts for the satisfaction of which the sale was effected. HAMIR SINGH *v.* ZAKIA
I. L. R. 1 All. 57

HENDRY *v* MUTTYLALL DHUR
I. L. R. 2 Calc 395

10. ———— *Succession—Suit against one of the heirs of a deceased person for debt.* The heirs to a deceased Mahomedan divided his estate among themselves according to their shares under the Mahomedan law of inheritance, a small debt being due from the estate at the time of division. Two of the heirs were subsequently sued for the whole of such debt *Held*, that, inasmuch
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All. 361

SINGH *v.* HUSAINI JAN

11. ———— *Inheritance—Devolution not suspended till payment of deceased ancestor's debts—Decree in respect of deceased ancestor's debts passed against heirs in possession of estate—Decree not binding on other heirs not parties thereto and not in possession, so as to convey their shares to auction-purchaser in execution—Recovery of possession by other heirs contingent on payment of proportionate shares of debt for which decree was passed.* Upon the death of a Mahomedan intestate, who leaves unpaid debts whether large or small with reference to the value of

MAHOMEDAN LAW—DEBTS—*contd.*

his estate, the ownership of such estate devolves immediately on his heirs, and such devolution is not contingent upon and suspended till payment of such debts. A decree relative to his debts, passed in a contentious or non-contentious suit against only such heirs of a deceased Mahomedan debtor as are in possession of the whole or part of his estate, does not bind the other heirs who, by reason of absence or other cause, are out of possession, so as to convey to the auction-purchaser, in execution of such a decree, the rights and interests of such heirs as were not parties to the decree. In execution of a decree for a debt due by a Mahomedan intestate, which was passed against such of the heirs of the deceased as were in possession of the debtor's estate, the decree-holder put up for sale and purchased certain property which formed part of the said estate. One of the heirs, who was out of possession, and who was not a party to these proceedings, brought a suit against the decree-holder for recovery of a

auction-purchaser, in execution of the decree, possession of his share in the property sold, without such recovery of possession being rendered contingent upon payment by him of his proportionate share of the ancestor's debt of which the decree was passed, and in satisfaction whereof the sale took place. *Wahidunnissa* v *Sheobruttun, 6 B L. R 54*, *Assamathennessa Bibee* v *Roy Lutchmeeput Singh, I. L. R 4 Calc 142*, *Mazhar Ali* v *Budh Singh, I. L R 7 All 297*, *Bachman* v *Bachman, I. L R 6 All 583*, *Hamir Singh* v. *Zakia, I. L R. 1 All 57*; and *Muttiyan* v. *Ahmed Ally, I. L. R. 8 Calc 370*, referred to by MAHMOOD, J. JAFRI BEGAM v AMIR MUHAMMAD KHAN

I L R 7 All. 822

12 ———————— *Inheritance—Devolution not suspended till payment of deceased ancestor's debts.* A creditor of *A*, a deceased Mahomedan, under a hypothecation bond, obtained a decree on the 20th December 1876 for recovery of

estate claimed in the suit devolved upon *J*, that she being no party to the decree of the 20th December 1876, her share in the property could not be affected by that decree, nor by the execution-sale of the 21st March 1878; that upon her death that share devolved upon her son, who conveyed his rights to the plaintiff; that the plaintiff was therefore entitled to recover possession of the share which he has purchased, but that he could not do so

MAHOMEDAN LAW—DEBTS—*contd*

without payment to the defendant of his proportionate share of the debts of *A*, which were paid off from the proceeds of the auction-sale of the 21st March 1878. *Jafri Begum* v. *Amir Muhammad Khan, I. L. R 7 All 822*, followed MUHAMMAD AWAIS v HAR SAHAI . . I. L. R. 7 All 716

13 ———————— *Liability of one of several heirs to pay ancestors' debts, when but for his own action debt would be barred by limitation—Justice, equity, and good conscience, application of principle of—Act XI of 1871, s 24.* *A*, a Hindu and a creditor of *B*, a deceased Mahomedan, sued *C*, *D*, *E*, and *F*, his heirs, to recover a sum of

was found not to have been made with their consent.

were not liable for any portion of the debt *A* accepted this decision and did not appeal. *C* appealed on the ground that he could only, under the Mahomedan law, be held liable for a part of the debt in proportion to the amount of *B*'s estate which had come into his hands. The lower Appellate Court decided in *C*'s favour, and varied the decree by directing that *A* was only entitled to recover two-fifths of the debt from *C*, that being the amount of *C*'s share. *D*, *E*, and *F* were not made parties to that appeal *A* then preferred a special appeal to the High Court, making *D*, *E*, and *F* parties. *Held*, that, under the circumstances of the case,

would not, under the circumstances of the case, be equitable to hold *C* liable for the whole of the debt. BUSSUNTERAM MARWARY v KAMALUDDIN AHMED

I L R 11 Calc 421

14 ———————— *Money due by a deceased Mahomedan—Suit by a creditor against only one of the heirs of the deceased—Right of suit—Debtor and creditor.* A suit for money due by a deceased Mahomedan lies against one of his heirs in respect of his share in the property left by the

MAHOMEDAN LAW—DEBTS—*contd.*

Jan, *I. L. R. 4 All. 401*, referred to. AMBASHANKAR HARPRASAD *v.* ALI RASUL.

I L R. 19 Bom 273

15. ——————— *Mahomedan family—Mortgage by Mahomedan father—Suit by mortgagee against minor son represented by mother after mortgagor's death and decree for possession—Some of the heirs not parties—Subsequent suit by daughters as heirs of mortgagor for redemption.* When in a mortgage suit the debt is due from the father, and after his death the property is brought to sale in execution of a decree against the widow or some of the heirs of the mortgagor, and the whole property is sold, then the heirs not brought on the record cannot be permitted to raise the objection that they are not bound by the

Bom. 597, and *Khurshetbibi* v. *Keso, I. L R. 12 Bom 101*, referred to and followed. One *N* mortgaged his property in 1862 to *B* and died in 1864, leaving a widow, a son, and two daughters. In 1864, *B* (the mortgagee) sued the minor son, represented by his mother, for possession as owner ... *decree on* ... possession ... were not ... then sold

I. L R. 20 Bom. 338

16. ——— Power of alienation of heir *—Executor—Purchaser from heir.* *A*, a Maho-

perty was put up to sale in execution of *B's* decree, and *B* became the purchaser, and now sued to obtain possession from *C* *Held*, that the mere fact of the property having once belonged to the estate of *A* did not entitle *B* to follow it in the hands of *C*, so as to enable him to recover possession without redeeming. The heir of a Mahomedan may, as executor, sell a portion of the estate of the deceased, if necessary, for the payment of debts; and such sale will not be set aside if the purchaser acted *bonâ fide*. ENAYET HOSSEIN *v.* RAMZAN ALI

1 B. L R A C. 172 : 10 W. R. 216

See HASAN ALI *v.* MEHDI HUSAIN

I L R 2 All. 533

17 ——————— *Sale for debts of father.* *M*, a Mahomedan, inherited certain property from his father, which, while he was a minor, his mother sold to the defendant, in good faith, for the discharge of a debt adjudged to be due to the defendant by *M's* father. *M*, when he became of age, sold the same property to the plaintiff, who sued to obtain possession thereof by avoidance of the sale to the defendant. *Held*, that the plaintiff, having no better title or other right than *M* could assert, was not competent to maintain the suit, without tendering payment of the debt. *Held*, also, that, even if Mahomedan law were applied, and *M's*

ABDUL RAHMAN . . . . 6 N. W. 268

18. ——————— Liability for assets—*Evidence of receipt of assets* Where it is sought to fix a person under the Mahomedan law with liability for the debt of a person deceased, by reason of the ... the creditor to

19. ——————— Priority. Under the Mahomedan law, the estate of a deceased person must be *applied to the payment of his funeral expenses*

right to sue such ... estate, but they are entitled to have recourse to a single heir only in a case where all the effects are in the hands of that heir PATHUMMABI *v* VITTIL UMMACHABI (1902) I. L. R. 26 Mad. 734

20. ——————— Partition—*Partition of* ... *Sisters* ... *set* ... *suit* ... *act* Plaintiff's husband ... of her marriage, sent her father R938 for her ... father's ac- ... and ... ame ... lace ... hich ... minor, was represented ... her ... usband owed ... owed him ... as, with the ... ist the sum ... the balance ... the plaintiff ... On a suit ... taining her ... was beyond ... gh he might have been plaintiff's guardian during her minority, to set off a debt due to her from the estate against the debt due by himself to it, and that the defendant could not rely on that transaction as binding on the plaintiff. Nor did it make any difference that

the plaintiff, while a minor, assented thereto. The transaction was really in the nature of a contract, and the fact that the minor was privy to it could not bind her. HAYATH BIHIMASAHEBA *v.* SYAHSA MEYA (1904) . I L. R. 27 Mad. 10

MAHOMEDAN LAW—DIVORCE.

1. ——— Validity of divorce—*Release of dower by wife—Evidence of divorce* According to the Mahomedan law, the non-payment by the

created by the husband's repudiation of the wife and the consequent separation The husband having distinctly alleged a divorce by khola, and relied on two instruments,—one an ibranamah (or deed of voluntary release by the wife of her denmohr or dowry) to which there was no satisfactory proof that she ever gave her assent with a knowledge of its contents, and a kholanamah

legal effect when used as a defence against the wife's claim to her dowry BUZL-UL-RUHEEM *v* LUTEEFUTOONNISSA

1 W. R. P. C. 57 : 8 Moo. I. A. 379
1 Ind. Jur. O. S. 1

2. ——— Evidence of divorce—*Husband's statement.* The Mahomedan law does not provide for the nature of the evidence required to prove a divorce *Quære* Whether the husband's statement that he has divorced his wife is sufficient proof of the fact BUKSH ALI *v* AMEERUN BEBEE

2 W. R. 208

3. ——— *Necessity of written document* Although writing is not necessary to the validity of a divorce under Mahomedan law, yet where a divorce takes place between persons

4. ——— *Deed of divorce signed in absence of wife, validity of.* An instrument of divorce signed by the husband in the presence of, and given to, the wife's father, was *held* to be valid, notwithstanding that it was not signed in the presence of the wife. WAJ BIBEE *v.* AZMUT ALI . . . . 8 W. R. 23

5 ——— *Marriage.* Where a Mahomedan was shown to have been duly married, her subsequent divorce should not be presumed only from the fact of her husband having taken another woman to live with him, in consequence of which his wife left his house and went to live with a relative, nor from the fact of his having stated in his will that he had no wife, lawful or nicca. NOOR BIBEE *v* NAIYAS KHAN

1 Ind. Jur N. S. 221

6. ——— Right to leave husband—*Man taking another wife.* A Mahomedan in the kubinnamah or deed of dower on his marriage with *S*, stipulated that he should not take a second wife without the permission of *S* *Held*, that *S* was not entitled to leave him upon his taking a second wife without her permission MOHABUTH ALLY *v.* MYMONISSA . . . . . . Marsh. 361

S C. MYMONISSA *v.* MOHABUTH ALLY 2 Hay 404

sent. *Held,* that the Mahomedan law sanctioned such an agreement, and that the wife, on proof of her husband having married a second time without her consent, was entitled to a divorce BADARANISSA BIBEE *v.* MAFIATTALA

7 B. L. R. 442 : 15 W. R. 555

8. ——— Mode of divorce—*Charge of adultery—Ill-usage.* A charge of adultery by a

pays the dower, in the absence, that is, of any sufficient answer to his claim Ill-treatment by him and his second wife would justify the first wife in leaving him. JAUN BEEBEE *v.* BEPAREE

3 W. R. 93

9. ——— *What amounts to divorce—Revocable divorce* Under Mahomedan law, no special expressions are necessary to consti-

10 ——— *Divorce in absence*

MAHOMEDAN LAW—DIVORCE—*contd.*

divorce three times successively before the Town Kazi of Trichinopoly. Defendant directed also that the letter of divorce should be sent to the plaintiff, but there was no evidence of her having received it. *Held*, upon special appeal, that it was clear upon the authorities that there had been a valid *divorce. The compressing the expression of the intention into one sentence* seems, on the authorities, not to affect the legality of the repudiation, although some doctors consider the process immoral. SHERIF SAIB *v.* USANABIBI AMMAL 6 Mad. 452

11. ———— *Khoola divorce.* [illegible]

[illegible] though granted under compulsion VADAKE VITIL ISMAL *v.* ODAKEL BEYARUTTI UMAR I. L. R. 3 Mad. 347

12. ———— *Wife's right of option, non-user of.* Under Mahomedan law, where [illegible]

need not be limited to any particular period but may be absolute as regards time Such option is *not lost by non-user where there is nothing in the* contract between the parties obliging the wife to exercise the option directly a breach of the condition occurs. ASHRUF ALI *v.* ASHAD ALI 16 W. R. 260

13. ———— *Pronunciation of word "talak" by husband.* The mere pronunciation of the word "talak" three times by the husband, without its being addressed to any person, is not sufficient to constitute a valid divorce by Mahomedan law. *Semble* That a divorce pronounced in due form by a man against a woman who is in fact his wife dissolves the marriage, though he pronounces it under a belief that she is not his wife. FURZUND HOSSEIN *v.* JANU BIBEE I. L. R. 4 Calc. 588

14. ———— *Divorce by one acting on compulsion from threats* According to Mahomedan law, the divorce of one acting upon compulsion from threats is effective. IBRAHIM MULLA *v.* ENAYETUR RUHMAN 4 B. L. R. A. C. 13 : 13 W. R. 460

15 ———— *Repudiation by ambiguous expression—Custody of minor children.* Where a Mahomedan said to his wife when she insisted against his wish on leaving his house and going to that of her father, that if she went she [illegible]

MAHOMEDAN LAW—DIVORCE—*contd.*

wife, being used with intention, constituted, under Mahomedan law, a divorce which became absolute if not revoked within the time allowed by that law. *Held*, also, that the divorce having become absolute, [illegible] not [illegible] until [illegible] ALI *v.* IMTIAZAN . . . . I. L. R. [illegible] All 71

16. ———— *Zihar—Mutta form of marriage. Quære* · Whether the form of divorce called *zihar* may be exercised in the mutta form of marriage. *In the matter of the petition of* LUDDUN SAHIBA *v.* KAMAR KUDDER I. L. R. 8 Calc. 736 : 11 C. L. R. 237

[illegible] 5 Bom. Cr. [illegible]

18 ———— Shiah school—mutta marriage—*Gift of term.* In a suit brought by a Mahomedan of the Shiah sect against his wife, belonging to the same persuasion, for a declaration that the relationship of husband and wife had termi- [illegible]

unnecessary, the Court was bound, in administering [illegible] to modify the [illegible] lthough the [illegible] respect of [illegible] nevertheless [illegible] away the unexpired portion of the term for which the marriage was contracted, and the consent or acceptance on the part of the wife *is not necessary for the dissolution of the marriage.* MAHOMED ABID ALI KUMAR KADER *v.* LUDDEN SAHIBA I. L. R 14 Calc. 276

19 ———— Divorce by wife. Under the Mahomedan law, a husband may give his wife the power to divorce herself from him according to the form prescribed by that law for divorce by the husband. HAMIDOOLLA *v.* FAIZUNNISSA I. L. R. 8 Calc. 327 : 10 C. L. R. 291

20. ———— *Effect of divorce—Irrevocable divorce:* According to Mahomedan law, a [illegible] take [illegible]

UNISSA BIBEE . [illegible]

21. ———— *Talak Ladlal—Husband and wife—Order for maintenance upon husband—Effect upon order—Presidency Magistrate's Act, IV of 1877, s. 234—Borah Mahomedans*

which is effected by three repudiations at the same time, appears from the authorities to be sinful, but valid. *In re* ABDUL ALI ISHMAILJI

I. L. R. 7 Bom. 160

So with an order made under Act XLVIII of 1860 (Police Amendment Act), s. 10 *In re* KASAM PIRBHAI . . . . . 8 Bom. Cr 95

22. ——— **Maintenance of wife, order for**—*Criminal Procedure Code, 1872, s 536—"Iddat."* An order for the maintenance of a wife, passed under Ch XLI of Act X of 1872,

95; and *Luddun Sahiba* v. *Kamar Kadar, I L. R. 8 Calc. 736; Madras High Court Proceedings, 2nd December 1879,* referred to and followed The Mahomedan law of divorce relating to the maintenance of a divorced wife during her "iddat" referred to. *In the matter of the petition of* DIN MAHOMED . . . I. L. R. 5 All. 226

23. ——— **Hanafi Sunnis**—*Divorce—Talak-ul bain by one pronouncement in the absence of the wife—Execution of talaknama in the presence of the Kazi—Communication of the divorce to the wife—Marz-ul-maut—Death of the husband before expiration of the period of iddat.* A, a Mahomedan

never communicated to the plaintiff, that a bain talak, such as the present, reduced to manifest and customary writing, took effect immediately on the

derance *ghaliba* or *khauf* or apprehension, that is, that at the given time death must be more probable than life: (ii) there must be some degree of subjective apprehension of death in the mind of the sick person: (iii) there must be some external indi-

claim to inherit to the husband. SARABAI v. RABIABAI (1905) I. L. R. 30 Bom 537

24. ——— **Absence of wife**—*Talak—Dower, suit for—Limitation.* Under the Mahomedan Law, absence of the wife does not make the pronouncement of *talak* void and inefficacious. *Furzund Hossein* v *Janu Bibi, I L. R. 4 Calc. 588,* and *Sarabai* v *Rabiabai, I. L. R 30 Bom 537,* referred to and discussed FUL CHAND *v.* NAZAB ALI CHOWDHRY (1908) . I. L. R. 36 Calc. 184

25. ——— **Marriage contract stipulating wife's option to divorce herself on husband marrying again, when to be exercised.**

first moment she hears the news. The injury done

Faizunnissa, I L. R 8 Calc. 327, applied AYATUNNESSA BEEBEE *v.* KARAM ALI (1908)

I. L. R. 36 Calc. 23

MAHOMEDAN LAW—DOWER.

See DEBTOR AND CREDITOR.
I. L. R. 8 All. 178

See EVIDENCE ACT, s 32
I. L. R. 19 Calc 689
L R. 19 I. A. 157

See JURISDICTION—CAUSES OF JURISDICTION—CAUSE OF ACTION.
I. L. R. 18 All. 400

See RESTITUTION OF CONJUGAL RIGHTS.
I. L R. 8 All. 149
I. L. R. 17 Calc. 670

1. ——— **Dower, proof of claim to**—*Deed of dower, necessity of—Verbal statement* A deed of dower is not in all cases indispensable to the truth and validity of a claim for dower. *Semble:* There appears to be no reason why a mukzernamah or statement made (not on oath before the Court) by parties in a position to know the facts should not have a certain weight. JUMULLA *v.* MULKA . 1 Ind. Jur. N. S. 26

S.C MULLEEKA *v* JUMEELA . 5 W. R. 23

MAHOMEDAN LAW—DOWER—*contd.*

s.c. on appeal to Privy Council. MULLEEKA *v.* JUMEELA
11 B. L. R. 375 : L. R. I. A. Sup. Vol. 135

TAJOO BEEBEE *v.* NOORUN BEEBEE 1 W. R. 31

2. ———— *Verbal contract for dower—Customary dower, evidence of amount of.* A verbal contract of dower for a large sum is admissible only if proved by most clear and satisfactory evidence. A customary dower must be proved by showing a custom of the women of the wife's family to receive, rather than of the men of the husband's family to pay, a certain dower;

unequal marriages, though the means and position of the bridegroom must not altogether be excluded from consideration. NUJEEMOODDEEN AHMED *v.* HOSSEINEE . . . . . 4 W. R. 110

3. ———— *Oral evidence in proof of claim.* The very best description of oral evidence is absolutely necessary to support a claim for dower where no kabinamah is produced. HUSEENA *v.* HUSMUTOONISSA . 7 W. R. 495

ABDOOL JUBBAR CHOWDHRY *v.* COLLECTOR OF MYMENSINGH . . . . 11 W. R. 85

4. ———— Deed in lieu of dower—*Possession—Validity of deed* According to the Mahomedan law, possession under a deed of bye-mokasa executed in lieu of dower is not necessary to its validity. NUSEEBOONISSA *v.* DANUSH ALI
3 W. R. 133

5. ———— Payment by husband to wife—*Presumption of nature of payment—Gift.* Where a husband granted a dower of five lakhs of Lucknow rupees, and subsequently directed Sicca rupees 4,50,000 Company's paper to be set aside for her:—*Held*, under the circumstances, that this was to be presumed to be a payment on account of dower, and not a gift. IFTIKARUNISSA BEGUM *v.* AMJAD ALI KHAN . 7 B. L. R. P. C. 643

6. ———— Right to dower—Where a

stances at the time of marriage or the value of his estate at his death, the plaintiff was only entitled, under the circumstances, to a reasonable amount of dower. *Held*, by the Full Bench, on appeal from the decision of STUART, *C.J.*, that a Mahomedan widow was entitled to the whole of the dower which her deceased husband had on marriage

MAHOMEDAN LAW—DOWER—*contd.*

agreed to give her, whatever it might amount to, and whether or not her husband was comparatively poor when he married, or had not left assets sufficient to pay the dower-debt SUGRA BIBI *v.* MASUMA BIBI . . I. L. R. 2 All. 573

7. ———— *Omission to claim dower in legacy.* According to Mahomedan law, if the widow assents to any person's taking a legacy without putting forward her claim to dower, she cannot afterwards retract her assent. REZZA HOSSEIN *v.* IFATOONNISSA . . 24 W. R. 564

8. ———— Nature of dower—*Dower not specified.* According to Mahomedan law, dower is presumed to be prompt in the absence of express contract, and may be enforced at any time. TADIYA *v.* HASANEBIYARI . . . 6 Mad. 9

9. ———— *Suit for dower—Dower prompt or deferred—Presumption.* According to Mahomedan law, dower, being considera-

ASSAN BIVI AMMAL . I. L. R. [illegible] Mad. [illegible]

10. ———— *Exigible dower, no amount specified as. Held*, where no specific [illegible] exigible, and as

wife a lien on her husband's [illegible]
As to the nature of the wife's claim for dower against the heirs of her husband MAHAR ALI *v.* AMANI . . . 2 B. L. R. A. C. 306

s.c. KHYRATUN *v.* AMANI . 11 W. R. 212

MEHRAN *v.* KUBIRAM
6 B. L. R. 60 note : 13 W. R. 49

12. ———— *Prompt and deferred dower—Custom.* Under Mahomedan law when on marriage it is not specified whether a wife's dower is prompt or deferred, the nature of the dower [illegible] with reference to custom, but [illegible] prompt. The [illegible] be determined [illegible] wife and the [illegible] being at the

MAHOMEDAN LAW—DOWER—*contd.*

same time taken into consideration. TAUFIKUNNISSA v. GHULAM KAMBAR . I. L. R. 1 All. 506

13. ——— Non-payment of prompt dower, effect of—*Husband and wife—Shiah—Sunni—Suit for recovery of wife* A woman of the

[illegible]

... 205

14. ——— *Suit for restitution of conjugal rights—Custom—Prompt and*

[illegible]

dower is prompt, she is entitled, when her husband sues her, to enforce his conjugal rights, to refuse to cohabit with him, until he has paid her her dower, and that notwithstanding that she left his house without demanding her only demands it when he sues, and ding also that she and her husband lready cohabited with consent since age When at the time of marriage of dower has not been stipulated to d," payment of a portion of the dower sidered "prompt" The amount of is to be determined with reference to here there is no custom, it must be

[illegible]

wife had been a prostitute and came prostitutes, it exercised its discretion DAN v. MAZHAR HUSAIN I. L. R. 1 All. 483

——— *Restitution of*

[illegible]

ive years, where the wife's dower is ad has not been paid. *Abdool Shukm-oon-nissa, 6 N. W. 91,* followed. AIN v. ALLAH RAKHI I. L. R. 2 All. 831

——— *Marriage—Suit of conjugal rights—Plea of non-pay- of decree.* According to the Maho-

MAHOMEDAN LAW—DOWER—*contd.*

analogy to price under the contract of sale. Although prompt dower may be demanded at any time after marriage, the wife is under no obligation to make such demand at any specified time during

[illegible]

tion on the part of the husband without her consent; but, although she may plead non-payment, the husband's right to claim cohabitation is antece-

[illegible]

the wife to secure payment. Her right to resist

[illegible]

surrender to her husband resembles the delivery of the goods to the vendee. Her lien for unpaid dower ceases to exist after consummation, unless at such time she is a minor, or insane, or has been forced, in which case her father may refuse to surrender her until payment. It cannot in any case be pleaded so as to defeat altogether the suit for restitution of conjugal rights which is maintainable upon the

[illegible]

v. *Jumeeta, 11 B. L. R. 375*; *Khajooroonissa* v. *Ryeesoonissa, L. R. 2 I. A. 235*; *Nawab Bahadur Jung Khan* v. *Uzeez Begum, N. W. S. D. A. (1843) 46, p. 180*; *Jaun Bibee* v. *Beparee, 3 W. R. 93*; *Gatha Ram Mistree* v. *Mohita Kochin Atteah*

[illegible]

or partly prompt. It also appeared that she had attained majority before the marriage, and that she had cohabited with the plaintiff for three

months after marriage and there was no evidence that she had ever demanded payment of her dower before the suit was filed, or that she had refused co-habitation on the ground of non-payment. Besides the plea already mentioned, she also relied upon allegations of divorce and cruelty, but these allegations were found to be untrue. The lower Appellate Court dismissed the suit, holding that, inasmuch as the plaintiff had not paid the dower-debt at the time when he brought his suit, he had no cause of action under the provisions of the Mahomedan law:—*Held* by the Full Bench, that the lower Appellate Court's view of the Mahomedan law relating to conjugal rights and the husband's obligation to pay dower was erroneous, and that the plaintiff, under the circumstances of the case, had a right to maintain the suit ABDUL KADIR *v.* SALIMA . **I. L. R. 8 All. 149**

17. ——— *Suit by husband for restitution of conjugal rights—Duty of wife to cohabit with husband—Non-payment of dower.* Suit by a Mahomedan to recover possession of his wife, the defendant. Defendant pleaded that she was not bound to return to plaintiff until plaintiff paid R42 prompt for dower, which plaintiff promised to pay by the marriage contract and had not paid. The lower Courts, following *Eidan v. Mazhar Husain, I. L. R. 1 All. 483,* dismissed the suit. *Held,* on appeal, that defendant could not refuse cohabitation on the plea that her dower had not been paid. *Abdul Kadir v. Salima, I. L. R. 8 All. 149,* followed. KUNHI *v.* MOIDIN

I. L. R. 11 Mad. 327

18. ——— **Suit for dower**—*Cause of action.* In a suit by a Mahomedan widow to recover from the heirs of her husband the amount of dower which became due to her after her husband's death, the cause of action must be deemed to have arisen at the time when she was ejected by order of Court from the property left by her husband, and which she held as security for the satisfaction of her dues. SOORMA KHATOON *v.* ATTAFFOONNISSA KHATOON

2 Hay 210

19. ——— *Exigible dower—Cause of action—Deferred dower.* According to Mahomedan law, mojal or exigible dower is payable on demand at any time from the consummation of the marriage up to the death of the wife, and a suit preferred by heirs for their mother's mojal dower will be in time if brought within twelve years of the mother's death. Mowajal or non-exigible or deferred dower is claimable on the dissolution of the marriage either by death or divorce. Shares of dower when received by the legal inheritors thereof cease to be dower, and become part of the recipient's estate. HOSSEINOODDEEN CHOWDHRY *v.* TAJUNNISSA KHATOON . **W. R. 1864, 199**

20. ——— *Prompt and deferred dower.* A Mussalman, on his marriage, entered into a written agreement (unregistered) with his wife to pay her a lakh of rupees, one-fourth as prompt (mojal) dower, the remainder as deferred (mowajal) dower. A separation occurred between the husband and wife, but there was no divorce.

[illegible]

deferred dower:—*Held,* that she could recover the latter. The cause of action in respect of deferred dower could not arise until the husband's death. But the cause of action in respect of prompt dower arises upon demand by the wife and refusal by the husband. KHAJARANNISSA *v.* RISANNISSA BEGUM

5 B. L. R. 84 : 13 W. R. 371

21. ——— *Limitation—Divorce.* Where dower is "prompt," limitation does not begin to run until the dower is demanded or the marriage is dissolved by death or otherwise. The amount claimed,—*viz.* R16,25,000, not having been disputed in the Court of original jurisdiction, was allowed. *Quære.* Whether, in the case of a divorce, a cause of action accrues in respect of deferred dower before the repudiation has become irrevocable, or the dower has been demanded. MULLEEKA *v.* JUMEELA . . **11 B. L. R. 375**

L. R. I. A. Sup. Vol. 135

s.c. in lower Court, JUMEELA *v.* MULLEEKA

W. R. 1864, 252 : 5 W. R. 23

1 Ind. Jur. N. S. 26

22. ——— *Exigible dower—Demand—Application to sue in formâ pauperis—Cause of action.* The prompt or exigible dower of the Mahomedan law may be regarded as a debt always due and demandable during the subsistence ... on demand.

[illegible]

bringing an action for dower only if she obtains ... to do so as a pauper. Until she has the Court's ...

[illegible]

does not alter the character of the proceedings ... constitute a cause of ... and by ... and the ... ending

[illegible] **R. 163**

L. R. [illegible] I. A. 235

Reversing the decision that the suit, as regarded the prompt dower, was barred by limitation in KHAJARANNISSA *v.* RISANNISSA BEGUM

5 B. L. R. 84 : 13 W. R. 371

MAHOMEDAN LAW—DOWER—*contd.*

23. ——— *Demand—Limitation.* A Mahomedan of the Shiah sect by a deed of dower charged his whole estate with a certain sum when demanded by his wedded wife, but did not impignorate his estate to secure the sum put in settlement The dower was not demanded during the lifetime of the husband, and his widow at his death took possession of his estate in satisfaction of her claim:—*Held*, by the Sudder Dewany Court, and such decision on appeal confirmed by the Privy Council, that the widow had a lien upon her deceased husband's estate as being hypothecated for her dower, and could either retain property to the amount of her dower or alienate part of the estate in satisfaction of her claim *Held*, also, that a demand in the lifetime of the husband was not necessary, and that, though more than twelve years had elapsed from the date of the deed and the time the widow set up her claim for dower, the claim was not barred by limitation AMEER-OON-NISSA *v.* MORAD-OON-NISSA . . 6 Moo. I. A. 211

24. ——— *Genuineness of kabinnamah—Right to sue without certificate under Act XXVII of 1860, s. 3—Prompt and deferred dower* The appellant, one of the royal family of Oudh, sued his father, the respondent, for R50,000

being unpaid, he, as co-heir, became entitled to three-tenths, but, having regard to the circum-

Appellate Court, holding that the defendant had established his plea of satisfaction, reversed the decision:—*Held*, that the mehrnamah was a

after payment of debts, was the share of dower due to each co-sharer. Where it is not expressed whether the payment of the dower is to be prompt or deferred, the rule is to regard the whole as due on demand. *Quære*. Where no time for the payment

25. ——— Lien for dower—*Fixing of amount of dower.* On an issue, whether an oral gift

MAHOMEDAN LAW—DOWER—*contd.*

tain amount, which remained unpaid, it was not necessary to affirm in the decision that that amount

I. L. R. 3 All. 266

26. ——— *Lien of widow against heir—Amount of dower unascertained.* In a suit against the two widows of a deceased Mahomedan, who had obtained a certificate of administration to his estate under Act XXVII of 1860, the plaintiff claimed a 12-anna share of the estate, and prayed for the possession with mesne profits from the death of the deceased The widows claimed to have their dower first satisfied The amount of the dower had not been ascertained *Held*, that the widows had a lien for their dower on the estate, and the plaintiff was not entitled to recover possession so long as any portion of the dower remain unsatisfied. This was so, though the amount of the dower was unascertained AHMED HOSSEIN *v* KHADIJA

3 B. L. R. A. C. 28 note : 10 W. R. 369

TAJIM *v.* WAHED ALI . . 22 W. R. 118

NOUSHA BEGUM *v.* UMRAO BEGUM . 7 N. W. 60

ATAHUR ALI *v.* ALTAF FATIMA

10 W. R. 370 note

27. ——— *Mahomedan widow—Widow's heir—Determination of amount of dower.* A Mahomedan widow lawfully in pos-

properly in a suit for an account of what was due as dower,—was not applicable to a case where the plaintiffs seeking to recover possession did not claim as heirs of the widow's husband, but as heirs of the

I. L. R. 7 All. 353

28. ——— *Consent of heirs to possession of widow—Suit by heir claiming*

possession without payment of proportionate share of dower—Burden of proof as to nature of widow's possession. Held, per BURKITT, *J*, that where a Mahomedan widow is in possession of the property of her deceased husband, having obtained such possession lawfully and without force or fraud, and her dower or any part of it is due and unpaid, she is entitled as against the other co-heirs of her husband to retain possession of such property until her dower-debt is paid. It is immaterial to such widow's right to retain possession that such possession was obtained originally without the consent of the other co-heirs. *Bachun* v. *Hamid Hossein, 14 Moo. I A 377, Aziz-ullah Khan* v. *Ahmad Ali Khan, I L R 7 All. 353;* and *Tajin* v. *Wahed Ali, 22 W. R. 118,* referred to. AMANI BEGAM *v.* MUHAMMAD KARIM-ULLAH KHAN

I. L. R. 16 All. 225

Held, in the same case on appeal under the Letters Patent by EDGE, *C J.*, and BANERJI, *J.*—When a Mahomedan widow is in possession, and has been for some time in undisturbed possession, of property which had been of her husband in his lifetime, and dower is admitted or proved to be due to her, it lies upon the heir who claims partition without payment of his proportion of dower to prove that the Mahomedan widow was not let into possession by her husband in lieu of dower, or did not obtain possession in lieu of dower after her husband's death with the consent or by the acquiescence of the heirs MUHAMMAD KARIM-ULLAH KHAN *v* AMANI BEGAM I. L. R. 17 All. 93

29. ———— **Law in Oudh**—*Punjab Code.* The widow of a Mahomedan in possession of her

years 1859 and 1860), the dower mentioned in a marriage contract (instead of being enforced as an absolute deed as claimed by the appellant) was subject to a modification at the discretion of the Court, both in the case of a divorce and on the death of the husband MULKAH DO ALUM NAWAB TAJDAR BOHOO *v.* JEHAN KUDR

2 W. R. P. C. 55 : 10 Moo. I. A. 252

30. ———————— The heir of a deceased Mahomedan having dispossessed the widow of deceased, who was in possession in lieu of dower takes the estate subject to her lien for the amount of her dower. AMED ALI *v.* SAFFIHAN

3 B. L. R. A. C. 175

So does a purchaser from her son, and the purchaser cannot dispossess the widow in possession in lieu of dower BUNDAY ALI KHAN *v.* CHOTEE BIBEE . . . . 1 Agra 273

31. ———————— *Law in Oudh—Discretionary power of the Courts over the amount of dower—The Oudh Laws Act (XVIII of 1876), s. 5.* In a suit by a wife for her dower the Appellate Court altered the amount decreed by the first Court as a reasonable sum payable in lieu of an excessive one, which the husband had on the date of the marriage nominally entered in a nikahnama as the wife's dower. Both Courts acted under the Oudh Laws Act (XVIII of 1876), s 5 The Judicial Committee, having examined the grounds on which each of the Courts had exercised its discretionary power, considered the reason given by the first Court to be sound and restored the decree. SULEMAN KADR *v.* MEHDI BEGUM SURREYA BAHU

I. L R. 21 Calc. 135
L. R. 20 I. A. 144

32. ———————— *Oudh, law of, relating to reduction in amount of dower—Determination of amount of deferred dower recoverable from representatives of deceased husband married in, but a non-resident of, Oudh, not affected by law of that Province—Usage having force of law.* A Mahomedan, a resident in Patna, since deceased, married the plaintiff, while he was for a time in

I. L. R. 19 Calc. 000
L R. 19 I. A. 157

33. ———————— *Effect of Oudh Laws Act (XVIII of 1876), s 5.* Advantage of

instead of making the decree for the amount of dower contracted for, however extravagant that amount may be. COLLECTOR OF MORADABAD *v.* HARBANS SINGH . . I. L. R. 21 All. 17

34. ———— **Lien on estate of husband.** Where the widow of a Mahomedan obtained actual and lawful possession of the estates of her husband under a claim to hold them as one of the heirs and for her dower, it was held that she was entitled to retain possession until her dower was satisfied, with the liability to account to those entitled to the property subject to the claim for the profits received BACHUN *v* HAMID HOSSEIN

10 B. L R. 45 : 14 Moo. I. A. 377
17 W. R. 113

35. ———————— *Widow in possession in lieu of dower—Charge on estate for dower* Where a Court holds that a defendant is in possession of certain landed property in lieu of ... laim for ... to deter- ... dower, plaintiff having pleaded that the dower had been surrendered. A Mahomedan widow is entitled to a

MAHOMEDAN LAW—DOWER—*contd.*

lien for whatever dower remains due to her, although there may be a dispute as to what is the amount actually due, having reference to the amount originally filed as dower, or to the amount satisfied by payments. An heir to a share of the estate is not entitled to recover possession from the widow so

[illegible]

every other debt, must be made before the estate can be distributed amongst the heirs BALUND KHAN v. JANEE . . . . . **2 N. W. 319**

See UFZOOL BEGUM v. LADLEE BEGUM **2 N. W. 325**

and IMDAD HOSSEIN v. HOSSEINEE BUKSH **2 N. W. 327**

36. ——————— *Right of widow to possession against heirs* A widow, who is not [illegible]

her husband or by the consent of the other heir or heirs in lieu of dower AMEERUN v RUHEEMUN **2 Agra Pt. II, 162**

Where it is so found, she has such right. KUREEM BUKSH KHAN v. DOOLHIN KHOORD **15 W. R. 82**

37. ——————— *Hypothecation—Beng Reg VII of 1832.* The widow's claim for dower under the Mahomedan law is only a debt [illegible]

[illegible]

WAHIDUNNISSA v. SHUBRATUN **6 B. L. R. 64 : 14 W. R. 239**

38. ——————— *Right of widow to possession for dower as against heirs.* A Maho- [illegible]

[illegible]

MAHOMEDAN LAW—DOWER—*contd.*

39. ——————— *Dispossession of widow—Wasilat* The widow of a Mussulman, in possession of her husband's estate under a claim of dower, has a lien upon it, and is entitled to possession as against those entitled as heirs, till her claim is satisfied Should the widow in such a case be deprived of possession by a decree in favour of heirs who take with notice of her claim to dower, and more particularly where her right to sue has been expressly reserved, the heirs take subject to a lien of which the property is not divested by the decree. *Held*, by the Appellate Bench, that in a case in which a Mahomedan widow had, after many years of possession as above, been compelled to make over one-sixth of her estate to her mother-in-law, and then sued her mother-in-law for one-sixth of her dower without interest, she was entitled to recover her claim without reduction on account of wasilat WOOMATOOL FATIMA BEGUM v MEERUNMUNNISSA KHANUM . **9 W. R. 318**

40. ——— **Assignment to wife in lieu of dower**—*Subsequent decree affecting share—Priority of assignee over decree-holders.* Where a [illegible]

[illegible]

assignment, and if at all affected, she (assignee) would be entitled to have the same extent of land made up to her out of whatever other interest her husband or his heirs may have had in the estate; that her right would be prior in time and preferable to any that could be set up by a creditor under a decree, subsequent to assignment, and that the plaintiffs who purchased from the assignee were consequently entitled to decree DHUN SINGH v. RAM SUHAI . . . . . **2 Agra 39**

[illegible]

it does not, by virtue of a bye-mokusa executed by [illegible]

[illegible]

42. ——— **Widow out of, or in wrongful, possession.** Where she is not in possession or her possession is unlawful, her right is to demand

MAHOMEDAN LAW—DOWER—*contd.*

the amount of her dower from the heirs: such amount being realizable from their shares of the estates, like other debts, in the usual course of law. MEERUN *v.* NAJEEBUN . . . 2 Agra 335

43. ———— *Right of widow deprived of estate by heir.* Where a Mahomedan widow was improperly deprived of a portion of such estate under a decree in a suit by an heir of her husband, the question as to her right of dower having been before the Court, but not disposed of by the Judge in that suit:—*Held*, that the heir must be treated as having taken the property subject to a right of lien which was not divested by the decree in the former suit. JANEE KHANUM *v.* AMATOOL FATIMA KHANUM . . . 8 W. R. 51

44. ———— Inheritance—*Transfer by widow in possession in lieu of dower—Right of purchaser—Heirs. Held*, that a purchaser of a deceased husband's estate from a Mahomedan widow, in possession thereof, pending payment of her dower, is not entitled to plead not-satisfaction of her dower-debt to a claim by her husband's heirs for their share of his inheritance, as the widow's right to dower is personal to herself and does not pass to a purchaser of the estate. *Bachan* v. *Hamid Hossein*, *10 B. L. R. 45*, and *Bazayet Hossein* v. *Dooli Chand, L. R. 5 I. A. 211*, referred to. ALI MUHAMMAD KHAN *v* AZIZULLAH KHAN

I. L. R. 6 All. 50

45. ———— Nature of widow's lien for dower. The lien which a Mahomedan widow whose dower is unpaid may obtain on lands which have belonged to her deceased husband is a purely personal right, and does not survive to her heirs. *Ali Muhammad Khan* v. *Azizullah Khan*, *I. L. R. 6 All 50*, and *Ajuba Begam* v. *Nazir Ahmad, All. Weekly Notes (1890) 115*, referred to HADI ALI *v* AKBAR ALI . I L R. 20 All. 262

46. ———— Right of mortgagee prior to suit for dower. A Mahomedan dying, his son *N*, who was in possession of the whole of the deceased's property, mortgaged it to secure repay-

attached and sold the property, and, buying it themselves, got into possession The mortgagee then brought a suit to obtain from the widows the property which he had purchased. *Held*, that until the widows brought their suit the property in *N*'s hands was not subject to a lien or charge in favour of them, and that it passed free from incumbrances to the mortgagee as a *bonâ fide* purchaser for valuable consideration. *Held*, also, that the plaintiff was entitled to so much of the property as was *N*'s share. BEGUM *v.* DOOLEE CHUND . 20 W. R. 93

47. ———— Widow taking possession against the consent of the other heirs. If a Mahomedan widow entitled to dower has not obtained possession of property of her deceased husband lawfully, that is, by contract with her husband, by his putting her into possession, or by her being allowed with the consent of the heirs on his death to take possession in lieu of dower, and thus obtained a lien for her dower, she cannot obtain

54; Bazayet Hossein v. *Dooli Chand, I. L. R. 4 Calc. 402; L. R. 5 I. A 211; Meerun* v. *Najeebun*, *2 Agra (1867) 335; Ali Muhammad Khan* v. *Azizul-lah Khan, I. L. R 6 All. 50*, and *Mehrun* v. *Kubeerun, 13 W. R. 49: 6 B. L. R. 60 note*, referred to. *Woomatool Fatima Begum* v. *Meerunmun-nissa Khanum, 9 W. R. 318; Ahmad Hossein* v. *Khodeja, 10 W. R. 369; 3 B L R. A. C. 28 note* and *Bolund Khan* v. *Janee, 2 N. W. (All. 1870), 319*, distinguished AMANAT-UN NISSA *v* BASHIR-UN-NISSA . . I. L. R. 17 All. 77

48. ———— Suit by heirs of Mahomedan widow for her dower—*Alienation of*

priority over the mortgagee's decree and a sale held in execution thereof. *Bazayet Hossein* v. *Dooli Chand, I. L R. 4 Calc. 402.* YASIN KHAN *v* MUHAMMAD YAR KHAN . I. L. R. 19 All. 504

49. ———— Mortgage by widow in possession in lieu of dower of immoveable property which had been of her husband. A Mahomedan widow in possession of immoveable property of her late husband in lieu of her dower has no power to mortgage such property CHUHI BIBI *v.* SHAMS-UN-NISSA BIBI I. L R. 17 All. 19

50. ———— Power of widow to alienate share of which she is in possession in lieu ... *Held* that a

of such transfer made by the widow. ... USSUDOOLLAH KHAN *v.* GHASHEEA BEEBEE

1 Agra 150

They cannot, however, claim possession before the dower is paid. AZEEMUN *v.* ASGUR ALI

2 Agra Pt. II, 167

51. ———— *Share by right of inheritance. Held*, that a widow who is in possession ... dower is not ... permanently, ... by right of ... v. MAHOMED HUSSUN . . . 1 Agra 287

52. ———— Power of mother in possession of daughter's shares in husband's

MAHOMEDAN LAW—DOWER—*contd.*

estate in lieu of dower—*Daughters without immediate right.* *Held*, that the mother who is in pos-

53. ———— **Purchase of property by wife out of money given on account of dower**—*Husband and wife* Under the Mahomedan law, a wife may (except with fraudulent intent) purchase property as her own during her husband's lifetime with money given to her by him on account of dower. NASOO *v* MAHATAL BEEBEE
4 W. R. 7

54. ———— **Claim for dower**—*Suit on a mortgage executed by judgment-debtor—Decree for sale—Decease of judgment-debtor—Sale by Court—Attempt by purchaser to obtain possession—Resistance by widow on ground that her dower formed a charge on the land.* A widow's claim for dower under Mahomedan law is not a lien on her husband's property, such as is obtained by a mortgage, but ranks on a par with ordinary debts. AMEER AMMAL *v* SANKARANARAYANAN CHETTY (1901)
I. L. R. 25 Mad. 658

55. ———————— *Widow in possession in lieu of dower—Widow not precluded from suing to recover her dower.* *Held*, that there was

I. L. R. 26 All. 452

56. ————— **Priority of decree for dower**—*Dower—Decree for dower against heir of deceased Mahomedan—Decree held by creditor against heir personally—Civil Procedure Code, s 295.* A Mahomedan widow obtained against the other heir of her deceased husband a decree for her dower payable out of the estate of the deceased, and in execution thereof attached certain property of the deceased in the hands of the heir A

in virtue of her decree for dower claim a charge

MAHOMEDAN LAW—DOWER—*contd*

57. ———— **Rights of widow in possession in lieu of dower**—*Shias—Succession—Widow* A Mahomedan widow in possession of immoveable property of her deceased husband in lieu of her dower has only a lien on the property to secure payment of the dower debt: she has no transferable interest in the property *Mussummat Bebee Bachun v Sheikh Hamid Hossein, 14 Moo I. A 377*, and *Hadi Ali v. Akbar Ali, I. L. R 20 All. 262*, referred to MUZAFFAR ALI KHAN *v* PARBATI (1907) . . . . I. L. R 29 All. 640

58. ———— **Wife's death in husband's lifetime**—*Deferred dower—Right accrues to heirs of wife after her death—Cause of action not joint—Suit by one of heirs—Other heirs necessary parties—Joinder of an heir after time—Limitation—Limitation Act (XV of 1877), s 2—Joint covenant—Right of action when joint and when several* When a Mahomedan wife, who has not been divorced by her husband, dies during the husband's lifetime, the right to sue for her deferred dower accrues for the first time to her heirs The cause of action is not a joint one and any of the heirs may sue the husband separately for his or her share. But in such a suit the presence of all the heirs is necessary in order effectually and completely to adjudicate upon the claims of the several heirs. Where in a suit by one

deceased was a joint interest as the defendant, the husband, was himself one of the heirs, the cause of action must be taken to have been split up MOOKERJEE, *J.*—The question whether a contract is

59. ———— **Remission of dower by widow**—*Dower—Remission effective without acceptance by the heirs of husband—Money spent for the benefit of another—Obligation to repay.* According to Mahomedan law a dower is a debt

60. ———— **Contract for dower**—*Dower prompt and deferred—Agreement by father on behalf of minor son—Evidence of intention—Khanadamad—*

MAHOMEDAN LAW—DOWER—*concld.*

Pin-money, claim for, by heir—Limitation—Executor a trustee—Costs. When the executor of a deceased Mahomedan woman is her husband who was under an agreement to pay her a certain dower, he cannot avail himself of the ordinary period of limitation of three years as a simple debtor and avoid the payment of the dower to the heirs of the deceased.

did not mean to insist upon the payment of the dower but something else. *Sugra Bibi v. Musuma Bibi, I. L. R. 2 All. 573*, followed. A fixed sum of ... time of ... wife as ... e in the nature of a personal allowance; and, if the wife failed to claim and recover the same during her life-time, her heirs could not, after her decease, recover the same from her husband as a part of the

MAHOMEDAN LAW—ENDOWMENT.

See CUSTOM . . . 1 Bom. 36

See MAHOMEDAN LAW—MOSQUE.

See MAHOMEDAN LAW—WAQF.

See RIGHT OF SUIT—CHARITIES AND TRUSTS . I. L. R. 20 Calc. 810

1. —— Creation of endowment—*Verbal endowment.* According to Mahomedan law, a valid endowment may be verbally constituted without any formal deed. SHURBO NARAIN SINGH *v.* ALLY BUKSH SHAH . . . 2 Hay 415

2. —— *Charges on profits for definite period.* The primary objects for which lands are endowed under the Mahomedan law are to support a mosque and to defray the expenses of

PUHRAJ DITAREY MOHAPATTUR . 13 W. R. 255

3. —— *Words declaratory of appropriation—Motive.* The chief elements of wukf are special words declaratory of the appropriation and a proper motive cause; and where the declaration is made in a solemnly, published document, the wukf is completed. DOYAL CHUND MULLICK *v.* KERAMUT ALI 16 W. R. 116

MAHOMEDAN LAW—ENDOWMENT—*contd.*

4. —— *Lands set apart for support of mosque.* The payment of expenses of a mosque out of the rents of certain property is not proof of itself that the property is endowed. SHURFOONNISSA *v.* KOOLSOOM . . 25 W. R. 447

5. —— *Grants for subsist-* ... in his own right and

8 W. R. 316

6. —— *Wukf—Construction of deed of endowment—Settlement on person and his descendants to three generations, and afterwards to charity—Appropriations of property by settlement.* A Mahomedan settled a portion of his immoveable property as follows: "I have made wukf the remaining four annas in favour of my

purposes. *Semble* ... of a settlement of property on a man and his descendants ... perty on himself ... reduce himself to a state of absolute poverty. MAHOMED HAMIDULLA KHAN *v.* LOTFUL HUQ I. L. R. 6 Calc. 744 : 8 C. L. R. 164

7. —— *Wukf—Settlement on man and his descendants. Semble.* To con- ... law it

his descendants, which ... inalienable by himself and his descendants for ever. *Held*, that the plaintiffs, who were sons of a daughter of one of the original settlors, did not come within the meaning of the term "aulad dar aulad" or the term "warrasan," used in the instrument of settlement. ABDUL GANNE KASM *v.* HUSSEN MIRA RAHIMTULA . . . . 10 Bom. 7

8. —— *Wukf—Possession, delivery of—Grant of endowed property.* To constitute a valid "wukf," or grant made for charitable and religious purposes, it must, according to the doctrine of the Shiahs, be absolute and unconditional, and possession must be given of the "mowkoof," or thing granted. Where a Mahomedan lady executed a deed conveying her property on trust for religious purposes, reserving to herself

MAHOMEDAN LAW—ENDOWMENT—*contd.*

deed must be considered invalid with respect to that portion of the income reserved by the grantor to herself for life; but as to the rest, that the deed operated as a good and valid grant. KALUB HOSSEIN v. MEHRUM BEEBEE . . 4 N. W. 155

9. ———————— *Wukf—Mutwali—Right to sue* A Mahomedan of the Shafi sect, by a deed of settlement executed in 1838, called a wukfnamah, settled moieties of his estate on his two wives, their daughters, and the descendants of the donees in each line so long as it should subsist, with cross remainders, on the extinction of either line, to the representatives of the other, with final remainders on the extinction of both to the heirs of the settlor. The settlor constituted himself the nazir or mutwalli (superintendent or trustee) of the estate during his life, and nominated *A* and *B* to act as such after his death with the consent of his wives. In 1840 the settlor died, *A* died in 1865; *B* survived. The wives and daughters of the settlor also died. The representatives of one of the settlor's daughters sued the defendant to recover a part of the estate, which had been sold to him by the Civil Court, as

merely of conferring a perpetual and inalienable estate on a particular family without any ultimate express limitation to the use of the poor or some other inextinguishable class of beneficiaries. PHATE SAHEB BIBI v. DAMODAR PREMJI

I. L. R. 3 Bom. 84

10. ———————— *Charitable object—Subject of wukf—Shares in company.* According to Mahomedan law, a wukf cannot be created of shares in a limited liability company. A wukf, the purpose of which is to create a mere family

11. ———————— *Wukf—Provi-*

MAHOMEDAN LAW—ENDOWMENT—*contd.*

the property should be managed by the minor's father The deed contained a provision that,

provisions for payment of debts and maintenance, the wukf was valid LUCHMIPUT SINGH v. AMIR ALUM . I. L. R. 9 Calc. 176 : 12 C. L. R. 22

12. ———————— *Grant to grantees and their aulad va ahfad—Meaning of the word "ahfad"—Wukf—Tailyat and sajjadanashin, right of females to hold the offices of.* A certain village was granted by the Mogul Government in inam to two persons and their "aulad va ahfad" for the maintenance of a durga (mausoleum) of a pir (saint). The plaintiff and the defendant were the descendants of the original grantees. In 1878 the plaintiff sued the defendant for the recovery

grantees. It was contended (*inter alia*) for the defendant that the expression "aulad va ahfad" used in the grant would include only the lineal male descendants, and not the plaintiff, who claimed

in the offices of the durga and the endowment. The term "ahfad," being a term of the largest and most general signification, includes the descendants of females as well as of males The primary

keeping up the mausoleum. A female could not be the sajjadanashin, whose duties were of a strictly spiritual nature requiring peculiar personal qualifications so as to exclude female descendants from participating in the endowment; but it would not follow that males who established their descent from the propositus through females should be excluded. Had the intention of the grant in the present case been to limit the class of descendants exclusively to persons claiming through males, the expression "aulad dar aulad" would have been used

MAHOMEDAN LAW—ENDOWMENT— *contd*

13. ———————— *Wukf, essentials*

expenses of the servants of a mosque, and fursh and light, etc., one-third for the expenses of a madrassa, and the remaining one-third for the maintenance allowance of the mutwalli :—*Held*, that the gift complied with the four essential conditions necessary to create a valid wukf according to Mahomedan law *Held*, also, that, in the absence of any express direction as to what was to be done with any surplus profits of the dedicated property, the reasonable presumption is that the improved value of the dedicated property, or any excess of profit over and above the amount stated in the sanad, was intended by the grantor to be devoted to the same purpose for which the amount, which was the actual value of the property at the time of the gift, was expressly assigned. JUGATMONI CHOWDRANI v. ROMJANI BIBEE . **I. L. R. 10 Calc. 533**

14. ———————— *Wukf—Descent per stirpes—Grant in inam to grantee and children without restriction as to names—Direction to pray for perpetuity of Government* A sanad of the

regard to the grant of a village, does not stamp the grant as a wukf or religious endowment. MAHOMED ALI v. GOBAR ALI . **I. L. R. 6 Bom. 88**

15. ———————— *Wukf—Power of revocation—Reservation of rents and profits to*

MAHOMEDAN LAW—ENDOWMENT— *contd.*

donor for life—Ultimate dedication of property to charity with intervening private interests—Rule against perpetuities how far applicable in a colony subject to English law—Charities, what are—Trust for maintenance of idol, for benefit of poor, for building tanks—Dedication by minor—Subsequent ratification—Estoppel A wukf must be cer-

ultimate charitable object ... The rule against perpetuities extends to a colony in which English law is enforced only so far as it is adapted to the circumstances of the community. The case of " charities useful and beneficial " to the

standard of customary law and common ... amongst the community to which the parties interested belong. Objects which the English law would possibly regard as superstitious uses are allowable and commendable according to Mahomedan law. A trust for the benefit of the poor, for aiding pilgrimages and marriages, and for the support of wells and temples, is a charity amongst ... Mahomedans

according to the ... Where the proposed object of the endowment is one which is directly contrary to the public law of the State, the above rule does not apply. By an indenture of voluntary settlement, dated 16th March 1866, F a Mahomedan girl of the age of

property being kept intact. (iii) ... be no such descendants, or in the event of failure

MAHOMEDAN LAW—ENDOWMENT— *contd.*

of such descendants, the rents and profits were to be expended on charitable purposes, such as expenses of poor pilgrims going to Mecca, building mosques, funeral and marriage expenses of poor people, sinking wells or tanks, or in such other manner as the trustees should think fit. Shortly after the execution of the settlement, the trustees took possession of the property, and for fifteen years continued to pay the rents and profits to the settlor. The settlor was married in 1866 to *H*, and there was issue of the marriage only one son, who died in 1872, an infant under the age of five years. *H* died in 1872, and the settlor remained a widow. In 1881 she became desirous of revoking the above settlement, and under s. 527 of the Civil Procedure Code (Act X of 1877) she stated a case for the opinion of the Court, contending that she could lawfully revoke the trusts declared by the said indenture; that if she could not revoke, then that the trust therein declared in favour of charity was void for remoteness, and generally that she was, under the circumstances, entitled to have the property reconveyed to her by the surviving trustee. *Held*, that the settlement was irrevocable. The dedica-

purposes of the dedication fail, the final trust for charity did not fail with them. It was but accelerat-

could not with reason contend that the dedication was invalid on account either of its ceremonial defects or of a want of an accompanying volition. FATMABIBI *v.* ADVOCATE GENERAL OF BOMBAY

I. L. R. 6 Bom. 42

16. ———— *Wukfnama—Wukf—Perpetuity—Ultimate trust in favour of charity.* *M*, the father of the three defendants, executed an instrument purporting to be a wukfnama in favour of his heirs and descendants,

having defrayed the expenses of repairs and the

MAHOMEDAN LAW—ENDOWMENT— *contd.*

penses. The deed then proceeded: If any one from among my heirs and (? or) descendant after descendant should die, then the said mutwallis shall make his or her funeral outlays according to

given to Mahomedan fakirs and indigent people."

and he contended that in no case could the mort-

one has any interest as the heir of the appropriator.

17. ———— *Wukf—Settlement in favour of the settlor's family without any ultimate trust for charity—Document not establishing a trust for a religious or charitable purpose.* A Mahomedan cannot settle his property in wukf on his own descendants in perpetuity without making an express provision for its ultimate devolution to a

MAHOMEDAN LAW—ENDOWMENT—*contd.*

daughters) of either wife died, the share of that

perty, consisting of two nafars, was set apart for such purposes as the building of his own tomb, the saying of prayers, the recitation of the Koran, etc.; and he directed that in case the produce of the two nafars proved insufficient for these purposes, his wives and daughters and their descendants should contribute out of the property settled in wukf on them. *Held*, that, with the exception of the two nafars set apart for religious purposes, the rest of the settlement was not a vaid wukf, as it was solely for the benefit of the settlor's family, and contained no express provision for the ultimate devolution of the property to any religious or charitable object. NIZAMUDIN GULAM *v.* ABDUL GAFUR

I. L. R. 13 Bom. 264

Held, on appeal by the Privy Council, affirming the above decision, that the instrument could neither be maintained as establishing a wukf, nor as a settlement: also that it could not be supported as a will, not having been validated by consent of heirs, as to two-thirds of the succession; and that, even if it could have been dealt with as a will, the above provision would have been void. A wukfnama, to be valid, must be a substantial dedication of property to a religious or charitable purpose at some time or other. *Mahomed Ahsanulla Chowdhry* v. *Amarchand Kundu, L R 17 I A. 28 I. L. R. 17 Calc. 498*, referred to and followed ABDUL GAFUR *v.* NIZAMUDIN . . I. L. R. 17 Bom. 1
L R. 19 I. A. 170

18. ——— *Appropriation not within the principle of wukf—Property settled on members of grantor's family with a charge upon it for religious and charitable purposes—Effect of*

stantially, and not merely colourably, dedicated to such purposes. Although an instrument purporting to dedicate property as "fisabilillah wukf"

MAHOMEDAN LAW—ENDOWMENT—*contd.*

pattur, 13 W. R. 235, to the effect that the mere charge upon the profits of the estates of certain items which must in the course of time have ceased,

execution of a decree against one of the grantees. MAHOMED AHSANULLA CHOWDHRY *v.* AMARCHAND KUNDU . . . . I. L. R. 17 Calc. 498
L. R. 17 I. A. 28

19. ——— *Wukf, constitution ... with temporary* To ... ca- ... use,

although there may be a temporary intermediate

I. L. R. 18 Calc. [illegible]

20. ——— *Wukf, constitution of—Dedication to pious objects—Sajjadanashin—Mutwalli—Minor, appointment of, as*

ship referred to. *Semble* A minor ... appointed the sajjadanashin of a durga or shrine. PIRAN *v.* ABDOOL KARIM . I. L. R. 19 Calc. 203

21. ——— *Settlement in favour of the settlor's family with the reservation ... the whole of the income ... us."* A ... kindred ... t or the

MAHOMEDAN LAW—ENDOWMENT—*contd*

whole of the income thereof in favour of the settlor for his own use during his lifetime, is valid. *Mahamed Ahsanulla Choudhry v. Amarchand Kundu, I. L. R. 17 Calc. 498 L. R. 17 I. A. 28*, referred to *Rasamaya Dhur Choudhuri v. Abul Fata Mahomed Ishal, I. L. R. 18 Calc. 399*, dissented from In the construction of a deed of wukf, the words 'charitable' and 'religious' must be taken in the sense in which they are understood in Mahomedan law MAHOMED ISRAIL KHAN v SASHTI CHURN GHOSE . I. L. R. 19 Calc. 412

22. ——————————— *Wukf—Conditional and revocable dedication—Conditions of a valid dedication* A Mahomedan by an instrument revoking a previous trust deed conveyed her property to her husband on trust as follows:—(i) to maintain the settlor and her children out of the income; (ii) to hand over the property to the children on their attaining majority. (iii) in the event of the settlor's death without leaving children with the income of the property to have Kathom recited in a mosque, give food to the mollahs who come there for reciting the same and get the moilu performed The settlor reserved to herself and her representatives an option of dealing with the property as a special fund for the maintenance of her children, if any. The settlor died leaving no children. *In a suit by her half-sister against her* husband and others to recover her share of the property:—*Held, per* MUTTUSAMI AYYAR and PARKER, *JJ*, that the plaintiff was entitled to recover her proportionate share of the property notwithstanding the provisions of the above instrument *Per* SHEPHARD, *J.*—There had been no complete dedication of the property, and except so far as regards the income required for the three specific objects named by the donor, her property was undisposed of Conditions of a valid wukf considered PATHUKUTTI v AVATHALAKUTTI

I. L. R. 13 Mad 66

23. ——————————— *Wukf—Construction of document* Where a Mahomedan of the Shia sect executed a document purporting to come into operation after his death, which document provided in a most complete manner of the devolu-

MAHOMEDAN LAW—ENDOWMENT—*contd.*

the executant was evidently merely the maintenance of the family estates and of the dignity of the riasat. *Mahomed Ahsanulla Chowdhry v. Amarchand Kundu, I. L. R. 17 Calc. 498 · L. R. 17 I. A. 28*, followed. *Khujooroonissa v. Roushan Jehan, I. L. R. 2 Calc. 184 L. R. 3 I. A. 291*, and *Nizamuddin Gulam v. Abdul Gafur, I. L. R. 13 Bom. 264*, referred to. MURTAZAI BIBI v JAMUNA BIBI

I. L. R. 13 All. 261

24. ——————————— *Wukf—Wukfnama containing provision for descendants of the grantor.* The fact that the grantor of a wukf has in the deed constituting the same made some provision for the maintenance of his kindred and descendants will not render the wukf invalid. *Mahomed Ahsanulla Chowdhry v. Amarchand Kundu, I. L. R. 17 Calc. 498 L. R. 8 I. A. 28*, and *Muzhurool Huq v. Puhraj Ditarey Mohapattur, 13 W. R. 235*, referred to. DEOKI PRASAD v. INAIT-ULLAH . . I. L. R. 14 All 375

25. ——————————— *Wukf—Delivery of possession—Shia sect.* According to the law applicable to the Shias sect of Mahomedans, a wukf-bil-wasiyat or testamentary wukf, is not valid unless actual delivery of possession of the appro-

testamentary wukf cannot validate such wukf. Distinction between wukf-bil-wasiyat and wasiyat-bil-wukf explained AGHA ALI KHAN v. ALTAF HASAN KHAN . . I. L. R. 14 All 429

26. ——————————— *Wukf—Relin-*

upon it and retained possession until his [illegible] of the property dealt with by the deed, [illegible]

REMEMBRANCER, N.-W. P. AND OUDH

I. L. R. 15 [illegible]

27. ——————————— *[illegible] ment in favour of the settlor's family [illegible] remainder to the poor—Dedication [illegible] for religious and charitable [illegible] not within the principles of [illegible] on the settlor's family with a [illegible] religious and charitable [illegible]*

MAHOMEDAN LAW—ENDOWMENT—*contd*

upon, where wukf not valid. A settlor by instrument purported to create a wukf in favour of his

were alienable:—*Held*, by the majority of the Full Bench, PETHERAM, *C.J.*, TREVELYAN and GHOSE, *JJ.* (AMEER ALI, *J.* dissenting), that upon the construction of the deed and upon the authority of *Mahomed Ahsanulla Chowdhry* v. *Amarchand Kundu, I. L. R. 17 Calc 498 L. R. 17 I. A. 28*, the instrument did not create a valid wukf, there being no substantial dedication to religious and charitable purposes. *Held*, by the majority of the Full Bench, PRINSEP, GHOSE, and AMEER ALI, *JJ.* (PETHERAM, *C.J.*, and TREVELYAN, *J.*, dissenting), that the charge of R75 per annum should be allowed. *Held*, by PRINSEP, TREVELYAN, and GHOSE, *JJ.*, that the course of the decisions

supplies ample safeguards against fraud, created a valid endowment. There is a consensus of opinion among Mahomedan lawyers of every school and sect that wukfs on children kindred, or neighbours in perpetuity are valid. To hold that a wukf, the

property, upon whomsoever he chooses, and in any manner whatever, only it must endure for ever. If he bestows the usufruct in the first instance upon those whose maintenance is obligatory on him, or if he gives it to his descendants so long as they exist, to prevent their falling into indigence, it is a pious act, even more pious than giving to the

28. ———————— *Wukf—Deed invalid as a wukfnama—Attempted family settlement in perpetuity—Ultimate, but illusory, gift for charitable purposes.* An instrument, nominally a wukfnama expressly purporting to make property wukf, settled *it in perpetuity on the family of the dedicators*, with an ultimate gift for the benefit of

MAHOMEDAN LAW—ENDOWMENT—*contd.*

the poor, only to take effect upon the failure of the descendants of the family:—*Held*, that a gift to the poor might be illusory from the smallness of the amount, or from its uncertainty or remoteness; and

Calc. 498 L. R. 17 I. A. 28, and *Abdul Gafur* v. *Nizamudin, I. L. R. 17 Bom. 1; L. R. 19 I. A. 170*, referred to and followed as the principle that the charitable purpose, in order to establish a wukf must be substantial and not illusory. Provision for the dedicator's family, out of the appropriated property, may be consistent with the making a valid wukf, where the appropriation is substantially for a pious or charitable purpose But as family settlement in perpetuity is contrary to the Maho-

116, approved. ABUL FATA MAHOMED ISHAK *v.* RASAMAYA DHUR CHOWDHRI

I. L. R. 22 Calc. 619
L. R. 22 I. A. 76

29. ———————— *Wukf—Charitable and religious trusts—Perpetuities, rule against.* A Mahomedan, by an instrument in writing, dedicated certain moveable and immoveable properties for the up-keep of her husband's tomb and "for the daily, monthly and annual expenses of the aforesaid mausoleum, such as lighting, frankincense, flowers, and the salaries of repeaters of Koran and readers of benedictions, etc., as well as for the annual fatheha ceremonies of the deceased, and after my death for my annual fatheha ceremony." It was found that a traveller's inn was erected *by the endower* of the property

on appeal, reversing the judgment of DAVIES, J., that the instrument was not a valid wukf, and was void as contravening the rule against perpetuities. KALELOOLA SAHIB *v.* NUSEERUDEEN SAHIB

I. L. R. 18 Mad. 201

30. ———————— *Wukf—Illusory dedication—Fatheha ceremony—Custom as a guide to interpreting the intention of a wakif.* In determining whether a disposition of property made by a Mahomedan is or is not a valid wukf,

MAHOMEDAN LAW—ENDOWMENT—*contd.*

Kundu, I. L. R. 17 Calc. 498, and *Abul Fata Mahomed Ishak v Russomaya Dhur Chowdhry, I. L. R 22 Calc. 619 L R. 22 I. A 76*, referred to PHUL CHAND v AKBAR YAR KHAN
I. L. R. 19 All. 211

31. ——— *Wukf—Illusory dedication—Settlement for benefit of descendants of the settlors. Held*, that a mere charge for some charitable purposes on the profits of an estate strictly settled on the family of the settlors in perpetuity, and not dedicated in substance to

32. ——— Revocation of endowment —*Effect of revocation or improper conduct of trustees.* A valid wukf cannot be affected by revocation or by the bad conduct of those responsible for the carrying out of the appropriator's behests, nor can it be alienated. DOYAL CHUND MULLICK v. KERAMUT ALI . . . 16 W. R. 116

33. ——— *Removal for misconduct.* According to Shia law, a man who devotes property to charitable or other uses, and

has reserved to himself the right to do so in express terms. HIDAITOONNISSA v. AFZUL HOSSEIN
2 N. W. 420

34. ——— *Grant reverting to donor on misconduct of mutwallis* If mutwallis fail to act up to the directions of an endowment, the grant does not necessarily revert to the heirs of the grantee. REASUT ALI v. ABBOTT . 12 W. R. 132

35. ——— Management of endowment

36. ——— *Land granted for purposes of—Right of succession to, and income*

MAHOMEDAN LAW—ENDOWMENT—*contd.*

for the support of which the land was granted. JAAFAR MOHIUDIN SAHIB v AJI MOHIUDIN SAHIB
2 Mad. 19

37. ——— *Suit against directors or mushavirs of a mosque—Board of directors not properly constituted under the rules of the mosque—Liability of directors for acts done by Board not properly constituted—Appointment of officers—Management of property—Liability of provisional committee assuming authority to act—Trustees—Limitation Act (XV of 1877), Art 120—Kazi—Act II of 1864 and Bombay Act IV of 1864—Nazir of mosque, Liability of—Parties.* A

duties of the kazi, mushavirs, and nazir, and declared that the power of filling up vacancies should be exercised by the kazi and mushavirs

from Government. He held the

kazi of Bombay. The mushavirs were then advised that they could not select one of the

mushavirs was reduced to six, and two of them (the relators), as above stated took no part in the administration, so that the management was left in the hands of the first four defendants. In 1891 four new mushavirs (defendants Nos. 6 to 9) were

MAHOMEDAN LAW—ENDOWMENT —contd.

son, had devolved the office of sajjadanashin and khilafat held by the family, and not on his younger brother, the defendant, and that he alone was entitled, as mutwalli, to take possession of and manage the wukf property. The plaintiff relied, firstly, on the appointment made by his father in 1865, and, secondly, on the fact of his being the eldest son of the last incumbent, to whom, he maintained, both by law and custom belonged the succession to the offices in question so long, at least, as such eldest son was in other respects a fit and proper person to succeed, which in his own case was not contested The defendant denied that either by law or custom was the eldest son, as such, entitled to succeed, and relied on the fact of his appointment by his father.—*Held*, that the plaintiff had made out no case of a right to succeed his father in the offices in question. Not under the deed of appointment, because that was made by his father when he believed he was dying, and was subsequently on recovery cancelled, and was therefore inoperative, on similar principles to those

by reason of any custom, because no such custom as that contended for was established on the evidence. The evidence went to show that the eldest son did not uniformly succeed, and that, even when he succeeded, he did so by right of appointment, and not by right of primogeniture. ABDULA EDRUS *v.* ZAIN SAYAD HASSAN EDRUS I. L. R. 13 Bom. 555

43. ———— Appointment as manager—*How far effectual* An appointment as manager by the trustee for the time being of a Mahomedan religious endowment was held not effectual beyond the incumbency of the nominator. MOHEEOODDEEN AHMED *v.* ELAHEE BUKSH . 6 W. R. 277

44. ———— *Shia—Disqualification.* The fact of a person being a Shia does not disqualify him for the supervision of a wukf made by a Sunni. DOYAL CHUND MULLICK *v* KERAMUT ALI . . . . . . 16 W. R. 116

45. ———— *Hereditary succession* In a Mahomedan religious endowment, when it is essential that the superior or manager should have certain qualifications which succession by descent would not always ensure, the theory of hereditary succession is most unlikely and out of place. SYEDUN *v.* ALLAH AHMED W. R. 1864, 327

46. ———— *Suffada-nasheen, descent of office of—Female's right of.* Under the Mahomedan law, offices like that of suffadanasheen should descend to persons in the male line and those who are descended from females are regarded as not belonging to the family of the founder, but strangers. Where such an office has been once diverted for sufficient cause (*e.g.*, default of male issue) from a particular line of descent, it is

MAHOMEDAN LAW—ENDOWMENT —contd

liable to be brought back into the line of a previous holder when the person claiming under that holder is a descendant in the female line. AHMUD HOSSEIN *v.* MOHIOODEEN AHMUD . 16 W. R. 193

47. ———— *Temporal and spiritual affairs—Performance of duties by female.* According to Mahomedan law, a woman may

SHERIF . . . . . . 4 Mad. 23

48. ———— *Wukf or endowed property—Office of mutwalli, nature of—Transfer of, or performance of duties of, by agent.* The office of mutwalli is a trust which a woman, equally with a man, is capable of undertaking, but it is a personal trust, and the office may not be transferred nor the endowed property conveyed to any person whom the acting mutwalla may select. The word "deputy," in book 9, Ch. V, page 591 of Baillie's Mahomedan Law, signifies some one who, as an agent, may be employed to perform the duties of the office, as to collect rents and to assist the mutwalli in expending the proceeds of the endowed property for charitable purposes. WAHID ALI *v.* ASHRUFF HOSSAIN I. L. R. 8 Calc. 732: 10 C. L. R. 529

49. ———— *Woman performing duties of manager of endowment.* A woman is

50. ———— *Appointment of the religious superior of a Mahomedan institution*

such influence must range itself, citing *Boyse* v *Rosborough, 6 H. L C. 1* They found no evidence of the exercise of any influence. The decision of the Chief Court was therefore reversed; and the

51. ——— **Alienation of endowed property**—*Wukf—Limitation.* According to Mahomedan law, wukf or endowed property is alienable. Wukf property is not the less wukf property because of the use of the words "inam" and "altamgha" in the grant, provided the grant clearly appears to have been intended for charitable purposes A

52. ——————— *Alienation by mutwalli.* In dealing with the mutwalli of an endowment, it is not necessary for the purchaser to look further than to the power of the mutwalli under his deed of trust. If the deed gives the mutwalli the power and discretion to make a sale, *it is not a matter of concern* to the purchaser whether that power or discretion is judiciously exercised or not. GOLAM ALI v SOWLUTOONNISSA BIBEE . . . W. R. 1864, 242

53. ——————— *Grant of mirasi lease* According to Mahomedan law, the trustees of an endowment cannot create a valid miras tenure at a fixed rent by granting a lease of any portion of the wukf property SOOJAT ALI v. ZUMEEROODDEEN . 5 W. R. 158

54. ——————— *Alienation of*

the trust. FULTOO BIBEE v BHURRUT LALL BHUKUT . . . . 10 W R 299

55. ——————— *Alienation of wukf property—Suit to set aside such alienation—Right to sue—Civil Procedure Code (Act XIV of*

render any service to the mosque, whereupon they (the plaintiffs) had been acting as mutwallis in their stead They therefore claimed to be entitled, as such, to the management and enjoyment of the lands in dispute. It was contended, *inter alia*, that the plaintiffs could not sue in the lifetime of

perty restored to the service of the mosque They were not merely beneficiaries, but members of the family of the mutwallis and were the persons on

interested in the endowment can sue to have alienations set aside and the property restored to the trust. *Per* RANADE, *J*—As a suit for possession, the suit was defective in form and could not be maintained It was a suit for partition of a moiety of the lands, and the owner of the other moiety was not a party. The suit was, however, really a suit for a declaration that the lands were *the inam property of the mosque, and as such* was not liable to alienation for the private debts of defendants Nos 3, 4, and 5 The plaintiffs were

56. ——————— *Liability of wukf property in hands of widow to decree against husband* Where property is endowed (made wukf) by the proprietor, and as such devolves to his widow as trustee (mutwalli), it cannot be sold in satisfaction of a claim against him FLOREDO v MAHOMED MUDESSUR . . . 15 W. R. 75

57 ——————— *Alienation by trustees without sanction of Judge whether voidable or void* A Civil Court of superior jurisdiction in

I A. 390, followed. SHAMA CHURN ROY v ABDUL KABEER . . . . 3 C. W. N. 158

58. ——————— *Mortgage.* The fact that a mortgage is in existence over property at

MAHOMEDAN LAW—ENDOWMENT *—contd.*

the time when it is set apart as an endowment does not invalidate the endowment under Mahomedan law. It is an endowment subject to a mortgage.

of other assets of the endower But, if necessary, the mortgagee may enforce the mortgage by sale of the land, and the endowment will be rendered void as against the purchaser under the mortgage, but not as against the heirs of the endower; as *against the latter, the surplus sale-proceeds will be* subject to the endowment. HAJRA BEGUM *v.* KHAJA HOSSEIN ALI KHAN

4 B. L. R. A. C. 86 : 12 W. R. 498

Upholding on review, KHAJAH HOSSEIN ALI *v.* HAZARA BEGUM . . . 12 W. R. 344

59. ——————— *Waste commit-*

expenditure, and dealings with the property belonging to the endowment. IMDAD HOSSEIN *v.* MAHOMED ALI KHAN . . . 23 W. R. 150

60 ——————— *Suit for assertion of khadims rights—Sale of office to which are attached conduct of religious worship and performance of religious duties—Custom.* The plaintiffs instituted a suit for a declaration that they were the khadims of a certain durga and, as such, entitled to perform the duties attached to that office for 21 days in each month, and during that period to receive the offerings made by worshippers at the durga. They also claimed an injunction restraining the defendants from interfering with them in the exercise of that office The plaintiffs claimed their khadimi rights partly by inheritance and partly by purchase, a custom of transferability by sale having been long recognized :—*Held,* that the suit, being a claim to an hereditary office, fell under

Mancharam v. Pranshankar, I. L. R. 6 Bom. 298; and *Vurma Valia v. Ravi Vurma Kunhi Kutty, I. L. R. 1 Mad. 235 L. R. 4 I. A. 76,* referred to. SARKUM ABU TORAB ABDUL WAHEB *v.* RAHAMAN BUKSH . . I. L. R. 24 Calc. 83

61. ——— **Removal of manager**—*Misconduct.* If a superintendent of an endowment misconducts himself, the Mahomedan law admits

MAHOMEDAN LAW—ENDOWMENT *—contd.*

of his removal, and this is sufficient to protect the objects for which the trust was created. HIDAITOON-NISSA *v.* AFZUL HOSSEIN . 2 N. W. 420

62. ——————— *Mismanagement —Power of donor.* The rule of Mahomedan law that a mutwalli, or superintendent of an endowment, is removable for mismanagement, does not apply to the case of a trustee who has a hereditary proprietary right vested in him It is essential for the exercise by the donor of the power of removing a superintendent, that such power be specially reserved at the time of the endowment. GULAM HUSSAIN SAIB *v.* AJI AJAM TADALLAH SAIB. AJI AJAM TADALLAH SAIB *v.* GULAM HUSAIN SAIB

4 Mad. 44

63. ——————— *Misconduct* Where the plaintiff sued to recover certain property as wukf, on the ground that the mutwalli and his an-

heir or otherwise, to partake of the benefit of the

justify the Court in selecting a mutwalli DHURRUCK CHUNDRA SAHOO *v.* GOLAM SHURRUF

10 W. R. 458

64. ——————— *Removal of officer for disobedience—Cause of action—Trust.* In a

same trust. . . . 11 W. R.

65. ——— **Sajjadanashin, position of** *—Rule that remuneration of mutwalli should not exceed one-tenth of income of endowment.* The rule of Mahomedan law that the remuneration of a

MAHOMEDAN LAW—ENDOWMENT —contd.

mutwalli should not exceed one-tenth of the income relates to such managers or mutwallis as have no beneficial interest in the usufruct of the

I. L R. 20 Calc. 810

66. ———— Sajjadanashin, position of and maintenance of—Liability to pay Income-tax The position of the sajjadanashin

khankah properties for the purpose of his own maintenance and that of his family. SECRETARY OF STATE FOR INDIA v. MOHIUDDIN AHMED

I. L. R. 27 Calc 674

67. ———— Waqf, validity of—Creation of endowment—Waqf-nama—Mutwalli, amount to be expended in charitable uses at the discretion of the—Endowment, family—Charitable uses, gift to. To be a valid deed of waqf, a deed must have the effect of granting the property in substance to charitable uses Where its effect is to give the property in substance to the family, or leaves the amount to be expended in charitable uses in the absolute and uncontrollable discretion of the mutwalli and no one has a right to demand an

68. ———— Shias—Waqf—Invalid waqf—Condition suspending operation of waqf-nama—Condition that wafq-nama should not take effect until registration According to the

I. L. R. 24 All. 231

69. ———— Waqf of money held to be valid. Held, that, according to the Mahomedan law, a waqf of moveable property may be validly constituted. *Fatima Bibee* v. *Ariff Ismailjee Bham, 9 C. L. R 66*, dissented from. ABU SAYID KHAN v BAKAR ALI (1901)

I. L. R. 24 All. 190

70. ———— Waqf—Essentials of a valid waqf, according to the Shia law—Illusory dedication One Muhammad Faiyaz Ali Khan, a Mahomedan of the Shia sect, on the 7th of May, 1878, caused to be drawn up an instrument by which he purported to make a waqf of the whole of his property. This instrument, beyond the bare

1878, the instrument above referred to, and the will, were executed by Faiyaz Ali Khan, and they

ordinarily be performed by a pious and well-to-do Mahomedan of the sect to which the testator belonged The tenth paragraph of the rules of practice did, however, provide that, should the settlor have left any debts, "the succeeding mutwalli should pay them first of all by curtailing all the expenses" The former of these two docu-

transaction, inasmuch as, under the Mahomedan law applicable to the Shia sect, a waqf could not be

MAHOMEDAN LAW—ENDOWMENT —*contd.*

created by will. It appeared moreover that the settlor's intention was to suspend the operation of

pious or charitable objects as to secure the preservation of the donor's property for his family. *Agha Ali Khan* v. *Altaf Hasan Khan, I. L. R. 14 All. 429; Abdul Ganne Kasam* v. *Hussein Miya Rahimtulla, 10 Bom H. C. Rep. 7; Mahomed Hamidulla Khan* v. *Lotful Huq, I L R 6 Calc. 744 Pathukutti* v. *Avatha-akutti, I. L R 13 Mad. 66;* and *Syeda Bibi* v. *Mughal Jan, I. L. R. 24 All. 231,* referred to. *Per* BURKITT *J.*—The *waqfnama* and the will could be read together as constituting but one transaction, which was not therefore open to the objection of being a testamentary *waqf*, inasmuch as the dedication was made by the *waqfnama*, and the will did not purport to make any testamentary disposition in favour of the succeeding *mutwalli* but merely recited the dedication made in the *waqfnama*, and then went on to lay down certain rules as to the management of the property. But even so the *waqf* was invalid, as not being a real and substantial dedication to religious or charitable purposes, but under the guise of such dedication, an attempt to preserve the property in act for the benefit of the settlor's family Apart from this,

under the circumstance of the case, the settlor had ever taken such possession *as mutwalli* of the *waqf* property as is requisite under the Shia law. HAMID ALI *v.* MUJAWAR HUSSAIN KHAN (1902)

I. L. R. 24 All. 257

71. ———— *Waqf, validity of—Family settlement in perpetuity—Illusory gifts*

to charitable or religious purposes, but, in effect, to give the property in substance to the grantor's family practically in perpetuity, and that the provisions for charitable purposes could scarcely be regarded as other than illusory:—*Held*, that the

to. FAZLUR RAHIM ABU AHMUD *v.* MAHOMED OBEDUL AZIM ABU AHSAN (1903)

I. L. R. 30 Calc. 666
s.c. 7 C. W. N. 916

MAHOMEDAN LAW—ENDOWMENT —*contd.*

72. ———— *Power of Shia to create valid waqf by will—Admissibility of evidence—Statements as to heirs, made in accordance with practice of public office—Proof of legitimacy of heirs named in such statements—Evidence Act, 1872, s. 32.* By the law of the Shia sect of Mahomedans, as well as by that of the Sunni sect, a valid *waqf* can be created by will. *Agha Ali Khan* v. *Altaf Hasan Khan, I. L. R. 14 All. 429,* dissented from. A series of statements, extending from 1860 to 1890, by a *wasiqadar*, made in accordance with the practice of the *wasiqa* office, a Department under Government, as to who were her heirs and made at a time when no controversy on the subject was in contemplation, and letters written by her, in reply to inquiries by the *wasiqa* officer, explaining and confirming such statements, were held to be admissible in evidence in support of the legitimacy of such heirs, and, under the circumstances, to be conclusive in their favour. BAQAR ALI KHAN *v.* ANJUMAN ARA BEGAM (1903)

I. L. R. 25 All. 236
s.c. L. R. 30 I. A. 94; 7 C. W. N. 465

73. ———— *Shias—Waqf—Words necessary to constitute a valid waqf. Held,* that, according to the Mahomedan Law applicable to the Shia sect, the use of the word "*waqf*" to create a valid *waqf* is not essential, but other words purporting to effect a transfer may, when read together with surrounding circumstances, be sufficient to create a valid *waqf*. SALIQ-UN-NISSA *v.* MATI AHMAD (1903) . . I. L. R. 25 All. 418

74. ———— *Waqf—Mutwalli—Appointment of successor by dying mutwalli—Stranger, if may be appointed.* There is no prohibition against a dying *mutwalli* appointing as his successor in office a stranger, *i.e.*, one who is not a member of the family of the deceased founder of the *waqf*. AMIR ALI *v.* WAZIR HYDER (1905)

9 C. W. N. 876

75. ———— *Endowment—Waqf—Validity—Religious and charitable clauses ancillary to aggrandisement of family—Limitation—Adverse possession—Estate inherited from mother—* ... The terms ... and his ... securing ... he whole ... the husband in the full enjoy... estate in ...

MAHOMEDAN LAW—ENDOWMENT —contd.

and the husband about 14 years later *Held*, that

(1905) . . . **I. L. R. 27 All. 320**
s.c. 9 C. W. N. 625
L. R. 32 I. A. 86

76. ——— **Testamentary waqf**—*Validity—Power of cancellation reserved—Condition as to birth of issue in life-time of testator—Waqf of income—Postponement to life interest of widow—Inheritance on death of widow with life interest* *Held*, that a waqf created by a Shia by his will is not invalid on the ground that it is not absolute and unconditional merely because it contains clauses cancelling the will, if any child should be born to the testator in his life-time and reserving to the testator the power to cancel or modify any of the conditions of the will. *Baqar Ali Khan* v *Anjuman Ara Begam, I. L R 25 All. 236*, referred to *Held*, further, that the waqf was not invalid because the testator directed that, after the death of his widow, to whom he gave a life interest, the *income* of the property should be devoted to the purposes of waqf, where it was clear from other terms of the will that the *corpus* also was to be devoted to the purposes of the waqf *Held*, further, that the fact that the property did not at once on the testator's death pass to the trustees of the endowment, their employment being postponed to a life interest of the widow for maintenance, did not invalidate the waqf *Mahomed Ahsanulla Choudhry* v *Amarchand Kundu, I. L R 17 Calc 498*, referred to *Baqar Ali Khan* v *Anjuman Ara Begam, I. L R 25 All. 236*, discussed *Held*, further, that the plaintiffs' father having predeceased the widow of their uncle, the testator, to whom a life estate had been given by the will,

Khan v *Nuran Bibi, I L R 11 Calc 597*, referred to. MUHAMMAD AHSAN *v.* UMAR DARAZ (1906)
I. L R. 28 All. 633

77. ——— *Waqf—Testamentary waqf—Mortgage of waqf property—Inoperative waqf* Though *waqf* may be created by a will, it does not follow from this that it must be an operative transaction. ABDUL KARIM *v* SOFIANNISSA (1906) . . **I L R. 33 Calc 853**

78. ——— *Waqf—Statement in a will that the testator had at a former time given away or set apart property to charity—Not a testamentary devise—Absence of actual delivery—*

MAHOMEDAN LAW—ENDOWMENT —contd

Reasonably clear intention A mental act although afterwards sufficiently expressed in conduct will not, unless clothed in appropriate words, create a *wakf* *Per* CURIAM: We do not think that a mere statement in a will of some gift in the past can be referred back to the date still undetermined, when that gift is afterwards alleged to have been made, or that such a narrative statement can in any view be an adequate substitute for the oral declaration of dedication to God, which the Mahomedan law appears to us imperatively to require synchronously with the act of dedication itself. There is a plain distinction between giving charity and declaring that one has given in charity. And for the purpose of fixing the origin of the *wakf*, if there was a *wakf* at all, the mere statement in a will that at some past date the testator had set apart such and such funds for charitable objects is of comparatively slight value. Where there has been no actual delivery, a reasonably clear declaration is necessary to create a *wakf* BANUBI *v.* NARSINGRAO (1906) **I. L. R. 31 Bom. 250**

79. ——— *Waqfnamah, suit for setting aside—Substantial dedication—Intention of waqf—Illusory trust—Delivery of possession of waqf property to Mutwalli—Evidence to show that there was no intention to give effect to*

perfected and established by its terms a substantial charitable trust, it is wholly immaterial, whether its provisions were carried out or not, for that is a matter of breach of trust only Evidence given to show that it was never intended to give effect to the trusts and that in fact they were not given effect to, is irrelevant in such a suit. Evidence, however, showing the manner in which the document is related to existing facts, *e g*, the value and state of the *waqf* properties, is relevant According to Mahomedan law a *waqf* cannot be created of shares in a Company *Fatima Bibi* v. *Ariff, 9 C L R 66*, followed *Sakina Khanum* v *Luddun Sahiba, App from O. D. 110 of 1900, 10th June 1902*, dissented from *Oriental Bank* v. *Govind Lall Seal, I L R 9 Calc. 607*, referred to KULSOM BIBEE *v* GOLAM HOSSEIN CASSIM ARIFF (1905) . . **10 C. W. N 449**

80. ——— **Right of a female to be appointed mutwalli**—*Religious trust—Mutwalli—Consent decree giving preference to lineal descendants of settlor—Senior lineal descendant a woman and a Babee—Unorthodox Mahomedan—Discretion of Court in selection of trustee under decree giving it power to appoint.* By Mahomedan

MAHOMEDAN LAW—ENDOWMENT —*contd.*

deputy. A consent decree made by the High Court

the settlor The settlor was a Mahomedan of the Shiah sect His eldest, and only really eligible, lineal descendant was his daughter, the appellant, who claimed the right to be appointed. She,

duties of the trust by deputy, and as a Babee would not take such interest in the religious observances of the Shiah School as one of the Shiah sect —*Held*, by the Judicial Committee, that the Chief Court had a discretion in the appointment of a trustee, which under the circumstances they had rightly exercised. *Held*, also, that no absolute right of the lineal descendants of the settlor to be appointed was established by the authorities cited in the

81. ——— Administration of waqf estate—*Rights of waqifs—Practice of Court—Scheme of administration—Charter of Incorporation superseded.* The wakf properties in suit, situate at Port Louis in the island of Mauritius,

mittee of whom was to administer them and all other properties belonging to the mosque Later purchases were expressed to be made, some on behalf of the Cutchees, others on behalf of the congregation. In 1903, two deeds were executed by a body of Cutchees by which they formed themselves into a society afterwards incorporated under Ordinance 22 of 1874 for certain pious and charitable purposes

MAHOMEDAN LAW—ENDOWMENT —*concld.*

and declared that *they brought into the society* in full ownerships all the said purchased properties with extensive powers of selling and letting the same, other than the mosque and its accessories, of which latter they reserved to themselves the exclusive management. In actions brought respectively by the Hallaye and Soortee classes the Court below ordered both deeds to be set aside, so far as they gave exclusive administration of

82. ——— Decree directing sale of waqf property—*When judgment-debtor objects as trustee, claim falls within s 278 and the order on such claim is not appealable.* When the judgment-debtor or his representative objects to the attachment and sale of property in execution on

83. ——— Validity of waqf—*Sunnis—Provision for celebration of anniversary of birth of Ali Murtaza, expenses of the Muharram and the death anniversaries of members of the family of* ... —*Waqf held* ... ging to the ... f of all her ... mounting to ... some of the ... dedicated property should be applied annually towards the following purposes, viz, the celebration of the birth of Ali Murtaza, the expenses of keeping *tazias* in the month of Maharram, the ... of the deaths of members of the ... epairs of an ... and declared ... to God and ... *H*, *that the* ... an intention ... and charit- ... h the waqf ...

(1908) ... 31 All. 136

MAHOMEDAN LAW—GIFT.

See COMPROMISE—CONSTRUCTION, ENFORCING, EFFECT OF, AND SETTING ASIDE DEEDS OF COMPROMISE
6 Bom. A. C. 77

See DEED—CONSTRUCTION
I. L. R. 13 All. 409

See LIMITATION ACT, 1877. ART. 91
I. L. R. 11 All. 456

See MAHOMEDAN LAW—MARZ-UL-MAUT.

1. LAW APPLICABLE TO.

1. ———— **Law of equity and good conscience**—*Cases of inheritance, marriage, and caste*

SIRDAR *v.* BAHABOOLLA SIRCAR **W. R. 1864, 185**

Agra F. B. Ed. 1874, 286

findings that deeds of gift were not executed by the donor under pressure of the sense of imminent death upheld and approved IBRAHIM GOOLAM ARIFF *v.* SAIBOO (1907) . **I. L. R. 35 Calc. 1**
L. R. 34 I. A. 167 : 11 C. W. N. 973

2. CONSTRUCTION

1. ———— **Donee from Mahomedan widow**—*Title. Held,* that a donee holding from a Mahomedan widow does not acquire a better title to the property than the donor herself had MAHOMED NOOR KHAN *v* HUR DYAL **1 Agra 67**

2. ———— **Gift for consideration**—*Revocable grant—Construction of instrument of gift* One of two brothers, co-sharers in ancestral lands, died leaving a widow, who thereupon became entitled to one-fourth of her husband's share of the family inheritance. Without relinquishing her

MAHOMEDAN LAW—GIFT—*contd.*

2. CONSTRUCTION—*contd.*

revocable by the donor nor a grant of an estate only for the life of the widow It was a *hibbah-bil-iwaz*, or gift for consideration, granting the villages absolutely MAHOMED FAIZ AHMED KHAN *v.* GHULAM AHMED KHAN . **I. L. R. 3 All. 490**
L R. 8 I. A. 25

3. ———— **Transfer of absolute estate**—*Condition—Sunni law—Shiah law* The owner of

nature of a recommendation, and not having the effect of limiting the estate in the house itself NASIR HUSAIN *v.* SUGHRA BEGUM
I. L. R. 5 All. 505

4 ———— **Deed of gift**—*Will—Validity of*

same into the possession of the said Mir Saheb. Because the said Mir Saheb being the heir of all my goods and property, I have constituted him the possessor thereof by virtue of ownership He is therefore the owner. And after me, should this

MAHOMEDAN LAW—GIFT—*contd.*

2. CONSTRUCTION—*contd.*

property be divided, then the said Mir Saheb is the owner and absolutely entitled to receive my portion by the aforesaid right, by the right of ownership of my share, from the Court of His Honour the Agent. No one shall oppose him." *Held*, further, that, even if the direction in the above document as to making the grantee of the document the owner of the grantor's share in her husband's property be regarded as a declaration of [illegible]

5. ——————— *Gift—Possession, transfer of, by the donor—Relinquishment of a share by a Mahomedan in the property of the deceased—Valuable consideration—Transfer of Property Act (IV of 1882), s. 53—Fraudulent transfer—Good faith.* To facilitate the action of the Collector in [illegible]

the share to which he was entitled in the property of his deceased brother, the father of the minor girl The certificate was duly obtained by the Collector. The plaintiff, a judgment-creditor of *M*, then sued the minor for a declaration that *M*'s share in the property of his brother, which he had relinquished, was liable to attachment and sale in execution of his decree. The lower Court decreed the plaintiff's claim on the grounds that the relinquishment was not valid and binding upon the donor under the Mahomedan Law, since being a gift it had not been accompanied and perfected by possession and that it was void against *M*'s creditors under s. 53 of the Transfer of Property Act (IV of 1882), because it had been made with intent to defeat, delay or defraud them.—*Held*, that the relinquishment by *M* of his share in the property of his brother was not a gratuitous transaction, but was supported [illegible]

ment was not a mere gift, but was supported by consideration which the law regards as valuable, and that, therefore, the rule of Mahomedan law, which requires that a gift must be accompanied by possession to render it valid and binding upon the donor, did not apply to the transaction. *Held*, further, that as the transfer was made by *M* honestly with the intention of parting with his share [illegible]

personal benefit, it was not void under s. 53 of the Transfer of Property Act (IV of 1882). MAHAMMADUNISSA BEGUM *v.* J. C. BACHELOR (1905)

I. L. R. 29 Bom. 428

MAHOMEDAN LAW—GIFT—*contd.*

2. CONSTRUCTION—*contd.*

6. ——————— Usufruct—*Gift—Ariat. Held*, upon application for review of judgment in the case of *Mumtaz-un-nissa v. Tafail Ahmad, I. L. R. 28 All. 264; All. Weekly Notes (1905) 269*, that what was decided in that case was that the transfer there in question was not an absolute [illegible]

un-nissa for her life. It was not intended to be laid down that the transfer being an *ariat* was invalid. KHALIL AHMED, *In the matter of.* (1908)

I. L. R. 30 All. 309

7. ——————— Transfer of property in lieu of dower-debt, whether gift or sale—*Hiba bil ewaz—Registration—Consideration, what is sufficient—Koran, copy of.* A transfer of immoveable property by a Mahomedan to his wife purporting to be "made in consideration of a dower-debt of R49" and "on account of right of inheritance," was held to be a sale and as such [illegible]

Transfer of Property Act excepts only gifts without consideration from the operation of the Chapter on Gifts. ABBAS ALI SHIKDAR *v.* KARIM BAKSH SHIKDAR (1908) . . . 13 C. W. N. 160

3. VALIDITY.

1. [illegible]

that a deed of gift was executed in the last [illegible]

death and whether such delivery was in contemplation of death, and with the intention that it should become effectual on the death of the donor. NUSSEEBUN BIBEE *v.* ASHRUFF ALLY

Marsh. 315: 2 Hay 163

2. ——————— *Legacy.* According to Mahomedan law, a gift on a death-bed is viewed in the light of a legacy. ASHADOOLLAH *v.* SHAEBA JHASOBS . . . 2 Hay 345

[illegible]

MAHOMEDAN LAW—GIFT—*contd.*

3 VALIDITY—*contd*

heirs, a will carries the whole property. EKIN BEBEE v. ASHRUF ALI . . 1 W. R. 152

4. ——— *Will—Person*

5. ——— *Will—Consent of heirs.* A deed of gift, such as a tuluknamah, executed at a time when the grantor was labouring under a sickness from which she never recovered, cannot operate save as a will. If such a death-bed gift or will is made in favour of one who is an heir, the will or gift, so far as it relates to that heir, will be inoperative without the consent of the other heirs. ASHRUFFUNNISSA v. AZEEMUN. BARODA KOOERY v. ASHRUFFUNNISSA . 1 W. R. 17

6. ——— *Will—Disposition in favour of heir—Consent of other heirs.* A Mahomedan executed in favour of his wife an instru-

brother sued the widow to set aside the deed as invalid :—*Held,* that the instrument, though pur-

document had never existed at all ... ALTAF ALI . . . I. L. R. 9 All. 357

7. ——— *Death-bed gifts—Consent of heirs—Musha—Delivery of possession*

mitta property was proclaimed by beat of tom-tom, and that the tenants were called upon to attorn to the donees, who subsequently collected rent. The widow took no exception to the gifts, but after two years one of the daughters brought

MAHOMEDAN LAW—GIFT—*contd.*

3. VALIDITY—*contd.*

this suit to have them set aside as invalid and to recover her share as an heiress of her father :—*Held,* (i) on the evidence that the attestation of the heirs

delivery of possession, the gifts were complete; (iii) that the gifts were not impeachable on the ground of musha. Evidence of undue influence considered. SHARIFA BIBI v. GULAM MAHOMED DASTAGIR KHAN . . I. L. R. 16 Mad. 43

8. ——— *Lease granted during illness.* A mokurari lease, extended where

HOSSEIN v. KUREEMOONISSA . 5 W. R. 40

9. ——— *Gift by person labouring under disease.* Under the Mahomedan

donee has been put into possession by the donor. LABBI BEEBEE v. BIBBUN BEEBEE 6 N. W. 159

10. ——— *Gift during mortal illness—Donatio mortis causâ—Marz-ul-maut.* The Hanifi rules with regard to the subject of marz-ul-maut gifts are not exhausted by the dictum

(ii) Whether the character and nature of the disease was such as to induce the donor to believe that death would be caused thereby or to engender in

The limit of one year, mentioned in the law books, does not lay down any hard-and-fast rule regarding the character of the illness; it only indicates that

MAHOMEDAN LAW—GIFT—*contd.*

3. VALIDITY—*contd.*

11. ———— *Absence of immediate apprehension of death—"Marz-ul-maut."* According to Mahomedan law, a gift by a sick person is not invalid if at the time of such gift his

Held, therefore, where at the time of a gift the donor had suffered from a certain sickness for more than a year and was in full possession of his senses, and there was no immediate apprehension of his death, and he died shortly after making the gift, but whether from such sickness or from some other cause it was not possible to say, that under these circumstances the gift was not invalid according to Mahomedan law. MAHOMED GULSHERE KHAN *v.* MARIAM BEGUM . . I. L. R. 3 All. 731

12. ———— *Absence of immediate apprehension of death Semble* A gift by a sick person is not invalid if at the time he made it he was in full possession of his senses and there was no immediate apprehension of death IBRAHAM *v.* SULEMAN . I. L. R. 9 Bom. 146

13. ———— *Gift in lieu of debt for dower—Sale—Dower. Held*, that the provisions of the Mahomedan law applicable to gifts

14. ———— Deed of sale—*Joint gift—Without discrimination of shares.* Where a conveyance between Mahomedans, though in form a

v ISMAIL AHMED . . 7 Bom. O. C. 27

15. ———— Deed of gift altering succession of property by law—*Intention of parties.* Where a Mahomedan transferred certain property (Company's paper) to his son, reserving the interest to himself for life, the object of the disposition being to give the son a larger share of the father's property than would come to him by

MAHOMEDAN LAW—GIFT—*contd.*

3. VALIDITY—*contd.*

succession *ab intestato* —*Held*, that the transaction could not be impeached on moral grounds, as a

also, that the intention of the parties did not violate any provision of the Hedaya, and the transfer was complete and the gift valid. UMJAD ALLY KHAN *v* MOHUMDEE BEGUM
10 W. R. P. C. 25 : 11 Moo. I. A. 517

16. ———— Hiba-bil-iwaz—*Effect of, upon heirs.* A hiba-bil-iwaz differs from an out-and

17. ———— *Condition of*

some act in respect of the property. USSUD ASLI KHAN *v.* OLFUT BEEBEE . 3 Agra 237

18. ———— Alienation by Mahomedan lady—*Consent of children.* A Mahomedan lady can sell or give away her property as she pleases. When a mother makes a gift to her children, and one

given. MAHOMED ZUHEERUL HUQ *v* BUTOOLUN
1 W. R. 79

19. ———— *Gift on death-bed—Will.* A Mahomedan widow, or any other woman, holding property in her own right, may give it away to whomsoever she pleases, unless she delays the gift till upon her death bed, when such a gift would be looked upon as a will, and be inoperative beyond a certain limit LUTEEFOONISSA BIBEE *v* RAJAOOR RUHMAN . 8 W. R. 84

20. ———— Gift to take effect at an indefinite future time—*Mapillas* Gifts to take effect at an indefinite future time are void under Mahomedan law. CHEKKONEKUTTI *v.* AHMED
I. L. R. 10 Mad. 196

21. ———— Delivery of possession—*Possession with mortgagee—Sale—Minors.* A Mahomedan lady executed a deed of gift in favour of

execution of her deed

late Courts found that the defendant was, at the

[illegible]

Mahomedan law, make a gift of it, although she could sell the same See *Adam Khan* v *Alarakhi, I L. R 6 Bom. 645* When the donee is a minor, possession may be had by a trustee on his behalf. MOHINUDIN v MANCHERSHAH I. L. R. 6 Bom. 650

22 ——— Gift of share before partition—*Co-sharers* According to the Mahomedan law, one of two sharers can give over his share to the other even before partition AMEENA BIBEE v ZEIFA BIBEE . . . 3 W. R. 37

23. ——— Gift without delivery of possession—*Habi-bil-iwaz, or gift on stipulation—Possession necessary for such a gift—Registration not equivalent to delivery of possession so as to validate gift* By a deed of gift duly executed and registered a Mahomedan woman gave certain property to the plaintiff's father The deed stated

[illegible]

the donee The registration of a deed of gift between Mahomedans does not cure the want of delivery by the donor MOGULSHA v. MAHAMAD SAHEB . . . I. L. R. 11 Bom. 517

24. ——— Gift of undivided property—*Musha, or confusion—Change of possession.* Where there is, on the part of a father or other

[illegible]

definite shares in certain zamindaris, the nature of the right in which is defined and regulated by the public Acts of the British Government, so that they form for revenue purposes distinct estates, each having a separate number in the Collector's books, and each liable to the Government only for its own

[illegible]

25. ——— Gift of property not in possession—*Gift of zamindaris let out on lease, and malikana rights—Musha as applied to gifts of unpartitioned and undivided lands.* The rule of

[illegible]

the rents and profits There is nothing in Mahomedan law to make the gift of a zamindari, a part or the whole of which is let out on lease to tenants invalid Nor is there any principle by which to

[illegible]

law which lay down that a gift of an undivided share in property is invalid because of musha or confusion on the part of the donor, and that a gift of property to two donees without first separating or dividing their shares is bad because of musha on the part of the donees, apply only to those subjects of gift which are capable of partition. MULLICK ABDOOL GUFFOOR v MULEKA . I. L. R. 10 Calc. 1112

26. ——— *Hiba, or deed of gift—Gift by husband to wife—Possession—Continued receipt of rents by husband—Husband, Manager for wife—Gift of "musha" or undivided part—Subsequent partition.* In 1871 *H G*, a Mahomedan, executed a formal hiba or deed of gift, to his wife, the defendant, of a house belonging to

[illegible]

deed of gift, and down to the time of his death in 1881, *H G* continued to collect the rents as before, and they were entered in his books and drawn upon

[illegible]

rents as her manager, even when he [illegible]

[illegible]

brother were entitled in equal shares. [illegible] had been made between *A G* and [illegible] when *H G* died: *Held*, that the gift was [illegible] a gift of a "musha," or undivided [illegible] susceptible of partition. [illegible]

MAHOMEDAN LAW—GIFT—*contd.*

3. VALIDITY—*contd.*

there had been partition subsequently to the deed, that would or would not have operated to validate the gift. EMNABAI *v* HAJIRABAI

I. L. R. 13 Bom. 352

27. ———— *Pension—Gift of musha—Undivided part—Ascertained share—Transfer of possession—Mutation of names—Delivery of title-deeds—Bengal Civil Courts Act (IV of 1871), s. 24—Pension Act (XXIII of 1871), s 7, cl (2)* A pension of the nature described in Act XXIII of 1871 (Pensions Act), s. 7, cl. (2), was drawn by a Mahomedan, in whose name alone it was recorded in the Government registers, for himself

one of his sisters brought a suit against his widow to establish her right (i) to receive the share in the pension which she had inherited from her father and received up to her brother's death, and (ii) as heir to her brother himself, to the share which he had inherited. It was contended on her behalf

subject of gift, and under the Mahomedan law it was "musha" and not transferable, and actual delivery or transfer of possession was, under the same law, essential to the completion of the gift, but no such delivery or transfer had been effected · *Held*, that the deed of gift was not a good assignment in law of the interest of the plaintiff, who was not a party thereto, and the defendant could take

are the heirs became at once divided and separate at the death of the sole owner; and in this case the shares were definite and ascertained and required no further separation than was already effected

undivided part, and had no application to cases where the donor's interest itself was separate; and that even if it were the strict Mahomedan law

MAHOMEDAN LAW—GIFT—*contd.*

3 VALIDITY—*contd.*

that where a man having a definite ascertained

to the Mahomedan law, possession was necessary

with the pension or assigning the right to receive the pension; that the gift in this case was perfect as soon as the deed was executed and handed over with the other papers to the donee; and that the mutation of names was merely a thing which would follow on the perfection of the title, and did not in itself go to make or form part of the title SAHIB-UN-NISSA BIBI *v.* HAFIZA BIBI. HAFIZA BIBI *v.* SAHIB-UN-NISSA BIBI . I. L. R. 9 All. 213

28. ———— *Mahomedan law of gift—Possession not delivered at the time, but afterwards obtained—Musha, mixed, or common* A hibanama

followed that one of three shares might give his share to the other two. *Ameena Bibi* v *Zeifa Bibi, 3 W. R 37*, referred to and approved. *Held*, also, that, as the donor had done all that she could do to perfect the contemplated gift, which was attended with complete publicity, and as the donees had afterwards obtained possession, *the fact* of the donor's having been out of possession, and therefore

29. ———— *Claim to possession of property under deed of sale—Consideration—"Musha"—Effect of possession following upon gift to render it valid* The law relating to the invalidity of gifts of "musha," *i.e*, the prohibition of the gift of an undivided part in property capable of partition, ought to be confined within the strictest

and moveables Of the greater portion of this property the donor, a mother giving them to her daughter, had only so far possession that she was in receipt of the rents and profits In the deed of gift she declared (thereby making an admission whereby her heir and all claiming through him were bound) that she had made the donee, her daughter, possessor of all the properties; and she directed that the gift should be carried into effect by the daughter's husband, who was manager of estates

30. ——— *Musha—Gift of an undivided share—Gift of future revenues of*

donation A Mahomedan executed a deed of gift in favour of his wife, by which he agreed to give her and her heirs in perpetuity a sum of R4,000 per

I. L. R. 22 Bom. 488

31. ——— **Interest of donees undefined by gift**—*Receipt by donees of rent of land*

6 Bom. A. C. 25

32. ——— **Gift in lieu of dower**—*Indefiniteness* In a suit upon a hibanama alleged to have been executed by the husband of the plaintiff,

ATCHAMMA . . . . . . 4 Mad. 115

33. ——— **Gift without defining respective shares of donees**—*Act VI of 1871,*

or detail of their respective shares, whereby a younger son and several daughters were excluded from inheritance, was set aside by the Court under the general rule of Mahomedan law, that anything which is capable of division, when given to two persons, should be divided by the donor at the time of the gift, or immediately subsequent thereto and prior to the delivery to the donees, and the special rule that a gift of undivided property is absolutely invalid where one of the donees is a minor son; justice, equity, and good conscience not requiring, under the circumstances of the case, that the deed should be maintained. *K* devised a certain estate to his son *Z*, but directed that the devise should only take effect on his death in respect of a portion of the property which was rent-free land, and that, with

have a son competent to manage land paying

34. ——— **Undefined gift**—*Gift by father to minor son* The rule that an undefined gift of joint undivided property, mixed with property capable of division, is invalid by Mahomedan law, does not apply to a gift by a father to a minor son. WAJEED ALI *v.* ABDOOL ALI

W. R. 1864, 121

35. ——— **Gift of defined shares in land**—*Separate property* A defined share in a landed estate is a separate property, to the gift of which the objection which attaches under Maho-

MAHOMEDAN LAW—GIFT—*contd.*

3. VALIDITY—*contd.*

medan law to the gift of joint and undivided property is inapplicable. JIWAN BAKHSH *v.* IMTIAZ BEGAM . . . . . I. L. R. 2 All. 93

36. ——— Gift of defined shares of property—*Possession—Hanifia Code—Imamia Code.* A Mahomedan bequeathed his property to his two nephews, Gulam Rasul and Gulam Ali, as joint tenants. Gulam Ali died, leaving a widow and a daughter, who continued to be joint tenants with Gulam Rasul; but the latter continued in exclusive possession of the property, subject to any claim which they might establish to a share in, or a charge upon, it. Gulam Rasul, by a written instrument, made a gift of that property to his younger son, the father of the defendants, disinheriting his elder son, the plaintiff. *Held,* that the gift was valid, and that the doctrine of the Hanifia, though not of the Imamia Code, that the gift of a share in undivided property, which admits of partition, is certainly invalid, or at least forbidden has no application to the gift of property so circumstanced GOLAM JAFAR *v.* MASLUDIN I. L. R. 5 Bom. 238

37. ——— *Reservation of income—Condition against alienation—Undivided property—Indivisible property* B owned a one-twelfth share of a muafi estate and a dwelling-house. As owner of the dwelling-house, she

law, and such gift was not vitiated by the mere reservation of the income of the share, or by the

I. L. R. 5 All. 285

38. ——— Gift with restriction as to alienation—*Absolute gift* Plaintiff, during his

taken in execution for the son's debts, many years after the gift.—*Held,* that by Mahomedan law, as well as by the general principles of law, such a restriction on alienation, especially after the gift had become complete long before, is absolutely invalid. AMIRUDDAULA MUHAMAD KAKYA HUS-

MAHOMEDAN LAW—GIFT—*contd.*

3. VALIDITY—*contd.*

SAIN KHAN *v.* NATERI SRINIVASA CHARLU. JAGHIRDAR OF VIRUTHALABATHI *v.* NATERI SRINIVAAS CHARLU . . . . . . 6 Mad. 356

39. ——— Gift coupled with condition—*Absolute gift.* A testatrix was entitled to Government notes under a gift coupled with the condition that she was to receive only the interest

L. R. 8 I. A. 117

at the time, the gift is void ABEDOONISSA KHATOON *v.* AMEEROONISSA KHATOON . 9 W. R. 257

MUNEER . . . . . 18 W. R. 66

42. ——— *Hibba.* Possession is under the Mahomedan law absolutely necessary to establish the validity of a hibba. SHAHJAN BIBEE *v.* SHIB CHUNDER SHAHA . 22 W. R. 314

43. ——— *Contingent or postponed gift—Possession not immediate.* Under the Mahomedan law, a gift cannot depend upon a contingency or be postponed, but possession must be immediate. ROSHUN JAHAN *v.* ENAET HOSSEIN 5 W. R. 4

44. ——— *Donor remaining in possession.* According to Mahomedan law, a gift is invalid when the donor is to remain in possession during his lifetime. ZOHOOROODEEN SIRDAR *v.* BAHAROOLLAH SIRCAR W. R. 1864, 185

45. ——— *Donor remaining in possession—Deed of gift—Consideration.* The policy of the Mahomedan law is to prevent a testator interfering by will with the course of the devolution of property according to law among his heirs. But a holder of property may defeat the policy of the law by giving in his lifetime the whole, or any part, of his property to one of his heirs, provided he complies with certain forms This may be done by a deed of gift without consideration, or by deed of gift for consideration A conveyance

necessary for its validity,

MAHOMEDAN LAW—GIFT—*contd.*

3. VALIDITY—*contd.*

perty, and to confer it on the donee. It is incumbent on those who set up transactions of this nature to show very clearly that the forms of the Mahomedan law, whereby its policy is defeated, have been strictly complied with. KHAJOOROONISSA *v.* ROUSHAN JEHAN
I. L. R. 2 Calc. 184 : 26 W. R. 36
L. R. 3 I. A. 912

affirming the decision of the High Court in ROSHUN JAHAN *v.* ENAET HOSSEIN . . 5 W. R. 4

46. ——— *Gift in futuro.* Under the Mahomedan law, a gift is not valid unless it is accompanied by possession, nor can it be made to take effect at any future definite period. A document containing the words, "I have executed an ikrar to this effect, that, so long as I live, I shall enjoy and possess the properties, and that I shall not sell or make gift to any one, but, after my death, you will be the owner, and also have a right to sell or to make a gift after my death"—*Held*, to be an ordinary gift of property "*in futuro,*" and as such invalid under Mahomedan law. YUSUF ALI *v.* COLLECTOR OF TIPPERAH
I. L. R. 9 Calc. 138

47. ——— *Delivery—Donee*

no formal entry or actual physical departure is necessary; it is sufficient if the donor and donee are present on the premises, and an intention on the part of the donor to transfer has been unequivocally manifested. IBRAHIM *v.* SULEMAN
I. L. R. 9 Bom. 146

48. ——— *Gift made on death-bed—Delivery of possession.* Where pro-

as such manager or agent was not such possession as would render it necessary to the validity of the gift that there should have been an actual or formal delivery to him of possession of the property. VALAYET HOSSEIN *v.* MANIRAN . 5 C. L. R. 91

49. ——— *Change of possession—Consideration.* On an issue whether an

50. ——— *Seisin—Surrender and delivery to donee.* The plaintiff's deceased sister in her lifetime was the owner of three

51. ——— *Absence of relin-*

donor or of seisin by the donee. JESWUNT SINGHJEE UBBY SINGJEE *v.* JET SINGHEE UBBY SINGJEE . . . . 6 W. R. P. C. 46
3 Moo. I. A. 245

52. ——— "*Tamlik,*" or assignment of ownership. "Tamlik," or assign-

53. ——— *Seisin and acceptance of possession—Residence and receipt of rent by donor.* A Mahomedan husband executed a

3. VALIDITY—*contd.*

part of the donee, and relinquishment on the part of the donor,—had been complied with, though the husband shortly afterwards returned to the house, resided there with his wife till his death, and received the rents of other parts of the property comprised in the hibba. The continued occupation or residence and receipt of rents were in such circumstances to be referred to the character which the donor bears to husband, and to the rights and duties connected with that character. AMINA BIBI *v.* KHATIJA BIBI . 1 Bom. 157

54. ———— *Gift by husband to wife—Delivery of possession—Gift, validity of, as against creditor, or subsequent bonâ fide purchasers.* The plaintiff, the nika wife of the late Nawab of the Carnatic, sued for a declaration of her absolute title to certain premises (Nos. 1, 2, 3, and 4), for possession of certain other premises (Nos 5 and 6), for delivery to her by defendant of the title-deeds of all the premises except No 1, and for cancellation and delivery up of a sheriff's bill of sale of No 1 in favour of *T A*, of a mortgage of Nos. 2, 5, and 6 to *R & Co*, of a mortgage of No 4 to *A A*, and of all assignments by *T A R & Co*, or *A A*, to defendant She claimed this relief under an alleged gift to her by the late Nawab on or about the 6th January 1851 Defendant said (and it was so found) as to 2, 5, and 6, that he had never had anything to do with the said premises or with the title-deeds thereof As to the other premises, that the several assignments in his possession were made to him as receiver of the Carnatic property under Act XXX of 1858, but that he had not obtained possession of the said premises nor of any of the title-deeds thereof, except the sheriff's bill of sale of the 29th November 1855. Issues were settled raising the following questions: Whether ... if so, it ... tent pur- ... donor? ... evoked? ... ossession ... , 5, and 6? *Held*, that a complete gift had been made and not revoked; that it was valid against the creditors of the donor, and also (as the donor and donee were both Mahomedans) against subsequent purchasers for valuable consideration from the donor; but that defendant had never had possession of the title-deeds of Nos. 2, 5 and 6, so that the suit could not be maintained as regards them. Under Mahomedan law, "in the instance of a wife who may give a ...

that, if a father transfer his house to his minor son, himself continuing to occupy it and to keep his property therein, the gift is valid, on the principle that ...

relation of husband and wife. AZIMUNNISSA BEGUM *v.* DALE . . . . 6 Mad. 455

... 1 Agra 238

56. ———— *Gift by father to minor son.* According to Mahomedan law, no for- ...

57. ———— *Absence of change of possession—Gift by father to son.* Gift by father to son held not valid as being followed by no real change in the nature of the enjoyment of the property, and merely nominal MUNNOO BIBEE *v.* JEHANDAR KHAN . . 1 Agra 350

...

dates of their respective gifts The husband ... of which ... t the gift ... ss or for ... MIRA ... I. L. R. 10 Mad. 46

5 ———— *Ground for cancellation of deed of gift—Want of delivery of possession to donee.* *Held*, in the case of a deed ... no ground ... of the ... been ... ccord-

MAHOMEDAN LAW—GIFT—*contd.*

3 VALIDITY—*contd.*

ing to the Mahomedan law, inoperative. UMRAO BIBI *v.* JAN ALI SHAH . I. L. R. 20 All. 465

60.* ——— *Want of possession—Essentials for valid gift* Delivery and seisin are, under the Mahomedan law, the essence of a gift, and therefore no right of any description passes without them A donor therefore must be in possession *Mohin-ul-din* v *Manchershah, I L R 6 Bom 650*, referred to and followed

gift —*Held*, that the gift was invalid, the language of the texts of Mahomedan law distinctly laying

61. ——— *Gift of life-estate—Want of possession in donee* A grant of a life-estate is invalid under the Mahomedan law The grantee in such a case would take an absolute estate. A Mahomedan executed a deed by which he settled his property in wukf on his two wives and

perty —*Held*, that the settlement was invalid as a deed of gift to the settlor's next of kin after the determination of the life-estates granted to his wives and daughters; *first*, because the donor had not parted with possession of the property till his death, and, *secondly*, because the grant of a life-estate is quite inconsistent with the Mahomedan law, the grantee in such a case taking an absolute estate. NIZAMUDIN GULAM *v.* ABDUL GAFUR

I. L. R. 13 Bom. 264

62. ——— *Hiba bil-ewaz—Gift made in consideration of services rendered—Donor not in possession—Possession not delivered*

MAHOMEDAN LAW—GIFT—*contd.*

3 VALIDITY—*contd.*

It does not include the case of a gift in consideration only of natural love and affection or of services or

MAD HASAN . . I. L. R. 11 All. 1

63. ——— *Possession—*

Bukh Khan v *Husseini Bibi, I. L R. 15 Calc.*

exceptions allowed by Mahomedan law. BAVA SAIB *v* MAHOMED . . I. L. R. 19 Mad. 343

65. ——— *Validity of gift—Possession—"Musha"* A deed, which was found in effect to be a deed of gift comprising

MAHOMEDAN LAW—GIFT—*contd.*

3 VALIDITY—*contd.*

11 All. 460 : L. R. 16 I. A. 205, referred to. SAJJAD AHMAD KHAN v. KADRI BEGAM
I. L. R. 18 All. 1

66. ——— *Alleged gift by a Mahomedan father to his son—Benami transaction—Evidence of transfer of ownership.* Government securities were indorsed and delivered by a Mahomedan father to his son in the presence of the local Treasury Officer. On the question, raised after the father's death, whether this was intended to transfer the ownership, or was a benami transaction, leaving the true ownership in the father, the Courts below had drawn different inferences from the proved facts The first Court decided that the ownership had been changed, the notes having been given with only a reservation of the temporary use of the interest The High Court found that the ownership remained in the father. On a review of the possession of the parties at the

reservation differed from the case alleged by the defendant and from that actually made out by the plaintiff at the hearing IBRAHIM ALI KHAN v UMMAT-UL-ZOHRA . . I. L. R. 19 All. 267
L. R. 24 I. A. 1

67. ——— *Gift not perfected by possession—Necessity of delivery of possession—Registration.* Under the Mahomedan law, a registered deed of gift is not valid if it is never *perfected by possession* The *Mahomedan law* requires that the donor should be in actual or at least constructive possession, and that he should give actual or at least constructive possession to the donee. Registration is not equivalent to possession ISMAL v. RAMJI SAMBHAJI
I. L. R. 23 Bom. 682

68. ——— *Hiba-bil-iwaz—Settlement in lieu of dower—Possesion not transferred—Validity on passing of consideration.* A Mahomedan executed a deed of settlement of certain land in lieu of dower on his wife, who left him shortly thereafter without ever acquiring possession. On his contending that the settlement was invalid :—*Held,* that a *bond fide* transaction by way of 'hiba-bil-iwaz' (as this was

HAMMAD ESUPH RAVUTAN v PATTAMSA AMMAL
I. L. R. 23 Mad. 70

69. ——— *Gift of one-third*

MAHOMEDAN LAW—GIFT—*contd.*

3. VALIDITY—*contd.*

the Land Acquisition Act, two persons claimed a share in compensation to be paid in respect of it, alleging that the property in question had been assigned to them by a registered deed of gift, and that it had devolved upon their assignor as a sharer, under the Mahomedan law, in the estate of a deceased relative. The deed of gift recited the fact that the assignor had become entitled to 14 out of 24 shares in the said estate, and authorised the claimants to collect the assignor's shares from tenants and others who were in possession of the properties, by means of suits or mediation, and directed the claimants to take as a gift to their ... so collected. ... ourt of first ... was invalid ... laimants, as donees, had not been put into possession of the property, and also because the gift was of an undefined share, and therefore invalid, according to Mahomedan law, by reason of "*musha*" or confusion. *Held,* that, even if the doctrine of "*musha*" was in force in the Presidency of Madras, the claimants were entitled to be paid the compensation claimed *Quære.* Whether the doctrine of "*musha*" is in force in the Presidency of Madras. *Per* BENSON, *J.*—*The validity of the gift* was not "a question regarding succession, inheritance, marriage or caste, or any religious usage or institution," as referred to in the Madras Civil Courts Act, 1873, and therefore the rules of Mahomedan law with regard to gifts were not necessarily the rules by which the question should be decided. The Mahomedan law, as adopted by our Courts, does not require immediate possession to be given in all cases, and it may be doubted whether even the restricted rule as to possession is any longer adapted to modern requirements, and whether the mode of a transfer laid down as obligatory on Europeans and Hindus by s 123 of the Transfer of Property Act, and adopted by the parties in this case (namely, by registered instrument attested by ... ought not

Mahomedans. *Mahomed Buksh Khan* ... *Bibi, L. R. 15 I. A. 81,* referred to ALABI KOYA v MUSSA KOYA (1901) . I. L. R. 24 Mad. 513

70. ——— *Gift—Transfer* ... On the 5th day of July, 1901, ... t of moveable ... the house in ... *C, D, E,* the ... ively, of her ... of the deed ... the house on ... On the 7th ... house and at day of July, 1901, ... her instance, the tenants, who resided on a portion *of the property transferred,* attorned to *A.* During the absence of *J* from *July 5th to July*

MAHOMEDAN LAW—GIFT—*contd.*

3. VALIDITY—*contd.*

7th, 1901, certain furniture and other moveable property belonging to her, remained in the house, the subject of the gift On the 18th October 1903, *J* died intestate Upon *S.* the sole surviving daughter of *J* filing a suit claiming that the alleged gift was invalid under Mahomedan law.—*Held*, that the execution of a deed of gift of immoveable property accompanied by a temporary abandonment of possession by the donor in favour of the transferee and the attornment of tenants to the transferee, is a sufficient delivery of seisin to make the gift valid under the Mahomedan law The fact that during the abandonment of possession, a portion of the donor's moveable property remains on the premises, and that the donor, after a temporary absence, continues to reside in the same, does not render the transfer of possession inoperative. *Shaikh Ibhram v. Shaikh Suleman, I L R. 9 Bom. 146,* followed. It was within the discretion of the lower Court to allow separate costs to the 1st defendant and her minor children. But only one set of costs was allowed in the appeal. KHAYER SULTAN v. RUKHIA SULTAN (1905) . . I. L. R. 29 Bom. 468

71. ——— *Gift—Mode of making valid gifts either with or without consideration—Bonâ fide intention—Delivery of possession—Gift with reservation by donor of possession and enjoyment of property to himself and wife for their lives.* By the Mahomedan law a holder of property may in his life-time give away the whole or part of his property, if he complies with certain forms; but it is incumbent upon those who seek to set up such a transaction, to show very clearly that those forms have been complied with. It may be by deed of gift simply, or by deed of gift coupled with con-

[illegible] of the property and to confer it upon

or was intended to pass; that in executing the

I. L. R. 28 All. 438
s.c. 10 C. W. N. 706
L. R. 33 I. A. 68

MAHOMEDAN LAW—GIFT—*contd.*

3. VALIDITY—*contd.*

72. ——— *Transfer of pos-*

donee. *Shaik Ibrahim v. Shaikh Suleman, I. L. R. 9 Bom. 146,* followed. HUMERA BIBI v. NAJM-UN-NISSA (1905) . . I. L. R. 28 All. 147

73. ——— *Nature of possession necessary to constitute a valid gift—Residence of donor—Mother with daughter—Donee does not make gift invalid* Under Mahomedan law, to

by limitation of names in the register, the mere

I. L. R. 30 Mad. 305

74. ——— *Gift by registered instrument not valid if unaccompanied by delivery of possession* The Mahomedan law is

75. ——— *Gift—Validity of deed of gift—Marz-ul-maut—Death illness, what constitutes—Apprehension of death—Concurrent judgments on fact—Privy Council, practice of.* The

MAHOMEDAN LAW—GIFT—*contd.*

3. VALIDITY—*concld.*

and there being concurrent judgments on the evidence that there was no such apprehension, the Judicial Committee declined to interfere, particularly as it appeared that the reasons given by the Courts established a large preponderance of probability in favour of the conclusion at which they had both arrived. FATIMA BIBI *v.* AHMED BAKSH (1907) . . . I. L. R. 35 Calc. 271
s.c. L. R. 35 I. A. 67
12 C. W. N. 214

76. ———— *Gift—Mushaa gifts of undivided shares in Companies and shares in freehold property in Rangoon—Whether law of mushaa applicable to Mahomedans residing in Rangoon—Death-bed gifts—Gifts made not under sense of imminence of death* In suits brought to set aside certain deeds of gift executed shortly before his death by a Mahomedan in Rangoon in favour of his widows and minor children, as being invalid because they were death-bed gifts, and because they were contrary to the law of *mushaa* (prohibiting gifts of undivided shares in property which is divisible) —*Held*, in accordance with the principles laid down in *Muhammad Mumtaz Ahmad* v *Zubaida Jan, I. L R. 11 All. 460*, *L. R.*

large commercial town. *Held*, also, on the facts upholding the concurrent decisions of the Courts below, that the deeds of gift were not executed under pressure of the sense of the imminence of death and were therefore valid IBRAHIM GOOLAM ARIFF *v* SAIBOO (1907) . I. L. R. 35 Calc. 1
. s.c. L. R. 34 I. A. 167

77. ———— *Gift—Hiba bil mushaa—Possession* *Held*, that what is known to Muhammadan law as a *hiba bil mushaa*, or gift of an undivided joint property, is a valid gift, if the donee obtains possession. *Mumtaz Ahmad* v. *Zubaida Jan, I. L. R 11 All. 460*, referred to. MOHIBULLAH *v* ABDUL KHALIK (1908)
I. L. R. 30 All. 250

4. REVOCATION

1. ———— Power of revocation—*Irrevocable gift—Delivery of possession.* In a suit for arrears of rent due on defendant's patni talukh though the rate was admitted, it was pleaded that,

consequence of defendant's house having been plundered, she was entitled to assistance to enable her to replace what he had lost, and that the rajah (zamindar), not being able to make good the amount

MAHOMEDAN LAW—GIFT—*concld.*

4. REVOCATION—*concld.*

at once, took this method of assisting his connexion :—*Held*, that the gift (or remission of rent for the years in suit) was complete at the termination of each year; in other words, delivery had been made to the donee, and it could not be recalled under the Mahomedan law, which is precise as to the impossibility of revoking a gift after delivery without the decree of a Judge or the consent of the donee. ENAET HOSSEIN *v.* KHOOBUNNISSA . . . 11 W. R. 320

2. ———— Power of revoking gift—*Revocable gifts.* Certain lands, choultries, and moveable property had been, by instrument in

applying the profits of the lands, etc, in perpe-

ALLAH SAIB AGI AJAM TADALLAH SAIB *v.* GULAM HUSSAIN SAIB . . . . 4 Mad. 44

3. ———— Power of revocation—*Alienation by donee—Gift by father to son.* By Mahomed
gift by a
the thing
W. R.

4. ———— *Deed of gift made in contemplation of marriage.* A hiba-bil-iwaz, or deed of gift made in contemplation of marriage, is not a revocable instrument KULSOOM *v.* AMEERUNNISSA . . . 1 Hyde 160

MAHOMEDAN LAW—GUARDIAN.

See GUARDIANS AND WARDS ACT, s 10
I. L. R. 29 All. 10

See MAHOMEDAN LAW—MARRIAGE.
1 Bom. 236

See MAHOMEDAN LAW—WIDOW
I. L. R. 26 Mad. 734

1. ———— Right of guardianship—*Mother—Father—Infant under seven years* According to Mahomedan law, the mother is entitled, in preference to the father, to the custody of an infant under seven years of age. FUTTEH ALI SHAH *v.* MAHOMED MUKEEM OODEEN. FUTTEH ALI SHAH *v.* FUZEELUTTUNISSA BEBEE
W. R. 1864, 131

RAJ BEGUM *v.* REZA HOSSEIN . 2 W. R. 76

MAHOMEDAN LAW—GUARDIAN—*contd.*

2. ——— *Mother—Custody of child—Male child—Female child.* According to Mahomedan law, a mother is entitled to the

2 Hyde 63

3. ——— *Hizanut—The custody of female minors before puberty—Mother's right* By the Mahomedan law the mother is entitled to the custody of a female minor who has not attained her puberty, in preference to the husband. NUR KADIR v. ZULEIKHA BIBI

I. L. R. 11 Calc. 649

4 ——— *Minors—Custody*

I. L. R. 7 Calc. 434

5. ——— *Mother—Paternal uncle—Minors, custody of* According to Mahomedan law, a mother has a preferential right over the paternal uncle to the guardianship of minors and to the custody of their persons ALIMODEEN MOALLEM v SYFOORA BIBEE 6 W. R. Mis. 125

6. ——— *Mother, re-marriage of* Under the Mahomedan law, the mother

7. ——— *Custody of minor son—Mother, right of.* According to the Mahomedan law, a mother has the right of custody of the person of her minor son up to seven years of age. *Quære:* Where she does not maintain him, has she, as against a relation on the father's side, the right of custody and control after that age? *In the matter of* AMEEROONISSA . 11 W. R. 297

8. ——— *Girl not having attained puberty—Grandmother—Maternal grand-*

I. L. R. 11 Calc. 574

9. ——— *Custody of children—Act IX of 1861, s 5—Appeal* The Maho-

MAHOMEDAN LAW—GUARDIAN—*contd.*

been rejected by the District Judge, an appeal was preferred to the High Court as an appeal from an order. It was objected to the hearing of the appeal that, in view of s. 5 of Act IX of 1881, the appeal should have been as from a decree, and should have been made under the rules applicable to a regular appeal:—*Held,* that, looking to the

any proper ground to justify the refusal of the application. IDU v. AMIRAN . I. L. R. 8 All. 322

10 ——— *Guardianship of female minor—Female minor, right to custody of*

LARDLI BEGUM v. MAHOMED AMIR KHAN

I. L. R. 14 Calc. 615

11. ——— *Minor—Guardian of property—Certificate of guardianship.* Under the Mahomedan law, the brother of the mother of a female minor, whose parents are dead, is entitled, in preference to a mere stranger, to the guardianship of the property of the minor, unless it be shown that he is in some way unfit to take charge of such property. *In the matter of the petition of* IMAM BUKSH IMAM BUKSH v. THACKO BIBEE . . I. L. R. 9 Calc. 599

12. ——— *Sister—Minor, custody of—Prostitute. Held,* where the plaintiff

MAHOMEDAN LAW—GUARDIAN— *contd.*

13. ———————— *Uncle—Nephew —Next friend.* The rule of Mahomedan law that an uncle cannot be the guardian of a minor nephew's

14. ———————— *Suit for restitution of minor wife in custody of her mother.* The plaintiff sued to recover *M*, who was ten years of age, alleging that he had been married to her, that she had remained at his house, and that her mother and other persons had taken her away, and would not allow her to return The lower Appellate Court dismissed the suit on the ground that *M* was a minor, and also on the ground that she was only ten years of age:—*Held*, that the plaintiff's suit was properly dismissed WAZEER ALI *v* KAIM ALI **5 N. W. 196**

15. ———— **Minor's property**—*Sale by guardian of property of minor—Purchaser, right of.* Under the Mahomedan law, a sale by a guardian of property belonging to a minor is not permitted otherwise than in case of urgent necessity or clear advantage to the infant A purchaser from such guardian cannot defend his title on the ground of the *bona fides* of the transaction. An elder brother is not in the position of a guardian having any power as such over the property of his minor sisters. BUKSHAN *v* MALDAI KOOERI **3 B. L. R. A. C. 423** S. C. BUKSHUN *v.* DOOLBUN . **12 W. R. 337**

16 ———————— *Brothers* Under the Mahomedan law, remote guardians, among whom are brothers, can under no circumstances

RUTTON *v.* DOOMEE KHAN . . **3 Agra 21**

17. ———————— *Legal necessity—*

fit of the minor, and permits the guardian to dispose of moveable property if it be for the benefit of the minor. In this case a sale made to carry on important litigation was held *bonâ fide* and for the benefit of the minor, the decision in *Grose's Case, 4 B L R. O. C 1, 12 W R. O. C 13*, not being applicable. SYEDUN *v.* VELAYET ALI KHAN **17 W. R. 239**

18. ———————— *Sale of minor's property—Validity of such sale—Sanction of sale*

MAHOMEDAN LAW—GUARDIAN— *contd.*

plaintiff's husband, his elder brother acting for him in the transaction. It was proved that the sale of

in debt, or when the sale of such property is necessary for the maintenance of the minor The evi-

ZIA-UL-NISA BEGAM . I. L. R. 6 Bom. 40

19. ———————— *Minor—Infant—Guardian of property—Mortgage—Co-heirs—Infants' liability* In May 1881 certain co-heirs of a deceased Mahomedan mortgaged a portion of the property which had descended to them in common with others, then infants, as heirs of the deceased. The mortgage was raised for the purpose of paying off arrears of rent of a patni talukh which was a part of the property inherited from the deceased. There was no evidence to show that there were any other necessary expenses connected with the deceased's estate which had to be met, nor what that estate consisted of, nor whether the arrears of rent could or could not have been paid without having recourse to the mortgage. According to the Mahomedan law, the mortgagors were not the guardians of the property of the infants. *Held*, that the shares taken by the infants as heirs of the deceased were not bound by the mortgage. BHUTNATH DEY *v.* AHMED HOSAIN . . **I. L. R. 11 Calc. 417**

20. ———————— *Alienation by guardian to pay ancestral debts—Minor, sale binding on* *H*, being in possession of certain real property on her account, and on account of her nephew and niece, minors, of whose persons and property she had assumed charge in the capacity of guardian, sold the property, in good faith and for valuable consideration, in order to liquidate ancestral debts and for other necessary purposes and wants of herself

MEHDI HUSAIN . . I. L. R. ... 33

21. ———————— *Alienation by widow—Rights of other heirs—Minor—Mother—Mortgage—First and second mortgagees—Suit by first mortgagee for sale of mortgaged property—Second mortgagee not made a party—Transfer of Property (Act IV of 1882), ss. 78, 85—Res judicata*

MAHOMEDAN LAW—GUARDIAN— *contd.*

Upon the death of *G*, a Mahomedan, his estate was divisible into eight shares, two of which devolved upon his son, *A*, one upon each of his five daughters, and one upon his widow, *B* The name of *B* only was recorded in the revenue registers in respect of the zamindari property left by *G*. In 1876 *A* and *B* gave to *X* a deed of simple mortgage of 2½ biswas out of a 5 biswas share of a village included in the said property In 1878 *A* and *B* gave to *S* a deed of simple mortgage of the 5 biswas, which were described in the deed as the widow's "own" property In 1882 *X* obtained a decree upon his mortgage for the sale of the mortgaged property, and it was put up for sale and purchased by *X* himself in January 1884 In February and November 1884 the daughters of *G* obtained *ex parte* decrees against *A* and *B* in suits brought by them to recover their shares by inheritance in the 5 biswas In 1885 *S* brought a suit upon his mortgage of 1878, claiming the amount due thereon and the sale of the whole 5 biswas. To this suit he made defendants *A* and *B*, *G*'s daughters, and *X*, alleging that the decrees of February and November 1884 were fraudulently and collusively obtained, and as to the auction sale of January 1884, that the 2½ biswas were sold subject to his mortgage, he not having been made a party to the suit brought by *X* upon the deed of 1876, and therefore not being bound by any of the proceedings taken therein or consequent thereto It was contended that *B*'s position as head of the family entitled her to deal with the property so [illegible]

contended, *inter alia*, that the decrees obtained by them against *A* and *B* in February 1884 were con-

the place of her deceased husband would probably be a mere mark of respect and sympathy. Her position in respect of her husband's estate is ordinarily nothing more or less than that of any other heir, and even where her children are minors, she cannot exercise any power of disposition with reference to their property, because although she may, under certain limitations, act as guardian of their persons till they reach the age of discretion, she cannot exercise control or act as their guardian in respect of their property with-

MAHOMEDAN LAW—GUARDIAN— *contd.*

for applying against them the rule of estoppel contained in s 115 of the Evidence Act, or the doctrine of equity formulated in s. 41 of the Transfer of Property Act, but here no such circumstances existed SITARAM *v.* AMIR BEGUM

I. L. R. 8 All. 324

22. ——————— *Power of guardians— Sale by guardian of property to which ward's title was in dispute, and for the benefit of the latter.* By the Mahomedan law, guardians are not at liberty to sell the immoveable property of their wards, the title to which property is not disputed, except under certain circumstances specified in Macnaghten's Principles of Mahomedan Law, Ch VIII, cl. 14. But where disputes, existing as to the title to revenue-paying land, of which part formed the ward's shares, sold by their guardian, where thereby ended, and it was rendered practicable for the Collector to effect a settlement of a large part of the land, a fair price moreover having been obtained, the validity of the sale was maintained in favour of the purchaser

transaction being afterwards impeached by the

23. ——————— *Mother of minor —Power to sell property of minor* According to Mahomedan law, a mother, not being the legal guardian of her minor child, cannot do any act relating to the property of the minor so as to bind him. BABA *v.* SHIVAPPA **I. L. R. 20 Bom. 199**

24. ——————— *Uncle of minor —Liability of minor for act of person without authority purporting to act as the guardian of the minor.* The uncle of a minor Mahomedan purporting, though without authority, to act as the minor's guardian,

gagee sued to recover rent :—*Held*, that the mortgagee was not entitled to recover, although, had

Bom. 150; Babu v. *Shivappa, I. L. R. 20 Bom. 199; Bukshun* v. *Doolhin, 12 W. R. 337; 3 B. L. R. A. C. 423;* and *Girraj Baksh* v. *Hamid Ali, I. L. R.*

MAHOMEDAN LAW—GUARDIAN—*contd.*

9 All. 340, referred to. NIZAM-UD-DIN SHAH *v.* ANANDI PRASAD . I. L. R. 18 All. 373

25. ———— *Mother's power to bind her minor children's estate—Minor—Liability of minor for the act of mother purporting to act as guardian.* Under the Mahomedan law, a mother is not *de facto* guardian of her minor children, and, unless she is appointed a guardian *de jure*, or is specially authorized by the District Judge, she has no power to bind their estate by mortgage or otherwise. Such an act by the mother is entirely void. *Bhutnath Dey v. Ahmed Hosain, I. L. R. 11 Calc. 417; Baba v. Shivappa, I. L. R. 20 Bom 199;* and *Nizamuddin Shah v Ananda Prasad, I. L. R 18 All 373*, referred to. MOYNA BIBI *v.* BANKU BEHARI BISWAS (1902)
I. L. R. 29 Calc. 473: s.c. 6 C. W. N. 667

26. ———— *Guardians and Wards Act (VIII of 1890), s 10—Guardian and minor—Mahomedan law —Paternal uncle or mother* The paternal uncle has no legal right under the

ALIM-ULLAH KHAN *v* ABADI BEGAM (1906)
I. L. R. 29 All. 10

27. ———— *De facto guardian, power of, over minor's property—Transfer of*

Act is not opposed to any principle of Mahomedan law, and s 2 does not preclude its application in cases decided under the Mahomedan law. What constitutes good faith within the meaning of s 51 is a question of fact; and a person may act in good faith, though he acts under a mistake of law DURGOZI ROW *v.* FAKEER SAHIB (1906)
I. L. R. 30 Mad. 197

28. ———— *Minor's property—Power of de facto guardian to alienate—Mother, alienation by—validity—Legal necessity—Benefit—Rule of justice, equity and good conscience.* Under Mahomedan law, a *de facto* guardian such as the mother can alienate her minor children's property for legal necessity and for their benefit. *Moyna*

Syedun v. Velayat Ali Khan, 17 W. R. 239, referred to. MUNSHI MAHOMED HOSSAIN *v* BASED SHEIKH (1906) . . . . 11 C. W. N. 71

29. ———— *Guardian of property—Mother's power to sell her minor children's*

MAHOMEDAN LAW—GUARDIAN—*concld.*

Bibi v. Banku Behari Biswas, I. L. R. 29 Calc. 473, referred to and distinguished MAFAZZAL HOSAIN *v.* BASID SEIKH (1906) . I. L. R. 34 Calc. 36

30. ———— *Guardian of property—Mother's power to sell her minor children's*

Dey v. Ahmed Hosain, ... *Hurbai v. Hiraji Byramji Shania, I. L. R. 20 Bom. 116*, referred to RAM CHARAN SANYAL *v.* ANUKUL CHANDRA ACHARJYA (1906) I. L. R. 34 Calc. 65

MAHOMEDAN LAW—INHERITANCE.

See CONVERTS . 1 Agra F. B. 39
2 Agra 61
3 Agra 82
I. L. R. 10 Bom. 1
I. L. R. 20 Bom. 53
I. L. R. 21 Bom. 181

See LUNATIC . I. L. R. 15 All. 29

See MAHOMEDAN LAW—CUSTOM
I. L. R. 21 Calc. 149
L. R. 20 I. A. 193

See MAHOMEDAN LAW—PRESUMPTION OF DEATH . I. L. R. 2 All. 625

See MAHOMEDAN LAW—SUCCESSION.

See SLAVERY . I. L. R. 3 Bom. 422
L. R. 6 I. A. 137
13 Bom 158

— ...ation of heirs by

SHAD *v.* ABDOOLLAH

2. ———— Kindred related in equal ... kindred are re... males ... double ... R. 315

MAHOMEDAN LAW—INHERITANCE —contd.

3. ——— Heirs of missing person—*Division of estate to be held by heirs on trust* The plaintiff sued to be put in possession of a share of the estate of a missing person, alleging that by Mahomedan law and custom they were entitled to hold in trust for him a share equal to that which would devolve on them after his death by right of inheritance —*Held*, that under the Mahomedan law the heirs of a missing person are not, as such, entitled to divide his estate among themselves, either as a trust or otherwise, before his death, natural or legal. KALEE KHAN v JADEE 5 N. W. 62

4. ——— Heirs of husband on death of wife, whose heir he was. Whatever may be the position and rights of a husband, being the only surviving heir of his wife, according to the Mahomedan law, there is no representation in matters of succession, and therefore those rights do not descend to the heirs of a husband who has predeceased the wife, and who are themselves no relation of the wife In fact, under the Mahomedan system, after the dissolution of a marriage contract by death or otherwise, the parties or their heirs bear no more relation to one another than the heirs of quondam partners in the same mercantile house EKIN BEEBEE v ASHRUF ALI 1 W. R. 152

5. ——— Heirs of girl not validly married—*Paternal grandmother—Mother—Half brothers or sisters* A marriage performed between minors in the fazolee (nominal) form, the girl's father being dead and the marriage being contracted by her paternal grandmother, was held to be invalid

estate; that the mother as her surviving parent was entitled to a third share thereof, and that her half brothers and sisters were entitled without prejudice to any claims by third parties to the residue MULKA JEHAN SAHIBA v. MAHOMED USHKURREE KHAN L. R. I. A. Sup. Vol. 192 : 26 W. R. 26

6. ——— Estate limited to take effect in favour of a person after another's death. It is not consistent with Mahomedan law to limit an estate to take effect after the determination, on the death of the owner, of a prior estate by way of what is known to English law as a vested remainder so as to create an interest which can pass to a third person before the determination of the prior estate. ABDUL WAHID KHAN v. MURAN BIBEE I. L. R. 11 Calc. 597 : L. R. 12 I. A. 91

7. ——— Primogeniture, custom of—*Exclusion of females from inheritance* Observations on the law laid down by the Privy Council

8. ——— *Proof of custom.* Where a suit was brought by two younger brothers, in accordance with Mahomedan law, for their shares in a property which was held by an elder brother and which had been held by a succession of elder brothers for a long course of years, two of the

9. ——— Adopted son. An adopted son cannot inherit among Mahomedans. OHEED KHAN v COLLECTOR OF SAHABAD . 9 W. R. 502

10. ——— Daughters of deceased brother—*Brother—Sister.* Under Mahomedan law, the daughters of a deceased brother of a person who demises cannot take any share of such person's property so long as a brother and sister, or only a brother, survives AZEEGUNNISSA v RUHMANOOLLAH . . . . . 10 W. R. 306

11. ——— Daughter—*Hindu embracing Mahomedan religion* *Held*, that a Hindu family,

ROOP RAM . . . . . . 2 Agra 61

12. ——— Illegitimate sons—*Succession to father's property* According to Mahomedan law, illegitimate sons can claim no relationship with their father's family. BOODHUN v JAN KHAN 13 W. R. 265

13 ——— *Brothers—Consanguinity—Nasab* The children of fornication or adultery (wahid uz-zina) have no nasab or consanguinity; hence, the right of inheritance being founded on nasab, one illegitimate brother cannot succeed to the estate of another SAHEBZADI BEGUM v HIMMUT BAHADUR 4 B. L. R A C. 103 : 12 W. R. 512

s c affirmed on review. HIMMUT BAHADUR v. SAHEBZADI BEGUM . . 14 W. R. 125

14. ——— Illegitimate children—*Succession to property of illegitimate child—Convert to Christianity* The State (and not the mother of an illegitimate Christian child) is entitled to

1 W. R. 272

15. ——— Residuaries—*Descendants in main line of paternal great-grandfather.* By Mahomedan law, descendants in the male line of the paternal great-grandfather of an intestate are within

MAHOMEDAN LAW—INHERITANCE —*contd.*

the class of "*residuary*" heirs, and entitled to take, to the exclusion of the children of the intestate's sisters of the whole blood. MOHIDIN AHMID KHAN *v.* MUHAMMAD . . . 1 Mad. 92

s c. MOHEDEEN AHMED KHAN *v.* MAHOMED 1 Ind. Jur. O. S. 132

16. ———— *Descendants of paternal grandfather's brother.* According to the Mahomedan law, descendants of a paternal grandfather's brother are entitled to rank among residuaries, and *as such* are preferable heirs to granddaughters SHOWKUT ALI *v.* AHMUD ALI. MEHER ALI *v.* SHOWKUT ALI . . 8 W. R. 39

17. ———— *Step-sister* ...

18. ———— *Collateral line* Under the Mahomedan law ...

19. ———— *Suit by legal* ... *aries* A suit ... r) against her ... property left ... a suit being brought by some of the sons against the others for their shares IMAM SAHEB *v* KASIM SAHEB 11 Bom. 104

20. ———— *Hereditary Offices Amendment Act (Bom. Act V of 1886), s 2—Succession to vatan becoming the property of widow and daughter—Construction of statute.* S 2 of Bombay Act V of 1886 is not retrospective ...

KHAN ... I. L. R. 21 Bom. 118

21. ———— Widow's rights to "return" ...

... to the exclusion of the fisc. MAHOMED ARSHAD CHOWDHRY *v* SAJIDA BANOO I. L. R. 3 Calc. 702 : 2 C. L. R. 46

22. ———— Distant kindred—"*Return*"—*Widow of the deceased—Heirs.* Under the Mahomedan law, a widow has no claim to share in the "return" or *residue* of her deceased husband's estate as against other heirs. KOONARI BIBI *v.* DALIM BIBI . . . I. L. R. 11 Calc. 14

23. ———— Widow—Right to "return." As a general rule, a widow takes no share in "the return," *i.e.*, on failure of residuaries; but some authorities seem to hold that, if there are no heirs by *blood alive*, the widow would take the whole estate to the exclusion of the fisc. HURMUT-OOL-NISSA BEGUM *v.* ALLAH DIA KHAN 17 W. R. P. C. 108

24. ———— Sister, a residuary with daughters—*Son of father's paternal uncle.* A Mahomedan lady died, leaving a husband, two daughters, a sister, and the son of her father's paternal uncle.—*Held*, that the sister was entitled, in preference to the paternal kinsman, to the residue of the deceased's estate after the husband and daughters had taken their shares MEHERJAN BEGAM *v.* SHAJADI BEGAM. NURUDIN *v* AMTUL-NISSA . . . . I. L. R. 24 Bom. 112

25. ———— Sister ... law, a s... tate left ... BIBEE *v* ...

26. ———— Sister's son—*Widow.* According to Mahomedan law, when a man dies leaving no children, a sister's son can claim his inheritance after the widow has obtained her one-fourth share. MAHOMED NOOR BUKSH *v.* MAHOMED HAMEEDOOL HUQ . . . . . . 5 W. R. 23

27. ———— Childless widow—*Shiah law.* According to ...

the land. TOONANJAN *v* MEHNDEE BEGUM 3 Agra 13

28. ———— *Immoveable property.* Under ... members of the ... alive by her d... the land which ... UMDUTOONISSA ...

29. ———— *Inheritance by childless widow* ... The childless widow ...

30. ———— *Land—Buildings. Held*, following *Toonanjan* v. *Mehndee Begum, 3 Agra 13*, that the childless widow of a Shiah ...

See AGA MAHOMED JAFFER BINDANIM *v.* KOOLSOM BIBEE. KOOLSOM BIBEE *v* AGA MAHOMED JAFFER BINDANIM I. L. R. 25 Calc. 9
L. R. 24 I. A. 196
1 C. W. N. 449

31. ———— Widow and daughters. According to Mahomedan law, a widow and two daughters are entitled between them to nineteen twenty-fourths of the property of their deceased

MAHOMEDAN LAW—INHERITANCE —contd.

husband and father in the proportion of one-eighth and two-thirds. MAHOMED RUHWAN KHAN v. KHAJAH BUKSH . 5 W. R. 212

32. ———— Khoja Mahomedans, custom of—*Succession to property of widow dying intestate.* By the custom of the Khoja Mahomedans when a widow dies intestate and without issue, property acquired by her from her deceased husband does not descend to her own blood-relations, but to the relations of her deceased husband. If no blood-relations of the deceased husband are forthcoming, the property left by the widow belongs to the Jamat. *Quære.* As to the degree of ownership which will entitle members of the deceased husband's family to succeed. *In the goods of* MULBAI. KARIM KHATAV v. PARDHAN MANJI 2 Bom. 292 : 2nd Ed. 276

33. ———— —Exclusion from inheritance —*Insanity.* Mental derangement is no impediment to succession under the Mahomedan law. MAHAR ALI v. AMANI . 2 B. L. R. A. C. 306

s.c. KHYRATUN v. AMANEE 11 W. R. 212

34. ———— *Daughter.* *Semble.* According to the Mahomedan law, want of chastity in a daughter, before or after the death of her father, whether before or after her marriage, is no impediment to her inheritance. NOBONARAIN ROY v. NEEMAEECHAND NEOGY 6 W. R. 303

35. ———— *Co-sharers—Suit for possession of a share in the property of a Mahomedan family—Right of suit.* In a suit in 1822 between the members of a family following the Mahomedan law of inheritance in which the plaintiffs sued as sharers for the recovery of their share in certain property, one of the defendants pleaded that a paramba, part of the property in dispute, was not subject to division, but this plea was unsuccessful, and a decree was passed for the plaintiffs. The present suit was brought by a

the mortgagor was joined as defendant, among others, including the defendant who had raised the plea above stated. This plea was repeated by the same person:—*Held*, distinguishing *Venkatarama v. Labai Meera, I. L. R. 13 Mad. 275*, on the ground that the parties in the present case were governed by the Mahomedan law of inheritance, that the suit was maintainable. A co-sharer by

36. ———— *Joint property —Partition—Suit for share of such property—Share allotted to defendant in same suit on payment of Court-fees.* In the Presidency of Bombay a suit

MAHOMEDAN LAW—INHERITANCE —contd.

37. ———— *Sunni and Shiah sects—Rules of descent—Evidence as to deceased having been a Sunni.* A Mahomedan widow, who by birth was a Sunni but whose deceased husband had been a Shiah, had during her married life conformed outwardly to his religion. The Sunni and

freed from the necessities of her position as the wife of a Shiah. HAYAT-UN-NISSA v. MUHAMMAD ALI KHAN . . . . I. L. R. 12 All. 290
I. L. R. 17 I. A. 73

38. ———— *Renunciation of right to inherit—Presumption of relinquishment*

the whole of which she had for upwards of eleven years been in possession, the plaintiff's title as residuary heir was put in issue, as well as other issues touching the widow's dower, etc. The

from their own acts and conduct, decided in favour of the widow, holding that the respondent had failed to establish the title upon which he sued. According to the Mahomedan law, there may be a renunciation of the right to inherit, and such a renunciation need not be expressed, but may be implied from the ceasing or desisting from prosecuting a claim maintainable against another. HURMUT OOL-NISSA BEGUM v. ALLAHDIA KHAN
17 W. R. P. C. 108

39. ———— *Relinquishment of rights of inheritance—Relinquishment executed before ancestor's death.* A Mahomedan sued to recover his share of the property of his mother, deceased. It appeared that before her death he had by a registered deed in consideration of R150 renounced all his claims on her estate:—*Held*, that the renunciation was binding on the plaintiff. KUNHI MAMOD v. KUNHI MOIDIN
I. L. R. 19 Mad. 176

40. ———— Default of sharers—*Illegitimacy—"Return"—Sunni sect—Bequest to an heir*

MAHOMEDAN LAW—INHERITANCE —*contd.*

without consent of other heirs According to Mahomedan law, in default of other sharers by blood and distant kindred, property left by a man or woman returns to the widow or to the husband *Mahomed Arshad Chowdhry v. Sajida Banoo, I. L R 3 Calc. 702*, followed. Among the *Sunni* sect, illegitimacy is no bar to a person inheriting from his mother and his maternal relations *Sahebzadee Begum* v. *Mirza Himmut Bahadur, 12 W. R 512*, considered. *Koonari Bibi* v *Dalim Bibi, I. L. R 11 Calc. 14*, followed. Under the Mahomedan law, a bequest to an heir is invalid without the consent of the other heirs BAFATUN *v* BILAITI KHANUM (1903)
I. L. R 30 Calc. 683

41. ———— Distant kindred—*Relation who is neither a sharer nor a residuary—Great-grandson of the brother of the grandfather of the deceased—Probate and Administration Act (V of 1881)—Letters of Administration.* According to Mahomedan law, the term " distant kindred " includes all relations who are neither sharers nor residuaries; therefore a great-grandson of the brother of the grandfather of the deceased comes within the term " distant kindred." ABDUL SERANG *v.* PUTEE BIBI (1902)
I. L. R. 29 Calc. 738

42. ———— *Mahomedan law —Claim to share in grandfather's estate—Onus probandi—Evidence Act, s 108* Where the plaintiff

death occurred at a date subsequent to that of the deceased owner; otherwise he is excluded by the children of the deceased living at his death as being earlier in degree. MOOLLA CASSIM BIN MOOLLA AHMED *v.* MOOLLA ABDUL RAHIM
L. R. 32 I. A. 177

43. ———— *Spes successionis*

those who rely on them should satisfy the Court

SUMSUDDIN *v.* ABDUL HUSEIN (1906)
I. L. R. 31 Bom. 165

MAHOMEDAN LAW—INHERITANCE —*contd.*

44. ———— *Shiahs—Succession—Childless widow.* Under the Imamia law a widow, if she has no issue alive at her husband's death, does not inherit any of her husband's immoveable property. MUZAFFAR ALI KHAN *v.* PARBATI (1907) . . I. L. R. 29 All. 640

45. ———— *Shiah branch—Descendants of paternal uncles and aunts—Stirpital succession* The heirs by consanguinity under the Shia law of inheritance fall into three classes In the first class are, first the parents and secondly children and other lineal descendants In the second class there are first grandparents and ascendants and secondly brothers and sisters and their descendants And in the third class come paternal and maternal uncles and aunts of the deceased and his parents and their descendants Succession in the third class, like that in the first and second class, is *per stirpes* and not *per capita* AGA SHERALLI *v.* BAI KULSUM KHANAM (1908)
I. L. R. 32 Bom. 540

46. ———— Custom—*Bengal Civil Courts Act (XII of 1887), s. 37—Evidence of custom at variance with Mahomedan Law* Where the parties to a suit are Mahomedans, governed, in regard to the matters mentioned in s. 37 of the Bengal Civil Courts Act, 1887, by the ordinary rules of Mahomed
a custom
Surmust
R. 38, referred to JAMMYA *v* DIWAN (1900)
I. L. R. 23 All. 20

47. ———— Custom excluding females—
... estate
of
Act
(XV of 1877), Sch. II, Arts. 123, 141—Share of sister where daughters are excluded—Compromise of former suit—Effect of compromise as estoppel—Renunciation of claim—Omission to make claim in a former In
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by the defendants to exist was not established:—*Held*, by the Judicial Committee, that the existence of the custom was a question of fact and that their usual practice of accepting concurrent findings of fact should be followed. A Mahomedan ... possessed of immoveable pro-
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MAHOMEDAN LAW—INHERITANCE —*contd.*

died on 7th February 1891, a share of property which had devolved upon him on the death of his sister, the senior widow, and other property which he had inherited from his father, the plaintiff claimed the latter as sole heir on the ground that the widow and daughters were excluded by custom from inheriting, and that the defendant's father had predeceased the brother whose estate she was claiming *Held*, in respect of the former property, that the cause of action arose at the earliest from the death of junior widow, and the suit having been *brought within 12 years from that date was not* barred by limitation. The Court of the Judicial Commissioner held that the daughters but not the widow were excluded by custom, and calculated the share of the plaintiff on the principle that as the custom by which daughters were excluded was founded on the notion that property should not be allowed to pass into another family, the exclusion should operate for the benefit of the persons who became heirs in default of daughters who should therefore be treated as non-existent so as to let in the defendants, the nephews, and their Lordships of the Judicial Committee affirmed that view. In 1895 the plaintiff had brought a suit for maintenance against her brothers who were in possession of their father's property, and in that suit she made a compromise with them on 10th September 1896 on the terms that they would pay her an allowance of R60 per annum for life, and objection was

omission to make her present claim in either

suit, nor from her omission to make the present claim previously and there was no estoppel. The onus was on the defendants who alleged such relinquishment and estoppel to establish their case, and on the evidence they had failed to do so. MUHAMMAD KAMIL *v.* IMTIAZ FATIMA (1909)
I. L. R. 31 All. 557

MAHOMEDAN LAW—JOINT FAMILY.

See LIMITATION ACT, 1877, SCH. II, ART 120 . . . 7 C. W. N. 155

See LIMITATION ACT, 1877, ART 127.
5 W. R. 238
24 W. R. 1
I. L. R. 12 Mad. 380
I. L. R. 10 All. 109
I. L. R. 14 Bom. 70
I. L. R. 15 Mad. 57; 60
I. L. R. 16 Bom. 191
I. L. R. 13 All. 282
I. L. R. 22 Calc. 954

MAHOMEDAN LAW—JOINT FAMILY. —*contd.*

1. ——— Inference of joint possession Where a Mahomedan lady with her daughters was found to be living with her brother, and to be supported by him from the proceeds of the patrimonial estate, it was held to be a proper and correct inference that the lady and her daughters were in possession along with the brother, who was the manager of the property. ACHINA BIBEE *v* AJLEEJOONISSA BIBEE . . . 11 W. R. 45

2. ——— Evidence of separation—*Separate registration of names.* The separate registry of the names of shares in the zamindar's serishta is not proof of separation of their shares. GUBLEBOOLLAH KHAN *v.* KEBUL LALL MITTER
13 W. R. 124

3. ——— *Onus probandi* —*Registration of land in one name.* In a dispute

which the legal presumption was in favour of one grandson claiming against another, and the *onus probandi* placed on the one claiming to be sole possessor, was more consistent with equity and common sense than a hard-and-fast rule requiring the party who claims a joint interest to prove that the registered proprietor has duly accounted to him for his proportionate share of the profits. Registration of landed property in the name of one member

4. ——— Acquisition by managing member—*Presumption.* Additions made to the

5. ——— Acquisition by the members severally—*Joint acquisition—Presumption.*

v. *Dharum Sing*, 10 *Moo. I. A.* 511, cited. *Rupchand Choudhry* v. *Latu Choudhry*, 3 *C. L. R.* 96, doubted. HAKIM KHAN *v.* GOOL KHAN
I. L. R. 8 Calc. 823 : 10 C. L. R. 603

See JAKER ALI CHOWDHRY *v.* RAJCHUNDER SEN
I. L. R. 8 Calc. 831 note

MAHOMEDAN LAW—JOINT FAMILY —*contd.*

6. ——— **Purchase by father in son's name**—*Onus probandi. Semble*: Among Maho-

the onus is not on the son to prove that the pur

W. R. 400

7. ——— **Joint or separate acquisition**—*Onus probandi—Presumption as to joint possession.* In a suit by a member of a Mahomedan family to recover possession of a share in landed property alleged to be ancestral, where defendant claimed the same as his separately acquired property :—*Held,* that it was not necessary for defendant to show that he had funds sufficient to enable him to obtain the property, and that the bı
was acquired f
family jointly
AFAK *v.* EKRA

8. ——— **Onus probandi**—*Hindu customs amongst Mahomedans—Presumption when no allegation of custom made. A* and *B* were two brothers, Mahomedans, who lived together in commensality. *A*, whilst so living with his brother, purchased certain lands under a conveyance executed by the vendor and *A*. In a suit by the heirs of *B* against the heirs of *A* to obtain possession of

purchased with joint funds. On appeal, the onus of proving that the land was purchased by *A* alone

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ground that they are debts due on account of the

MAHOMEDAN LAW—JOINT FAMILY —*concld*

necessary to the existence of the family, but for the individual benefit of *A*, and that, as in a Mahomedan family the individual benefited, and not the family, is liable for expenses incurred for the benefit of any particular member. *A* alone was liable for the debt. *Held*, also, that the agreement had reference only to such claims as the family were jointly liable for. ALIMUNESSA KHATUN *v.* HASSAN ALI . . . 8 C. L. R. 378

10. ——— *Principles applicable to purchase.* The principles applicable to a purchase by one member of a joint Hindu family from another are not applicable to Mahomedans. MAHAMAD AMIN *v.* HASAN (1906) I. L. R. 31 Bom. 143

severalty. On the death of a Muhammadan, his heirs take their shares in severalty, as heirs and not as members of the family. One who is not a guardian under Muhammadan law, cannot by taking possession of the minor's property and dealing with it, claim the right to bind the minor by his acts as *de facto* guardian. *Mafazzal Hosain* v. *Basid Sheikh, I. L. R. 34 Calc. 36*, distinguished Under Muhammadan law, the father and his executors are the guardians of the minor's property and failing
his executors. Failing
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two minor sons
and the minors and

as guardian de facto
KHADER *v.* CHIDAMBARAM CHETTIYAR (1908) I. L. R. 32 Mad. 276

MAHOMEDAN LAW—KAZI.

1. ——— **Appointment of Kazi**—*Hereditary office—Bom. Reg. XXVI of 1827—Act XI of 1864.* The enactment of Bombay Regulation XXVI of 1827 was adverse to any supposition that the office of kazi could be hereditary. The repeal of that Regulation by Act XI of 1864 left the Mahomedan law as it stood before the passing of that Regulation; and that law sanctioned no grant of such an office to a man and his heirs. The appoint-

MAHOMEDAN LAW—KAZI—*contd.*

ment of kazi lies exclusively with the sovereign, or other chief executive officer of the State, and ought to be made with the greatest circumspection with regard to the fitness of the individual appointed; and though the sovereign may have full power to make the watan attached to the office of kazi hereditary, yet he has, under the Mahomedan law, no power to make the office itself so. JAMAL WALLAD AHMED *v.* JAMAL WALAD JALLAL

I. L. R. 1 Bom. 633

2. ——————— *Bom Reg XXVI of 1827—Act XI of 1864* Where a sanad granted by the Emperor Aurangzib in A. D 1693 did not purport to confer a hereditary kaziship, but was a grant of the office of kazi personally to an ancestor of the plaintiff:—*Held*, that the subsequent recognitions or appointments of members of his family as [illegible]

plaintiff in 1867 could not be regarded as a constructive appointment of him to be kazi. DAUDSHA *v.* ISMALSHA . . . I. L. R. 3 Bom. 72

3. ——————— *Hereditary office —Custom—Hereditary Offices Act (Bom. Act III of 1874), s 9* The office of kazi is not an hereditary office, unless perhaps by special custom of the locality. Where such a custom is not established, property attached to the office is not vatan property and the Collector has no power to make an order with respect to it under s. 9 of the Hereditary Offices Act (Bombay Act III of 1874). *Jamal valad Ahmed* v. *Jamal valad Jallal, I L. R. 1 Bom 633*, and *Daudsha* v. *Ismalsha, I. L. R. 3 Bom 72*, followed. BABA KAKAJI SHET SHIMPI *v* NASSARUDDIN VALAD AMINUDDIN KAZI

I. L. R. 18 Bom. 103

See DHARAMDAS SAMBHUDAS *v.* HAFASJI

I. L. R. 19 Bom. 250

4. ——————— *Power to appoint kazi of Bombay—Disturbance of office—Right of suit—Fees received by kazi. Semble* The power to appoint a person to the office of [illegible]

at large. When it was shown that the plaintiff had acted as kazi of Bombay for more than twenty years, and the defendant, in an action brought against him for disturbing the plaintiff in his office of kazi, was unable to show that the plaintiff had been illegally appointed, it was held that the plaintiff so acting as kazi could maintain an action against the defendant who so disturbed him in his office, without proving that he, the plaintiff, had been legally appointed. The sums received by the kazi of Bombay in respect of his office of kazi are not mere gratuities, but are fixed and certain payments annexed to the discharge of official duties, and are therefore sums in respect of the privation whereof by a wrongful intruder an action either for money had and received or for disturbance in the office will lie. MUHAMMAD YUSSUB *v* AHMED . . . 1 Bom. Ap. 18

5. ——————— *Court vested with powers of kazi—District Court, jurisdiction of.* A Civil Court of superior jurisdiction in a district is vested, generally speaking, with the powers exercised by the kazi. SHAMA CHURN ROY *v.* ABDUL KABEER . . . . 3 C. W. N. 158

MAHOMEDAN LAW—MAINTENANCE.

1. ——— Husband's liability for maintenance—*Wife not arrived at puberty living with parents Quære.* In the case of Mahomedans, where a wife, although legally married, has not attained the age of puberty, is there a liability on the part of the husband to support her as long as she remains under the roof of her father? KOLASHUN BIBEE *v.* DIDAR BUKSH . 24 W. R. Cr. 44

2. ——————— *Husband and wife—Decree for past maintenance.* In a suit for [illegible]

I. L. R. 6 Calc. 631 : 8 C. L. R. 242

3. ——— Wife's right to maintenance [illegible]

4. ——— Agreement for maintenance —*Re-conveyance by wife (on consideration of maintenance) of her property received for dower* Where a Mahomedan wife, in re-conveying to her husband the property received from him in lieu of dower, took from him a written agreement in which he covenanted to pay her a certain sum of money [illegible]

YUSOOF ALI CHOWDHRY *v.* FYZOONISSA KHATOON CHOWDRAIN . . . 15 W. R. 296

5. ——— Mutta wife—*Mutta form of marriage—Criminal Procedure Code (Act X of 1872), s. 536—Shiah sect.* Under the law of the

MAHOMEDAN LAW—MAINTENANCE —*concld.*

Shiah sect of Mahomedans, a mutta wife is not entitled to maintenance, but such a provision of the law does not interfere with the statutory right to maintenance given by s 536 of the Code of Criminal Procedure. *In the matter of the Petition of* LUDDUN SAHIBA. LUDDUN SAHIBA *v* KAMAR KUDAR I. L. R. 8 Calc. 736 : 11 C. L. R. 237

MAHOMEDAN LAW—MARRIAGE.

See ADULTERY . . 7 C. W. N. 143

See BIGAMY . I. L. R. 18 Calc. 264
I. L. R. 19 Calc. 79

See MAHOMEDAN LAW—ACKNOWLEDGMENT.

See MAHOMEDAN LAW—DOWER.
I. L. R. 8 All. 149
I. L. R. 1 All. 483 ; 506
I L. R. 4 All. 205
I. L R. 2 All. 831
I. L. R. 23 Mad. 371
I. L. R 25 Mad. 658

See MAHOMEDAN LAW—RESTITUTION OF CONJUGAL RIGHTS

See MARRIAGE . I. L. R. 25 Calc. 537

———— requirements of—

See RESTITUTION OF CONJUGAL RIGHTS.
8 C. W N. 705
I. L. R. 31 Calc. 849

1. ———— Validity of marriage—*Requisites for valid marriage* Under the Shiah as well as the Sunni law, any connection between the sexes which is not sanctioned by some relation founded upon contract or upon slavery is denounced as "zina," or fornication. Both schools prohibit sexual intercourse between a Mooslnah, *i.e.*, a Mahomedan woman and a man who is not of her religion According to the Shiah law, marriage must in all cases be lawful, except when there is error on the part of both or either of the parents. HIMMUT BAHADOOR *v.* SHAHEBZADI BEGUM 14 W. R. 125

Affirming on review s c. SHAHEBZADI BEGUM *v.* HIMMUT BAHADOOR.
12 W. R. 512 : 4 B. L. R. A. C. 103

2. ———— *Valid marriage, essentials of—Sufficiency of evidence.* In a criminal prosecution under s. 498, Indian Penal Code, strict proof of marriage is necessary It is essential

3. ———— *Nikah marriage.* The nikah form of marriage is well known and established among Mahomedans. The issue of such

MAHOMEDAN LAW—MARRIAGE—*contd.*

a marriage is legitimte by Mahomedan law. MONEEROODDEEN *v.* RAMDHUN RAJEEKUR
18 W. R. Cr. 28

4. ———— *Woman's right to choose husband—Guardian—Marriage without consent of father.* According to the doctrine of the Mussulman teacher, Abu Hanifa, a Mussulman

puberty, a female of any one of the four sects can elect to belong to whichever of the other three sects she pleases, and the legality of her subsequent acts will be governed by the tenets of the Imam whose follower she may have become. A girl whose parents and family are followers of the school of Shafi, and who has arrived at puberty, and has not been married or betrothed by her father or guardian, can change her sect from that of Shafi to that of Hanifa, so as to render valid a marriage subsequently entered into by her without the consent of her father. MUHAMMAD IBRAHIM *v.* GULAM AHMED . . 1 Bom. 236

5. ———— *Marriage of minor —Assent of wife after puberty.* A ceremony of marriage was performed between Mahomedan minors in the fazolee (nominal) form; the girl's father being dead, and the marriage being contracted by her paternal grandmother. Thereafter the girl died, having attained the age of puberty without ever meeting or communicating with her husband, and without ever expressing in any way assent to or dissent from the marriage.—*Held*, that by the law of the Shiah sect which governed the

could not create any rights or obligations. Though by the law of the Sunnis the option of dissent must

L. R. I. A. Sup. Vol. 182 :

6. ———— *Consent of parents—Inequality of parties. Held,* that under

130

7. ———— *Infant—Consent—Apostate father.* The consent of the father was

MAHOMEDAN LAW—MARRIAGE— *contd.*

13 B. L. R. 160

8. ——— *Consent of mother.* Where the nearest guardian of a minor was pre-

9. ——— *Marriage with living wife's sister—Legitimacy of children of such marriage—Acknowledgment, effect of, on illegitimate children* Under the Mahomedan law marriage with the sister of a wife who is legally married is void. The children of such marriage are illegitimate and cannot inherit *Shureefoonissa* v *Khizu-*

Khan, I L R 10 All 289, followed AIZUNNISSA KHATOON *v* KARIMUNNISSA KHATOON

I. L. R. 23 Calc. 130

10 ———

DAS . . . I. L. R. 19 All. 375

11. ——— *Mutta form of marriage—Repudiation—Divorce.* The mutta form of marriage does not admit of repudiation under the law of the Shiah sect of Mahomedans *Quære* Whether the form of divorce called zihar may be exercised in the mutta form of marriage *In the matter of the petition of* LUDDUN SAHIBA LUDDUN SAHIBA *v.* KAMAR KUDAR

I. L. R. 8 Calc. 736 : 11 C. L. R. 237

12 ———

KHANUM . . . . . 6 W. R. P. C. 52

13. ——— *Cohabitation—Acknowledgment of wife and of legitimacy of children.* According to Mahomedan law, continued open cohabitation, accompanied by a declaration that the woman is the man's wife, and that the

been casual only, and there has been no acknowledgment of the woman as his wife, or the issue as his children, the fact of such cohabitation raises a presumption of marriage, and that the children are legitimate; but in such a case the presumption may be rebutted NAWABUNNISSA *v.* FUZOOLOONISSA. NAWABUN *v.* JUMEERUN

Marsh. 428

S C FUZLOONNISSA *v.* NAWABUNNISSA

2 Hay 479

14. ——— *Cohabitation.* According to Mahomedan law, cohabitation as husband and wife will raise a presumption of a marriage if the parties are Mahomedans, or persons between whom a valid marriage can be celebrated. MONOWAR KHAN *v* ABDOOLLAH KHAN . 3 N. W. 177

15. ——— *Legitimacy, proof of—Cohabitation* The mere residence of a woman

shown that cohabitation continued, that children were born, and that the woman was treated as a wife, and lived as such, and not as a servant KUREEMOONISSA *v* ATTAOOLLAH . 2 Agra 211

16. ——— *Legitimacy—Cohabitation* If a child has been born to a father of a mother where there has been not a more casual concubinage, but a more permanent connection, and where there is no

NUM . . . . . . 6 W. R. P. C. 52

S C. HIDAYUTOOLLAH *v* RAI JAN KHANUM.

3 Moo. I. A. 295

17 ——— *Cohabitation—Legitimacy* Though there is no evidence of the celebration of any marriage ceremony

and by the High Court in *Nawabunnissa v. Fuzoolоonissa, Marsh. 428* ASHRUFFUNNISSA *v* AZEEMUN. BARODA KOOERY *v.* ASHRUFFUNNISSA

1 W. R. 17

18 ——— *Acknowledgment of wife.* The acknowledgment of a wife which the Mohamedan law requires as proof of marriage should be specific and definite. The mere fact of a man keeping a woman within the purdah and treating her to outward semblance as a wife, does not necessarily, in the absence of express declaration and acknowledgment, constitute the factum

MAHOMEDAN LAW—MARRIAGE— *contd.*

of marriage. KADARNATH CHUCKERBUTTY *v.* DONZELLE . . . . . 20 W. R. 352

19. ———— *In a suit by A* for possession of property which belonged to her uncle *B*, the defendants *C* and *D* each alleged herself to be the wife of *B*, and each said that the other was hi...

... the evidence was conflicting, and the Courts below pronounced against both the marriages and also against the will *C* alone appealed to the Privy Council. *Held*, that lapse of tim...
joyment of
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BUTOOL *v.* HOSSEINEE BEGUM

10 W. R. P. C. 10
11 Moo. I. A. 194

20. ———— *Celebration of pregnancy and of birth of son.* The celebration of the seventh month of pregnancy, and the celebration of the birth of the son, are sufficient to prove the marriage and legitimacy of the son. WISE *v.* SUNDULOONISSA CHOWDHRANEE

7 W. R. P. C. 13
11 Moo. I. A. 177

21. ———— *Acknowledgment of wife.* An equivocal ...
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... and has had a child by him who has been openly acknowledged and treated by him as his lawful son, although there may be no evidence of the actual fact of marriage, the Court is justified in presuming a marriage MAHATALA BIBEE *v.* AHMED HALEEMOOZOOMAN. CURREEMUNNISSA BEGUM *v.* AHMED HALEEMOOZOOMAN

10 C. L. R. 293

22. ———— *Re...*

...from the fact of the re-marriage *that the impediment* had been removed ...
had r
re-ma
CHOW
... W. R. 108

23. ———— *Legitimacy—Presumption arising from relations between the parents.* Under the Mahomedan law the mere continuance of cohabitation under circumstances in which no obstacle to marriage exists is not alone sufficient to

MAHOMEDAN LAW—MARRIAGE— *contd.*

...treatment tantamount to an acknowledgment of the fact of the marriage and that ... he children. ... *Khanum,*
3 Moo ... *Ahmed*
Hossei ... *v. Hyder Hossein Khan, 11 Moo. I. A. 94,* referred to. MASIT-UN-NISSA *v.* PATHANI (1904) . . I. L. R. 26 All. 295

24. ———— *Marriage—Ghair kuf wife—Custom of exclusion from inheritance—*

for ejectment without redeeming —Regulation XVII of 1806 In a suit by a Muhammadan lady to recover possession as her husband's heir, of his immoveable property, the question arose whether she was a *ghair kuf* wife and so excluded by custom from inheritance as heir to her husband. The only reliable evidence of the custom was the village *wajib-ul arz*, which stated that " a married wife belonging to a different caste *(ghair kuf)* and an unmarried wife or their descendants would be entitled to maintenance ...

and the rules of inheritance laid down in it were

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deed made in 1866, between the same parties, described as a " mortgage deed by conditional sale " and containing the same terms, except that the period for repayment was five years The mort-...

closure on failure of the mortgagor to redeem within the time limited by the terms of Regulation XVII

(1906) . . . I. L. R. 28 All. ...
s.c. 10 C. W. N. 778
L. R. 33 I. A. 107

MAHOMEDAN LAW—MARRIAGE—*concld.*

25. ———— *Sunnis—Marriage brought about by fraud—No consummation—Dower—Liability of the husband to pay to the heirs of wife.* When consent to a marriage is obtained by fraud or force, such marriage is invalid unless ratified, and the husband is not liable to pay the dower of the deceased wife to her heirs. ABDUL LATIF KHAN *v* NIAZ AHMAD KHAN (1909) I. L. R. 31 All. 343

MAHOMEDAN LAW—MARZ-UL-MAUT

See DIVORCE . I. L. R. 30 Bom. 537

See MARZ-UL MAUT

1. ———— *Gift—Marz-ul-maut—Death—Illness, what constitutes—Gift to minor son—Possession, delivery of—Hibanama—Transfer of Property Act (IV of 1882), ss 123, 129.*

lasted a year, but the limit of one year does not constitute a hard-and-fast rule. If, however, the illness increases to such an extent as to give rise to

159, referred to. No actual delivery of possession is necessary, when a parent makes a gift to a son, who is a minor. *Ameeroonnissa Khatoon* v. *Abadoonnissa Khatoon, 15 B. L. R. 67. L. R. 2 I. A. 87,* followed. FATIMA BIBEE *v.* AHMED BAKSH (1904) I. L. R. 31 Calc. 319

2. ———— *Divorce—Marz-ul-maut—Death-bed illness, tests for determining*

I. L. R. 31 Bom. 264

MAHOMEDAN LAW—MINOR.

See MAHOMEDAN LAW—GUARDIAN.

MAHOMEDAN LAW—MORTGAGE.

———— **Mortgage by widow**—*Power to mortgage shares of minors—Mahomedan law of sale.* In 1884 *I*, a Mahomedan, died intestate, leaving a widow, two sons, and two daughters. At the time of his death he was the owner of a certain house in Bombay. After his death his widow and his eldest son *E* (without the consent of the other children, who were minors) mortgaged the said house to the defendant. In 1894 a younger son and one of the daughters of *I* filed this suit, praying that their shares in the house might be ascertained and declared; that the house should be sold, and their shares in the proceeds handed over to them. The defendant pleaded that the plaintiff's mother and adult brother *E* had mortgaged the house to him in 1891 as a security for a loan of R3,500 which they wanted to pay off debts incurred in rebuilding the house and to defray the marriage expenses of *E*. He contended that the mortgage was binding on the plaintiffs, having been made for the benefit of the family, and that, if not, the plaintiffs were bound to pay him the money due to him before claiming any share in the house. *Held,* that the plaintiffs were entitled to their shares in the said house free and discharged of the mortgage executed to the defendant. The Mahomedan law makes no provision with regard to mortgages, as such transactions are, strictly speaking, unlawful as they involve the payment of interest. As, how-

sity for the sale, or else it must be for the benefit of the minor. The money raised by the mortgage in question was not raised for any purpose specially

MAHOMEDAN LAW—MOSQUE.

1. ———— Constitution of musjid. Two

6 N. W. 80

2. ———— **Endowment or dedication of mosque**—*Muhammadi or Wahabi sect—Disturbing a religious assembly—Right to say "amin" loudly during worship.* According to the Mahomedan law, a mosque cannot be dedicated or appropriated exclusively to any particular school or sect of Sunni Mahomedans. It is a place where all Mahomedans are entitled to go and perform their

MAHOMEDAN LAW—MOSQUE—*concld.*

devotions as of right, according to their conscience. No one sect or portion of the Mahomedan community can restrain any other from the exercise of this right. Members of the Muhammadi or Wahabi sect are Mahomedans, and as such entitled to per-

performance of his duties, but *malâ fide*, for the purpose of disturbing others engaged in their devotions, made any demonstration oral or otherwise in a mosque, and disturbance was the result —So *held* by the Full Bench *Queen-Empress* v. *Ramzan*, *I. L. R. 7 All. 461*, referred to *Per* MAHMOOD, J —According to the Mahomedan ecclesiastical law, the word "amin" must be said and should be pro-

peace is caused) a Mahomedan pronouncing the word loudly, in the honest exercise of conscience, commits no offence or civil wrong. ATA-ULLAH *v.* AZIM-ULLAH . . . **I. L. R. 12 All. 494**

3. ———— **Public mosque**—*Right of Mahomedans without distinction of sect to use such mosque for the purposes of worship—Right to say "amin" loudly during worship.* Where a mosque is a public mosque open to the use of all Mahomedans without distinction of sect, a Mahomedan who, in the *bonâ fide* exercise of his religious duties in such mosque, pronounces the word "amin" in a loud tone of voice, according to the tenets of his sect does nothing which is contrary to the Mahomedan ecclesiastical law or which is either an offence or civil wrong, though he may by such conduct cause an

JANGU *v.* AHMAD-ULLAH . **I. L. R. 13 All. 419**

4. ———— **Dedication of mosque to public worship**—*Right to worship in mosque.* A mosque becomes consecrated for public worship either by delivering to a mutwalli or on the declaration of the wukif that he has constituted it into a musjid, or on the performance of prayers therein. The prayers of one individual alone are sufficient to constitute a public mosque so long as it is accompanied by the *azan* (call to prayer). Any Mahomedan, to whatever sect he may belong, is entitled to offer his prayers according to his own ritual in any mosque so long as he does not wilfully disturb or annoy the other members of the congregation. Non-conformity on matters of ritual does not affect his right to do so *Fazl Karim* v. *Maula Baksh, I. L. R. 18 Calc 448 L R 18 I. A. 59*, *Ataullah* v. *Azanullah, I L. R. 12 All. 494*; and *Queen-Empress* v. *Ramzan, I. L. R. 7 All 461*, referred to. ADAM SHEIK *v.* ISHA SHEIK . **1 C. W. N. 76**

MAHOMEDAN LAW—PARTITION.

———— *Partition suit, decree in—Infants, non-parties, how far bound.* Under the Mahomedan law, the minor heirs of a mother, not parties to a partition suit, for her share in her father's estate and continued after her death by her husband as her executor, and whose interests were not legally protected at the time of partition, are clearly entitled to have the matter gone into again But the division, as then made, should not be disturbed more than is absolutely necessary properly to adjust the interest of the heirs. Even if the portion of a dower that was prompt was not claimed by the wife in her life-time, the same on her death, together with the deferred portion thereof, becomes available to her estate, vests in her executors and passes on to her heirs The executor of a Mahomedan takes the whole estate of the testator by virtue of the Probate and Adminis-

Abbas
33 Calc.
ZAR ALI
(1908) . . . . . **13 C. W. N. 153**

MAHOMEDAN LAW—PARTNERSHIP.

See MAHOMEDAN LAW—JOINT PROPERTY. **I. L. R. 32 Mad. 276**

MAHOMEDAN LAW—PRE-EMPTION.

See PRE-EMPTION.
See MAHOMEDAN LAW—WAJIB-UL-ARZ.

1. RIGHT OF PRE-EMPTION.

(a) GENERALLY.

1. ———— **Origin of right**—*Law or custom—Cessation of right.* The right of pre-emption arises from a rule of law by which the owner of the land is bound; and it exists no longer if there ceases to be an owner who is bound by the law either as a Mahomedan or by custom. BYJNATH PERSHAD *v.* KOPILMON SINGH . . . **24 W. R. 95**

2. ———— **Requisites for right**—*Extinguishment of vendor's right—Incomplete sale—Right of pre-emption.* In a suit claiming a right to pre-emption, where it was found as a fact that the sale had not been completed, and that there had not

MAHOMEDAN LAW—PRE-EMPTION —contd.

1. RIGHT OF PRE-EMPTION—contd

(a) GENERALLY—contd.

extinction of the rights of the vendor LADUN v. BHYRO RAM . . 8 W. R. 255

3. ———— Extinguishment of

10 W. R. 246

BUKSHA ALI v. TOFEE ALI 20 W. R. 216

4. ———— *Sales—Leases in perpetuity* Under the Mahomedan law, the right of pre-emption applies to sales only, and cannot be enforced with reference to leases in perpetuity like a mokurari, which (however small the reserved rent) are not sales and in which there is no "milkyut" or ownership on the part of the shuffa or pre-emptor RAM GOLAM SINGH v. NURSING SAHOY 25 W. R. 43

5. ———— *Perpetual lease—Sale.* Where a co-proprietor does not part with his entire interest in land by an absolute sale, but merely grants a lease of it, even though it be a mourasi lease, the doctrine of pre-emption will not apply *Moorooly Ram v Huree Ram, 8 W. R 106*, and *Ram Golam Singh v. Nursing Sahoy, 25 W. R 43*, followed DEWANUTULLA v KAZEM MOLLA . . . I. L. R. 15 Calc. 184

6. ———— *Bonâ fide sale.*

2 W. R 16

7. ———— *Sale—Transfer in nature of gift* A transfer without money or other consideration, and which is in fact a gift, is held not to be a sale to which the right of pre-emption attaches AMEER ALI v. PEARUN W. R. 1864, 239

8 ———— *Gift of land without consideration—Shanklap.* No right of pre emption arises where land is assigned without consideration as *shanklap* HAR NARAIN PANDE v. RAM PRASAD MISR . . . . I. L. R. 14 All. 333

9. ———— *Proof of right on private sale—Auction sale.* *Held*, that in a case of private sale the right of pre-emption must be based on usage or contract, and that an instance of pre-emption in an auction-sale is not sufficient. BHAE KOONWAR v ZAHOOR ALI . . 1 Agra 258

MAHOMEDAN LAW—PRE-EMPTION —contd.

1. RIGHT OF PRE-EMPTION—contd

(a) GENERALLY—contd

10. ———— *Heir of pre-emptor—Non-survival of right* According to the Mahomedan law applicable to the Sunni sect, if a plaintiff in a suit for pre-emption has not obtained his decree for pre-emption in his lifetime, the right to sue does not survive to his heirs MUHAMMAD HUSAIN v. NIAMAT-UN-NISSA . I. L. R. 20 All 88

11 ———— *Claim for pre-*

Bengal, N.-W. P. and Assam Civil Courts Act

Case law prior and subsequent to Act IV of 1882 considered. *Per* BANERJI, J. (*contra*)— In the

upwards, unless such sale has been effected according to the provision of s 54 of Act IV of 1882 BEGAM v MUHAMMAD YAKUB I. L. R. 16 All. 344

12 ———— *Rights of third persons having a claim to pre-emption where the vendee is also a person who would have a similar claim were the sale to a stranger.* Under the Mahomedan law, even when the buyer is himself a pre-emptor, that is a person who would have the right of pre-emption against an outsider, other persons having a similar right of pre-emption are entitled to claim pre-emption against the buyer;

Lala Nowbut Lall v. Lalla Jewan Lal, I. L. R. 4

MAHOMEDAN LAW—PRE-EMPTION —*contd.*

1. RIGHT OF PRE-EMPTION—*contd.*

(*a*) GENERALLY—*contd.*

Dayal v. *Inyatullah, I. L. R. 7 All 775*, referred to. A person entitled to a right of pre-emption is not bound to claim pre-emption in respect of all the sales which may be executed in regard to the property, although every suit for pre-emption must include the whole of the property subject to pre-emption conveyed by one transfer. *Kashi Nath* v. *Mukkta Prasad, I. L R. 6 All. 370*, referred to. AMIR HASAN *v.* RAHIM BAKHSH

I. L. R. 19 All. 466

13. ———— *Invalid sale—Time when right of pre-emption arises.* No right of pre-emption arises upon a sale which, according to Mahomedan law, is invalid, as, for instance, by reason of uncertainty in the price or the time for delivery of the thing sold; but if such sale become

relates back to the date of the contract of sale. *Begam* v. *Muhammad Yaqub, I. L. R. 16 All. 344*, referred to. NAJM-UN-NISSA *v* AJAIB ALI KHAN

I. L. R. 22 All. 343

14. ———— Exercise of right—*Re-sale—Claim after waiver upon incompleted sale* The

15. ———— *Property sold in execution of decree—Right of judgment-debtor.*

16. ———— *Sale by public auction—Opportunity to bid* When property is sold by public auction at a sale in execution of a

17. ———— *Repudiation of sale by seller or buyer.* As, according to Mahomedan law, when either the seller or buyer repudiates the sale, there can be no sale, so neither can there be any right of pre-emption in such a case. OJHEOONISSA BEGUM *v.* RUSTOM ALI

W. R. 1864, 219

18. ———— Exercise of pre-emption—*Effect of allowing pre-emption—Conditions of pre-emption. Held*, that the right of pre-emption, when once allowed and exercised by the pre-emptor, cannot be disputed at subsequent occasions of sale, and that neither manhood, puberty, justice, or respectability of character, are conditions of pre emption under the Mahomedan law. PUNNA *v.* JUGGUR NATH . . . . . . 1 Agra 236

Nor is indebtedness of the pre-emptor. RAM KHELAWAN RAI *v.* SHIVA DASS . 2 Agra 76

19. ———— Evidence of right—*Suit to enforce right.* In a suit to enforce a right of pre-

SINGH . . . . . . 7 W. R. 211

HUNSRAJ SINGH *v* CHOKA SINGH . 7 W. R. 486

BEHAREE SINGH . . . .

21. ———— *Nature of pre-emption—Ground for allowing right.* The right of pre-emption is not matter of title to property, but is rather a right to the benefit of a contract; and when a claim is advanced on such a right, it must be shown that defendant is bound to concede the claim either by law or by some custom to which the class of which he is a member is subject on grounds of justice, equity, and good conscience. MOHESH LALL *v.* CHRISTIAN . . . . 8 W. R. 446

22. ———— *Nature of right* The right of pre-emption is not

persons, it being for the claimant in each case to show that it attaches to the defendant. AKHOY RAM SHAHAJEE *v.* RAM KANT ROY 15 W. R. 223

of right—

cided to extend. NUSRUT REZA *v.* 8 W. R. 309

BIBEE . . . . .

24. ———— *Proof of existence of custom of pre-emption. Held*, that a solitary case or two is not sufficient to prove the custom the privilege is not BEHAR-

Agra 243

MAHOMEDAN LAW—PRE-EMPTION —*contd.*

1. RIGHT OF PRE-EMPTION—*contd*

(*a*) GENERALLY—*contd.*

25. ———— *Decisions as to prevalence of custom.* In *Inder Narain Chowdhry v. Mahomed Nazirooddeen, 1 W. R 234,* the Court only meant to say that it could not be held upon ... conflict with other decisions of

26. ———— *Shiahs and Sunnis—Pre-emption claimed on ground of vicinage—Vendors and vendee Sunnis, pre-emptor a Shiah*

27. ———— Hindus—*Local custom—Sale to a stranger* The right of pre-emption, when it exists among Hindus, is a matter of contract or custom agreed to by the members of a village or community. Such a custom is not properly described as attached to the land, and as soon as any members of a Hindu community, who have agreed to be governed by it, sell to any one who is a stranger to the agreement, the land is no longer subject to pre-emption. HIRA v. KALLU

I. L. R. 7 All. 916

28. ———— *Hindus—Usage and custom* Unless a prescriptive usage and local

HUBEERUL HOSSEIN v LALLA DEWKEE NUNDUN

W. R. 1864, 75

29. ———— *Hindu pur-*

KHAN

CHUNDO v. ALIMOODDEEN . 6 N. W. 28

s c. Agra F. B. Ed. 1874, 305

30. ———— *Hindu purchaser—Mahomedan vendor and co-sharer. Per* PEACOCK, *C.J.*, and KEMP and MITTER, *JJ.*—A Hindu purchaser *is not bound by the Mahomedan* law of pre-emption in favour of a Mahomedan co-partner, although he purchased from one of several Mahomedan *co-parceners; nor is he bound by the* Mahomedan law of pre-emption on the ground of vicinage. A right of pre-emption in a Mahomedan

MOHUN SAHA. SAYAMA KUMAR ROY *v.* JAN MAHOMED. FARMAN KHAN *v.* BHARAT CHANDRA SHAHA CHOWDHRY

4 B. L. R. F. B. 134 : 13 W. R. F. B. 21

31. ———— *Hindu vendor—Right to enforce pre-emption* Held (STUART, *C.J*, and PEARSON, *J*, dissenting), that where the

32. ———— *Hindu purchaser—Mahomedan vendor and pre-emptor—Act VI of 1871 (Bengal Civil Courts Act), s 24—" Religious usage or institution "—" Parties."* Held by the Full Bench, that in a case of pre-emption, where the pre-emptor and the vendor are Mahomedans and the

Courts Act, does not mean the parties to an action, but *must be interpreted with reference to the inception of the right to be adjudicated upon.* Also *Per* MAHMOOD, *J.* The right of pre-emption is not a

MAHOMEDAN LAW—PRE-EMPTION —*contd.*

1. RIGHT OF PRE-EMPTION—*contd.*

(*a*) GENERALLY—*contd.*

right of " re-purchase " either from the vendor or

the vendee in respect of all the rights and obligations arising from the sale under which he has derived his title. The history and nature of the right of pre-emption discussed by MAHMOOD, J. *Shumsh-oolnissa* v *Zohra Bibi*, *6 N. W 2 ; Chundo* v. *Alim-ood-deen*, *6 N W. 28* , *Ibrahim Saib* v. *Muni Mir Uddin*, *6 Mad. 26 ; Moti Chand* v. *Mahomed Hussein Khan*, *7 N. W 147* , and *Dwarka Das* v. *Husain Bakhsh*, *I. L R 1 All 564*, referred to GOBIND DAYAL v. INAYATULLAH. BRIJ MOHAN LAL v ABUL HASAN KHAN

I. L. R. 7 All. 775

33. ———————— *Hindus—Custom prevailing among Hindu—Obligation to fulfil conditions* Where the custom of pre-emption pre-

custom is a custom under which it is incumbent upon him to fulfil those conditions. JAI KUAR v. HEERA LAL . . . **7 N. W. 1**

34. ———————— *Hindu vendor and purchaser—Mahomedan pre-emptor—" Talab-i-ishtihad "—Invocation of witnesses* A Mahomedan sued to enforce a right of pre-emption in respect of a sale between Hindus founding such right on local custom. The formality of " ishtihad," or express invocation of witnesses, required by the Mahomedan law of pre-emption, was not one of the incidents of such custom :—*Held*, that the circumstance that the plaintiff was a Mahomedan did not preclude him from claiming to enforce such right against the defendants, who are Hindus ; and that the formality of " ishtihad " not being one of the incidents of such custom, it was not necessary that the plaintiff should have observed that formality as a condition precedent to the enforcement of such right. *Fakir Rawot* v. *Emam Baksh*, *B L R. Sup Vol 35* , *Bhodo Mahomed* v *Radha Churn Bolia*, *13 W R. 332*, referred to *Kudratulla* v. *Mahini Mohan Shaha*, *4 B L R. F. B. 134* ; and *Dwarka Das* v *Husain Bakhsh*, *I. L R. 1 All 564*, distinguished. *Chowdhree Brij Lal* v. *Goor Sahai*, *F. B Rul June-Dec 1867, p. 129*, and *Jai Kuar* v. *Heera Lal*, *7 N. W 1*, followed ZAMIR HUSAIN v. DAULAT RAM . . **I. L. R. 5 All 110**

35. ———————— *Hindus—Province of Behar.* The custom of pre-emption has been recognized among Hindus in the province of Behar. JOY KOER v SUROOP NARAIN THAKOOR

W. R. 1864, 259

MAHOMEDAN LAW—PRE-EMPTION —*contd.*

1. RIGHT OF PRE-EMPTION—*contd.*

(*a*) GENERALLY—*contd.*

36. ———————— *Hindus—Province of Behar.* A native of Lower Bengal seeking his fortune in Behar would not be bound by the rule of Mahomedan law of pre-emption if nothing were shown to the contrary. BYJNATH PERSHAD v. KOPILMON SINGH . . . **24 W. R. 95**

37. ———————— *Hindus—Province of Behar.* There is no judicial finding to the

38. ———————— *Hindus—Province of Behar—Custom.* A right or custom of pre-

founded on and co-extensive with the Mahomedan law upon that subject, unless the contrary be shown. The Court may, as between Hindus, administer a modification of that law as to the circumstances under which the right may be claimed, where it is

RAMDULAL MISSER v JHUMACK LAL MISSER **8 B. L. R. 455 : 17 W. R. 265**

RAMGUTTY SURMA v KASI CHUNDER SURMA **W. R. 1864, 317**

SHEOJUTTUN ROY v. ANWAR ALI **13 W. R. 189**

39. ———————— *Hindus—Chi-* ... the subordinate ... m of the ... law pre- ... INDER ... ODDEEN ... **W. R. 234**

s.c. on review, where the Judges differed. NAZIROODDEEN KHAN v. INDER NARAIN CHOWDHRY . . . **5 W. R. 237**

40. ———————— *Hindus of Guzerat.* The existence of a local custom as to the right of pre-emption among the Hindus of Guzerat recog-

MAHOMEDAN LAW—PRE-EMPTION —*contd*

1 RIGHT OF PRE-EMPTION—*contd*

(a) GENERALLY—*contd*

nized Such a custom, where it exists, is regulated by the rules and restrictions of the Mahomedan law GORDHANDAS GIRDHARBHAI *v* PRANKOR
6 Bom. A. C. 263

41. ——— *Hindus—Law in Jessore. Quære* Whether the law of pre-emption extends to transactions as between Hindus in Jessore MADHUB CHUNDER NATH BISWAS *v.* TAMEE BEWAH . . . **5 W. R. 279**

42 ——— *Presidency of Madras* The Mahomedan doctrine of pre-emption is not law in the Madras Presidency IBRAHIM SAIB *v* MUNI MIR UDIN SAIB . **6 Mad. 26**

Nor in Sylhet JAMEELAH KHATOON *v* PAGUL RAM . . **1 W. R. 251**

Quære Whether in Tipperah DEWAN MUNAR ALI *v* ASHUROODDEEN MAHOMED . **15 W. R. 270**

43. ——— *Non-Mahomedans—Pre-emption, right of—Customs among Hindus of Behar—Pre-emptor a stranger in the district—Sale* Where the custom of pre-emption is judicially noticed as prevailing in a certain local area, it does not govern persons, who though holding lands therein for the time being, are neither natives of, nor domiciled in, the district Where therefore the pre-emptor was a Hindu co-sharer, neither a native of, nor domiciled in, Chapra, where the property was situate, but an inhabitant of the district of

TEWARI *v.* DHANAI OJHA (1905)
I. L. R. 32 Calc. 988

44. ——— *Shafi-i-khalit—Easement—Owner of dominant tenement.* Under the Mahomedan law of pre-emption the owner of the dominant tenement has in respect of a sale of the

46 ——— **Europeans**—*District of Cachar.* The right of pre emption arises from a rule of law by which the owner of the land is bound. It is essential that the vendor should be subject to the rule of law. Therefore, where the vendor of certain land situate in Cachar was a European, the Court held that there was no right of pre-emption POORNO SINGH *v.* HURRYCHURN SURMAH . **10 B. L. R. 117 : 18 W. R. 440**

(b) CO-SHARERS

47 ——— **Shafi-i-khalit**—*Nature of pre-emptive right arising by common enjoyment of rights appended to property.* In order that two persons may become shafi-i-khalits or persons having a right of pre-emption in virtue of the
t is necessary
oad and not a
are shafi-i-
n a right of
way, all those who are sharers in such right of way have equal rights of pre-emption, although one of them may be a contiguous neighbour. KARIM BAKHSH *v* KHUDA BAKHSH
I. L. R. 16 All. 247

48 ——— **Right of tenant.** The Mahomedan law nowhere recognizes the right of pre-emption in favour of a mere tenant upon the land GOOMAN SINGH *v.* TRIPOOL SINGH **8 W. R 437**

49. ——— **Right of share-holder**—*Effect of private partition on right of pre-emption* According to Mahomedan law, a shareholder in the property sold has the first or strongest right of pre-emption A private partition, though not sanctioned by official authority, if full and final as among the parties to it, will have the same effect as the most formal partition on the right of pre emption. GOPAL SAHI *v.* OJOODHEA PERSHAD **2 W. R. 47**

50 ——— *Conditional sale—Right of pre-emption among coparceners—Private partition of pattidari estate. A* and *B* had certain proprietary rights in an eight annas patti of a certain mehal *C* and *D* had no rights in that patti, but *D* had a small share in the remaining eight

MAHOMEDAN LAW—PRE-EMPTION —*contd.*

1. RIGHT OF PRE-EMPTION—*contd.*

(*b*) CO-SHARERS—*contd.*

have taken place; but that a private partition, if full and final between the parties, would have the same effect as the most formal partition on the right of pre-emption, and that *A*'s claim must therefore succeed. DIGAMBUR MISSER *v* RAM LAL ROY
I. L. R. 14 Calc. 761

51. ———————— *Right of support "appendages of property"—Easement—"Participator in appendages of property"* The right of shaffa (or pre-emption) belongs first to a partner in the property sold; secondly, to a participator in

east. *B*'s house adjoined the house in dispute towards the south, and was separated from it only by a wall *B*'s house was subject to the easement ... pute. *A*'s ... eiving and ... the roof ... owner of the servient tenement was a "participator in the appendages" of the house in dispute, and, as such, had a preferential right to purchase the house in dispute over *B*, who was a mere neighbour. RANCHODDAS *v.* JUGALDAS . I. L. R. 24 Bom. 414

52. ———————— *Right of co-sharer in part of estate sold* When part of an estate is sold in execution of a decree, a co-sharer in the estate is a partner in the thing actually sold, and according to Mahomedan law is entitled to the right of pre-emption IMAMOODDEEN SOWDAGUR *v.* ABDOOL SOBHAN . . . 5 N. W. 170

53. ———————— *Shiah law—Case in which more than two partners.* Under Shiah law, the authorities leave the point doubtful whether there can be any right of pre-emption in respect of property where there are more than two partners, but the Court held in accordance with the practice of the Courts in which no claim for pre-emption had ever been defeated on that ground. DAMI *v.* ASHOOHA BEBEE . 2 N. W. 360

54. ———————— *Property owned by more than two co-sharers—Shiahs.* The prevalent doctrine of the Mahomedan law governing the Shiah sect is that no right of pre-emption exists in the case of property owned by more than two co-sharers. *Daim v Asooha Beebee, 2 N. W. 360,* and *Tafazzul Husain v. Hadi Hasan, All. Weekly Notes (1886) 139,* dissented from. ABBAS ALI *v.* MAYA RAM . . I. L. R. 12 All. 229

55. ———————— *Equality of rights.* Where there is a plurality of persons en-

56. ———————— *Claim by one sharer.* Under the Sunni law, the right of pre-emption may be exercised by one or more of a plurality of co-sharers NUNDO PERSHAD THAKUR *v* GOPAL THAKUR . . I. L. R. 10 Calc. 1008

57. ———————— *Owner of separated share of estate* ...

continued since the separation, he would be entitled in right of vicinage to pre-emption, the point not being allowed to be taken. MAHADEO SINGH *v.* ZITANNISSA
7 B. L. R. 45 note : 11 W. R. 169

58. ———————— *Sharers in appendages, and in body of estate.* A sharer in the appendages has not an equal right to pre-emption with a sharer in the body of the estate. GOLAM ALI KHAN *v.* AGURJEET ROY . 17 W. R. 343

59. ———————— *Undefined share.* In order to establish a right of pre-emption on the part of a sharer, it is not necessary that the property sold should be actually separated or defined. GOBIND CHUNDER GOOPTO *v.* RAJ KISHORE SEIN
14 W. R. 365

60. ———————— *Khalit—Sharik—Partition, effect of, as to pre-emption* The word "khalit" is not improperly used in a plaint in a pre-emption suit to designate a sharik or partner in the substance of a thing; and if it is not clear whether the plaintiff claimed pre-emption as khalit or sharik, it may be shown by express words or it

Semble · Where an integral portion of property, as a wall, is left purposely joint and undivided, the community of interest continues. LALA PRAG DUTT *v.* BANDI HOSSEIN . . 7 B. L. R. 42

S C. LALLA PURIAG DUTT *v.* BUNDEH HOSSEIN
15 W. R. 225

and on review, BUNDEY HOSSEIN *v.* LALLA PURIAG DUTT . . . . 16 W. R. 110

61. ———————— *Co-partners—Partners between whom there has been separation.* In a suit to recover by right of pre-emption, on the ground that plaintiff was in the position of a co-partner in the property to be sold, notwithstanding

MAHOMEDAN LAW—PRE-EMPTION —contd.

1. RIGHT OF PRE-EMPTION—contd.

(b) CO-SHARERS—contd.

a private separation having taken place between the shareholders, inasmuch as he was still liable for arrears of Government revenue, and might still apply for a public batwara —*Held*, that, as plaintiff had divided off his own share by regular metes and

62. ——————— The term "sharik" cannot be restricted to cases in which the parties enjoy the properties jointly. In the contemplation of Mahomedan law those who occupy other houses in the same mansion are regarded as partners together with the person the sale of whose share in a house gives rise to the question of pre-emption GUREEBOOLLAH KHAN v. KEBUL LALL MITTER . 13 W. R. 124

63. ——————— *Right against co-parcener.* No right of pre-emption can exist as against a co-parcener. MOHESHEE LALL v. CHRISTIAN . . . . . . 6 W. R. 250

64. ——————— *Co-parceners.* There is no rule of Mahomedan law giving one co-parcener any right of pre-emption where another co-parcener is the purchaser. LALLA NOWBUT LALL v. LALLA JEWAN LALL

I. L. R. 4 Calc. 831 : 2 C. L. R. 319

65. ——————— *Joint purchase by co-sharers and stranger—Pre-emptor not compelled to pre-empt share purchased by co-sharers.*

as the co-sharer vendee is concerned HARJAS v. KANHYA . . . . I. L. R. 7 All. 118

66 ——————— *Joint purchase by co-sharer and stranger, effect of—Specification of share in a deed of sale, effect of.* Under the rule of Mahomedan law, if a sharer in an estate alienates his interest to a co-sharer and stranger, the purchasing sharer, by joining an outsider in the

of a joint purchase made by two persons of shares in two villages in one of which one of the pur-

v. RAGHUBARDYAL . . I. L. R. 15 Calc. 224

MAHOMEDAN LAW—PRE-EMPTION —contd.

1. RIGHT OF PRE-EMPTION—contd.

(b) CO-SHARERS—contd.

67. ——————— *Recorded co-sharers—Benami purchase of shares—Sale by co-sharer—Claim for pre emption resisted by person claiming to be co-sharer by virtue of benami transaction—Equitable estoppel.* A secret purchase

upon the strength of the interest so acquired to defeat an otherwise unquestionable pre-emptive right preferred by a duly recorded shareholder

Vol. 49, referred to. BENI SHANKAR SHELHAT v. MAHPAL BAHADUR SINGH I. L. R. 9 All. 480

68. ——————— *Wajib-ul-arz—*

defendants to the suit were the vendors, the vendees, and others who were rival claimants for pre-emption, in the share sold. The rival pre emptors alone defended the action on the ground,

MAHOMEDAN LAW—PRE-EMPTION —contd.

1. RIGHT OF PRE-EMPTION—contd

(b) CO-SHARERS—contd

suit for pre-emption was immaterial; the Court should have ascertained whether the plaintiff was at the date of suit entitled in law to the share out of which her right of pre-emption was alleged to have arisen. *Held* by MAHMOOD, J., that the passage from Hamilton's Hedaya by Grady, p. 562, means that in the pre-emptive tenement the pre-emptor should have a vested ownership and not a mere expectancy of inheritance or a reversionary or any kind of contingent right, or any interest falling short of full ownership SAKINA BIBI v AMIRAN
I. L. R. 10 All. 472

69. ———— *Shareholder or neighbour* The Mahomedan law of pre-emption was never intended to apply to a case in which the purchaser is not a stranger, but one who is already either a shareholder or a neighbour TEEKA DHAREE SINGH v MOHUR SINGH
7 W. R 260

70. ———— *Co-parcener or*

[illegible]

10 W. R. 10[illegible]

71. ———— *Preferential right —Extent of shares.* One of two joint sharers has

[illegible]

72 ———— Vicinage—*Right of partner to pre-emption on sale of villages or large estates.*

[illegible]

CHATTERNATH JHA *alias* JHINGHA JHA. MAHOMED HOSSEIN v MOHSIN ALI
6 B. L. R. 41 : 14 W. R. F. B. 1

MAHOMED HOSSEIN v. MOHSUN ALI
14 W. R. 266

73. ———— *Sale of share in zamindari—Vicinage* A right of pre-emption at-

[illegible]

74. ———— *Adjacent plots of land Quære* Whether, as between owners of adjacent plots of land, pre-emption can exist by right of vicinage. NIRPUT MUHTOON v. DEEP KOONWAR . . . . **8 W. R. 2**

MAHOMEDAN LAW—PRE-EMPTION —contd.

1. RIGHT OF PRE-EMPTION—contd

(b) CO-SHARERS—contd.

75. [illegible]

one of such mehals in respect of the other merely by [illegible]

76. ———— *Equal right of pre-emption in two persons.* Where two persons have by vicinage an equal right of pre-emption, the property is to be decreed to them in halves, on payment of their respective moieties of the purchase-money. KHEM KURUN v. SEETA RAM
2 N. W. 257

77. ———— *Ownership* [illegible] gives no "huk shuffa" according to

[illegible]

SHOOBHUDRA . . . . **9 W. R. 4[illegible]**

78. ———— *House on land—*

[illegible]

whom the owner has nothing in common. [illegible] SHADI LAL v. IRSHAD ALI . **2 N. W. 100**

79 ———— *Large estates—Small holdings—Mutual convenience* A claim to rights of pre-emption on the ground of vicinage [illegible] but only

[illegible]

the ground of convenience and mutual [illegible] EJNASH KOOER v. AMJUD ALLY . **2 W. R. 261**

80. ———— *Large estates—Partners.* The Mahomedan law of pre-emption on [illegible] or small [illegible] a claim [illegible] f that a [illegible] CHOW[illegible] SINGH **[illegible] W. R. 413**

81. ———— *Parcels of land —Entire estate.* The right of pre-emption on the [illegible] land and [illegible] case of an [illegible] surrounded [illegible] ABDUL [illegible] **[illegible] W. R. 356**

82. ———— Large or small estates The right of a shareholder to pre-emption exists

MAHOMEDAN LAW—PRE-EMPTION —contd.

1 RIGHT OF PRE-EMPTION—contd.

(b) Co-sharers—contd.

whether the parcel of land sold, and in respect of which the claim is made, be large or small. Jehangir Baksh v Lala Bhikari Lall
6 B. L. R. 42 note

Jahangeer Buksh v. Bhickaree Lall
11 W. R. 71

s.c affirmed on review. *In the matter of the petition of* Jehangir Baksh
7 B L. R. 24 : 11 W. R. 480

Mahatab Singh v. Ramtahal Misser
6 B. L. R 43 note : 10 W. R. 314

83. ——— Agricultural estates—*Part-*

attached, partners in the appurtenance can claim pre-emption in respect of the properties Karim Buksh v Kame-ud-deen Ahmad . 6 N. W. 377

84 ——— *Pre-emption—Shiah vendor—Hindu purchaser—Right of Sunni*

v. *Maya Ram, I. L R 12 All 229, Quarban Husain v Chote, I. L R 22 All. 10.,* referred to. No particular formula is necessary for the assertion of the pre-emptor's claim on the occasion

(1905) . . . I. L. R. 32 Calc. 982
s.c. 9 C. W. N. 826

85. ——— *Sale to a co-sharer after institution of a suit for pre-emption—*

MAHOMEDAN LAW—PRE-EMPTION —contd.

1. RIGHT OF PRE-EMPTION—contd.

(b) Co-sharers—concld

I. L. R. 30 All. 467

(c) Pre-emption in Towns

86. ——— Owners of upper and lower floors of house—*Pre-emption among Hindus.*

where a person owns the lower floor of a house, and another
way to it
sells the
owner of
such custom a right of pre-emption of the upper floor, preferable to the right of the owner of the lower floor Ganeshi Lall v. Luchman Dass
5 N. W. 31

Held, that a right of pre-emption under Mahomedan law attached to such house Zahur v Nur Ali
I. L. R. 2 All. 99

88. ——— Land from which irriga-

(d) Mortgages.

89. ——— Accrual of right—*Foreclosure*

Narayan Singh
B. L. R. Sup. Vol. 166 ; 2 W. R. 215

90. ——— *Right of suit to enforce right of pre-emption—Foreclosure—Possession by mortgagee.* On the foreclosure of a mortgage, after the expiry of the year of grace, but before a decree for possession had been obtained by the mortgagee, a suit to enforce the right of pre-emption in respect of the property mortgaged is maintainable Tara Kunwar v. Mangri Meeah
6 B. L. R. App. 114

MAHOMEDAN LAW—PRE-EMPTION —*contd.*

1. RIGHT OF PRE-EMPTION—*contd.*

(*d*) MORTGAGES—*concld.*

91. —————————— *Mortgage without actual transfer of possession.* In a suit for a declaration of plaintiff's right of pre-emption in a property which had been originally mortgaged, but which, owing to a subsequent arrangement, had not passed from the mortgagor to the mortgagee :—*Held*, that, as the ownership was still with the mortgagor, who could redeem his property within a stipulated period, no right of pre emption had arisen from the Mahomedan law. BHOWANEE PERSHAD *v.* PURSHUNNO SINGH . 11 W. R. 282

92. —————————— *Mortgage by a successful pre-emptor of the pre-empted property to a stranger—Pre-emptive rights of decree holder not thereby destroyed.* The plaintiff in a pre-emption [illegible] suit, to a stranger —*Held*, that whatever rights the mortgage to a stranger might or might not give rise to in the future, the successful plaintiff did not by that transaction forfeit the fruits of her decree. *Rajjo* v. *Lalman, I. L. R. 5 All 180,* distinguished. *Ram Sahai* v. *Gaya, I. L. R. 7 All. 107,* referred to. BELA BIBI *v.* AKBAR ALI (1901)

I. L. R 24 All. 119

93. —————————— *Pre-emption—Talab-i-mowashibat and talab-i-ishhad—Unreasonable delay, a question of fact—Action for pre-emption Claimants co-sharers as well as mortgagees—Deposit of mortgage money in Court by purchaser—Withdrawal by claimants—Waiver of claim.* The right of pre-emption must be exercised and claims necessary to give effect to it must be made with the utmost promptitude, and any unreasonable and unnecessary delay is to be construed as an election not to pre-empt. Whether there has been such delay is a question to be determined upon the facts of each particular case. The plaintiff in this case, claimed the right to pre-empt by reason of their having previously acquired a share in the property. They had also obtained the transfer of a *zurpeshgi* mortgage binding the share, the sale of which was the occasion of the present suit. In the course of the suit the purchaser, defendant, deposited the mortgage amount in Court and the same was withdrawn by the plaintiff —*Held*, that until a decree for pre-emption was made the purchaser owned the land, [illegible]

(*e*) WAIVER OF RIGHT OR REFUSAL TO PURCHASE.

94. ——— – Subsequent re-conveyance by purchaser to vendor—*Effect of, as against*

MAHOMEDAN LAW—PRE-EMPTION —*contd.*

1. RIGHT OF PRE-EMPTION—*contd.*

(*e*) WAIVER OF RIGHT OR REFUSAL TO PURCHASE—*contd.*

right of pre-emptor. Where one of two neighbours has sold his land to a stranger, and the other neighbour has thereupon claimed a right of pre-emption, no subsequent dissolution of the contract affects the right of the pre-emptor which has once accrued and been duly asserted. BHADU MAHOMED *v.* RADHA CHURN BOLIA . . . 4 B. L. R. A. C. 219

S.C. BHODO MAHOMED *v.* RADHA CHURN BOLIA 13 W. R. 332

95. ——— Surrender of right of pre-emption before sale. Where an offer of sale was made to pre-emptor, and he refused to avail himself of it, and consented to a sale to a stranger :—*Held*, that after a sale to a stranger he could not set up his right of pre-emption. BRAJA KISHOR SURMA *v.* KIRTI CHANDRA SURMA

7 B. L. R. 19 : 15 W. R. 247

But see *In the matter of the petition of* JEHANGIR BAKSH . . . . 7 B. L. R. 24 note

S.C. JAHANGEER BUKSH *v.* LALLA BHIKHAREE LALL . . . . 11 W. R. 480

where, however, the point was not directly decided, there being no sufficient proof of the refusal to purchase, and no evidence of consent to sell to another.

96. ——— Refusal to purchase when property offered for sale—*Subsequent suit to enforce right—Estoppel.* A Mahomedan offered to sell his share of certain property to a partner, and, on the refusal of the latter to purchase the same, sold it to a stranger :—*Held*, that the partner could not sue to enforce his right after the sale. TORAL KOMHAR *v.* AUCHHI

9 B. L. R. 253 : 18 W. R. 401

SHEO TUHUL SINGH *v.* RAM KOOER W. R. 1864, 311

KOOLDEEP SINGH *v.* RAM DEEN SINGH 24 W. R. 198

97. ——— Right of refusal on sale to stranger—*Co-sharers paying rent separately. A* and *B*, Mahomedan co-sharers of a talukh, made [illegible] to the zamindar, [illegible] e of the [illegible] e lands [illegible] y *A* of [illegible] a Mahomedan [illegible] OMALI [illegible] R. 166

98. ——— Right of refusal—*Conditional right—Co-sharers—Minor.* Where a condition for pre-emption contained in a record-of rights was intended to take effect at the time of a sale, and its language implied that the co-sharers in whose favour it was made were to be persons who were competent at that time to make a binding contract to accept or refuse an offer, no right of pre-emption

MAHOMEDAN LAW—PRE-EMPTION —contd.

1. RIGHT OF PRE-EMPTION—contd.

(e) Waiver of Right or Refusal to Purchase—contd.

accrued under the condition to a co-sharer who was a minor at the time of a sale and unrepresented by any person competent to conclude a binding contract on his behalf, whether it was assumed that the condition arose out of special contract or general usage. Raja Ram v. Bansi
I. L. R. 1 All. 207

99. ———————— "Stranger"—"Sale"—Assignment by way of dower—Assign-

pre-emption in respect of such sale. A husband transferred certain property to his wife in consideration of a certain sum which was due by him to her as dower. *Held*, that such transfer was a ... Mahomedan ... o the right of ... *nut Ali, 1 N.* The meaning ... n the Maho- ... Fida Ali v. Muzaffer Ali . . . I. L. R. 5 All. 65

100. ———— **Refusal to purchase without absolute relinquishment or surrender.** The right of pre-emption may be claimed after a sale notwithstanding there has been a refusal to purchase before the sale where there has been no absolute surrender or relinquishment of the right, and such refusal has been made simply in consequence of a dispute as to the actual price of the property. Abadi Begam v. Inam Begam
I. L. R. 1 All. 521

101. ———— **Acquiescence in sale**—*Notice to pre-emptor of projected sale—Purchase-money*

MAHOMEDAN LAW—PRE-EMPTION —contd.

1. RIGHT OF PRE-EMPTION—concld.

(e) Waiver of Right or Refusal to Purchase—concld.

waived his right of pre-emption. Bahairon Singh v. Lanman . . . I. L. R. 7 All. 23

102. ———————— *Relinquishment of right.* According to the Mahomedan law, if a

I. L. R. 8 All. 215

103. ———————— *Omission to give notice of demand within reasonable time, effect of—Co-sharers, pre-emption between.* The wajib-ul-urz of a village provided that a co-sharer wishing to sell his share must give notice to the other co-

I. L. R. 11 All. 108

104. ———————— *Effect of offer by pre-emptor to purchase from vendee.* *Held*, that

I. L. R. 10 All. 300

2. PRE-EMPTION AS TO PORTION OF PROPERTY.

1. ———— **Assertion of right as to portion of property**—*Ground for refusing whole.* In the absence of sufficient ground for refusing to

MAHOMEDAN LAW—PRE-EMPTION —*contd.*

2. PRE-EMPTION AS TO PORTION OF PROPERTY—*contd.*

take the whole of the lands to be sold, the right of pre-emption cannot be asserted as to a portion only. CAZEE ALI *v.* MUSSEEUTOOLLAH
2 W. R. 285

2. ——— *Circumstances disentitling party to enforce the right.* The right of pre-emption cannot ordinarily be claimed in respect of only a portion of any property conveyed away in a single sale; but this rule holds good only when the property sold is one entire property. Where a single sale embraces two distinct properties in respect of one of which a right of pre-emption [illegible]

[illegible] could claim as much [illegible]

[illegible] W. R. [illegible]

3. ——— *Suit to enforce the right in respect of a part of the property sold.* [illegible]

[illegible] *v. Musseeut* [illegible] *Nur Banu* [illegible] *heodyal Ram* (*1860*) *53; Guneshee Lal* v. *Zaraut Ali, 2 N. W. 343;* and *Bhawni Prasad* v. *Damru, I. L. R. 5 All. 197,* referred to. DURGA PRASAD *v.* MUNSI
I. L. R. 6 All. 423

4. ——— *Suit by pre-emptor not entitled to claim the whole of the pro-* [illegible] *Held* that, where a pre- [illegible]

[illegible] *Kashi Nath* v. *Mukhta Prasad, I. L. R. 6 All. 370,* and *Hulasi* v. *Sheo Prasad, I. L. R. 6 All. 455,* distinguished. ABDULLAH *v.* AMANAT-ULLAH
I. L. R. 21 All. 292

MAHOMEDAN LAW—PRE-EMPTION —*contd.*

2. PRE-EMPTION AS TO PORTION OF PROPERTY—*contd.*

5. ——— *Suit to enforce pre-emption to portion of property sold.* Under a deed of sale, the vendor conveyed to the purchaser five lots of land. In a suit by a third party to en- [illegible]

[illegible] deed of sale. IZZAT-ULLA *v.* BHIKARI MOLLA
6 B. L. R. 386 : 14 W. R. 469

RAGHUNANDAN SINGH *v.* MAJBUTH SINGH
6 B. L. R. 387 note : 10 W. R. 379

6. ——— *Sale of property of which shares belonged to minors.* The property of several co-sharers, some of whom were minors, [illegible] to a single purchaser under a deed of sale [illegible]

any loss he might incur should the minors when they came of age not ratify the sale. *A* sued to enforce her right of pre-emption in respect of the lands sold. The lower Appellate Court was of opinion that *A* could not enforce her claim of pre-emption in respect of the share of the minors; and on the Court's suggestion the plaint was amended so as to ask for enforcement of her claim [illegible] of full [illegible] r right [illegible] e it in [illegible] NUR- [illegible] R. 111

7. ——— *Co-sharer—Mouzahs distinct from one another.* The plaintiffs who were shareholders in a particular mouzah, sued to enforce a claim to a right of pre-emption upon a [illegible] particular sum of money by [illegible]

[illegible] mouzah only and that mouzah was [illegible] the other properties sold, the suit was maintainable. ROWSHUN KOER *v.* RAM DIHAL ROY
13 C. L. R. 45

8. ——— *Rival suits—Suit to enforce the right in respect of a part of the property sold.* The prior institution of a suit by rival pre-emptors in no way entitles a pre-emptor to depart from the general rule of pre-emption by [illegible] property sold. *Kashi* [illegible] referred [illegible] All. 455

9. ——— *Shafi-ul-arz—Rival suits—Decree not to allow either claimant to pre-empt part only of the property over which he has a pre-emptive right.* Where two rival pre-

MAHOMEDAN LAW—PRE-EMPTION —*contd.*

2. PRE-EMPTION AS TO PORTION OF PROPERTY—*contd.*

emptors, or on the default of one by the other, or that neither of them should obtain any interest in the property in respect of which the suits were brought. In two rival suits for pre-emption the Court gave one claimant a decree in respect of a three-annas share, and the other a decree in respect of a two-annas six pies share of certain property, each decree being conditional on payment of the

defeating the rule of law that a pre-emptor must buy the whole, and not part only, of the property which he is entitled to pre-empt. ARJUN SINGH *v.* SARFARAZ SINGH . . . I. L. R. 10 All. 182

10 ———— *Pre-emptor disentitled by laches from claiming portion of property.*

decree for part only of such property, applies to the case of a pre-emptor who claims the whole, but who is at the time disentitled by his own act or laches to maintain the claim as to a part. Such a disqualification prevents the pre-emptor from maintaining his suit for any portion of the property included in the sale. Where therefore a pre-emptor was disqualified from claiming a portion of the property sold, by not having made a prompt demand in accordance with the Mahomedan law in

the full purchase-money and to leave in the vendee's hands the portion as to which he was disqualified. MUHAMMAD WILAYAT ALI KHAN *v.* ABDUL RAB . I. L. R. 11 All. 108

11. ———— *Wajib-ul-arz—Pre-emptor disentitled by his own conduct to pre-empt part of the property sold—Pre-emptor not*

MAHOMEDAN LAW—PRE-EMPTION —*contd.*

2. PRE-EMPTION AS TO PORTION OF PROPERTY—*concld.*

v. UMED BIBI . . I. L. R. 21 All. 119

3. CEREMONIES.

1 ———— Necessity of proof of per-

JADU SINGH *v.* RAJKUMAR 4 B. L. R. A. C. 171

ISSUR CHANDER SHAHA *v.* NISAR HOSSEIN W. R. 1864, 351

PROKAS SINGH *v.* JOGESWAR SINGH 2 B. L. R. A. C. 12

2. ———— The right of

I. L. R. 1 All. 283

3. ———— *Omission to perform ceremonies—Evidence of relinquishment of right—Negligence.* There are certain ceremonies to be performed in order to lay a foundation for the establishment in a Court of law of a right of this kind, when it is menaced; and though, on the one hand, the effect of the omission to prove performance

exhibited strange haste in some stages of the negotiations, with the apparent purpose of forestalling plaintiff in his rights; but plaintiff's proceedings had been characterized with great negligence, if nothing worse; it was held that the plaintiff was not entitled to a decree. SURDHAREE LALL *v.* LABOO MOODEE . . . . . 25 W. R. 500

4 ———— **Acts or omissions by pre-emptor's authorized agent, effect of.** It is a general rule of pre-emption that any act or omission on the part of a duly authorized agent or manager of the pre-emptor has the same effect upon pre-emption as if such act or omission had been

MAHOMEDAN LAW—PRE-EMPTION —*contd.*

3. CEREMONIES—*contd*

made by the pre-emptor himself. HARIHAR DAT *v.* SHEO PRASAD . . I. L. R. 7 All. 41

observed on behalf of such person by an agent or manager of such person. ABADI BEGAM *v* INAM BEGAM . . . . I. L. R. 1 All. 521

6. ——— *Performance of ceremonies by agent—Affirmation by witnesses—Repudiation of sale.* According to Mahomedan law, the affirmation by witnesses need not be made by the claimant of the right of pre-emption in person, but may be made by a duly constituted agent. OJHEOONISSA BEGAM *v.* RUSTUM ALI W. R. 1864, 219

7 ——— Talab-i mawasabat—*Intention to assert right—Talab-i-ishtahad—Demand in presence of witnesses.* To entitle a person, otherwise favourably situated, to the right of pre-emption, two conditions must be fulfilled: first (talab-i-mawasa-

of witnesses. JHOTEE SINGH *v* KOMUL ROY 10 W. R. 119

8. ——— In order to sustain a claim for pre-emption in Mahomedan law, it is essential that the ceremony of talab-i-mawasabat should be properly performed. JARFAN KHAN *v.* JABBAR MEAH . . I. L. R. 10 Calc 383

9. ——— *Necessity of immediate claim.* Under Mahomedan law, the "talab-i-mawasabat," or immediate claim to the right of pre-emption, should be made as soon as the fact of the sale is known to the claimant, otherwise the right is

I. L. R. 1 All. 283

10. ——— *Delay in making*

fatal to his claim. RAM CHARAN *v.* NARBIR MAHTON 4 B. L. R. A. C. 216 : 13 W. R. 259

11. ——— *Omission to give notice of claim until after lapse of long time—Long deferred demand.* A sale of property, to which the Mahomedan law of pre-emption was applicable, took place in October 1881. The plaint-

MAHOMEDAN LAW—PRE-EMPTION —*contd.*

3. CEREMONIES—*contd.*

that no such notice was given: *Held*, that, even

ABDUL RAB

12. ——— *Want of proof of required ceremonies—Wajib-ul-arz—Custom—*

pre-emption, that law must be applied to the case, and that, under the circumstances above stated, the suit failed and must be dismissed *Fakir Rawot* v. *Emambakhsh, B. L. R Sup. Vol. 35; Choudhry Brij Lall* v. *Gour Sahai, Agra F. B. 128;* and *Jai Kuar* v. *Hira Lal, 7 N.W. 1,* referred to. RAM PRASAD *v.* ABDUL KARIM I. L. R. 9 All. 513

13. ——— *Time taken to ascertain if information of sale is correct.* According to the Mahomedan law, the mere fact of the pre-emptor taking a short time before performance of the talab-i-mawasabat for ascertaining whether the information conveyed to him was correct or not, does not invalidate his right. The Mahomedan law allows a short time for reflection before performance of the first demand. AMJAD HOSEIN *v.* KHARAG SEN SAHU 4 B. L. R. A. C. 203 : 13 W. R. 299

14. ——— *Making claim standing or sitting.* The act of a claimant rising from his seat to claim his right of pre-emption instead of claiming it as he sat, is not a delay sufficient to entail a forfeiture of his right. MAHARAJ SINGH *v.* LALLAH BHUCHOOK LALL W. R. 1864, 294

15. ——— *Witnesses, necessity of.* Although, according to Mahomedan law books, it is not necessary, in respect to the talab-i-mawasabat, or first preliminary required to establish a right of pre-emption, that witnesses should hear the exclamation it involves, yet it does not follow that, as matter of evidence, Courts of law are bound to decree a suit to establish such a right

MAHOMEDAN LAW—PRE-EMPTION—contd.

3. CEREMONIES—contd.

simply on the deposition of the plaintiff ABDOOL HOSSEIN KHAN v GOBIND CHANDRA SHAHA 11 W. R. 404

16. —— Talab-i-ishtahad—*Necessity of proof of performance.* To establish a claim to pre-emption under the Mahomedan law it is not enough to prove that the ceremony of talab-i-mawasabat was performed; it is also necessary to prove the talab-i-ishtahad NARBHASE SINGH v LUCHMEE NARAIN POOREE 11 W. R. 307

17. —— *Necessity of finding as to performance* The "talab-i-ishtahad" is a preliminary act as essential as the "talab-i-mawasabat" to secure to the claimant the right of enforcing pre-emption. There should always therefore be a distinct finding as to whether it was properly made or not. RAZEEOODDEEN v ZEENUT BIBEE 8 W. R. 463

18. —— *Necessity of proof of performance* Under the Mahomedan law, it is essential to the right of pre-emption to prove the performance of the talab i-ishtahad BHOWANEE DUTT v LOKHOO SINGH W. R. 1864, 60

19. —— *Mode of form of ceremony—Performance—Hindus* To the due performance of the ceremony of talab-i-ishtahad, it

20. —— *Mode or form of ceremony—Talab-i-mawasabat* To establish a right of pre-emption, it is necessary to show that the ceremony of talab-i-ishtahad has been observed, which requires the pre-emptor to make an affirmation not necessarily in the precise words of the form given in the Hedaya, but in substance to the effect of declaring, before witnesses, that the earlier preliminary—viz, talab-i-mawasabat—has already been performed. GIRDHAREE SINGH v. ROJUN SINGH 24 W. R. 462

21. —— *Requisites for ceremony—Invocation of witnesses.* To the ceremony of ishtahad or talab-i-istahad, it is essential that there should be an express invocation of witnesses PROKAS SINGH v GUGESWAR SINGH 2 B. L. R. A. C. 12

22. —— *Requisites for ceremony—Declaration and invocation of witnesses.*

DAYAMOOLLAH v KIRTEE CHUNDER SURMAH 18 W. R. 530

23. —— *Requisites for ceremony—Invocation of witnesses to demand*

vendor is in possession, in the presence of vendor, to bear witness to the demand GOLAKRAM DEB v BRINDABAN DEB 6 B. L. R. 165: 14 W. R. 265

24. —— *Performance in presence of purchaser* The ceremony of talab-i-ishtahad, or affirmation before witnesses, may, at the option of the pre-emptor, be performed in the presence of the purchaser only, though he has not yet obtained possession. JANGER MAHOMED v. MAHOMED ARJAD I. L. R. 5 Calc. 509: 5 C. L. R. 370

25. —— *Performance in presence of person in possession, vendor or purchaser* To establish the right of pre-emption, the talab i-ishtahad, or affirmation before witnesses, must be performed in the presence of the person in possession of the lands, whether it be the vendor or the purchaser. CHAMROO PASBAN v PUHLWAN ROY 16 W. R. 3

26. —— *Omission to invoke witnesses—Talab-i-mawasabat—Ceremonies of "immediate demand," and "demand with invocation"* A person claiming a right of pre-emption made the talab-i-mawasabat in the presence of wit-

made, the right of pre-emption could not be claimed. JADUNUNDUN SINGH v DULPUT SINGH I. L. R. 10 Calc. 581

27. —— *Mode of invocation of witnesses.* In a suit to establish the right of pre-emption, where the witnesses said that on the

28 —— *Invocation of witnesses where talab-i-mawasabat is made in presence of witnesses—Performance of talab-i-mawasabat and ishtahad—Witnesses* Where the first talab (talab-

MAHOMEDAN LAW—PRE-EMPTION —*contd.*

3. CEREMONIES—*contd.*

Wazid Ali Khan v. *Hunuman Prosad, 4 B. L. R. A. C. 139,* and *Gureeboolah Khan* v. *Kebul Lall Mitter, 13 W. R. 125,* cited. KOROMALI v. AMIR ALI
3 C. L. R. 166

29. ——— *Invocation of witnesses—Claim where there are several co-sharers—Tender of price for the land claimed—One out of several co-sharers claiming a right to pre-emption.* A person seeking pre-emption declared his right thereto when he first heard of the sale, in the presence of witnesses; and as soon as was possible on the same day, in the presence of the same witnesses, demanded his right from the vendors and the purchasers —*Held,* that it was unnecessary that he should again state, when making his demand, or that his witnesses should testify to the fact that he had declared his right as soon as he heard of the sale The principle of the law of pre-emption is that the pre-emptor should assert his right as soon as he has heard of the sale; that he should demand his right from the vendor or purchaser, or on the ground, in the presence of witnesses, and this assertion and demand may be simultaneous; but if they are not, the pre-emptor, when he makes the demand, is required to make a declaration before witnesses that he asserted his right when first he heard of the sale NUNDO PERSHAD THAKUR v GOPAL THAKUR
I. L. R. 10 Calc. 1008

30. ——— *Ceremonies of "immediate demand" and "demand with invocation."* When a person claiming a right of pre-emption has performed the talab-i-mawasabat in the presence of witnesses, but not in the presence either of the seller or of the purchaser, or on the premises, it is necessary that when performing the talab-i-ishtahad, he should declare that he has made the talab-i-mawasabat, and at the same time should invoke witnesses to attest it. *Jadunandun Singh v. Dulput Singh, I. L. R. 10 Calc 581,* affirmed. *Nundo Pershad Thakur* v. *Gopal Thakur, I L. R. 10 Calc. 1008,* overruled RUJJUB ALI CHOPEDAR v. CHANDI CHURN BHADRA **I. L. R. 17 Calc. 543**

31. ——— *Talab-i-mawa-*[illegible]

that he had prior thereto made what is known as the immediate demand (talab-i-mawasabat) *Rujjab Ali Chopedar v. Chundi Churn Bhadra, I. L. R. 17 Calc. 543,* referred to. AKBAR HUSAIN v. ABDUL JALIL . . **I. L. R. 16 All. 383**

32. ——— *Demand made "on the premises"—Demand made within an undivided village a share in which was the subject of sale.* Where certain persons claimed pre-emption in respect of a share in an undivided village and proved that they made an immediate assertion of their intention to pre-empt in the presence of witnesses within the area of the zamindari to which the share sold belonged: *Held,* that, in the absence of any indication that the demand was not made *bonâ fide,* the demand of pre-emption was a good demand made "on the premises" within the meaning of the Mahomedan law. KULSUM BIBI v. FAQIR MUHAMMAD KHAN . **I. L. R. 18 All. 298**

33. ——— *Demand made to vendee not in possession—Demand made by agent of pre-emptor. Held,* that, if the talab i ishtahad is made in the presence of the vendee, it is not necessary that such vendee should, at the time the [illegible]

to. *Held,* also, that the ceremony of talab-i-ishtahad need not necessarily be performed by the [illegible]

L. R. A. C. 139, and *Ojheoonissa Begum* v. [illegible] *Ali, W.R. (1864), 219,* referred to ALI MUHAMMAD KHAN v. MUHAMMAD SAID HUSAIN
I. L. R. 18 All. 309

34. ——— *Witnesses—Servants of pre-emptor.* In the making of the talab-i-ishtahad the servants of the pre-emptor are competent witnesses. The disability in this respect imposed by the Mahomedan law is limited to minors and persons convicted of slander. MUHAMMAD YUNUS KHAN v. MUHAMMAD YUSUF
I. L. R. 19 All. 334

35. ——— *Reference to talab-i-mawasabat necessary* A pre-emptor claiming pre-emption under the Mahomedan law is bound, at the time when he makes his talab-i ishtahad, to state distinctly that he has already made talab-i-mawasabat. *Rujjub Ali Chopedar v. Chandi Churn Bhadra, I. L. R 17 Calc. 543,* followed ABBASI BEGAM v AFZAL HUSEN . **I. L. R. 20 All. 457**

36. ——— *Reference necessary to talab-i-mawasabat* When in [illegible]

demands are [illegible] *I. L. R. 17 Calc. 543; Ak-* [illegible] *Chundi Churn Bhadra, I. L. R. 17 Calc. 543; Akbar Husain v. Abdul Jalil, I. L. R. 16 All 383;* and *Abasi Begam v. Afzal Husen, I. L. R. 20 All. 457,* followed. *Nundo Pershad Thakur v. Gopal Thakur, I. L. R. 10 Calc. 1008,* dissented from. ABID HUSEN v. BASHID AHMED **I. L. R. 20 All. 499**

MAHOMEDAN LAW—PRE-EMPTION —*contd.*

3 CEREMONIES—*contd.*

37. ——————— *Necessity of immediate demand* To entitle a person to a right

38. ——————— *Necessity of immediate demand* It is not a binding rule of law

LATIF HOSSEIN
8 B. L. R. 160 : 16 W. R. F. B. 13

39. ——————— *Mode of performance* The personal performance of the talab-

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LALA HANUMAN PRASAD
4 B. L. R. A. C. 139 : 12 W. R. 464

IMAMUDDIN v. SHAH JAN BIBI
6 B. L. R. 167 note

40. ——————— *Delay in making demand—Ceremonies of affirmation.* A delay of one

or the purchaser, or be performed on the premises. MAHOMED WAFIS v. HAZEE EMAMOODDEEN
6 W. R. 173

41. ——————— *Delay in making demand* A claim to pre-emption should be made as soon as the claimant becomes aware of the completion of the sale. AJOODHYA POOREE v. SOHUN LALL . . . . . . 7 W. R. 428

ELAHEE BUKSH v. MOHAN . 25 W. R. 9

42. ——————— **Performance of preliminary ceremonies**—*Expression of readiness to purchase.* Under the Mahomedan law, when a per-

43. ——————— *Delay in making preliminary declaration.* According to the Mahomedan law of pre-emption, the first thing to be

MAHOMEDAN LAW—PRE-EMPTION —*contd.*

3. CEREMONIES—*contd.*

44. ——————— *Mahomedan law—Talab-i-ishtishad—Reference to the previous talab-i-mauasibat necessary.* When in asserting a claim for pre-emption under the Mahomedan law

147, and *Nundo Persad Thakur* v. *Gopal Thakur, I. L. R. 10 Calc. 1008*, dissented from. MUBARAK HUSAIN v. KANIZ BANO (1905)
I. L. R. 27 All. 160

45. ——————— *Pre-emption—Talab-i-ishtishad—Witnesses not specifically invoked. Held*, that the mere fact that the talab-i-ishtishad is made in the presence of certain persons, who happen to be present at the place, where it is made, is not sufficient to make the demand a good one, unless those persons are specifically called upon to bear witness to the demand being made. *Issur Chunder Shaha* v. *Mirza Nisar Hossein, W. R. (1864) 351*, followed. GANGA PRASAD v. AJUDHIA PRASAD (1905) . . . . . I. L. R. 28 All. 24

point, should either have examined the other record or at least have given the plaintiff an opportunity of

47. ——————— *Pre emption—Ceremonies, due performance of—Wahabis, right of,*

specially dedicated for the use exclusively of the Hanafi sect of Sunni Mahomedans. Persons belonging to the *amil-bil hadi* (or Wahabi) sect of

MAHOMEDAN LAW—PRE-EMPTION —*contd.*

3. CEREMONIES—*contd.*

Mahomedans are entitled to worship at mosques chiefly used by the Hanafi sect and use the loud-toned *amin* and raise the hands above the knee during worship *Ataullah* v. *Azim-ullah, I. L R. 12 All. 491; Fazl Karim* v. *Moula Baksh, I. L. R. 18 Calc 448,* relied on. In making a declaratory decree that the plaintiffs were entitled to worship in accordance with the Wahabi rituals, the Court imposed the condition that in exercising this right the plaintiffs should not interrupt or disturb the worship of others. ABDUS SUBHAN *v.* KURBAN ALI (1908) . . . I. L R. 35 Calc 294 s.c. 12 C. W. N. 289

48. ———— *Pre-emption—Customary right—Hindus of Bihar—Pleadings—Right of pre-emption, assertion of—Proof—Delay in assertion—When to be made—Formalities—Who can perform—Manager of adult female under Court of Wards, rights and duties of—Court of Wards Act (Bengal Act IX of 1879), ss. 11 39, 40, 48, 49, 50—*

143, followed. Champaran has from the earliest

tence of the custom, under which Hindus have the

W R F. B 143, explained. There must be no delay in the assertion of the claim of pre-emption of *talab-i-mawasibat,* but before the *shafee* or pre-emptor can assert his right to pre-emption, he must be satisfied by evidence, which he holds to be credible, that a sale has been completed *Muhammad Wilayat Ali Khan* v. *Abdul Rab, I. L R. 11*

F. B. 13, followed. The performance of the *talab-i-ishtishad* is not meant to be done for the information of the vendor or vendee, though no doubt its effect may be to give them information. The formality is insisted on with the object of securing evidence that the pre-emptor has really asserted his

MAHOMEDAN LAW—PRE-EMPTION —*contd.*

3. CEREMONIES—*concld.*

ferred to. The performance of the ceremony in the *kachari* of the vendor is a sufficient compliance with the law. *Mubarak Hussain Kaniz Bano, I. L R. 27 All 160,* not followed. A guardian or manager under the Court of Wards can perform and it is his duty to perform the ceremonies of pre-emption on behalf of an adult female ward of Court; and from the omission in the Court of Wards Act

under the Mahomedan law for defeating the right of pre-emption. *Per* COXE, *J.*—An order under s. 29 of the Bengal Estates Partition Act has not the effect of dividing the shares of the proprietors finally, until the date specified in s 95 of the Act, and, until the later date, the right of the pre-emption subsists *Wahed Ali Khan* v. *Hunooman Pershad, 12 W. R 484,* referred to. *Joobraj Singh* v *Tookun Singh, 14 W. R 476,* distinguished. JADU LAL SAHU *v.* JANKI KOER (1908) I. L. R. 35 Calc. 575

4. MISCELLANEOUS CASES.

1. ———— Enforcement of right—*Delivery or registration of bill of sale.* A contract ... for sale and purchase of ... 500

BHEEMUL DOSS

See GIRDHAREE LALL *v.* DEANUT ALI 21 W. R. 311

2. ———— Offer to purchase at time of registration—*Sufficiency of claim. Held,* that ... must

KHAN

3. ———— Tender of price—*Necessity of tender.* It is not incumbent on a pre-emptor to tender the price at the time of making his claim. KHOFFEH JAN BEBEE *v.* MOHAMED MEHDEE 10 W. R. 211

HEERA LALL *v.* MOORUT LALL . 11 W. R. 275

4. ———— *Statement of readiness and willingness to pay.* In a suit for pre-

MAHOMEDAN LAW—PRE-EMPTION —*contd.*

4. MISCELLANEOUS CASES—*contd*

emption it is unnecessary to prove a tender of the actual price paid for the property claimed, it being sufficient if the person claiming the right to pre-emption states that he is ready to pay for the land such sum as the Court may assess as the proper price for the property. NUNDO PERSHAD THAKUR *v* GOPAL THAKUR I. L. R. 10 Calc. 1008

5. ———————— *Lien of vendor.* The right of the first purchaser is simply a vendor's lien,—*i e.*, to retain the property until he has the money from the party claiming pre-emption. It is no part of the Mahomedan law that the claimant of a right of pre-emption must carry the money in his hands and tender it to the first purchaser. A right of pre-emption may be decreed in respect of land within the patti of the party claiming such right. BULBOOD SINGH *v* MAHADEO DUTT . 2 W. R. 10

6. ———————— *Conclusion of contract of sale.* As soon as a contract is ratified by acceptance and the vendor has gone so far that he cannot legally draw back, it is time for the pre-emptor to step in. A pre-emptor is not required to tender the purchaser's price, or any price, at the

question of pre-emption the Court must act in strict accordance with the provisions of the Mahomedan law rather than on what it thinks just and equitable NUBEE BUKSH *alias* GOLAM NUBEE *v* KALOO LUSHKER . . . 22 W. R. 4

7. ———— Loss of right—*Claim disproved to specific land at specific price.* The right

land at a specific price, and that right is shown to have no existence ACHURBUR PANDAY *v* BUCKSHEE RAM . . . . . 2 W. R. 38

8. ———— Rights of purchaser on allowance of claim—*Profits between time of purchase and transfer to pre-emptor. Held,* that a purchaser is entitled to the profits of the property purchased by him accruing between the time of purchase and subsequent transfer to a pre-emptor. BULDEO PERSHAD *v* MOHUN . 1 Agra Rev. 30

9. ———— Decree for pre-emption—*Profits of property accruing between sale and decree becoming final—Pre-emption for Hindus—Bengal, N.-W. P. and Assam Civil Courts Act (XII of 1887), s. 37—Pre-emption on basis of contract or custom* In a suit for pre-emption based on the wajib-ul-urz of a village, the plaintiff pre-emptor did not ask for a declaration that he was

MAHOMEDAN LAW—PRE-EMPTION —*contd.*

4. MISCELLANEOUS CASES—*contd.*

cree in his favour did not grant him any such relief. The wajib-ul-urz was silent as to whether the purchaser or the pre-emptor was entitled to the profits accruing
avoided
merely
ownersc
date when the decree became final by the payment, in accordance with its terms, by the pre-emptor of the pre-emptive price decreed, and vested in the pre-emptor the rights of ownership from that date and his rights were not postponed until he had obtained possession of the property. *Held,* also, that the profits of the property which accrued between the date of the sale and the date when the pre-emptor, in accordance with the decree, paid the decreed pre-emptive price, belonged not to the pre-emptor nor to the original vendor, but to the original vendees *Held,* by MAHMOOD, *J.*, that the vendees-defendants were entitled to the profits accruing up to the date when the pre-emptor acquired possession of the property in accordance with the terms of the decree. Observations by MAHMOOD, *J.*, upon the texts of the Mahomedan law applicable to

where the words used were "I have a claim for pre-emption on this house If any one else purchases it, I shall be put to inconvenience. Go at this very moment and take the money

11. ———— Easement—*Pre-emption—Shafi khalit.* In a suit for pre-emption it was found that the house of the pre-emptor discharged water on the property sold, and this latter and the house of the vendee discharged water on a lane intervening between the houses and the pro-

MAHOMEDAN LAW—PRE-EMPTION —concld.

4. MISCELLANEOUS CASES—*concld.*

perty sold :—*Held,* that both the pre-emptor and the vendee were sharers in the immunities and appendages (*Shafi khalit*) and therefore one had no preferential right over the other. *Held,* also, that the Muhammadan law does not prescribe any [illegible]

MAHOMEDAN LAW—PRESUMPTION OF DEATH.

1. ———— **Missing person**—*Evidence Act (I of 1872), s 108—Act VI of 1871, s 24* The rule contained in s. 108 of the Evidence Act governs the case of a Mahomedan who has been missing for more than seven years, when the question of his death [illegible]

inheritance, marriage, or caste, or any religious usage or institution," within the meaning of s 24 of Act VI of 1871. MAZHAR ALI *v.* BUDH SINGH **I. L. R. 7 All. 297**

2. ———— *Right of inheritance. Held,* that, as under the Mahomedan law a [illegible]

was entitled to get the money claimed, it being compensation for land which had been found to belong to her exclusively, and not as having descended from her husband IMAM ALI KHAN *v.* ABDUL ALI KHAN . . . . . . **2 Agra 28**

3. ———— *Position of, as to inheritance during absence—Person in unlawful possession—Legal heir. Held,* that, assuming the [illegible]

disturbed by such legal heir. DOWLUT KHATOON *v.* ALI JAN . . . . . **2 Agra 59**

4. ———— *Alienation by heirs of proprietor—Right of alienee.* In a suit to recover possession of a share of landed property, where plaintiff claimed on the ground of purchase from the heirs of the proprietor, who had been missing for many years and in which the defendant set

MAHOMEDAN LAW—PRESUMPTION OF DEATH—concld.

up a mokurari, and pleaded that as ninety years had not elapsed since the disappearance of the proprietor the property could not, under Mahomedan law, be inherited by his heirs, and the alienation by them was therefore invalid :—*Held,* that, as plaintiff had been found in possession under the conveyance from the heirs, who did not dispute his title, the defendant, a stranger, who had failed to prove either title or possession under the mokurari which he set up, was not in a position to advance the plea in question. *Held,* also, that ninety years is the least period within which, according to Mahomedan law, the estate of a missing person can be alienated by his heirs. HOSSEINEE KHANUM *v.* TIJUN LALL **14 W. R. 293**

5. ———— *Alienation of property by his heirs—Claim of other heirs.* A claim [illegible]

and ninety years had not elapsed from his birth A sale of the shares by *R,* the brother of the missing [illegible]

surrender on the reappearance of the missing person RAKHI BIBI *v.* RAHAT BIBI **7 N. W. 191**

6. ———— *Act I of 1872.* [illegible]

missing person. [illegible] *Singh, I. L. R. 1 All. 53,* distinguished *Held* by STUART, *C J.,* that, according to Mahomedan law, ninety years not having elapsed from *F*'s birth, his share could not be claimed by the plaintiffs, but [illegible]

either as heir or trustee. **I. L. R. 2 All. 635**

MAHOMEDAN LAW—RELINQUISHMENT.

———— *Relinquishment of share—Voluntary settlement—Document whereby*

MAHOMEDAN LAW—RELINQUISHMENT—*concld.*

heirs give up their rights in the property in favour ... *Deed supported by valuable consideration*

the document was not a voluntary settlement but was a transaction supported by valuable considera-

MAHOMEDAN LAW—RESTITUTION OF CONJUGAL RIGHTS.

1. ——————— *Suit for restitution of conjugal rights—Limitation Act (XV of 1877), s. 23, Sch II, Arts 35, 120.* A suit for restitution

2. ——————— *Suit for restitution of conjugal rights—Legal cruelty—Other misconduct of the plaintiff pleaded as a defence to the suit.* In a suit for restitution of conjugal rights, the parties being Mahomedans, if the defendant raises a plea of legal cruelty, the facts to be proved to establish such a plea are similar to those which must be proved to establish a similar plea under the English law. *Moonshee Buzloor Ruheem* v. *Shumsoonnissa Begum, 11 Moo I A. 551,* referred to But in a suit for restitution brought by the husband misconduct on the plaintiff falling

which he totally failed to substantiate: *Held,* that the Court would be justified in refusing him relief. *Mackenzie* v. *Mackenzie,* [*1895*] *A.C. 384,* referred to. On the general facts of the case also it was found that the defendant had reasonable grounds for believing that her health and safety would be endangered if she returned to her husband's house, which was situated

MAHOMEDAN LAW—RESTITUTION OF CONJUGAL RIGHTS—*concld.*

in a Native State. HUSAINI BEGAM *v.* MUHAMMAD RUSTAM ALI KHAN (1906) **I. L. R. 29 All 222**

3. ——————— *Suit for restitution of conjugal rights—Non-payment of dower—Consummation of marriage* To a husband's suit for restitution of conjugal rights, the wife pleaded non-payment of dower. To this the husband pleaded consummation of marriage:—*Held,* that after consummation of marriage, non-payment of dower, even though proved, cannot be pleaded in defence of an action for restitution of conjugal rights. *Abdul Kadir* v. *Salima, I. L. R. 8 All. 149, Kunhi* v. *Moidin, I L. R 11 Mad 327,* and *Hamidunnessa Bibi* v *Zohiruddin Sheikh, I L. R. 17 Calc. 670,* followed. BAI HANSA *v.* ABDULLA (1905)
I. L. R. 30 Bom. 122

MAHOMEDAN LAW—SALE.

See MAHOMEDAN LAW—MORTGAGE
I. L. R. 20 Bom. 116

MAHOMEDAN LAW—SLAVERY.

See SLAVERY . **I. L. R. 3 Bom. 422**
12 Bom. 156

MAHOMEDAN LAW—SOVEREIGNTY.

MUHAMMAD NAIAMUT KHAN *v.* DALE **1 Mad. 281**

MAHOMEDAN LAW—SUCCESSION.

See MAHOMEDAN LAW—INHERITANCE.

——————— *Creation of vested remainder by a Mahomedan—Spes successionis—Creation of life-interest amongst Shias allowed* It is possible for a Mahomedan to create a definite interest like what would be called in English law a vested remainder, and such a remainder, though liable to be

Mussummat Zahoor Fatima, L. R. 17 I. A. 201, followed Amongst Shias the creation of a life-interest is allowed, and it appears according to

I. L. R. 32 Bom. 172

MAHOMEDAN LAW—TRUST.

1. ———— *Trust—Will—*

medan law possession is as necessary in the case of

third party takes upon himself the administration of the trust property he becomes a trustee *de son tort* and, as such, is bound to account as if he were the rightful trustee and limitation will not run in his favour under s 10 of the Limitation Act (XV of 1877). MOOSABHAI *v* YACOOBBHAI (1905)
I. L. R. 29 Bom. 267

2. ———— *Trust deed—Life interest with remainder over—Gift to unborn persons.* A deed creating a life interest with

Law.

Shaheb-

Fakir

I. L. R. 36 Calc. 431

MAHOMEDAN LAW—USURPED PROPERTY.

———— Conversion of usurped property —*Right of suit for damages by party injured* Under Mahomedan law, where there has been a change in usurped property, the injured party has a claim to recover damages in respect of the property usurped, but cannot claim to share in the property into which it has been converted. An heir cannot therefore claim estates purchased with moneys belonging to the ancestral estate of the deceased which have been misappropriated by a co heir, but must claim to recover his share in money. NOOROOL HOSSEIN *v.* MOONEERAM . 4 N. W. 103

MAHOMEDAN LAW—USURY.

1. ———— Interest—*Act XXVIII of 1855* The custom of taking interest as between Mahomedans is recognized by the Courts. *Semble —Per* PHEAR, J.

the Legislature meant laws affecting the rate of interest MIA KHAN *v* BIBI BIBIJAN
5 B. L. R. 500 : 14 W. R. 308

2. ———— *Interest on dower.* With respect to the awarding of interest on a claim

MAHOMEDAN LAW—USURY—*concld.*

of dower by a Moslem widow, the principle of Mahomedan law will not apply. SOORMA KHATOON *v.* ATTAFFOONNISSA KHATOON . 2 Hay 210

MAHOMEDAN LAW—WAJIB-UL-ARZ.

See MAHOMEDAN LAW—PRE-EMPTION.

1. ———— *Wajib-ul-arz—Construction of document—Mahomedan Law—"Intiqal."* Where in a wajib-ul-arz it was recorded merely that "the custom of pre-emption prevails": *Held,* that in the absence of any special custom different from or not co-extensive with the Mahomedan law of pre-emption, the Mahomedan law must be applied *Ram Prasad* v. *Abdul Karim, I. L R. 9 All 513,* followed. The term "*intiqal*" occurring in the pre-emptive clause of a wajib-ul arz covers all kinds of transfers, mortgages as well as sales. JAGDAM SAHAI *v.* MAHABIR PRASAD (1905)
I. L. R. 28 All. 60

2. ———— *Wajib-ul-arz—Owner of isolated plots in a village. Held,* that the owner of isolated plots of land in a village is a co-sharer in the village and may as such possess rights

ALI HUSAIN KHAN *v.* TASADDUQ HUSAIN KHAN (1905) . . . . I. L. R. 28 All. 124

3. ———— *Wajib-ul arz—Construction of document.* The pre-emptive clause of a wajib-ul-arz was drawn up in the following terms:—"In case of great necessity each co-sharer is entitled to transfer his property as recorded in the *khewat,* and the near co-sharers and the pattidars

no right of suit accrued to a nearer co-sharer. JAI DAT *v* RAM BADAL (1905)
I. L. R. 28 All. 168

4. ———— *Wajib-ul-arz—Sale of land by Government.* When Government has acquired land permanently it does not become a co-sharer in the village, to which the land originally appertained, and on a sale thereof the provisions contained in the village wajib-ul-arz, which deal with sales by co-sharers in the village, are not applicable. GAYA SINGH *v.* RAM SINGH (1905)
I. L. R. 28 All. 235

5. ———— *Wajib-ul-arz—Pre-emptor accepting a lease of property in suit from the vendee.* Where in a suit for pre-emption based upon a custom declared in the wajib ul arz it was found that the pre-emptor had, with knowledge of his right as pre-emptor, accepted a lease of the land claimed from the vendee: *Held,* that this amounted to such an acquiescence in the sale as would bar the plaintiff's right of suit. KISHAN LAL *v.* ISHRI (1905) . . . I. L. R. 28 All. 237

MAHOMEDAN LAW—WAJIB-UL-ARZ —*contd.*

6. ——————— *Wajib-ul-arz—Co-sharer—Owner of plot of grove land. Held,* that a person, who buys a plot of grove land in a village, does not thereby become a co-sharer in the village so as to entitle him to enforce a right of pre-emption under a wajib-ul-arz, which confers such right upon co-sharers. *Dalhni Din v. Rahimun nissa, I. L* … *Tasadduq* … rred to

… All. 246

7. ——————— *Wajib-ul-arz—Construction of document—Partition of village into separate mahals.* In a village, which consisted of two patties or mahals, the wajib-ul-arz recorded a custom of pre-emption to the effect that in the case of sale or mortgage by a share holder a claim for pre-emption might be brought by (i) own brothers and nephews, (ii) cousins who are co-sharers, (iii) …

I. L. R. 28 All. …

8. ——————— *Wajib-ul-arz—Construction of document—"Qimat" Held,* that the word "*qimat*" as used in the pre-emptive clause of a *wajib-ul-arz* is wide enough to include the consideration given for an usufructuary mortgage with possession as well as for a sale HULASRAI *v.* RAM PRASAD (1906) . . I. L. R. 28 All. 454

9. ——————— *Wajib-ul-arz—Construction of document—Custom or contract.* In …

and next by the sharers in other pattis, and when …

MAHOMEDAN LAW—WAJIB-UL-ARZ —*contd.*

and the new wajib-ul-arz, which was prepared for one of them, *A. M.* was copied verbatim from the wajib-ul-arz of the village before division and clearly put *hissadaran deh* and *hissadaran patti* on the same footing:—*Held,* that a co-sharer in the mahal of *A M.* had no right of pre-emption *in regard to property sold in A. M.* as against a co-sharer who, though he had no share in the mahal *A M.*, was a co-sharer in one of the other mahals *Dalganjan Singh v. Kalka Singh, I. L. R 22 All. 1,* distinguished. SARDAR SINGH *v.* IJAZ HUSAIN KHAN (1906) I. L. R. 28 All. 614

11. ——————— *Wajib-ul-arz—* …

reference to pre-emption:— Custom of pre-emption:—No pre-emption suit has been instituted, but the custom of pre-emption is accepted." But the wajib-ul-arz of the same village, prepared in 1864, was more explicit It ran as follows:—"Mention of the right of pre-emption:—When it is desired to transfer a share, the heirs and near brethren have the right first. On their refusal to take, the transferor is competent to sell, mortgage or assign to any one he likes:"—*Held,* that in the *wajib-ul-arz of 1883 the villagers intended to* reproduce—and understood they were in fact …

I. L. R. 28 All 679

12 ——————— *Wajib-ul-arz—Construction of document—"Shurkayan-i-shikmi"* The wajib-ul-arz of a village (Kandla) in the …

The pre-emptors were co-sharers in *patti* Khail. One of the vendees was a co-sharer in the mahal, but not in *patti* Khail. *Held,* that, regarding the …

13. ——————— *Wajib-ul-arz—* …

MAHOMEDAN LAW—WAJIB-UL-ARZ —*concld.*

I. L. R. 30 All.

14. ———— *Wajib-ul-arz—Construction of document.* The pre-emptive clauses of a wajib-ul-arz contained the following provi-

subject to the Muhammadan law of pre-emption,

15. ———— *Wajib-ul-arz—*

future to the termination of the next settlement they will abide by the following terms and act upon them." Amongst the subsequent provisions were certain provisions relating to the right of pre-emption In a later wajib-ul-arz of 1890 no mention was made of any custom of pre-emption, but it contained these words "For the remaining village customs see the Wajib-ul-arz prepared in 1867." *Held,* that the Wajib-ul-arz of 1867 recorded a contract and not a custom, and ...d not be perpe- later wajib-ul- village. BUDH R. 30 All 544

MAHOMEDAN LAW—WAKF.

See MAHOMEDAN LAW—ENDOWMENT.

———— *Wakf property—Jurisdiction.* Under Mahomedan law, the High Court has jurisdiction to authorise dealings with wakf property. *Shama Churn Roy* v. *Abdul Kabeer, 3 C. W. N. 158,* followed. *In the matter of* WOOZATUNNESSA BIBEE (1908) . I. L. R. 38 Calc. 21

MAHOMEDAN LAW—WIDOW.

See MAHOMEDAN LAW—DOWER.

———— *Alienations by widow—Validity.* According to the Mahomedan law, the widowed mother is not the legal guardian of the property of her minor children, and cannot do any act relating to their property so as to bind them and a sale or mortgage by her cannot, as such, bind the

MAHOMEDAN LAW—WIDOW—*concld.*

minor children. Though she may be a co-heir with her minor children in respect of the property dealt with by her, the Mahomedan law unlike the Hindu law, does not constitute the senior co-heir the managing co-parcenor, entitled to administer and manage the estate until partition. Alienations by such a widow cannot, therefore, be upheld by extending to Mahomedans the principle of Hindu law appliable to the acts of a guardian or managing member of a family. PATHUMMABI v. VITTIL UMMACHABI (1902) I. L. R. 26 Mad. 734

MAHOMEDAN LAW—WIFE.

See MAHOMEDAN LAW—DOWER.

1. ———— Power of alienation—*Power of wife as one of several tenants-in-common to grant lease.* The District Judge's decision that a Mahomedan married woman cannot execute a valid lease which may endure beyond her lifetime, of property of which she is one of several tenants-in-common, held bad in law. NICHHABHAI PRAGJI v. ISSEKHAN HAJI ABDULLA KHAN 2 Bom. 313 : 2nd. Ed., 297

2. ———— *Presumption* owner by the husband, and never by the wife, ... property which had descended from his wife's father (his own uncle), the husband having mortgaged the property and dealt with it in all respects as if were the owner, and the wife possessing none of the documents which she would have been able to produce if she had acted as the owner, it was held that she had no such interest in the property as entitled her to maintain a suit to recover possession of it after it was sold in satisfaction of the husband's debts. OZEEROONISSA BIBEE v. RAMDHUN ROY . . . 11 W. R. 17

MAHOMEDAN LAW—WILL.

See MAHOMEDAN LAW—ENDOWMENT. I. L. R. 25 All. 236

See MAHOMEDAN LAW—GIFT—VALIDITY
W. R. 1864, 221
1 W. R. 17, 152
8 W. R. 84
7 N. W. 313
I. L. R. 9 All. 357

See PARTIES—PARTIES TO SUIT—EXECUTORS . . I. L. R. 19 Bom. 83

See RECEIVER . I. L. R. 19 Bom. 83

1. ———— Gift operating as will—*Gift in contemplation of death—Legacy.* According to the Mahomedan law, a gift made in contemplation of death, though not operative as a gift, operates as a legacy. Ordinarily it conveys to the legatee property not exceeding one-third of the deceased's whole property, the remaining two-thirds going to the heirs. In the absence of heirs, a will carries the whole property. EKIN BIBEE v. ASHRUT ALI 1 W. R. 152

MAHOMEDAN LAW—WILL—*contd.*

2. ——— Invalid will—*Will disinheriting heirs.* A wasi-ut-namah, or will, divesting all the property from the next heirs, is illegal under Mahomedan law JUMUNOODDEEN AHMED *v* HOSSEIN ALI . . . 2 W. R. Mis. 49

3. ——— ——— *Will made without consent of heirs.* A will which has never received the assent of the heirs of the testator is inoperative to alter their rights to succeed according to the Mahomedan law of inheritance. KADIR ALI KHAN *v* NOWSHA BEGUM . . 2 Agra 154

4. ——— ——— *Will devising more than half estate to daughter* Under the

5 — *Bequest by married woman—Consent of husband* *Held*, that the bequest by a married woman of the whole of her estate to her brother, without the assent of her husband, was invalid according to the Mahomedan law. MUHAMMAD *v* IMAMUDDIN

2 Bom. 53 : 2nd Ed. 50

6 ——— *Legacy to one of several heirs—Want of consent of others.* A legacy cannot be left to one of a number of heirs without the consent of the rest ABEDOONISSA KHATOON *v.* AMEEROONISSA KHATOON . 9 W. R. 257

7 ——— *Power of testator to interfere with devolution of property* By the Mahomedan law, a testator may bequeath one-third

property to one of his sons as his executor, to be expended at the son's discretion in undefined pious uses, and conferring on such son a beneficial interest in the surplus of such third share, *held* to be an attempt to give, under colour of a religious bequest, a legacy to one of the testator's heirs, and to be invalid without the confirmation of the other heirs KHAJOOROONNISSA *v* ROUSHAN JEHAN

I. L. R. 2 Calc. 184 : 26 W. R. 36
L. R. 3 I. A. 291

8. ——— *Will made without consent of heirs.* Plaintiffs claimed as purchasers from the daughters (as heirs) of a Mahomedan

divided among the heirs. The lower Appellate

MAHOMEDAN LAW—WILL—*contd.*

9. ——— *Suit for share of property against persons in possession under will—Onus probandi* In a suit for an undivided share of property claimed by the plaintiffs, as heirs of the deceased owner, where the defendants pleaded possession under a wasi-ut-namah, or will —*Held*, that the Court could not tell how far the will was valid or invalid under the Mahomedan law, which allows a

10. ——— *Consent of heir—Consent before testator's death.* By Mahomedan law the consent given by heirs to a testator's will before his death is no assent at all; to be valid, it must be given after the testator's death. NUSRUT ALI *v.* ZEINUNNISSA . . 15 W. R. 146

11. ——— ——— *Assent given*

12. ——— *Consent of heiress to will—Evidence of consent.* To establish the consent of a Mahomedan heiress to a will, evidence of some act done at the time of its execution, or some act done subsequently amounting to a ratification of it, is necessary The Court will not

ISSA BEGUM. FAQUEEROONISSA BEGUM *v.* SUFDAR ALI . . . . 1 Ind. Jur. O. S. 119

13. ——— *Consent of heir—Evidence of consent.* According to Mahomedan law, a will is valid as against an heir if he affixed his signature to it as a consenting party thereto without undue influence KHADEJAH BIBEE *v.* SUFFUR ALI . . . . . 4 W. R. 36

14. ——— *Construction of a letter containing a bequest—Suicide of testator.*

MAHOMEDAN LAW—WILL—*contd.*

under the will having been disputed in this suit, on the ground that the will having been made by a person who had taken poison for the above purpose, was invalid by Mahomedan law: *Held*, that the

15. ———— **Form of will**—*Nuncupative will—Evidence of will.* The rule that by Mahomedan law a will does not require to be in writing is universal. The omission to write the wish, where there was ample time for that purpose, may throw doubt on the fact of the words being used as the expression of the testator's last will. But if the Court finds that the testator expressed his will, and that this was his last will, the omission to render it into writing will not deprive it of legal effect TAMEEZ BEGUM *v.* FURHUT HOSSEIN **2 N. W. 55**

16.

valid by the Mahomedan law, and effect was given to the bequests. *Semble* Such verbal bequests would have been valid even if beyond a third of the testator's estate, provided the heirs concurred in the bequests AMINOODDOWLAH *v.* ROSHUN ALI KHAN **5 Moo. I A. 199**

17. ———— *Proof of intention where purpose not completed* Where a testatrix devises a certain disposition of her whole property in the course of a wajib-ul-arz relating to only a portion of it, and independent testimony of her intention to make this disposition was produced :—*Held*, that the diposition was valid against a claim of possession set up by a rival claimant. MAHOMED ALTAF ALI KHAN *v.* AHMED BUKSH **25 W. R. 121**

18. ———— *Assignment to take effect on death—Sale* An assignment of his property made by a Mahomedan in favour of his

requisites of a sale under the Mahomedan law. MOGUL BEGUM *v.* FUKERUN BEBEE **3 Agra 288**

19. ———— Construction of will

MAHOMEDAN LAW—WILL—*contd.*

devise to the nephew was absolute to him, and did not extend to his sons in case of his death before his aunt. OOMUTOONNISSA BEEBEE *v.* OOREEFOONISSA BEEBEE . . . . **4 W. R. 66**

20. ———— *Disposition of estate among sharers—Words of duration of estate, not denoting more than interest for life—Construction—Restriction upon alienation.* Words such as "always" and "for ever," used in an instrument

his son "should continue in possession and occupancy of the full sixteen annas of all the estates ...... All the matters of management in connec

ment by his son, who retained it till his death.

L. R. 15 I. A.

21. ———— *Bequest to persons not in existence at testator's death.* A Mahomedan

consent-decree passed in 1881 three annas property were given to *V* and *E*, and the remaining two-fifths to *A* and *S*. The estate was duly divided in accordance with the decree, and the parties got possession of their respective shares. In February 1884 another son was born to *M*, and in May 1884 the infant brought this suit by his father and next friend, claiming to be entitled, on his attaining the age of twenty, to one-third of the property

MAHOMEDAN LAW—WILL—*contd.*

received by F and E, under the consent-decree: *Held*, that the plaintiff could not recover, not having been in existence at the date of the testator's death. According to Mahomedan law as well as Hindu law persons not in existence at the death of a testator are incapable of taking any bequest under his will. ABDUL CADUR HAJI MAHOMED *v.* TURNER (OFFICIAL ASSIGNEE) I. L. R. 9 Bom. 158

22. ———— ———— — *Charitable bequest—Stat 43, Eliz., c. 4—"Dharm," meaning of* In the will of a Khoja Mahomedan, written in

however, the will is in the native language, and the word "dharm" or "daram" is used the word

23. ———————— *Invalid gift for want of assent of heirs* A Mahomedan by his will

24. ———————— *Prohibition of alienation or partition.* A Mahomedan testator by will decreed that his moveable estate should not be

not plead adverse possession against them so as to bar their claims by lapse of time KHAJOORUNISSA *v.* ROHEEMUNNISSA . . 17 W. R. 180

25. ———————— *Administration of the estate of a Shiah Mahomedan under his will —Alleged gift—Claims as between his childless widow and the estate—Right of childless widow to maintenance—Legacies chargeable on one third only of the estate—Commission to executor.* A Mahomedan of the Shiah sect, dying without issue, left a widow. She as his childless widow was enti-

MAHOMEDAN LAW—WILL—*contd.*

to transfer the money into her name at the bank,

and no notice was given to her that rent would be charged. A Mahomedan childless widow is not by Shiah law entitled to share in the value of land forming the site of buildings that belonged to her husband's estate. Her one-fourth includes, as was admitted, a share in the proceeds of sale of the buildings The text quoted in Book VII, C. IV, p. 293, of Baillie's Mahomedan Law, Imamia, is not to be construed as referring only to agricultural land. AGA MAHOMED JAFFER BINDANIM *v.* KOOLSOM BIBEE KOOLSOM BIBEE *v* AGA MAHOMED JAFFER BINDANIM . . I. L. R. 25 Calc. 9 L. R. 24 I. A. 196 1 C. W. N. 449

26. ———————— *Construction of the will of a talukhdar—Quantity of estate devised —Unlimited gift of share of profits in a talukhdari estate under Oude Estates' Act I of 1869.* The will of a talukhdar, who left daughters, declared that in respect of his estate, in its entirety and with-

MAHOMEDAN LAW—WILL—*contd.*

sent appellant, his father FAIZ MUHAMMAD KHAN v. MUHAMMAD SAID KHAN
I. L. R. 25 Calc. 816
L. R. 25 I. A. 77
2 C. W. N. 385

27. ——— Executor—*Right to nominate successor.* Under Mahomedan law, an executor is entitled to nominate a successor to carry out the purposes of the will under which he was made an executor. HAFEEZ-OOR-RAHMAN v. KHADIM HOSSEIN . . . . 4 N. W. 106

28. ——— *Khoja Mahomedan administrator with the will annexed—Executor, powers of* The powers of a Khoja Mahomedan executor or administrator, like those of a Cutchi Mahomedan executor or administrator, seem to be generally limited to recovering debts and securing debtors paying such debts Where a will gave the executor full powers, with regard to the payment of the testator's debts:—*Held,* that an administrator with the will annexed, who was a Khoja Mahomedan, succeeded to those powers, and, in a suit brought against him as such administrator by an alleged creditor of the testator's estate, represented all the persons interested in the estate AHMEDBHOY HUBIBHOY v. VULLEEBHOY CASSUMBHOY
I. L. R. 6 Bom. 703

29. ——— *Infidel executor.* The appointment by the will of a Mahomedan of an infidel executor does not invalidate the will All the acts of such an executor and his dealings with the property under the will, until he is removed and superseded by the Civil Court, are good and valid. *Quære* Whether, if an application were made by a person interested in the will to have the infidel executor removed, and a proper person appointed in his place, the application would be granted JEHAN KHAN v MANDY
1 B. L. R. S. N. 16 : 10 W. R. 185

30. ——— *Testator—Bequest to stranger of more than one-third of testator's property—Consent of heirs—Alienation—Attachment—Civil Procedure Code (Act XIV of 1882), s. 276.* Where a Mahomedan, by his will, bequeaths more than one-third of his whole property to a stranger, the consent of his heirs to such bequest, required by the Mahomedan law, need not

testator's heirs, is good, and does not amount to an alienation such as is prohibited by s. 276 of the Civil Procedure Code (XIV of 1882). DAULATRAM KHUSHALCHAND v. ABDUL KAYUM NARUDIN (1902)
I. L. R. 26 Bom. 497

31. ——— *Will—Heirs.* The power of disposition by will of a Mahomedan

MAHOMEDAN LAW—WILL—*contd.*

testator being limited to a third of his estate, the remaining two-thirds pass to his heirs, whatever the terms of the will may be. The consequence of a grant of probate of a Mahomedan will, therefore, is that the executor, when he has realised the estate, is a bare trustee for the heirs as to two-thirds and an active trustee as to one-third for the purposes of the will. As the heirs claim adversely to the

ABBAS HOSSEIN KHA *alias* PEARA SAHEB (1905)
9 C. W. N. 938
s.c. L. R. 32 I. A. 244

32. ——— *Will—Construc-* ... Muhammad Azim made a

provided that none of the sons should have a right to alienate the property devised to him, and that on the death of one of the devisees without issue his share should go to the surviving brothers or brother or his or their heirs The testator died, leaving surviving him three sons Abdul Qayum and Abdul Kadir by one wife, and Abdul Karim by another. The will was assented to by the heirs of the testator, and the three sons entered into possession of their shares Then Abdul Kadir died, and his full brother, Abdul Qayum, took possession of his share. *Held,* on a suit by the half-brother for possession of half the share, that according to the Mahomedan law the three devisees took absolutely, and the plaintiff's claim could not be maintained ABDUL KARIM KHAN v. ABDUL QAYUM KHAN (1906)
I. L. R. 28 All. 342

33. ——— *Signature—Intention* Where it was found that a document purporting to be the will of a Muhammadan lady ... instructions

Taylor, 1 Hagg ... I. L. R. 28 All. ...
ATA-UD-DIN (1906) .

34. ——— Shias—*Power of devise amongst* ... of the Shia sect ... heirs so ... d of his ... out the ... rer, the ... not be ... the heirs, ... e testator, ... *Kulli* ... *Mad H.* ... *'s Digest,*

MAHOMEDAN LAW—WILL—*concld.*

120, and *Ranee Khujooroonnissa* v. *Roushun Jehan, L. R. 3 I. A. 291*, referred to FAHMIDA KHANUM v. JAFRI KHANUM (1908) . I. L. R. 30 All. 153

MAHOMEDAN LAW—WORSHIP.

———— *Amil-bil hadis—Hanafi sect—Mosques—Right of worship by different sects—Dedication to particular sect* Mahomedans of the *Amil-bil hadis* or *Wahabi* sect have the right to worship in a mosque built primarily for the use of and used, as a general rule, by members of the *Hanafi* sect, and cannot be debarred from the exercise of such right on the ground of their views in the matter of ritual being different *Quære* Whether a special dedication of a mosque to any particular sect of Mahomedan would be in accordance with Maho-

SUBHAN v. KORBAN ALI (1908)
I. L. R. 35 Calc. 294
s.c. 12 C. W. N. 289

MAIDEN.

See HINDU LAW—INHERITANCE.
I. L. R. 31 Bom. 495

MAINPRIZE.

———— **Power of High Court to issue writ of.** A writ of mainprize could only be issued

no right to demand to be released on bail The writ is one which could be issued only on the Common Law side of the Court of Chancery in England The power of the Common Law side of the Court of Chancery to issue such writ was not *conferred on the Supreme Court*, nor is there anything in the Charter of the High Court to give that Court power to issue it *In the matter of* AMEER KHAN . . . . . 6 B. L. R. 456

MAINTENANCE.

See CHAMPERTY.

See CIVIL PROCEDURE CODE, 1882, s. 266.
10 C. W. N. 1102

See CONTRACT—CONSTRUCTION OF CONTRACTS . . L. R. 28 I. A. 198

See DECREE—FORM OF DECREE—MAINTENANCE

See EXECUTION OF DECREE—MODE OF EXECUTION—MAINTENANCE.

See EXECUTION OF DECREE—APPLICATION FOR EXECUTION, AND POWERS OF COURT.
I. L. R. 26 Bom. 707

See FUTURE MAINTENANCE.

MAINTENANCE—*contd.*

See GRANT—CONSTRUCTION OF GRANTS.
I. L. R. 26 Mad. 202
I. L. R. 23 All. 194

See HINDU LAW . I. L. R. 32 Calc. 234
9 C. W. N. 271, 651
10 C. W. N. 1
I. L. R. 36 Calc. 943

See HINDU LAW—INHERITANCE—ILLEGI-

See HINDU LAW—MAINTENANCE.

See HINDU WIDOW . I. L. R. 31 All. 161
13 C. W. N. 150

See KHOJA MAHOMEDANS.
I. L. R. 29 Bom. 85

See LIMITATION ACT, 1877, SCH. II, ART. 128.

See MAHOMEDAN LAW—MAINTENANCE.

See MAINTENANCE, ORDER OF CRIMINAL COURT AS TO.

See MALABAR LAW—MAINTENANCE.

See PARTIES—PARTIES TO SUITS—MAINTENANCE, SUITS FOR.

See PENSION . I. L. R. 30 Mad. 266

See PENSIONS ACT
I. L. R. 31 Bom. 512

See RES JUDICATA—CAUSE OF ACTION—CONTINUING GUARANTEE
I. L. R. 27 Bom. 418

See SMALL CAUSE COURT, MOFUSSIL—JURISDICTION—MAINTENANCE.

See SMALL CAUSE COURT, PRESIDENCY TOWNS—JURISDICTION—MAINTENANCE.

See TRANSFER OF PROPERTY ACT (IV OF 1882), SS. 39 AND 100.

See WILL . I. L. R. 31 Mad. 283

———— **claim of junior members for—Chiefship of Tonk—**

See INHERITANCE . 8 C. W. N. 81

———— **compromise settlement—**

See GRANT . . . 8 C. W. N. 105

See HINDU LAW . 8 C. W. N. 105

———— **future, attachment of—**

See ATTACHMENT—SUBJECTS OF ATTACHMENT—MAINTENANCE.

———— **order for—**

See JURISDICTION OF CIVIL COURTS.
I. L. R. 30 Mad. 400

1. ———— **Illegitimate child**—*Suit for maintenance—Right of suit—Order of Criminal Court refusing maintenance, effect of—Criminal*

MAINTENANCE—*contd.*

Procedure Code (Act V of 1898), s. 488—Civil Procedure Code (Act XIV of 1882), s. 11—Hindu Law. Under the Hindu law as well as upon general principles, the father of an illegitimate child is bound to provide for its maintenance. A suit lies in the Civil Court for maintenance of an illegitimate child notwithstanding an order of the Magistrate, under s 488 of the Criminal Procedure Code, refusing to grant maintenance. *Subad*

I. L. R. 32 Calc. 479

2. ———— Babuana property, nature of—*Grant for maintenance—Power of grantee to alienate—Kulachar of Darbhanga Raj* Babuana property granted in accordance with the Kulachar or family custom of the Darbhanga Raj is property granted to the junior male members of the family to be enjoyed by them in lieu of money maintenance subject to the property rights of the grantor and his ultimate claim as reversioner on the extinction of the grantee's dependants in the male line The grantor remains responsible for the payment of the Government revenue and retains his position as the recorded proprietor of the property assigned. The grantee is bound to pay to the grantor such revenue which the latter pays into the

3. ———— Decree of Civil Court—*Maintenance—Effect of Civil Court decree in a suit for restitution of conjugal rights upon an order for maintenance passed by a Magistrate* A husband, against whom an order had been passed by a Magistrate under s 488 of the Code of Civil Procedure directing him to pay a monthly allowance of R4-8 for the maintenance of

seded the order of the Magistrate passed under s. 488 of the Code of Criminal Procedure. *In re Bulakidas, I. L. R. 23 Bom. 484,* followed. NUR MUHAMMAD *v.* AYESHA BIBI (1905)

I. L. R. 27 All. 483

4. ———— Hindu widow—*Widow having her husband's property in her hands—The property sufficient to maintain her for some years—Suit for declaration and for arrears of maintenance—Premature suit.* The plaintiff, a Hindu widow, filed a suit to recover arrears of maintenance and to obtain a declaration of her right to maintenance. At the time the suit was brought, she was found to be in possession of a fund belonging to her husband's family estate, which sum was sufficient to provide for her maintenance for five years at the rate allowed by the lower Court: *Held,* that no

I. L. R. 33 Bom. 60

MAINTENANCE, ORDER OF CRIMINAL COURT AS TO.

See APPEAL IN CRIMINAL CASES—CRIMINAL PROCEDURE CODES
7 W. R Cr. 10
2 Ind. Jur. N. S. 88

See MAGISTRATE, JURISDICTION OF—RETRIAL OF CASES . . 1 C. L. R. 89

See RES JUDICATA—ADJUDICATIONS.
I. L. R. 5 All. 224

See REVISION—CRIMINAL CASES—MISCELLANEOUS CASES . 5 Bom. Cr. 81

See WITNESS—CRIMINAL CASES—PERSONS COMPETENT OR NOT TO BE WITNESSES . I. L R. 18 All. 107
I. L. R. 16 Calc. 781

1. ———— Jurisdiction—*Criminal Procedure Code (Act X of 1882), s 488—"The District Magistrate," meaning of the expression—Complaint by a wife against her husband for maintenance* A complaint under s 488 of the Criminal Procedure Code (Act X of 1882) falls within the cognizance of the Magistrate competent to entertain such complaint, and within the local limits of whose jurisdiction the husband or the father is actually residing at the date of such complaint. The expression "The District Magistrate, a Pres

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is made

2. ———— *Criminal Procedure Code (1882), ss. 488 and 177—Complaint by a wife against her husband for maintenance—Issue of summons—Jurisdiction of Presidency Magistrate.* maintain his wife,

complaint

risdiction of

v. BENBOW

which the husband resides. I. L. R. 24 Calc. 638

In the matter of the petition of BENBOW
1 C. W. N. 577

3. ———— *Criminal Procedure Code, s. 488—Maintenance order passed on report of Subordinate Magistrate.* Under s. 488 of the Code of Criminal Procedure, a Magistrate of the first class may, upon proof of neglect or refusal by a person having sufficient means to support his wife, order such person to make a monthly allowance for the maintenance of his wife : a first class Magistrate,

MAINTENANCE, ORDER OF CRIMINAL COURT AS TO—*contd.*

having referred a complaint by a wife for maintenance to a Subordinate Magistrate to take evidence and report upon the facts stated in the petition of complainant, passed an order upon such report in the absence of the husband for payment of maintenance: *Held*, that the order was illegal VENKATA *v.* PARAMMA . . I. L. R. 11 Mad. 199

4. ——————— *Criminal Procedure Code, s 488—Liability of a Hindu not divided from his father to maintain his wife* A Hindu not divided from his father can be ordered to maintain his wife under s 488 of the Code of Criminal Procedure QUEEN-EMPRESS *v* RAMASAMI I. L. R. 13 Mad. 17

5. ——————— *Criminal Procedure Code (1882), s 488—Illegitimate children—Right of a married woman to claim maintenance for her illegitimate children* A married woman is entitled, under s 488 of the Code of Criminal Procedure (Act X of 1882), to claim maintenance for her illegitimate children from the putative father ROZARIO *v* INGLES . . I. L. R 18 Bom. 468

6. ——————— *Criminal Procedure Code (1882), s 488—Maintenance and custody of children—Moplahs—Personal law* The right of children to be maintained by their actual father is a statutory right, and the duty is created by express enactment independent of the personal law of the parties. If the children are illegitimate, the refusal of the mother to surrender them to the father is no

tarwad who is bound by law to maintain them. KARIYADAN POKKAR *v.* KAYAT BEERAN KUTTI I. L R. 19 Mad. 461

7. ——————— *Criminal Procedure Code (Act V of 1898), s 488—Usage in Malabar*

served by the Nayar community in Malabar, is liable to have an order made against him for its maintenance under s 488 of the Code of Criminal Procedure. VENKATAKRISHNA PATTER *v.* CHIMMUKUTTI . . . I. L. R. 22 Mad. 246

AYYA PATTER *v* KALIANI AMMAL I. L. R. 22 Mad. 247

8. ——————— *Criminal Procedure Code, s. 488—Failure to pay process-fees.*

MAINTENANCE, ORDER OF CRIMINAL COURT AS TO—*contd.*

An application for maintenance under Criminal

9. ——————— *Criminal Procedure Code*

the petitioner being resident at Cawnpore, or of the former application having been rejected. *In the matter of the petition of* TODD . 5 N. W. 237

10. ——————— *Criminal Procedure Code, s 488—Order for maintenance of wife—*

DECASTRO . . . I. L. R. 13 All. 348

11. ——————— Procedure in maintenance cases—*Criminal Procedure Code, 1872, s. 536—Mode of recording evidence* Cases under Act X of

12. ——————— *Proceedings on*

13. ——————— Proof of charge—"*Due proof*"—*Criminal Procedure Code, 1861, s. 316, order under.* Before an order under s. 316 of the Code of

MAINTENANCE, ORDER OF CRIMINAL COURT AS TO—*contd.*

Criminal Procedure for the maintenance of a wife or child can be passed against a person, the charge must be legally proved against him, the words "due proof" in that section meaning legal proof on oath. GONDA v. PYARI DOSS GOSSAIN
13 W. R. Cr. 19

14. ———— *Nature of evidence—Ground for making order* An order made by a Magistrate under s 316 of the Code of Criminal Procedure must be founded upon proof in the same proceedings, and not upon knowledge acquired by him in some other case. LOPOTEE DOMNEE v. TIKHA MOODAI . . . 8 W. R. Cr. 67

15. ———— *Criminal Procedure Code, 1872, s. 488—Evidence Act (I of 1872), s. 120—Bastardy proceedings—Order of affiliation—Evidence—Competent witness* Bastardy proceedings under the provisions of s. 488 of the Criminal Procedure Code are in the nature of civil proceedings, within the meaning of s. 120 of the Evidence Act, and the person sought to be charged is a competent witness on his own behalf Upon a summons, charging that the defendant, having sufficient means, had refused to maintain his child by his nika wife, whom he had subsequently divorced, the Magistrate found that the marriage had not been proved, but that upon the other evidence adduced including the similarity of the features and the name of the child with those of the defendant, who

circumstances, he was wrong in taking into account the similarity of the names and the features of the child and the defendant, but as there was ample evidence of the paternity, he was justified in making the order he did, as it was immaterial for the

16. ———— **Application by wife of Christian who had reverted to Hinduism and married again**—*Application for maintenance.* The rejection of an application for maintenance made by the wife of a Christian who had reverted to Hinduism and married a second wife is not warranted by the decision in *Anonymous Case, 3 Mad. Ap 7* ANONYMOUS CASE
4 Mad. Ap. 3

17. ———— **Marriage, proof of**—*Karao marriage, Validity of—Legitimacy of offspring of—Right to maintenance.* A woman of the Jat caste applied under s. 316 of the Code of Criminal Procedure for an order of maintenance. As she had only gone through the ceremony of "Karao" with her alleged husband, the Joint Magistrate rejected her application. His order was set aside on reference, a "Karao" marriage among the Jats being held

MAINTENANCE, ORDER OF CRIMINAL COURT AS TO—*contd*

valid, and the offspring of such unions being entitled to inherit. QUEEN v. BAHADUR SINGH
4 N. W. 128

18. ———— **Ground for allowing maintenance**—*Inability to live together.* The inability of a husband and wife to agree to live together is no ground for decreeing a separate maintenance to the wife JESMUT v. SHOOJAUT ALI
8 W. R. Cr. 59

19. ———— *Criminal Procedure Code, 1872, s. 536—Separate maintenance on ground of ill-treatment.* The proviso to s. 536 of Act X of 1872 does not authorize a Magistrate to entertain an application for separate maintenance, on the ground of ill-treatment, from a wife whose hus-

6 N. W. 205

20. ———— *Criminal Procedure Code, s. 488—"Cruelty."* The word "cruelty"

LAL . . . . . I. L. R. 11 All. 4[illegible]

21. ———— **Offer to maintain wife**—*Criminal Procedure Code, 1872, s. 536—Refusal to cohabit.* An offer by a Hindu, having two wives, to maintain his first wife by allowing her to live in his house and by supplying her with grain to be cooked and eaten separately, coupled with a refusal to live with her as husband and wife, does not come within the meaning of a proviso to s. 536 of the Code of Criminal Procedure, 1872. MARAKKAL v. KANDAPPA GOUNDAN . I. L. R. 6 Mad. 373

22 ———— *Criminal Proce-* ... *under* ... *to* ... akes ... roce- ... com- ... she

plainant is the wife of the ... claims maintenance, and that he has either neglected or refused to maintain her. The complainant claimed maintenance from her husband, G, under s. 488 of the Code of Criminal Procedure. In the course of the proceedings G pleaded that his marriage with the complainant was not valid according ... tain her in his ... offer was not ... the offer was ... the meaning of s. 488 of the Code of ... validity ... and refusal ... that there ... the words ... of the ... Kani-

MAINTENANCE, ORDER OF CRIMINAL COURT AS TO—*contd.*

appa Goundan, I L R 6 Mad 371, dissented from. *In re* Gulabdas Bhaidas
I. L. R. 16 Bom. 269

23. ——— *Criminal Procedure Code (1882), s. 488—"Adultery"—Penal Code (Act XLV of 1860), s. 497—Refusal of wife to live with husband—Criminal Procedure Code, s. 4.* A wife petitioned for maintenance for herself and

dure Code must, by virtue of s 4 of the Code, be construed with reference to the definition of the term in s 497 of the Penal Code Consequently a

s. 488 of the Code of Criminal Procedure intended

married or unmarried, or, in case of her being married, whether it is with or without her husband's

24. ——— *Criminal Procedure Code (1882), s 488 and s. 4—Adultery*

tha Achari, I L. R. 17 Mad. 270, dissented from. Gantapalli Appalamma v. Gantapalli Yellayya. Perianayagam v. Krishna Chetti
I. L. R. 20 Mad 470

25. ——— **Refusal by Hindu wife to live with husband for sufficient reason**—*Criminal Procedure Code, 1882, s. 488—Second marriage by husband* A Hindu wife having applied

The Magistrate ordered the husband to pay a monthly sum by way of maintenance: *Held,* that the fact that the husband had married a second wife was not a sufficient reason, within the meaning of

MAINTENANCE, ORDER OF CRIMINAL COURT AS TO—*contd.*

s. 488 of the Code of Criminal Procedure to justify the order. Arumugam v. Tulukanam
I. L. R. 7 Mad 187

26. ——— **Wife not permitted to live**

live with her husband without receiving money from him. An order under s. 536 cannot be made by a Magistrate of the second class. Somree v. Jitun Sonar . . . . . 22 W. R. Cr. 30

27. ——— **Ground for cancelling order**—*Proof of adultery.* It is open to a husband upon whom an order to make an allowance for the maintenance of his wife has been made under s 316, Cri-

28. ——— *Criminal Procedure Code, ss 488, 490—Order for maintenance of wife—Application by wife to enforce order—Plea that applicant had been divorced—Duty of Court to which application for enforcement is made.* Where a person in whose favour an order under s. 488 of the Code of Criminal Procedure has been made takes that order before a Magistrate, and the

a plea by the party against whom the order is

I. L. R. 15 All. 143

29. ——— **Alteration or withdrawal of order**—*Divorce—Criminal Procedure Code*

Mahomedan law for that purpose: *Held,* that the Magistrate should have enforced the order until application was made by the husband

MAINTENANCE, ORDER OF CRIMINAL COURT AS TO—*contd.*

under s. 537 for alteration of the order owing to the "change of circumstances" which had occurred. The husband was bound to pay maintenance up to the time of divorce. *Quære*. Whether what occurred was such a change of circumstances within s. 537 as would justify an alteration or withdrawal of the order. NEPOOR AURUT *v.* JURAI

10 B. L. R. Ap. 33 : 19 W. R. Cr. 73

30. ——— *Presidency Magistrate's Act (IV of 1877), ss. 234, 235—Effect of divorce on maintenance order.* A Presidency Magistrate is competent to stay an order for maintenance granted under s. 234 of Act IV of 1877, and to refuse to issue his warrant under the 3rd

[illegible]

and wife that a Magistrate can make an order under s. 234 granting maintenance to a wife; but where proof has been given that such relationship has ceased to exist, he may stay an order already made under that section. ABDUR ROHOMAN *v.* SAKHINA SOBHAN *v.* SHUBRATON. OSSUFF *v.* SHAMA

I. L. R. 5 Calc. 558 : 5 C. L. R. 21

31. ——— **Effect of maintenance order on right of divorce**—*Presidency Magistrates' Act (IV of 1877), s. 234—Borah Mahomedan*

[illegible] de under s. [illegible] Magistrate [illegible] ind of the [illegible] the main-

tenance of his wife belonging to the Hanafi sect does not deprive the husband of his right to divorce his wife, and after such divorce the Magistrate's order can no longer be enforced. *In re* ABDUL ALI ISHMAILJI . . . **I. L. R. 7 Bom. 180**

Also so held with regard to an order under s. 10 of the Police Amendment Act, XLVIII of 1860. In re KASAM PIRBHAI . . . **8 Bom. Cr. 95**

32. ——— *Criminal Procedure Code (Act X of 1872), s. 536—Mahomedan law—Divorce—"Iddat."* An order for the maintenance of a wife, passed under Ch. XLI of Act X of 1872, becomes inoperative, in the case of a

[illegible]

See LARAITI *v.* RAM DIAL . **I. L. R. 5 All. 224**

MAINTENANCE, ORDER OF CRIMINAL COURT AS TO—*contd.*

33. ——— *Mahomedan law—Shiah school—Mutta marriage—Gift of term—Divorce.* In a suit brought by a Mahomedan of the Shiah sect against his wife, belonging to the same

[illegible]

necessary, the Court was bound, in administering [illegible] modify the [illegible] ough the [illegible] ning the Magistrate from enforcing the order for mainten- [illegible] the Magistrate

[illegible]

MED ABID ALI KUMAR KADAR *v.* LUDDEN [illegible]

I. L. R. 14 Calc. 276

34. ——— *Criminal Procedure Code (1882), ss. 488, 489, and 490—Plea of* [illegible] *enforcement*

[illegible] sequent to [illegible] to subsist [illegible] the parties [illegible] deemed to [illegible] In s 489 [illegible] " referred [illegible] er circum- [illegible] the allow- [illegible] r decrease [illegible] originally [illegible] the parties [illegible] wance So [illegible] r. (*dissen-* [illegible] *tion of Din* [illegible] *r Rohoman*

Muhammad, I. L. R. 5 *All.* [illegible] *; Zeb-un-nissa v. Sakhina, I. L R. 5 Calc 558 ;* [illegible] *v. Mendu Khan, Weekly Notes All. (1885) 29 ; In re Kasam Pirbhai, 8 Bom. 95 , In re Abdul Ali Ismailji, I. L R. 7 Bom. 180 ; Mahomed Abid Ali Kumar Kadar v. Ludden Sahiba, I. L. R. 14 Calc. 276 ;* and *Baji v. Nawab Khan, 29 Panj Rec. 69,* [illegible] *B. L. R.* referred to. *Nepoor Aurut v. Jurai, 10 B. L. R.*

MAINTENANCE, ORDER OF CRIMINAL COURT AS TO—*contd.*

Ap 33, dissented from *Mahbhuban* v. *Fakir Bakhsh, I. L R. 15 All 143*, overruled. Abu Ilyas v. Ulfat Bibi . . I. L R. 19 All. 50

35. ——— **Effect of decree of Civil Court on order for maintenance**—*Decree in suit for restitution of conjugal rights* An order for maintenance ceases to have any effect after the [illegible]

36. ——— *Criminal Procedure Code (Act X of 1882), s 488—Maintenance order obtained by a wife against husband—Subsequent decree for restitution of conjugal rights obtained by husband—Effect of such decree on previous order of maintenance.* A decree of a Civil Court for res- [illegible]

mined, if the wife failing to comply with the decree for restitution refuses to live with her husband. *In re* Bulakidas . I. L. R. 23 Bom. 484

37. ——— *Order as to pa-* [illegible]

38. ——— **Effect of decree of Civil Court on right to apply for maintenance**—*Decree of Civil Court refusing to enforce agreement for maintenance.* A decision of the Civil Court, refusing to enforce a contract or agreement against a man for the maintenance of a woman, cannot con- [illegible]

39. ——— *Criminal Proce-* [illegible]

[illegible]

MAINTENANCE, ORDER OF CRIMINAL COURT AS TO—*contd.*

viding for his illegitimate offspring The law requires that the person on whom the order of maintenance is issued must have sufficient means to support the child Queen v. Roshun Lall 4 N. W. 123

41. ——— **Willingness of husband to take charge of children on conditions**—*Cri-* [illegible]

was illegal. Panchudas v Shudhamayi 8 B. L. R. Ap. 19 ; 16 W. R. Cr. 72

42. ——— **Order for maintenance of** [illegible]

43.——— **Order with reference to husband's means**—*Criminal Procedure Code, 1861, s. 317.* The proceedings of a Magistrate awarding the payment of a certain sum of money per mensem [illegible]

9 W. R. Cr. 1

44 ——— **Prospective order for in-** [illegible]

45. ——— **Order at progressively increasing rate**—*Criminal Procedure Code (Act X of 1882), ss 488, 489* A Magistrate has no power, under s 488 of the Code of Criminal Procedure, to make an order for maintenance at a progressively increasing rate. He may, however, under s 489 from time to time alter the rate of the monthly allowance granted as maintenance under s. 488. Upendra Nath Dhal v. Soudamini Dassi I. L. R. 12 Calc. 535

46. ——— *Criminal Procedure Code, s. 489—Maintenance, variation in rate of.* A Magistrate has no power under Criminal Procedure Code, s. 489, to make an order for maintenance at a progressively increasing rate, but the [illegible]

I. L. R. 14 Mad. 398

MAINTENANCE, ORDER OF CRIMINAL COURT AS TO—*contd.*

47. ——— **Security for performance of order**—*Criminal Procedure Code, 1872, s 536*—*Power to take security for prevention of default.* In making an order for maintenance under the Code of Criminal Procedure, s. 536, a Magistrate has no power to take security for possible default. KANOO SOUDAGUR *v.* ALABUNDEE BEWA

24 W. R. Cr. 72

48. ——— **Agreement by husband to maintain wife**—*Criminal Procedure Code, 1872, s. 536.* An agreement by a husband to maintain his wife by giving her a house and jewels, and by delivering to her annually a certain quantity of grain and money, cannot be made the subject of an order under s. 536 of the Code of Criminal Procedure, 1872, nor enforced under the provisions of that section. VIRAMMA *v.* NARAYYA

I. L. R. 6 Mad. 283

49. ——— **Question as to right of guardianship**—*Criminal Procedure Code, 1872, ss. 536, 538*—*Custody of child* In determining questions under Ch XLI of Act X of 1872, as to the maintenance of wives and families in certain cases, a Magistrate has no power to enter into any question as to the lawful guardianship of a child LAL DAS *v.* NEKUNJO BHAISHIANI . **I. L. R. 4 Calc. 374**

50. ——— **Effect of order for maintenance**—*Suit for maintenance S. 316 of Act XXV of 1861* is no bar to a suit by a wife against her husband for maintenance. LALLAH GOPEENATH *v.* JEETUN KOER . . . . . **6 W. R. 57**

51 ——— *Criminal Procedure Code, s. 488*—*Release of claim for maintenance.* Where an application is made to a Magistrate to enforce an order for maintenance, passed under s. 488 of the Code of Criminal Procedure, such Magistrate is not bound to enforce the order if the defendant proves that the claim for maintenance has been released. RENGAMMA *v.* MAHAMMAD ALI

I. L. R. 10 Mad. 13

52. ——— **Mode of enforcing order for accumulated arrears of maintenance**—*Criminal Procedure Code, 1872, s. 536.* There is nothing in s. 536 of the Criminal Procedure Code, 1872, to render the levy of accumulated arrears of maintenance by a single warrant illegal. ANONYMOUS . . . . . **7 Mad. Ap. 37**

53. ——— **Warrant for collection of arrears of maintenance**—*Criminal Procedure Code, 1872, ss. 536, 538* Notwithstanding the provisions of s. 538 of the Code of Criminal Procedure, the Magistrate who has made an order for maintenance under s 36 may issue a warrant for collection of arrears of maintenance when the husband is out of his jurisdiction QUEEN *v.* KARRI-PAPAYAMMA . . . **I. L. R. 4 Mad. 230**

54. ——— **Mode of enforcing order**—*Criminal Procedure Code, 1869, s. 316.* The issue of a warrant under s 316 of the Code of Criminal Procedure is permissible for every breach of an order of maintenance made under that section, but there seems no ground for saying that a defendant can get out of his liability for any payment by the failure to issue a warrant for the levy of that payment. The result of issuing it for an aggregate of payments is that one month's imprisonment would alone be awardable in default. ANONYMOUS

6 Mad. Ap. 23

55. ——— **Imprisonment for default of payment**—*Criminal Procedure Code, s 488*—*Subsequent offer to pay*—*Sentence absolute.* A sentence of imprisonment awarded under s 488 of the Code of Criminal Procedure for wilful neglect to comply with an order to pay maintenance is absolute, and the defaulter is not entitled to release upon payment of the arrears due. BIYACHA *v.* MOIDIN KUTTI . . . . **I. L. R. 8 Mad. 70**

56. ——— *Criminal Procedure Code (1882), s 488*—*Breach of order for monthly allowance*—*Sentence absolute*—*Husband* [illegible] an order for [illegible]

[illegible] amount due an order was [illegible]

[illegible] the imprisonment authorized by the [illegible] should have [illegible] mode of enforcing payment, he [illegible] : *Held*, that [illegible] much as the [illegible] all its proper consequences as long as it remain[illegible] force. *Held*, [illegible] for imprisonment under [illegible] that the [illegible] esult of [illegible] evidence [illegible] *eld*, further, that the imprisonment which [illegible] awarded under the section is not a punishment for contempt of the Court's order, but merely a means of enforcing payment of the amount due, and that, upon the payment of that amount being made, the husband

MAINTENANCE, ORDER OF CRIMINAL COURT AS TO—*contd.*

was entitled to be released *Biyacha* v. *Moidin Kutti, I L R 8 Mad 70,* dissented from SIDHESWAR TEOR v. GYANADA DASI
I. L. R. 22 Calc. 291

57. ——————— *Criminal Procedure Code (1882), s 488* The imprisonment provided by s 488, Criminal Procedure Code, in default of payment of maintenance awarded, is not limited to one month The maximum imprisonment that can be imposed is one month for each month s arrear, and if there is a balance representing the arrear for a portion of a month, a further term of a month's imprisonment may be imposed for such arrear *Biyacha* v *Moidin Kutti, I L R 8 Mad 70,* approved of ALLAPICHAI RAVUTHAR v MOHIDIN BIBI . I. L. R. 20 Mad 3

58.——————— *Criminal Procedure Code (Act X of 1882), s 488—Warrant of commitment—Procedure* An order of commitment to prison for default in payment of a wife's maintenance allowance cannot be made without proof that the non-payment was due to wilful neglect of the person ordered to pay. *Sidheswar Teor* v. *Gyanada Dasi, I L R 22 Calc 291,* followed The law contemplates a single warrant of commitment in respect of the arrears due at the time of its issue Where six months' arrears were due, an order for separate warrants of commitment awarding a separate sentence of imprisonment of one month on each warrant was therefore held to be bad in law As to the mode of computing the term of imprisonment, the case of *Allapichai Ravuthar* v *Mohidin Bibi, I L R 20 Mad 3,* followed. BHIKU KHAN v ZAHURAN . I. L. R. 25 Calc 291

59. ——————— *Criminal Procedure Code, s 488—Wife—Breach of order for monthly allowance—Warrant for leaving arrears for several months—Imprisonment for allowance remaining unpaid after execution of warrant—General Clauses Consolidation Act (I of 1868), s 2, cl. 18—"Imprisonment"* Where a claim for accu-

power to pass a heavier sentence in default than one month's imprisonment, as if the warrant only relate to a single breach of the order. *Per* EDGE, C J —S 488 contemplates that a separate warrant should

General Clauses Act (I of 1868). "Imprisonment" in s 488 of the Criminal Procedure Code may be either simple or rigorous. *Per* OLDFIELD, *J.*—A claim for accumulated arrears of maintenance arising under several breaches of order may be dealt with in one proceeding, and arrears levied under a single warrant. QUEEN-EMPRESS v NARAIN . . . . I. L. R. 9 All. 240

60. ——————— **Agreement between the parties subsequent to the order for maintenance**—*Criminal Procedure Code, ss. 488, 489, 490—Such agreement no bar to enforcement of order for maintenance, so long as such order subsists.* Where an order for maintenance is passed under s 488 of the Code of Criminal Procedure, and the parties afterwards come to an agreement between themselves as to what is to be paid, the existence of such agreement will not of itself be a bar to the enforcement of the order for maintenance ; but it will be the duty of the party chargeable, if he wishes to be relieved from the payment of the maintenance allowance, to bring such settlement to the notice of the Court and obtain a cancellation of the order for maintenance. *Rangamma* v. *Muhammad Ali, I. L R. 10 Mad 13,* not followed. PRABHU LAL v RAMI (1902)

I. L. R. 25 All. 165

61. ——————— **Application for cancelment of order for maintenance**—*Criminal Procedure Code, s 488* Where it is sought, under s. 488, sub-ss (4) and (5), of the Code of Criminal Procedure, to have an order passed under sub-s (1) of s 488 set aside, such application must be made to the Magistrate who passed the original order, or to his successor in office, who, and who only, has jurisdiction in the matter. BHAGWANIA v SHEO CHARAN LAL (1903) . I. L. R. 25 All. 545

62. ——————— *Maintenance of child—Power to cancel an order for maintenance. Held,* that where an order has once been passed by a competent Court under s. 488 of the Criminal

63. ——————— **"Living in adultery"**—

I. L. R. 26 All. 326

MAJORITY ACT (IX OF 1875).

See MAJORITY, AGE OF.
I. L. R. 7 All. 490

——— s. 2—

See MAJORITY, AGE OF.
I. L. R. 7 All. 763

1. ——— *Minor—Mahomedan law—Capacity to contract—Capacity to sue—Civil Procedure Code, 1877, Ch. XXXI, ss 440-464.* S. 2 of Act IX of 1875 refers only to the capacity to contract, which is limited by s. 11 of the Contract Act, and not to the capacity to sue, which is purely a question of procedure and regulated by the Civil Procedure Code, Ch. XXXI. PUVIKUTH ITHAYI UMAH *v.* KAIRHIRAPOKIL MAMOD
I. L. R. 3 Mad. 248

2. ——— cl (b)—*Minor, custody of—Guardian—Change of religion.* A Brahman boy, sixteen years of age, having left his father's house, went to and resided in the house of a missionary where he embraced Christianity and was baptised In a suit by the father to recover possession of his son from the missionary:—*Held*, (i) that the question whether the boy was a minor was to be decided, not according to Hindu law, but by Act IX of 1875; (ii) that the claim as not affected by s. 2, cl (*b*), of that Act; (iii) and that the father was entitled to a decree that his son should be delivered into his custody. READE *v.* KRISHNA
I. L. R. 9 Mad. 391

——— ss. 2 and 3—

See PARSIS . **I. L. R. 22 Bom. 430**

——— s 3—

See ACT XL OF 1858, s. 3
I. L. R. 8 Calc. 714
I. L. R. 9 Calc. 901

See GUARDIAN AND WARD.
I. L. R. 29 All. 672

See GUARDIANS AND WARDS ACT.
I. L. R. 31 Bom. 590

See LETTERS OF ADMINISTRATION.
I. L. R. 21 Calc. 911

See MAJORITY, AGE OF.
I. L. R. 3 All. 598

See MINOR—CUSTODY OF MINORS.
I. L. R. 12 All. 213
I. L R. 36 Calc. 768
13 C. W. N. 643

1. ——— *Testamentary* [illegible]

[illegible]

2 C. L. R. 577

MAJORITY ACT (IX OF 1875)—*contd.*

——— s. 3—*contd.*

2. ——— *Age of majority—Order of Court under Act XL of 1858 appointing guardian, effect of.* In a suit in Calcutta against one of the makers of a joint promissory note executed in Calcutta on the 9th June 1877, the defend- [illegible]

[illegible]

that consequently he was a minor on the 22nd June 1875, when the Majority Act IX of 1875 came in force; and therefore, under s. 3 of the latter Act, his minority was further extended to the age of twenty-one years, so that on the date of the execution of the note the defendant was still a minor. RAJ COOMAR RAY *v.* ALFUZUDIN AHMED
8 C. L. R. 419

3. ——— *Minor—Guardian ad litem.* The appointment of a guardian *ad litem* is sufficient to make the minor party subject to s. 3, Act IX of 1875, and to constitute his period of majority at twenty-one, at any rate so far as relates to the property in suit, notwithstanding that such minor would but for such appointment have attained majority at eighteen. SUTTYA GHOSAL *v.* SUTTYANUND GHOSAL . **I. L. R. 1 Calc. 388**

4. ——— *Guardian—Minor—Disability of infancy; its continuance—Period of minority, how affected by Act XL of 1858.* When a guardian has once been appointed to a minor under the provisions of Act XL of 1858, the disability of infancy will last till the age of twenty-one, whether the original guardian continue to act or not. RUDRA PROKASH MISSER *v.* BHOLA NATH MUKHERJEE . . **I. L. R. 12 Calc. 612**

5. ——— *Minor under Court of Wards.* A "minor under the jurisdiction of the Court of Wards" means a person of whose estate the Court of Wards has actually assumed the management, not a person of whose estate the Court of Wards might with the sanction of Government take charge. PERIYASAMI *v.* SESHADRI AYYANGAR . . . **I. L. R. 3 Mad. 11**

6. ——— *Minor—Guardian—Guardian of property—Guardian of person—Necessity for issue of certificate of administration in order to complete appointment of guardian of property—Appointment of guardian of person—Age of majority—Limitation.* The Bombay Minors Act [illegible] provide for the ap- [illegible]

[illegible]

the appoint[illegible]

MAJORITY ACT (IX OF 1875)—*contd.*

——— s. 3—*contd*

ministrator of the property and the plaintiff's mother-in-law the guardian of the person of the plaintiff, but no fresh certificate of administration was granted In 1880 the plaintiff brought the present suit against the defendants to recover from them the property left by her mother The defendants contended, *inter alia*, that the plaintiff had

the fact that a guardian has been at one time appointed is sufficient to bring the case within s. 3 of the Indian Majority Act (IX of 1875) so as to extend the period of minority to the age of twenty-

7. ——— *Minor—Age of majority—Guardian and Manager—Act XL of 1858, ss. 4, 7, 12—Collector—Court of Wards Act (Beng Act IX of 1879), ss. 7-11, 20, 65.* In a suit to recover money due upon certain promissory notes executed between the 14th December 1885 and

MAJORITY ACT (IX OF 1875)—*contd.*

——— s. 3—*contd.*

the execution of the promissory notes he was then

of minority only continues so long as the Court of Wards retains charge of a minor's property and no longer. *Rudra Prokash Misser* v. *Bhola Nath Mookerjee, I. L. R. 12 Calc. 612,* referred to and commented on BIRJMOHUN LALL *v.* RUDRA PERKASH MISSER . . I. L. R. 17 Calc. 944

8. ——— *Minority, period of, where guardian has once been appointed, although no longer in existence—Guardians and Wards Act (VIII of 1890), s 52—Suit on promissory note executed by minor.* The defendant was sued upon a promissory note executed by him on the 24th

9. ——— *Guardian—Minor—Order making appointment of guardian—Certificate of guardianship not issued—Act XX of*

and such order is subsequently set aside the period of minority is not extended to 21 years under s. 3 of

MAJORITY ACT (IX OF 1875)—*concld.*

——— s. 3—*concld.*

the Indian Majority Act. NAGARDAS *v.* ANANDRAO (1907) . . . I. L. R. 31 Bom. 590

MAJORITY, AGE OF.

See GUARDIAN—APPOINTMENT.
I. L. R. 18 Bom. 366

See LIMITATION ACT, 1877, s. 7.
5 C. L. R. 543

See PARSIS . I. L. R. 22 Bom. 430

1. ——— **Hindu, resident and domiciled in Calcutta, majority of.** The age of majority of a Hindu resident and domiciled in the

DROBO MOYEE DOSSEE *v.* JUGGESSUR HATI
1 W. R. 75

(*Contra*) *In the matter of* HEMNATH BOSE
1 Hyde 111

PURMESHUR OJHA *v.* GOOLBEE . 11 W. R. 446

TARINEE PERSHAD SEIN *v.* DWARKANATH RUKHEET . . . . 15 W. R. 451

2. ——— *Hindu law—Act XL of 1858.* A Hindu, resident and domiciled in Calcutta and possessed of lands in the mofussil, borrowed in Calcutta a sum of money from the

The defendant having made default in payment, the plaintiff brought the present suit. The defendant pleaded his minority:—*Held* by the Full Bench, that the law as to the age of minority governing the case was not Act XL of 1858, but the Hindu law, under which the defendant was not a minor at the time he executed the bond, and that therefore he was liable on it. MOTHOORMOHUN ROY *v* SOORENDRO NARAIN DEB

I. L. R. 1 Calc. 108 : 24 W. R. 464

3. ——— **Construction of will**—*Executor—Grant of probate, refusal of, to minor.* A

debts and dues relative to my real and personal estates, my eldest son, *H C G*, who has attained the

MAJORITY, AGE OF—*contd.*

G C G, will come of age, then both the brothers shall be competent personally to manage the affairs; at that time the advice and superintendence of my said sister shall not remain" *G C G*, after attaining

below refused to grant probate of the will to the son of the testator, on the ground that he was under the age of eighteen years:—*Held*, on appeal, that he had not attained the age contemplated in his father's will at which he was to be joined in the executorship with his brother. *In the goods of* GANGA PRASAD GOSAIN . . . 4 B. L. R. Ap. 43
s.c. on appeal . . . 5 B. L. R. 80

4. ——— **Mahomedan not subject to Court of Wards.** In the case of Mahomedans not subject to the Court of Wards, the limit of minority was held to be at least sixteen years. ABDOOL OAHAB CHOWDHRY *v.* ELIAS BANOO
8 W. R. 301

5. ——— **Proprietors paying revenue to Government**—*Beng. Reg. XXVI of 1793, s 3.* The holder of an estate paying revenue direct to Government, whether the settlement of that estate be temporary or permanent, was a proprietor within the meaning of s. 3, Regulation XXVI of 1793; and the minority of such a proprietor extended to the end of the eighteenth year. HURO MONEE DEBIA *v.* TUMEEZOODEEN CHOWDHRY . . . . . 7 W. R. 181

BEER KISHORE SUHYE SINGH *v.* HUR BULLUB NARAIN SINGH . . . . 7 W. R. 502

6. ——— *Beng. Reg. XXVI* ... *personal*

v. POGOSE . . . .

7. ——— *Proprietors out of possession—Beng Reg. XXVI of 1793.* Regulation XXVI of 1793 applied to proprietors out of possession as well as to those in possession, and was not overridden by the Mahomedan law with reference to majority. ENAET HOSSEIN *v.* ROSHAN JAHAN. ROSHAN JAHAN *v.* ENAET HOSSEIN
5 W. R. 4

8. ——— *Sale of estate by ... proprietor—Beng. Reg. XXVI of 1793,* ... on in which ... state paying ... t estate, the ... n years, as ... 3. AMEER- ... KHATOON ... W. R. 208 ... L. R. 2 I. A. 87

MAJORITY, AGE OF—*contd.*

9. ——— *Co-sharer—Beng. Reg XXVI of 1793.* Regulation XXVI of 1793 [illegible]

W. R. 1864, 83

10. ——— Hindu—*Bom. Reg. V of 1827, s. 7—Minor—Application for execution of decree* *Held*, that a Hindu of the age of seventeen years was [illegible]

[illegible] Bom. A. C. [illegible]

11. ——— **Person not European British subject**—*Act XL of 1858—Majority of Hindus.* Every person not being a European British subject, who has not attained the age of eighteen years, is a minor for the purposes of Act XL of 1858; and unless he is a proprietor of an estate paying revenue to Government, who has been taken under the jurisdiction of the Court of [illegible]

s c MODHOO SOODUN MANJEE *v* DABEE GOBIND NEWGEE . . . 10 W R. F. B. 36

ABDOOL HOSSEIN *v.* LUTEEFOONNISSA 11 W. R. 235

12. ——— **Person subject to Act XL of 1858**—*Act XL of 1858, certificate under.* When a certificate of guardianship has been granted under Act XL of 1858, it is by the terms of that Act, and not by reference to Mahomedan or Hindu law, that the period at which the ward is to be considered of full age must be determined. MAHOMED ARSUD CHOWDHRY *v* OOSUN BEBEE 2 W. R. 217

13. ——— *Limit of minority* Discussion as to the limit of minority of Hindus [illegible]

[illegible] . . . . . . [illegible] W. R. [illegible]

14. ——— *Revenue-paying proprietors* The age of majority fixed by Act XL of 1858 is not only for proprietors of land paying revenue to Government, but for all persons not being British subjects. LAKHIKANT DUTT *v.* JAGABANDHU CHUCKERBUTTY 3 B. L. R. Ap. 79

s c. LUCKHEE KANT DUTT *v.* JUGOBUNDHOO CHUCKERBUTTY . . . 11 W. R. 561

MAJORITY, AGE OF—*contd.*

15. ——— *Jurisdiction—* [illegible]

16. ——— *Power to sue—Act XL of 1858, s 3.* Where a person (a native of this country) has not attained the age of eighteen [illegible]

17. ——— *Act IX of 1875 (Majority Act), s 3—Minor* A minor, of whose person or property a guardian has been appointed under Act XL of 1858, does not attain his majority when he completes the age of eighteen years, but when he completes the age of twenty-one years. KHWAHISH ALI *v* SURJU PARSAD SINGH I. L. R. 3 All. 598

18. **European British subject** The defendant was, at the time of making a [illegible]

19. ——— **European British subject**—*Law governing capacity to contract.* The *lex loci contractus* determines the capacity of a person to [illegible]

[illegible] or whether his grandfather was married; that his father married a lady bearing an English name; that he himself and all his relations were Christians; that he was born in Calcutta, and

MAJORITY, AGE OF—*contd.*

knew of no relatives in Europe:—*Held*, that he was the legitimate descendant of a European British subject, and therefore his age of majority was twenty-one years. ROLLO *v.* SMITH

1 B. L. R. O. C. 10

21. ——— European British subject

time was under twenty years of age and was temporarily residing, and not domiciled, in British India It was subsequently dishonoured, and a suit was then brought by the bank which had cashed the cheque, to recover the amount from the indorser and drawer. The former alleged that

received no consideration, and that his indorsement was in blank, and not in favour of the bank, and was converted into a special indorsement without his knowledge and consent. The Court

ity Act, so far as concerned persons temporarily

jects was the common law of England, which recognized twenty-one as the age of majority. *Per* OLDFIELD, *J*, that by the rule of the *jus gentium*, as hitherto understood and recognized in England, the *lex loci* would govern in respect to the capacity to

MAJORITY, AGE OF—*contd.*

contract, but that in framing the Indian Majority

tentionally excluded from its operation *persons not* domiciled there, and to have left such persons to be governed by the law of their domicile. *Per*

I. L. R. 7 All. 400

Act (XL of 1858), s. 26—*Majority Act (IX of 1875), s* 2 (*c*). In a suit upon a bond executed on the 5th June 1875 by a Mahomedan who at that date was sixteen years and nine months old, the defendant pleaded that at the time when the bond was executed he was a minor, and that the agreement was therefore not enforceable as against

force, was competent in respect of age to make

of s. 11 of the Contract Act

ave been

in it pro-

der s. 26

essary

All. 763

23. ——— Bombay Minors Act (XX of

XX of 1864

who is not

attains his

years.

Bom. 463

24. ——— Charge of property of minor—*Act XL of 1858, s. 2.* Under Act XX of *1864, s. 1, it is the charge of a minor's property,* and not the property itself, which shall vest in

MAJORITY, AGE OF—*concld.*

the Civil Court a distinction which has been overlooked in *Bai Kesar* v. *Bai Ganga, 8 Bom A. C 33.* The meaning of the 1st section of Act XX of 1864, when regarded in connection with the sequel thereof (which provides, for the information of the Civil

which would lead to the conclusion that, until the Court is moved to exercise its jurisdiction, the care of the minors themselves or the charge of their property is vested in the Court, or that more was intended than that, like the Court of Chancery in England, the principal Civil Courts of districts should have the right, if moved so to do, and if they so think proper, to take care of the persons of minors and charge of their property; and that, until the Court does so, the minors cannot be regarded as wards of the Court, or their property as in its charge It is only for the purposes of Act XX of

MAL OR LAKHIRAJ.

See LANDLORD AND TENANT.
10 C. W. N. 434

MALABAR COMPENSATION FOR TENANTS' IMPROVEMENT ACT (MAD. I OF 1887).

See LANDLORD AND TENANT—*BUILDINGS ON LAND, RIGHT TO REMOVE, AND COMPENSATION FOR IMPROVEMENTS*

——— ss. 2, 3, 4, 6—

See LANDLORD AND TENANT—PROPERTY IN TREES AND WOOD ON LAND.
I. L. R. 24 Mad. 47

MALABAR COMPENSATION FOR TENANTS' IMPROVEMENTS ACT (MAD. I OF 1900).

——— ss. 3, 4, 7, 10—

See LANDLORD AND TENANT—PROPERTY IN TREES AND WOOD ON LAND.
I. L. R. 24 Mad. 47

——— s. 19—*Contracts entered into before 1st January 1886, effect of.* S 7 of the Malabar Compensation for Tenants' Improvements Act of 1887, which is reproduced as s. 19 of the Act of 1900 does not affect the validity of contracts made prior to 1st January 1886, whether the improvement was made before or after the coming into operation of the Act of 1887. *Malikan* v *Shankunni, I. L. R. 13 Mad. 502,* dissented from RANDUPURAIL KUNHISORE *v* NEROTH KUNHI KANNAN (1908)
I. L. R. 32 Mad. 1

MALABAR LAW.

See COURT FEES ACT, s 17.
I. L. R. 30 Mad. 61

See UBHAYAPATTOM.

1. ——— *Liability of improvements made by sub-tenants of kanomdar for rent due by kanomdar to jenmi. Quære:* Whether improvements made by the sub-tenants of a *kanomdar* are liable for rent due by the *kanomdar* to the *jenmi* *Achuta* v. *Kali, I. L. R. 7 Mad, 545,* and *Eressa Menon* v *Shamu Patter, I. L. R. 21 Mad. 138,* referred to. VEDAPURATTI *v.* AVARA (1901)
I. L. R. 25 Mad. 568

KENATH PUTHEN VITTIL TAVAZHI *v* NARAYANAN (1905) . . . **I. L. R. 28 Mad. 182**

MALABAR LAW—ADOPTION.

a decree as prayed. SHANKARAN *v.* KESAVAN
I. L. R. 15 Mad. 6

MALABAR LAW—ADOPTION—*concld.*

2. ——— Adoption by the karnavan of a Marumakkatayam tarwad—*Want of consent by the rest of the tarwad.* A tarwad in Malabar subject to Marumakkatayam law was reduced in number to two persons, *viz*, the karnavan and his younger brother, the plaintiff. They quarrelled, and the former without the consent of the latter adopted as members of the tarwad his son and daughter and her children. On his death the

MALABAR LAW—CUSTODY OF CHILD.

——— Nephews—*Guardianship—Right of —Ground for exercise of jurisdiction of Civil Court.* The Civil Judge removed two children, governed by the rule of Marumakkatayam, from the custody of their karnavan, and placed them under the

cise of the Civil Judge's power, and that the order was wholly opposed to the very principle upon which Marumakkatayam depends THATHU BAPUTTY *v.* CHAKAYATH CHATHU 7 Mad. 179

MALABAR LAW—CUSTOM.

See MALABAR LAW—INHERITANCE. I. L. R. 15 Mad. 281

1. ——— Nambudri Brahmans—*Proof—Adoption of sister's son.* A Division Bench of the

nized by the customary law of Malabar, and supported their opinion by giving instances of such adoption which had taken place within their knowledge, and named the persons alleged to have been adopted in pursuance of the custom as holding estates by virtue of the title thereby acquired. The Division Bench referred to a Full Bench the question whether the evidence sufficiently estab-

Gopalayyan v. Ragupathi Ayyan, 7 *Mad.* 250, as to that constitutes sufficient proof of custom, has been too strongly expressed. ERANJOLI ILLATH-

MALABAR LAW—CUSTOM—*concld.*

VISHNU NAMBUDRI *v.* ERANJOLI ILLATH KRISHNAN NAMBUDRI . . . I. L. R. 7 Mad. 3

2. ——— Nambudris—*Introduction of stranger to perpetuate existence of illam.* According to the custom prevailing amongst Nambudris in Malabar, a person may be introduced into an illam (*family*) *to perpetuate its existence. Such person* thereupon becomes a member of the illam, and is *primâ facie* entitled to exercise the uraima, rights of the illam (*i e.*, to act as trustee of temples, the hereditary trusteeship of which is vested in the illam), as well as to enjoy the properties belonging to the illam. KESHAVAN *v.* VASUDEVAN.

I. L. R. 7 Mad. 297

3. ——— Custom in family of the Zamorin Rajas of Calicut—*Presumption as to pro- ... of member of family.* According

lifetime, becomes, on his death, the property of

property. VIRA RAYEN *v.* VALIA ... I. L. R. 3 Mad. 141

aside. CHANDU *v.* SUBBA

5. ——— Custom of Mapillas—*Co-parcenary.* There is no authority for saying that the custom of holding property in co-parcenary is a recognized custom among Mapillas in Malabar. KASMI *v.* AYISHAMMA I. L. R. 15 Mad. 60

6. ——— *Kuikanom lease for indefinite period—Customary law as to duration of lease* By the customary law of Malabar, a tenant under a *kanom* or *kuikanom* lease is entitled not to be redeemed or ejected until the expiration of twelve years. But, where no time is fixed *for* the duration of the lease, it does not, under the customary law, determine on the expiration of twelve years from its date KELLAPPAN *v.* MADHAVI (1901)

I. L. R. 25 Mad. 452

MALABAR LAW—DEBTS.

1. ——— Hindu law how far applicable—*Brahmans—Nambudris—Mussads—Liability of sons for father's debt in Hindu law not applicable.* The principle of Hindu law, which imposes a duty on a son to pay his father's debt, contracted for purposes neither illegal nor *immoral,* is not applicable to the Malabar Brahmans called Nambudris and Mussads. NILAKANDAN *v.* MADHAVAN

I. L. R. 10 Mad. 9

MALABAR LAW—DEBTS—*concld.*

2. ———————— *Debt incurred by karnavan and senior anandravan for benefit of tarwad —Decree for money—Liability of moveable property*

had been obtained as against the karnavan and senior anandravan on a debt which had been contracted by them for the benefit of the tarwad, and

Mad. 333, discussed. MANAKAT VELAMMA *v.* IBRAHIM LEBBE (1904) . I. L. R. 27 Mad. 375

MALABAR LAW—ENDOWMENT.

See PARTIES—ADDING PARTIES TO SUITS —PLAINTIFFS I. L. R. 10 Mad. 322
I. L. R 14 Mad. 489
I. L. R. 26 Mad. 461

1. ———— Uralans—*Agreement to increase number of uralans (trustees)—Binding effect of, on minority.* An agreement by the majority of the uralans (trustees) of a Malabar devaswam (temple) to increase the number of uralans is not binding on a dissentient minority. NARAYANAN *v.* SRIDHARAN I. L. R. 5 Mad. 165

2. ———————— *Trust management—Power of majority.* Where the majority of the uralans of a Malabar devaswam agreed to renew a kanam on terms beneficial to the devaswam

URATH LAKSHMI . . I. L. R. 6 Mad. 270

3. ———————— *Uraiama or rights of uralan—Melkoima—Effect of compromise by uralers of the right to manage a devaswam—Claim of certain uralers to exclude others from management—Limitation.*

ants families had been in joint management since 1845 in accordance with the provisions of a deed of compromise. *Held*, (i) on its appearing that the compromise had been entered into by the karnavan of the plaintiffs' illom, and that the compromise was not vitiated by fraud or the like, that the compromise was binding on the plaintiff; (ii) that the claim to exclusive management was barred by limitation. A legal origin to which the joint

MALABAR LAW—ENDOWMENT—*contd.*

tion of the British Government, or in the status of the Nambidi family as patrons of the institution. NILAKANDAN *v.* PADMANABHA I. L. R. 14 Mad. 153

exponent of the melkoima right; and that the compromise could not be re-opened. NILAKANDHEN NAMBUDIRAPAD *v.* PADMANABHA REVI VARMA I. L. R. 18 Mad. 1
L. R. 21 I. A. 128

4. ———— Alienation of endowed property—*Sale of joint property—Uralans of devaswam—Sale by one tarwad without consent of others* When the uralans of a devaswam were four tarwads —*Held*, that a sale of the uraiama right by

5. ———— Transfer of right to man-

I. L. R. 5 Mad. 89

6. ———————— *Alienation—*

object of securing the due performance of the worship and the due administration of the property of the temple by the instrumentality of a class of per-

property, to a person unconnected with the families from which the trustees were to be taken, to be

MALABAR LAW—ENDOWMENT—*contd.*

Moo I. A. 405, and *Rajah Muttu Ramalinga Setupati* v. *Perianayagam Pillai*, *L. R. 1 I. A. 209*, referred to and approved. VURMAH VALIA *v.* RAVI VURMAH . . . I. L. R. 1 Mad. 235
L. R. 4 I. A. 76

Affirming decision of High Court in VARMA VALIA (RAJAH OF CHERAKOT KOVILAGOM) *v.* KOTTAYATH KIYAKI KOVILAGATH REVI VARMA MOOTHA RAJAH . . . . . 7 Mad. 210

See GNANASAMBANDA PANDARA SANNADHI *v.* VELU PANDARAM . I. L. R. 23 Mad. 271

7. ——— rights of Sthanamdars. Rights of members of a sthanam, *inter se*, considered. MAHOMED *v* KRISHNAN
I. L. R. 11 Mad. 106

8. ——— Alienability of "sthanam" lands—*Payment of debt*. Lands attached to the "sthanam" of sthanamdars in Malabar are, unless the contrary be specifically proved in any particular case, liable to alienation and charge at all events for the payment of debts incurred for the conservation of the sthanam. CHEMMINIKARA MUPPIL NAIR *v.* KILIYANAT UKONA MENON
I. L. R. 1 Mad. 88

See VENKATESWARA IYAN *v.* SHEKHARI VARMA
I. L. R. 3 Mad. 384 L. R. 8 I. A. 143

9. ——— *Grant of perpetual lease*. The grant of a perpetual lease at a fixed rent is not necessarily beyond the powers of a sthanam-holder in a Malabar royal family. MANA VIKRAMAN *v* SUNDARAN PATTAR
I. L. R. 4 Mad. 148

10. ——— *Powers of stani—Lease by stani of forest land attached to the stanam.* A *stani* in Malabar is not a tenant for life impeachable for waste. He is a person who represents the estate for the time being, and it is open to him to make a lease of forest land for a term of years, and the mere fact that the alienation is intended to hold good after his lifetime will not invalidate it. ITTIRARICHAN UNNI *v.* KUNJUNNI
I. L. R. 21 Mad. 144

11. ——— Tarwad property—*Appointment of trustees to tarwad charities by karnavan—Validity.* Though the *karnavan* of a Malabar ... d by ... ging ... erent ... e his ... ANDI ... 438

12. ——— *Suit against karnavan as manager of tarwad—Attachment of tarwad property under decree—Subsequent order of release—Suit to cancel order of release, barred by s. 244 of Civil Procedure Code.* Plaintiff in a suit ...

MALABAR LAW—ENDOWMENT—*concld.*

being brought by plaintiff against defendants for the cancellation of the last-mentioned order: *Held*, that the suit was not maintainable, by reason of s. 244 of the Code of Civil Procedure. KAMAL KUTTI *v.* IBRAYI (1901) . I. L. R. 24 Mad. 658

MALABAR LAW—GIFT.

1. ——— Validity of gift—*Delivery of possession.* Plaintiff sued to recover certain land in ...

hands of tenants, a deed of gift with the counter- ... title- ... rsing ... the decision of the Principal Sudder Ameen, that ...

2. ——— Restriction on enjoyment—*Attempt to create estate subject to incidents of Malabar tarwad property—Sale of interest of donee by judg-* ... of certain land in Mala- ...

I. L. R. ...

3. ——— Gift of land to a wife and her children—*Incidents of tarwad property*— ... Land, ...

yanan v. *Kannan*, *I. L. R. 7 Mad.* ... from · *Held*, by the Division Court accordingly, ... of the sons ...

MODIN *v.* AMBU I. L. R. 16 Mad. 203 note

(*Contra*) PARVATHI *v.* KERAN
I. L. R. 16 Mad. 202

4 ——— *Effect of gift of property to a female and her children—Such property not assets for the debts of a deceased member.* A gift of property to a female and some or all of her children by their father or the karnavan of the tarwad has not the effect of constituting them into

MALABAR LAW—GIFT—*concld.*

a tarwad by themselves. They, however, hold the properties so given with the ordinary incidents of tarwad property and when a member dies, his interest passes by survivorship to the others and is not available for attachment at the instance of a decree-holder *Kunhacha Umma v Kutti Mammi Hajee, I L R 16 Mad 201,* referred to. KOROTH AMMAN KUTTI v PERUNGOTTIL APPU NAMBIAR (1906) . . I. L. R. 29 Mad. 322

MALABAR LAW—GRANT.

1. ———— *Adimayavana tenure—Land granted for services rendered prior to grant—Right of landlord to eject* An adi-

[illegible]

I. L. R. 21 Mad. 2[illegible]

2. ———— *'Anubhavam' grants, meaning of—Whether the use of the word creates an irredeemable tenure depends on the particular instrument in each case—Limitation Act (XV of 1877), Art 131—Applies only when absolute property sold.* A stipulation in a kanom deed that a certain amount in grain or money is granted to the mortgagee as anubhavam does not necessarily create an irredeemable tenure The word 'Anubhavam' will create an irredeemable tenure only when used with reference to the tenure itself, but when used with reference to the allowance, such allowance will be perpetual, but not the tenure. Whether, in any particular case, the word creates an irredeemable tenure or only a perpetual rent

[illegible]

I. L. R. 29 Mad. 541

MALABAR LAW—INHERITANCE.

1. ———— **Issue of parents governed by different systems of law.** Where a woman belonging to a Malabar tarwad governed by the Marumakkatayam law (succession by nephews) has

MALABAR LAW—INHERITANCE—*contd.*

issue by a man who is governed by the Makkatayam law (succession by sons), such issue are *primâ facie* entitled to their father's property in accordance

[illegible]

I. L. R. 6 Mad. 2[illegible]

2 ———— *Devolution of property—Marumakkatayam law—Mahomedan law.* A deceased as well as his paternal ancestors had followed the Mahomedan law; but his mother had been a member of a tarward which held property subject to Marumakkatayam law. On its being contended that in such a case the property of the

[illegible]

law governing the devolution of the property of the deceased, derived from either parent but not held by him as a member of a tarwad subject to Marumakkatayam law, is the Mahomedan law. ASSAN v PATHUMMA . I. L. R. 22 Mad. 494

3. ———— *Devolution of property—Application of Marumakkatayam or Makkatayam law—Presumption where deceased was Mahomedan* In North Malabar, where the devolution of property is in question, if the late owner

[illegible]

mother, interested in tarwad property. In *Assam v. Pathumma, I L. R. 22 Mad 494,* the property, the devolution of which was in question, had belonged to a person, who was admittedly governed by *Mahomedan law. That case should not be* understood as laying down that in every case

[illegible]

4. ———— Nambudris—*Inheritance—Sarvasvadhanam marriage —Rights of son.* Among

[illegible]

5. ———— *Appointment of heir—Nambudris, their personal law—Power of disposing of tarwad property by an antharjanam—*

[illegible]

MALABAR LAW—INHERITANCE— *contd.*

member of another illom by a sarvasvadhanam marriage, but her husband died without issue. In 1872 defendant No. 1 and her mother—there being no attaladakkam heirs—appointed defendant No. 2, an adult member of a third illom, to be manager and heir of their illom and to marry and rise up issue for it. The mother and father of defendants

lute disposal; (iv) that a Nambudri widow, who is

appoint an heir in order to perpetuate her illom in the absence of dayadies with ten or three days'

he is appointed as heir. VASUDEVAN v. SECRETARY OF STATE FOR INDIA . I. L. R. 11 Mad. 157

6. ——— Mode of succession to pollam—*Private property left by poligar.* The mode of succession in a pollam is not such as to render the holder responsible for the debts of his predecessor. There is not a continuance of the previous

7. ——— Exclusion from inheritance

Held, that the plaintiff was not excluded from inheritance by reason of lunacy under Aliyasantana law, and the will in favour of the defendants was invalid. SANKU v. PUTTAMMA

I. L. R. 14 Mad. 289

8. ——— Makkatayam rule of inheritance—*Custom of Tiyars in South Malabar.* A community, following the Makkatayam rule, must not be taken to be necessarily governed by the Hindu law of inheritance with all its incidents.

MALABAR LAW—INHERITANCE— *concld.*

Accordingly, when a member of the Tiyar community in Calicut, following that rule, alleged and proved a custom that brothers succeeded to self-acquired property in preference to widows, it was *held* that the Court should give effect to it. RARICHAN v. PERACHI . . I. L. R. 15 Mad 281

9. ——— *Tiyans of South*

brothers. IMBICHI KANDAN v. IMBICHI PENNU

I. L. R. 19 Mad. 1

10. ——— *Thiyyas of Calicut—Widow—Mother.* Among the Thiyyas of Calicut governed by the Makkatayam law, the widow of the deceased owner is a preferential heir to his mother. KUNHI PENNU v. CHIRUDA

I. L. R. 19 Mad. 440

11. Sarasvadanom marriage—*Devolution of property of wife's illom on her decease without issue—Nambudries—Self-acquisitions.* First defendant, who was the nephew of *S*, had executed a hypothecation bond over certain property in plaintiff's favour, subject to a prior mortgage which had been executed by his uncle in favour of *P*. The assignee of a decree

defendant, had no right to execute a mortgage

over the property of her

663

MALABAR LAW—JOINT FAMILY.

See RIGHT OF SUIT—INTEREST TO SUPPORT RIGHT . I. L. R. 11 Mad. 106
I. L. R. 24 Mad. 296

MALABAR LAW—JOINT FAMILY—*contd.*

1. ——— Taveral—*Succession—Tarwad.* In Malabar the word "taverai" has several distinct meanings. In the families of the princes all

times adopted the same customs, but there is the strongest presumption against the truth of this in the case of the private family. Families becoming very numerous have often split into various branches. In the language of the people, there is community of purity and impurity between them, but no community of property. In the only sense of the word with which Courts of Justice are concerned, people so related are not of the same tarwad. Where there are several houses bearing the same original tarwad name, but with an addition, and there is no evidence of the passing of a member of one house to another, there is the strongest ground for concluding that this separation has taken place. ERAMBAPALLI KOPAPEN NAYAR *v* ERAMBAPALLI CHENEN NAYAR . . . . . 6 Mad. 411

2. ——— Joint property—*Acquisitions not disposed of in lifetime—Family property—Presumption from position of karnavan.* By the law of Malabar all acquisitions of any member of a family which he has not disposed of in his lifetime form part of the family property. The acquirer, however, may during his lifetime hold, alienate at once, and encumber, his self-acquisitions. A karnavan, in possession of the family funds, is presumed to have made all acquisitions with them and for the benefit of the corporate body. But such presumption is not irrebuttable, and his alienation or charge of such acquisitions made during his lifetime may be valid. KALLATI KUNJU MENON *v* PALAT ERRACHA MENON . . . . . . 2 Mad. 162

3. ——— Self-acquired property—*As-*

4. ——— Property assigned for support of females—*Liability of, to attachment in execution of decree against karnavan.* Property assigned by the males of a Nayar family for the support of their females is still family property, as liable as such to be taken in execution of a judgment against the karnavan. PARRAKEL KONDI MENON *v* VADAKENTIL KUNNI PENNA
2 Mad. 41

5. ——— Sale of tarwad property—*Powers of karnavan—Assent of members of tarwad, how far necessary.* There is no rule of Malabar law that the assent of every member of a tarwad is necessary to render valid the alienation of tarwad property. KALLIYANI *v.* NARAYANA
I. L. R. 9 Mad. 266

6. ——— Claim for improvements, effected by anandravan in tarwad property. An anandravan has no right to the value of the improvements effected by him on tarwad property upon surrender to the karnavan, when such improvements are not made with private funds. URAMKUMARATH KANNAN NAYAR *v.* URAMKUMARATH TENJU NAYAR . I. L. R. 5 Mad. 1

7. ——— Right of member of tarwad to an account—*Right to succeed to management of family property.* An individual member of a tarwad governed by the Marumakkatayam rule, has

8. ——— Right to manage illom—*Nambudri family.* The right of the eldest member of a Nambudri family to manage the illom is absolute, and where a junior member has in fact

9. ——— Right to manage tarwad—*Right to revoke agency.* A karnavan who appoints a junior anandravan as his agent to manage part of the tarwad property can, on behalf of the tarwad family, revoke the authority at any time and take the management into his own hands. GOVINDAN *v* KANNARAN . . I. L. R. 1 Mad. 351

10. ——— Power of karnavan to renounce privileges and duties of office. *Semble.* A karnavan cannot part by contract so as to be unable to resume them, with the privileges and duties which attach to his position as karnavan. CHERUKOMEN *alias* GOVINDEN NAIRV *v.* ISMALA
6 Mad. 145

11. ——— Powers of karnavan—*Dele-*

and void. CHAPPAN NAYAR *v* ASSEN KUTTI
I. L. R. 12 Mad. 129

12. ——— Alienation of Joint family property—*Signature of karnavan as indicating*

GINREAGATTA ARAMMADA . . 1 Mad. 248

MALABAR LAW—JOINT FAMILY—*contd.*

13. ——————— *Power of karnavan—Anandravan* The assent of the anandravans is necessary to a sale of tarwad land by a karnavan. The chief anandravan's signature to the instrument of sale is sufficient, but not indispensable, evidence of such assent. KAIPRETA RAMEN *v.* MAKKHAYIL MUTOREN . . . . . 1 Mad. 359

14. ——————— *Purchaser, duty of—Notice.* It is the unquestionable law of Malabar that tarwad property is inalienable, except in cases of adequate family necessity. In such cases alienations will be upheld; but it lies upon the purchaser to make out with abundant clearness that the purpose was a proper one. The assent of the senior anandravan is some (but rebuttable) evidence that the purpose was proper. *Semble* That, considering the state of Hindu families, a purchaser would be affected with notice by much slighter evidence than a purchaser in other countries KOYILOTHPUTEN PURAYIL MANOKI KORAN NAYAR *v.* PUTHENPURAYIL MANOKI CHANDA NAYAR . 3 Mad. 294

15. ——————— *Otti mortgage—Karnavan, Power of.* A karnavan singly may make an otti mortgage EDALHIL ITTI *v* KOPASHON NAYAR . . . . . . 1 Mad. 122

16. ——————— *Authority of karnavan of tarwad to alienate endowed property* The authority of a karnavan to make alienations of the immoveable property of the tarwad stands on a different footing from his power to pledge the credit of the tarwad. The karnavan is not the agent of the family to make alienations, but must have special authority in each case KOMBI ACHEN *v.* LAKSHMI AHMA . . I. L. R. 5 Mad. 201

17. ——— Perpetual lease—*Karnavan, Powers of.* The karnavan of a Malabar kovillagom executed a kuikanom lease of certain land, the jenm of the kovillagom, in 1846, and in 1861 his successor demised the same land to the same tenants in perpetuity. The present karnavan sued in 1889 to recover possession of the land. *Held*, (i) that the perpetual lease, as being of an improvident character, was *ultra vires* and void; and (ii) that the original lease was not surrendered by the acceptance of the subsequent lease. RAMUNNI *v.* KERALA VARMA VALIA RAJA

I. L. R. 15 Mad. 166

18. ——— Position of karnavan—*Trustee—Parties.* A karnavan is not a mere trustee, nor do the rules of Courts of Equity as to the necessity of making *cestui que* trusts parties to suits against trustees by strangers apply to the case of a karnavan and the members of the tarwad Status of a karnavan discussed. VARANAKOT NARAYANAN NAMBURI *v.* VARANAKOT NARAYANAN NAMBURI

I. L. R. 2 Mad. 328

19. ——————— The position of a karnavan is not analogous to that of a mere trustee, officer of a corporation, or the like. The person to whom the karnavan bears the closest resemblance is the father of a Hindu family. He should not be removed from his situation except on the most cogent grounds. The solution of the difficulties which the state of families and property in Malabar will always create will not be assisted by bringing in the anarchy and insecurity which will always follow upon any attempt to weaken the natural authority of the karnavan. ERAVANNI REVIVARMAN *v.* ITTAPU REVIVARMAN

I. L. R. 1 Mad. 153

20. ——— Power of karnavan. Incidents of property held by tarwad and by joint Hindu family distinguished. A Court has no

industries, the extension of such powers must be sought from the Legislature. PONAMBILATH PARAPRAVAN KUNHAMOD HAJEE *v* PONAMBILATH PARAPRAVAN KUTTIATH HAJEE. TOD *v* PONAMBILATH PARAPRAVAN KUNHAMOD HAJEE

I. L. R. 3 Mad. 169

21. ——————— *Powers restricted by family arrangement.* The ordinary powers of the karnavan of a Malabar tarwad can be restricted [illegible] he is a party, and [illegible] van makes [illegible] tice of the [illegible] the aliena- [illegible] IEN

I. L. R. [illegible] Mad. 381

22. ——————— *Power to set aside* [illegible] A karnavan is not entitled [illegible] rrange- [illegible] he tar- [illegible]

I. L. R. [illegible] Mad. 134

23. ——————— *Compromise of doubtful claims by adult members of a tarwad—* [illegible] *Semble* · That a [illegible]

I. L. R. [illegible]

24. ——— Position and powers of [illegible] *of property and* [illegible] *ngers into* [illegible] n Nayars [illegible] g to their [illegible] ng to the descent of property through females, a[illegible] so established as to be judicially noticed without proof, while others require proof. The large powers of the karnavan of a tarwa are essentially for the management of his property. His power to alienate is limited. He is empowered to adopt so as to make persons and their heirs members of the tarwad only with the consent of the other members thereof. Where the members had been reduced in

MALABAR LAW—JOINT FAMILY— *contd.*

number to the karnavan himself and one anandravan.—*Held*, that the karnavan could not adopt at his own discretion without the consent of the latter, in the absence of a proved custom authorizing adoption by the karnavan alone. In the time of the last possible karnavan such a power to him alone might be essential to preserve the tarwad. But in the present case the last karnavan had not been reached, and the adoption by the actual one acting alone without the consent of the surviving anandravan was therefore invalid. THIRUTHIPALLI RAMAN MENON v. VANANGATTIL PALISSERI RAMAN MENON . . I. L. R. 24 Mad. 73
L. R. 27 I. A. 231
4 C. W. N. 810

25. ——— Karnavan, decree against —*Execution against tarwad property—Sale—Right of purchaser—Res judicata—Right of junior member of tarwad not impleaded to contest sales of tarwad property in execution of decree against karnavan sued as such.* When the karnavan of a Malabar tarwad has not been impleaded as such in a suit, and there is nothing on the face of the proceedings to show that it was intended to implead him in his representative character, tarwad property cannot be attached and sold in execution of the decree, even though it is proved that the decree was obtained for a debt binding on the tarwad. Although the property of a tarwad may be attached and sold in execution of a decree when the karnavan is sued as

was passed was not binding on the tarwad. ITTIACHAN v. VELAPPAN. KRISHNA v. NANU
I. L. R. 8 Mad. 484

26. ——— *Karnavan's authority—Tarwad bound by bonâ fide acts of—Procedure—*

27. ——— *Binding effect on tarwad.* The karnavan of a Malabar tarwad, having sued to redeem certain land belonging to the

MALABAR LAW—JOINT FAMILY— *contd.*

dismissed. *Held*, that the junior members of the

I. L. R. 7 Mad. 413

28. ——— *The Valiya Rajah of a kovilagom sued as such—Liability of kovilagom properties. Semble.* That a decree passed against the Valiya Rajah of a kovilagom is *primâ facie* binding upon his successor and his kovilagom. KERALA VARMA VALIYA RAJAH v. SHANGARAM . . I. L. R. 16 Mad. 452

29. ——— *Suit by anandra-*

PAIDEL . . . . I. L. R. 9 Mad. 473

30. ——— *Suit to set aside*

and that this finding was bad in law, as being opposed to binding decrees of competent Courts. *Held* by HOLLOWAY, J., (i) that there was nothing compelling the Court to decide, contrary to the plain rules of law, that this delegation was irrevocable

reserved, (iii) that there was nothing to prevent the Court from deciding that the Civil Judge was right in saying that this was an ordinary Malabar tarwad: and (iv) that the renunciation before the Sudder Court was not even irrevocable

correlative duties upon his becoming senior.

MALABAR LAW—JOINT FAMILY— *contd.*

13. ——————— *Power of karnavan—Anandravan.* The assent of the anandravans is necessary to a sale of tarwad land by a karnavan. The chief anandravan's signature to the instrument of sale is sufficient, but not indispensable, evidence of such assent. KAIPRETA RAMEN *v* MAKKHAYIL MUTOREN . . . . . **1 Mad. 359**

14. ——————— *Purchaser, duty of—Notice.* It is the unquestionable law of Malabar that tarwad property is inalienable, except in cases of adequate family necessity In such cases alienations will be upheld ; but it lies upon the purchaser to make out with abundant clearness that the purpose was a proper one The assent of the senior anandravan is some (but rebuttable) evidence that the purpose was proper. *Semble* That, considering the state of Hindu families, a purchaser would be affected with notice by much slighter evidence than a purchaser in other countries. KOYILOTHPUTEN PURAYIL MANOKI KORAN NAYAR *v.* PUTHENPURAYIL MANOKI CHANDA NAYAR . **3 Mad. 294**

15. ——————— *Otti mortgage—Karnavan, Power of.* A karnavan singly may make an otti mortgage. EDALHIL ITTI *v* KOPASHON NAYAR . . . . . . **1 Mad. 122**

16. ——————— *Authority of karnavan of tarwad to alienate endowed property*

have special authority in each case KOMBI ACHEN *v* LAKSHMI AHMA . . **I. L. R. 5 Mad. 201**

17. ——— **Perpetual lease**—*Karnavan, Powers of.* The karnavan of a Malabar kovillagom executed a kuikanom lease of certain land, the jenm of the kovillagom, in 1846, and in 1861 his successor demised the same land to the same tenants in perpetuity. The present karnavan sued in 1889 to recover possession of the land. *Held,* (i) that the perpetual lease, as being of an improvident character, was *ultra vires* and void ; and (ii) that the original lease was not surrendered by the acceptance of the subsequent lease. RAMUNNI *v.* KERALA VARMA VALIA RAJA

I. L. R. 15 Mad. 166

18. ——— **Position of karnavan**—*Trustee—Parties* A karnavan is not a mere trustee, nor do the rules of Courts of Equity as to the necessity of making *cestui que* trusts parties to suits against trustees by strangers apply to the case of a karnavan and the members of the tarwad. Status of a karnavan discussed. VARANAKOT NARAYANAN NAMBURI *v.* VARANAKOT NARAYANAN NAMBURI

I. L. R. 2 Mad. 328

19. ——————— The position of a

MALABAR LAW—JOINT FAMILY— *contd.*

not be removed from his situation except on the most cogent grounds. The solution of the difficulties which the state of families and property in Malabar will always create will not be assisted by bringing in the anarchy and insecurity which will always follow upon any attempt to weaken the natural authority of the karnavan ERAVANNI REVIVARMAN *v.* ITTAPU REVIVARMAN

I. L. R. 1 Mad. 153

20. ——— **Power of karnavan.** Incidents of property held by tarwad and by joint Hindu family distinguished. A Court has no

...rs must be NAMBILATH NAMBILATH ... PONAM-

I. L. R. 3 Mad. 169

21. ——————— *Powers restricted by family arrangement* The ordinary powers of the karnavan of a Malabar tarwad can be restricted by a family agreement to which he is a party, and if, in breach of such agreement, the karnavan makes an alienation to a stranger who has notice of the agreement, the tarwad is not bound by the alienation KANNA PISHARODI *v.* KOMBI ACHEN

I. L. R. 8 Mad. 381

22. ——————— *Power to set aside* ... A karnavan is not entitled ... range- ... he tar-

I. L. R. 11 Mad. 134

23. ——————— *Compromise of doubtful claims by adult members of a tarwad*— ... *Semble* · That a

24. ——— **Position and powers of karnavan**—*Powers of alienation of property and adoption of females—Power to adopt strangers into Nayar tarwad—Custom.* The litigation between Nayars in South Malabar was decided according to their laws and usages, some of which, relating to the descent of property through females, are so established as to be judicially noticed without proof, while others require proof. The large powers of ... of a tarwa are essentially for the ... ale- ... as to ... tar- ... bers ... d in

MALABAR LAW—JOINT FAMILY—*con'd.*

number to the karnavan himself and one anandravan:—*Held*, that the karnavan could not adopt at his own discretion without the consent of the latter, in the absence of a proved custom authorizing adoption by the karnavan alone In the time of the last possible karnavan such a power to him alone might be essential to preserve the tarwad But in the present case the last karnavan had not been reached, and the adoption by the actual one acting alone without the consent of the surviving anandravan was therefore invalid THIRUTHIPALLI RAMAN MENON v. VANANGATTIL PALISSERI RAMAN MENON . . I. L. R. 24 Mad. 73 L. R. 27 I. A. 231 4 C. W. N. 810

25. ——— Karnavan, decree against —*Execution against tarwad property—Sale— Right of purchaser—Res judicata—Right of junior member of tarwad not impleaded to contest sales of tarwad property in execution of decree against karnavan sued as such.* When the karnavan of a Malabar tarwad has not been impleaded as such in a suit, and there is nothing on the face of the proceedings to show that it was intended to implead him in his representative character, tarwad property cannot be attached and sold in execution of the decree, even though it is proved that the decree was obtained for a debt binding on the tarwad Although the property of a tarwad may be attached and sold in execution of a decree when the karnavan is sued as representative of the tarwad, members of the tarwad who are not parties to the proceedings, and have not been represented in the manner prescribed by the Code of Civil Procedure, are not estopped from showing that the debt for which the decree was passed was not binding on the tarwad. ITTIACHAN v. VELAPPAN. KRISHNA v NANU I. L. R. 8 Mad. 484

26. ——— *Karnavan's authority—Tarwad bound by bond fide acts of—Pro-*

the tarwad sued the parties to that decree to set aside the decree and also the forfeiture of the tenure, on the ground that the karnavan had acted improperly in denying the title of the landlord It was found that the karnavan acted *bond fide* in denying his landlord's title and in defending the suit. *Held*, that the plaintiffs could not succeed. NURINGA MANGALATH GOPALAN NAYAR v. VALIA TAMBURATTI . . . I. L. R. 7 Mad. 87

27 ———

MALABAR LAW—JOINT FAMILY—*contd*

dismissed. *Held*, that the junior members of the

I. L. R. 7 Mad. 413

28. ——— *The Valiya Rajah of a kovilagom sued as such—Liability of kovilagom properties. Semble*: That a decree passed against the Valiya Rajah of a kovilagom is *primâ facie* binding upon his successor and his kovilagom. KERALA VARMA VALIYA RAJAH v. SHANGARAM . . I. L. R. 16 Mad. 452

29. ——— *Suit by anandravans to set aside a sale in execution of decree against their karnavan, when maintainable.* The lands sued for being the jenm of a devasam were sold in execution of a decree obtained by defendant No 1 against the uralans Plaintiffs, being the anandravans of the uralans, sued to set aside the sale, alleging that the debt was not contracted for devasam purposes, and that the decree was collusive. *Held*, that the decree was binding on the plaintiffs unless it had been obtained by fraud and collusion. KELU v. PAIDEL . . . . I. L. R. 9 Mad. 473

30. ——— *Suit to set aside decree and recover lands sold under it.* In suits by a branch karnavan of a Malabar tarwad to recover

family, the velia kaimal Upon an issue sent

MALABAR LAW—JOINT FAMILY—*contd.*

SCOTLAND, C J.—That the Court was not constrained to hold that the irrevocability of the arrangement effected in 966 by the former head of the [illegible]

the litigation, of which there was proof in the records; that such arrangement operated only as a personal renunciation and delegation of the rights of management possessed by the then head of the tarwad; and that, assuming it to have been irrevocable by him, it was not binding on the third defendant, admittedly the head of the family, by right of seniority. APPUNI alias AYAMPALLI RAMAN KUMARAN v. AYANEPALLI EKANATHA THAVAI VARIKARNAVAN . . 6 Mad. 401

31. ——— *Suit against karnavan and senior female member of a tarwad—Evidence of intention to sue defendants as representatives of the tarwad.* The karnavan and senior female member of a Malabar tarwad executed a hypothecation-bond, on which a suit was brought against them asking for the sale of the tarwad property. The defendants had represented the tarwad in other suits, but were not in this case expressly sued in a representative capacity The plaintiff obtained a decree. *Held*, that the decree was binding on the tarwad. SUBRAMANYAN v KALI
I. L. R. 10 Mad. 355

32. ——— A sued for possession of certain shops belonging to a Malabar tarwad which had been attached in execution of a personal decree passed against a karnavan in a suit on a private debt In the execution-proceedings an objection petition was put in, stating that the shops were stridhanam, and was rejected; and the order of rejection was not appealed against for one year. Respondents Nos. 1 to 4, the husbands of the persons who put in the objection petition, were in possession and were now sued for possession. The plaintiff was assignee of purchaser at the execution-sale. *Held*, that upon the facts found the plaintiff acquired nothing under the Court-sale. ACHUTA v. MAMMAVU
I. L. R. 10 Mad. 357

33. ——— *Representative of tarwad.* The karnavan and an anandravan of a Malabar tarwad were authorized by a karar to manage the affairs of the tarwad A decree was obtained against them, and land belonging to the tarwad was attached and sold in execution. The plaint did not describe the defendants otherwise than by their individual names; but the plaintiff's claim was, *inter alia*, in respect of the breach of a contract by the defendants to put him into possession of certain land which was expressed to be "the jenm of the defendant's tarwad" It was found in the present suit that the amount decreed in the prior suit constituted a debt due by the tarwad. *Held*, that the decree and the execution-sale did not bind the tarwad *Daulat Ram* v. *Mehr Chand*, *I. L. R. 15 Calc. 70*, distinguished. SANKARAN v. PARVATHI . . . I. L. R. 12 Mad. 434

34. ——— *Nambudri—Sale in execution of decree.* A junior member of a Nambudri illom, of which he was held out as the manager and *de facto* karnavan, contracted a debt for the purposes of the illom The creditor sued him on the debt, but did not implead him as karnavan, and, having obtained a personal decree, attached and brought to sale in execution property belonging to the illom A son of the judgment-debtor now sued to set aside the sale *Held*, that the sale should be set aside GOVINDA v KRISHNAN . . . I. L. R. 15 Mad. 333

35. ——— *Decree for maintenance against karnavan—Execution against tarwad property.* A member of a Malabar tarwad, having [illegible]

[illegible]

36. ——— *Decree against karnavan and senior anandravan not binding on junior members—Civil Procedure Code, s 13, expl. 5, s. 30.* A decree having been obtained against the karnavan and senior anandravan of a Malabar tarwad whereby the tarwad was dispossessed of certain land. the junior members of the tarwad who had [illegible]

were bound to prove *mala fides* on the part of the karnavan in defending the former suit as a condition precedent to recover. SRIDEVI v KELU ERADI . . . . I. L. R. 10 Mad. 79

37. ——— *Female managing the affairs of a tarwad—Res judicata.* The senior female member of a Malabar tarwad, who [illegible]

[illegible]

38. ——— *Res judicata—Cancellation of deeds—Declaratory suit—Withdrawal of part of claim.* A and B, junior members of a Malabar tarwad, sued to cancel certain mortgages executed by their karnavan and senior anandravan, on the ground that the secured debt was not binding on the tarwad, and to appoint

MALABAR LAW—JOINT FAMILY—*contd.*

to the office of karnavan The last part of the prayer was withdrawn. The mortgages were executed to secure a decree-debt, the decree having been passed *ex parte* against the late karnavan of the tarwad. No fraud was alleged, but the lower Courts found that the karnavan had been guilty of fraud in allowing the decree to be passed *ex parte* The plaintiffs had not been parties to the decree, and the other junior member of the tarwad who had been joined were exempted from liability *Held*, that the nature of the debt was not *res judicata*, and that the plaintiffs were entitled to a declaration that the mortgages in question were invalid as against them MOIDIN KUTTI *v* KRISHNAN

I. L. R. 10 Mad. 322

39 ——— *Suit by junior members of a tarwad—Suit to restrain execution of a decree obtained in a suit against plaintiff's karnavan—Right of suit* In a suit brought in a subordinate Court by the junior members of a Malabar tarwad against their karnavan and others, the plaintiffs prayed for a declaration of the uraima right of their tarwad in a certain devaswam, and for an injunction to restrain the defendants, other than the members of the plaintiff's tarwad, from executing a decree of a District Court, passed on appeal from a Munsif's Court, whereby certain lands of the devaswam were decreed to be surrendered to them in the character of uralers, it appeared (i) that plaintiff's karnavan was a party to the suit in which the abovementioned decree was passed; (ii) that the plaintiff's tarwad was otherwise entitled to the uraima right by adverse possession, if not immemorial title. *Held*, that the plaintiffs were entitled to maintain the suit without proof of fraud and collusion on the part of their karnavan in the previous suit; and that they were entitled to the decree as prayed. APPU *v* RAMAN

I. L. R. 14 Mad. 425

40. ——— *Former decrees against karnavan—Civil Procedure Code, s 13—Limitation Act (XV of 1877), Sch. II, Arts 91,*

(with which, however, it was now found on the evidence that they were less closely connected

MALABAR LAW—JOINT FAMILY—*contd.*

perty now claimed was held under one of those

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necessary for the plaintiffs to prove *mala fides* against their karnavan in respect of his conduct in the former suits or to seek that the decrees passed therein be set aside, and that those decrees did not constitute the present claim *res judicata*, as the karnavan was not then impleaded in his capacity as such; and (iii) that the plaintiffs were entitled to a decree as prayed. SHANKARAN *v*. KESAVAN

I. L. R. 15 Mad. 6

41. ——— *Aliyasantana law—Unjustified alienation of family property by a member of undivided family—Partition, Right of—Adverse possession—Limitation* In 1851 the ejaman of an Aliyasantana family mortgaged family property to the ancestor of some of the defendants who and whose alienees were now in possession.

suit to redeem the mortgage of 1851, the plaintiff obtained a decree for redemption of a moiety of the

1857 had no legal existence, nothing could pass by that sale, and the suit should be dismissed. Neither the original mortgagee nor his son could rely on the twelve years' rule of limitation unless he could prove a subsequent valid sale, in the absence of which his possession must be taken to retain its original character. BYARI *v*. PUTTANNA

I. L. R. 14 Mad. 38

42. ——— *Decree against karnavan on tarwad debt before partition—Execution after partition against property of person not party to execution-proceedings—Joint decree*

MALABAR LAW—JOINT FAMILY—*contd.*

decree of 1879. He was not joined as a party in the execution-proceedings. *Held,* that the Court-sale did not bind the plaintiff. *Sankara* v. *Kelu, I. L. R. 14 Mad. 29,* referred to. KUNHAPPA NAMBIAR *v.* SHRIDEVI KETTILAMMA

I. L. R. 18 Mad. 451

43. ——————— *Decree against karnavan on tarwad debt before partition—Execution after partition—Joint decree executed against separate property* In a suit for declaration that certain land was not liable to be attached in execution of a decree obtained in 1880, it appeared that the decree was passed against the judgment-debtor as karnavan of a Malabar tarwad, and that it was for a debt incurred for purposes binding on the tarwad In 1882 a partition had been come to between the members of the tarwad under which the property in suit had been allotted to the plaintiff. *Held,* that the state of things when the debt was contracted must be looked to, and at that time the karnavan was competent to bind all the members of the tarwad Any subsequent arrangement in the family could not affect their obligation to the creditor, who was not a party to it The plaintiff's property therefore was liable notwithstanding the partition. KRISHNAN NAMBIAR *v.* KRISHNAN NAIR

I. L. R. 18 Mad. 452 note

44. ——————— *Decree against karnavan binding on tarwad—Parties* A decree in a suit in which the karnavan of a Nambudri illom or a Marumakkatayam tarwad is, in his represen-

45. ——————— *Karnavan—Effect of decree against karnavan representing the tarwad—Res judicata—Civil Procedure Code, 1882, ss 13 and 30.* Although the members of a tarwad or family may, in an irregular fashion, be represented by a karnavan of the tarwad in a suit, the decree therein does not raise an absolute estoppel against members not actually brought on the record. *Ittiachan* v. *Vellappan, I. L. R 8 Mad 484,* and *Sri Devi* v. *Kelu Eradi, I. L R. 10 Mad. 79,* followed KOMAPPAN NAMBIAR *v* UKKARAN NAMBIAR . . . . **I. L. R. 17 Mad. 214**

46. ——————— *Customary law of Mapillas—Multifariousness—Suit by karnavan —Right of suit.* The plaintiff sued as the karnavan of a Mapilla tarwad to recover lands in the possession of the defendants who were a donee from and the descendants of a previous karnavan and their tenants. It appeared that the alleged previous karnavan had died less than twelve years before the suit was filed, but more than twelve years before the joinder, as

MALABAR LAW—JOINT FAMILY—*contd.*

the alleged previous karnavan was a party, was put in evidence to show that he had in a particular instance acted in the capacity of karnavan of a

vious karnavan as alleged, and that the previous karnavan had followed the Marumakkatayam rule, although it was shown that other members of the family had dealt with property, described as self-acquired under the precepts of Mahomedan law. BYATHAMMA *v* AVULLA . **I. L. R. 15 Mad. 19**

47. ——————— *Mapillas.* The

general issue as to the mode of devolution of self-acquired property in Marumakkatayam Mapilla families in North Malabar; and ultimately it dismissed the suit, ruling that in Marumakkatayam Mapilla families the self acquired property of a

to the law applicable to Mapillas. RAMAR *v.* KUTTI KUNHAMED **I. L. R. 17 Mad. 69**

48. ——————— **Removal of karnavan from office**—*Ground for removal.* When a karnavan was found to have made perpetual grants of certain lands belonging to his tarwad for other than family

from his office, his conduct ... his position to show that he could not be retained in his position without serious risk to the interests of the family. ERAVANNI REVIVARMAN *v* ITTAPU REVIVARMAN

I. L. R. 1 Mad. 153

49. ——————— *Grounds for removal—Tarwad property—Powers of karnavan.* The grant of a very improvident lease following on a course of conduct pursued for some years, in which the interests of the tarwad were persistently disre-

... karnavan ... ty. Era- ... L. R. 1 ... APRAVAN ... APRAVAN ... PARA- ... ad. 169

MALABAR LAW—JOINT FAMILY—*concld.*

50. ——— *Suit to remove a karnavan for mismanagement as de facto karnavan.*

drawn with leave to sue again. *A* died, and was succeeded by *B*, against whom the plaintiffs brought a suit, to which all the adult but none of the minor

were committed when *B* was *de facto* and not *de jure* karnavan did not make them the less a ground for removing him from his office of *de jure* karnavan *Held*, also, that the minor members of the tarwad were sufficiently represented on the record KUNHAN v. SANKARA . . . I. L. R 14 Mad. 78

51. ——— *Karnavan, disqualification for the office of—Blindness* Suit to remove the defendant from the office of karnavan of a Malabar tarwad The defendant had become blind after occupying the office of karnavan for some years *Held*, that the defendant was not a fit person to be the karnavan of a tarwad, and should be removed from his office KANARAN v. KUNJAN I. L. R. 12 Mad. 307

52. ——— *Karnavan, Disqualification for office of—Blindness.* A blind man sued, as the karnavan of a Malabar tarwad, to recover certain land. One of the defendants, who claimed, but was not admitted, to be a member of the tarwad, and who asserted a right as kanamdar to the land in question, pleaded that the plaintiff was not competent to act as karnavan, or consequently to maintain the suit, by reason of his blindness *Held*, that it was for the members of the tarwad to take this objection, as if they wish a blind man to act as their karnavan, he can do so; the defendant therefore was not entitled to raise this plea. UKKANDAN v. KUNHUNNI I. L. R. 15 Mad. 483

MALABAR LAW—LEASE.

——— ——— *Revenue Recovery Act (Madras Act II of 1864), s. 32—Purchaser*

of Madras Act II of 1864. A purchaser of the land at a revenue sale was therefore bound to pay compensation to the tenant for improvements before he could obtain possession. MEPPATT KUNHAMAD v. CHATHU NAIR (1904) I. L. R. 27 Mad. 373

MALABAR LAW—MAINTENANCE.

1. ———Right to maintenance—*Anandravan. Semble* An anandravan's right to maintenance is merely a right to be maintained in the family-house. KUNIGARATU v. ARRANGADEN 2 Mad. 12

2. ——— *Anandravan.* Though the general rule is that an anandravan cannot have separate maintenance, there are exceptions to that rule PERU NAYAR v. AYYAPPAN NAYAR . . . . I. L. R. 2 Mad. 282

3. ——— *Anandravan—Misbehaviour.* A karnavan (manager) of a Malabar tarwad (family) is not justified in excluding an

4. ——— *Suit by member*

KUTTI ALI . . I. L. R. 7 Mad. 233

5. ——— *Karnavan—Practice of allowing karnavan half the net income disapproved.* In suits for maintenance against the karnavan of a Malabar tarwad, the practice of awarding one moiety of the net income of the tarwad to the karnavan is not authorized by law. NARAYANI v. GOVINDA . I. L. R. 7 Mad. 352

6. ——— *Member of tarwad*

Pulanvitil r, I. L. R. 4 UNJIAMA v. 5 Mad. 71

7. ——— *Maintenance claimed by anandravans living in tarwad house against karnavan, who had left tarwad house and neglected to maintain family* Where a suit was brought by an anandravan of a Malabar tarwad living in the family house for maintenance against the karnavan, who had left the family house,

... I. L. R. 11 Mad. 307

MALABAR LAW—MAINTENANCE—*concld.*

8. ———— *Member of tarwad —Taverai.* A member of a tarwad divided into "taverais" with separate dwelling-houses may claim to be maintained by the karnavan in the house of the "taverai" to which he or she belongs. CHALAYIL KANDOTHA NALLAKANDIYIL PARVADI *v.* CHALAYIL KANDOTHA CHATHU NAMBIAR

I. L. R. 4 Mad. 169

9. ———— *Maintenance of families of male members by tarwad.* In North Malabar the male members of a Nayar tarwad are by custom entitled to receive from the karnavan an allowance for the maintenance of their consorts and children while living in the tarwad house. VARIKARA VADAKA VITTIL VALIA PARVATTHI *v.* VARIKARA VADAKA VITTIL KAMARAN NAYAR

I. L. R. 6 Mad. 341

10. ———— *Mapillas—Separate maintenance—Marriage.* The junior male members of a Mapilla tarwad governed by the Marumakkatayam law are entitled to maintenance from the tarwad when living in the houses of their consorts and also to a higher rate of maintenance when living with their consorts than when living as single men. CHOWAKARAN ORKATARI BAPPAN *v.* CHOWAKARAN CHERIA ORKATAN MAKKI

I. L. R. 6 Mad. 259

11. ———— *Karnavan, In-*

for a reasonable amount by way of maintenance, in computing which allowance should be made for the income of the tarwad property in their possession. *Nallakandiyil Parvadi v. Chathu Nambiar, I. L. R. 4 Mad. 169,* followed. CHEKKUTTI *v.* PAKKI

I. L. R. 12 Mad. 305

12. ———— *Karnavan, Right of, to sue a member in possession for maintenance.* Where properties of a Tavazhi are in the possession of a member other than the Karnavan, the latter cannot sue such member for maintenance, but only for possession of such properties. NAMBIAMUTTIL POKKER *v.* KITHAKKI KUNHIPATUMMA (1905)

I. L. R. 29 Mad. 206

MALABAR LAW—MORTGAGE.

1. ———— **Kanam mortgage.** The question whether a kanam is to be regarded as a lease or a mortgage depends upon the object for which the tenure was created. Where a kanam is granted as a secu...

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MALABAR LAW—MORTGAGE—*contd.*

2. ———— *Failure to give possession—Right of suit for money advanced on it.*

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KUTTIAYISSA *v.* UDAYA VARMAVALIA RAJAH

2 Mad. 315

3. ———— *Suit for redemption—Express agreement.* Although the right to hold for twelve years is inherent in every kanam ac-

4. ———— *Right to hold for twelve years.* A kanam-holder who denies his jenmi's title forfeits his right to hold for twelve years RAMEN NAYAR *v.* KANDAPUNI NAYAR

1 Mad. 445

5. ———— *Right to hold for*

6. ———— *Right of redemp-*

documents in support of such allegation were forged. PAIDAL KIDAVU *v.* PARAKAL IMBICHUNI KIDAVU

1 Mad. 13

7. ———— *Rights under a kanam—Denial of jenmi right by kanamdar—Adverse possession—Limitation—Declaration of escheat.* A demised certain lands on kanam to B in 1853. B afterwards committed an offence under

and in 1863 sold them to C. ... now sued to recover the lands from C's representatives, who set up an adverse title and alleged that the suit was time-barred. *Held,* that C was at the time of the escheat, in the position of a manager for mortgagees; that the escheat proceedings of which the mortgagor had no notice did not affect his rights; that denial by the mortgagee in possession of the mortgagor's right to redeem is not sufficient to convert such possession into adverse possession. MUSSAD *v.* COLLECTOR OF MALABAR

I. L. R. 10 Mad. 169

8. ———— *Right of a jenmi, who is a judgment-creditor, to sell the kanam right be-*

MALABAR LAW—MORTGAGE—*contd.*

fore the expiry of twelve years A jenmi, who has obtained a decree for arrears of rent, may sell the kanam before the expiry of twelve years; such a sale does not put an end to the kanam, but only transfers the kanamdar's interest to the purchaser at the execution-sale ACHUTAN NAYAR *v* KESHAVAN I. L. R. 17 Mad. 271

9. ———— *Malabar kanam —Redemption, value of improvements on—Depreciation of, between decree and date of redemption.* A decree for the redemption of a kanam in Malabar was passed in December 1894, when there were on the

[illegible]

10. ———— *Transfer of interest—Appointment of a creditor as agent to collect rents and appropriate part towards the debt—Mortgagee in possession—Usufructuary mortgage* In a suit to redeem a kanam on certain land, the jenm of

[illegible]

had sued as co-plaintiffs with the samudayam, in subsequent suits, however, two of the uralers had sued other tenants for rent and the samudayam

[illegible]

11 ———— *Limitation—Cre-*

[illegible]

MALABAR LAW—MORTGAGE—*contd.*

and for an injunction: that suit was dismissed on

[illegible]

suit, that the defendant was not a mortgagee in possession under the instrument of 1741, the suit was not barred by limitation. RAMAN *v* SHATHANATHAN . . . . I. L. R. 14 Mad. 312

12 ———— *Right of tenure*

[illegible]

See also KUNJU VELAN *v.* MANAVIKRAMA ZAMORIN. KRISHNA MANNADI *v* SANKARA MANAVAN 1 Mad. 113 note

13. ———— *Ejectment before expiration of time* A mel-kanamdar cannot eject a kanamdar or his assignee before the expiration of twelve years from the date of the kanam PRAMATAN TUPEN NAMBUDRIPAD *v.* MADATIL RAMEN 1 Mad. 296

14. ———— *Right to redeem, and make further advances.* The holder of a melkanam may recover the land from the kanam-holder after the expiry of the term of the kanam, on pay-

[illegible]

15. ———— *Tenant's right to improvements prior to demise sued on—Presumption*

[illegible]

PANAGARI NARAYANAN NAYAR *v.* VIRUPATCHAN NAMBUDRIPAD . . I. L. R. 4 Mad. 287

16. ———— *Redemption of kanam—Amount to be ascertained before decree—Value of improvements to be ascertained before decree—Jenmi—Right to deduct arrears of rent due from sum payable* When a decree is passed for

[illegible]

KOMBI ACHEN . . . I. L. R. 5 Mad. 301

17. ———— *Right to set off arrears of rent against claim for improvements—Mortgage of right of kanamdar, how affected.*

MALABAR LAW—MORTGAGE—*contd.*

See Gressa Menon v. Sama Patter
I. L. R. 21 Mad. 138

18. ——— *Time for redemption* Where a deed was described as a kanam deed

expired, but must be construed as referring to a period subsequent to the term of twelve years. Kanara v. Govindan . I. L. R. 5 Mad. 310

19. ——— *Kanam—Con-* ... *Time for redemption* ... be re- either clause. *Puthenpurayil Kuridipravan Kanara Kurup* v. *Puthenpurayil Kuridipravan Govindan, I L R. 5 Mad. 311,* distinguished Ahmed Kutti v. Kunhamed . . . I. L. R. 10 Mad. 192

20. ——— *Redemption suit*

fore premature. Mahomed v. Ali Koya
I. L. R. 14 Mad. 76

21. ——— *Improvements—Trees of spontaneous growth—Redemption suit—Costs of ascertaining value of improvements.* Ac-

the head of improvements the value of trees of spontaneous growth. In suits to redeem land demised on kanam tenure, on payment of the value of improvements, the costs of the adjudication necessitated by the refusal of either party to accept the terms of compensation offered or demanded by his opponent should, when those terms are reasonable, be charged on the party refusing. Narayana v. Narayana . I. L. R. 8 Mad. 284

22. ——— *Redemption on terms of admitted demise—Improvements—Local custom—Jenmi's right to a moiety—Arrears of rent—Jenmi's right to deduct from amount payable by him.* In a suit brought against *A* and *B* for redemption of land alleged to have been demised to *A* on kanam tenure in 1874, and to be held by *B* under *A*, it was found that the demise of 1874 was invalid because it had been executed fraudulently; but inasmuch as *B* admitted that he was in possession under a similar demise of 1855, it was *held* that the plaintiff was entitled to redeem on the terms of the demise admitted by *B*. *Kunhi Kutti Nair* v. *Kutti Maraccar, 4 Mad. 359,* followed. Local usage of Ernad, by which the jenmi on redemption of a kanam takes credit for one-half of the value of improvements effected by the kanamdar, upheld. *The right of a jenmi to deduct arrears of rent from* the amount payable by him on redemption of a kanam, being a customary incident of the tenure, is not affected by the three years' period of limitation for recovery of arrears of rent. Unnian v. Rama
I. L. R. 8 Mad. 415

23. ——— *Transfer of Property Act (IV of 1882), s. 60—Partial redemption—Indivisibility of mortgage.* The karnavan of a Malabar tarwad, having the jenm title to

the last-mentioned land. In a suit brought by the plaintiff to redeem the kanam and to recover arrears of rent :—*Held,* that the defendants were not estopped from denying the plaintiff's right to redeem on the ground that he did not represent the

the premises comprised in it. Kunhi ... v. Karunakara . . I. L. R. 16 Mad. 328

24. ——— Kanam and otti tenures—*Time for redemption. Per curiam:* It is settled

25. ——— *Prior right of tenant to make further advances—Right to redeem.* The prior right of an ottidar to make further advances is established by authorities, but there is no authority to support a kanamdar's claim to a similar privilege. An ottidar may redeem a prior kanam. Kunhamu v. Keshavan Nambudri
I. L. R. 3 Mad. 216

26. ——— Otti mortgage—*Denial of title—Forfeiture of right.* An otti holder, like a

MALABAR LAW—MORTGAGE—*contd.*

kanamdar, forfeits his right to hold for twelve years by denying the jenmi's title. KELLU ERADI v PUAPALLI . . . . . . 2 Mad. 161

27. ——————— *Redemption of mortgage* An otti, like a kanam mortgage, cannot be redeemed before the lapse of twelve years from its date. EDATHIL ITTI v KOPASHON NAYAR
1 Mad. 122

KUMINI AMA v. PARKAM KOLUSHERI
1 Mad. 261

28. ——————— *Distinction between otti and kanam mortgage.* An otti differs from a kanam mortgage, *first,* in respect of the right of pre-emption which the otti-holder possesses; *secondly,* in being of so large a sum that practically the jenmi's right is merely to receive a pepper corn rent. KUMINI AMA v PARKAM KOLUSHERI
1 Mad. 261

29. ——————— *Right of jenmi —Right of a second mortgagee.* During the continuance of a first otti mortgage, the jenmi is in the same position as regards his right to make a second otti mortgage to a stranger after, as he was before, the lapse of twelve years from the date of the first

could not redeem the lands comprised in the first mortgage. ALI HUSAIN v. NILLAKANDEN NAMBUDIRI . . . . 1 Mad. 356

30. ——————— *Kaividu otti tenure.* According to Malabar law, and demised on the tenure called kaividu otti is redeemable KUNDU v. IMPICHI . . . . I. L. R. 7 Mad. 442

31. ——————— *Right to make further advance—Second mortgage to stranger without notice to otti-holder invalid.* R, having

32. ——————— *Forfeiture of right of pre-emption* An otti-holder does not

MALABAR LAW—MORTGAGE—*contd.*

33. ——————— *Sale of jenmi's rights at Court-sale.* An otti mortgagee, if he avails himself of his right of pre-emption must pay whatever sum is *bonâ fide* offered to the jenmi for his

34. ——————— *Right of pre-emption—Further charge created by jenmi—Auction-sale of jenmi's rights subject to further charge —Cause of action—Remedy of veppu-holder.*

that his right of pre-emption was injured thereby: —*Held,* that the suit would not lie VASUDEVAN v. KESHAVAN . . . . I. L. R. 7 Mad. 309

35. ——————— *Right of pre-emption under otti—Waiver—Limitation Act (XV of 1877), s. 28.* A jenmi, having demised certain land in Malabar on otti to defendant No. 3 in 1869, sold the jenm title to the plaintiff and defendants Nos 1 and 2 in 1886. In 1888 defendant

36. ——————— *Ottidar's right of pre-emption—Suit to redeem kanam.* In a suit

v. KUTTI . . . . I. L. R. 15 Mad. 401

MALABAR LAW—MORTGAGE—*contd*

37. ———————— *Ottidar's right of pre-emption—Waiver—Election not to purchase.* An ottidar in Malabar loses his right of preemption if he refuses to bid at a Court-sale of the land comprised in his otti held in execution of a ... ivan ... sted, ... and ... the ... sale.

I. L. R. 15 Mad. 480

38. ———— Peruarthum mortgage—*Local law of Malabar—Redemption* In the case of a mortgage of the kind prevailing in a certain part of Malabar called a "peruarthum" mortgage, when the mortgagor redeems, the mortgagee is entitled (before restoration of the mortgaged land) to be paid its market value at the time of redemption, not the amount for which the land was mortgaged. SHEKARI VARMA VALIA RAJAH *v* MANGALOM AMUGAR . . . . I. L. R. 1 Mad. 57

39. ———— Suit by co-uralan for redemption—*Suit by one of two co-uralans for redemption of mortgage without allegation or proof that the other had been asked to join plaintiff in the suit—Maintainability of suit.* One of two co-*uralans* may bring a suit to redeem a mortgage without averring or proving that the other *uralan* had been asked to join as a plaintiff in the suit. *Savitri Antharjanam* v *Raman Nambudri, I. L. R. 24 Mad 296*, distinguished KARATTOLE EDAMANA *v.* UNNI KANNAN (1903)

I. L. R. 26 Mad. 649

40. ———— Suit to redeem kanom—*Failure to prove "special exigency," less than twelve ... suit— ... Varur ...* enure ... have ... demption at an earlier date. A *kanom* deed contained the vernacular words "*Avasyamayi Chodikambole,*" "*Avasyamayi Varumbole.*" On the question being referred to a Full Bench whether these words meant "on demand," or whether they meant "on demand based on some special exigency": —*Held*, that the words did not impose on a *jenmi* the obligation of proving "some special exigency" as a condition precedent to his right to recover "on demand" before twelve years have elapsed. *Mahomed* v *Ali Koya, I. L. R. 11 Mad. 76*, dissented from. KELU NEDUNGADI *v.* KRISHNAN NAIR (1903). . . I. L. R. 26 Mad. 727

41. ———————— *Kanom for fixed period—Kanomdar to enjoy portion of produce for interest—Anomalous mortgage—Forfeiture not entailed by disclaimer of mortgagor's title by kanomdar—Suit to recover the land prior to expiration of period—Maintainability.* By the terms of a kanom deed, a term of 59 years was provided for its redemption. the amount was R500, and the kanomdar was to enjoy a portion of the produce for interest on the kanom and to pay the balance of the produce annually to the mortgagor—the jenmi. Prior to the expiration of the term, the kanomdar disclaimed the title of the jenmi, who thereupon brought the present suit, claiming the right to do so by reason of the disclaimer. *Held*, that the transaction ...

redemption of the mortgage before the expiration of the 59 years. The suit was therefore premature. RAMAN NAIR *v.* VASUDEVAN NAMBOODRIPAD (1904)

I. L. R. 27 Mad. 28

MALABAR LAW—PARTITION.

See MALABAR LAW—JOINT FAMILY. I. L. R. 18 Mad. 451, 452 note

1. ———— Compulsory partition—*Malkatayam rule of inheritance—Tiyans' custom.* The ordinary rule of Marumakkatayam against compulsory partition is equally applicable to Tiyans who follow Makkatayam, no custom to the contrary having been made out. RAMAN MENON *v.* CHATHUNNI . . . I. L. R. 17 Mad. 184

2. ———— Iluvans of Palghat—*Custom relating to partibility of property—Tiyans.* In a ...

bility of property had no application ... *I. L. R. 17 Mad. 184,* ...

themselves as separate from the latter, ...

proved. VELU *v.* CHAMU I. L. R. ...

MALABAR LAW—PRE-EMPTION.

———————— *Otti-holder's right of pre-emption, nature of—Such right a right of election and not a right to veto—Right of pre-emption cannot be enforced by counter-claim by otti holder in transferee's suit for redemption—Variation between pleading and proof—Plaintiff failing to prove plaint mortgage may be given a decree on mortgage admitted by defendant* The right of pre-emption which an otti-holder has by custom under Malabar law is only a right to elect whether he will purchase or not and not a right to veto a transfer by the janmi, without his knowledge. The otti-holder's right cannot be pleaded as a bar to a transferee's right to redeem, without an offer to purchase that right. Such an offer by the otti-holder cannot, in this country, be entertained as a counter-claim in a suit by the transferee of the janmi right for

MALABAR LAW — PRE-EMPTION — *concld.*

demption, the plaintiff fails to prove the mortgage set up by him, the Court may allow the plaintiff to redeem on the basis of a different mortgage, under which the defendant claims to hold. KADAKAMVALLI SANKARAN MUSSAD *v* MOKKATH USSAIN HAJI (1907) . **I. L. R. 30 Mad. 388**

MALABAR LAW—WILL.

1. ———— Testamentary dispositions of tarwad property by last surviving member of tarwad valid. The last surviving member

I. L. R. 12 Mad. 126

2. ———— Will by member of Malabar tarwad—*Validity of will. Quære* Whether the principle laid down in *Alami* v *Komil, I L R 12 Mad. 126*, would apply in the case of a will made by a member of a Malabar tarwad having heirs in the tarwad KUTTYASSAN *v* MAYAN **I. L. R. 14 Mad. 495**

3. ———— Power of disposition by will—*Self-acquired property—Marumakkatayam law —Right to succession certificate— Probate* A member of a Marumakkatavam tarwad died leaving self-acquired property The karnavan of the tar-

not be granted to the karnavan, but to one of the legatees ACHUTAN NAYAR *v* CHERIOTTI NAYAR **I L. R. 22 Mad. 9**

MALADMINISTRATION.

See COURT OF WARDS **12 C W. N. 1065**

See EXECUTRIX . **I. L. R. 35 Calc. 1100**

See TRESPASS . **I. L. R. 36 Calc. 28**

See LIMITATION . **I. L. R. 36 Calc. 141**

MALFEASANCE.

See LIMITATION . **I. L. R. 36 Calc. 141**

MALIAHS.

See EVIDENCE ACT, s 115 **I. L. R. 28 Mad. 130**

See GRANT . **I. L. R. 28 Mad. 130**

MALICE.

See ARREST—CIVIL ARREST **I L. R. 4 Calc. 583**
1 N. W. Pt. II, 32. Ed. 1873, 91

See CHAMPERTY . **I. L. R. 2 Calc. 233**
L R. 4 I. A. 33
13 B. L. R. 530

MALICE—*contd*

See DEFAMATION **I. L. R. 30 Calc. 402**
I. L. R. 32 Calc. 756

See LIBEL . **I. L R. 32 Calc. 318**

See MALICIOUS ARREST.

See MALICIOUS PROSECUTION

See MALICIOUS SEARCH.

See PRIVILEGED COMMUNICATION **7 C. W. N. 246**
I. L. R. 12 Mad. 374

See TORT . **12 C. W. N. 973**

See WRONGFUL CONFINEMENT. **I. L. R. 13 Bom. 376**

———— absence of—

See DEFAMATION **I. L. R. 36 Calc. 375**

———— evidence of—

See LIBEL **I L R. 36 Calc. 907**

———— interpretation of—

See DEFAMATION **I. L R. 31 Bom. 293**

See MUNICIPALITY **I. L. R. 31 Bom. 37**

See TRADE-MARK **I. L. R. 34 Calc. 495**

1. ———— Proof of malice—*Suit for damages for wrongful attachment—Reasonable and probable cause, absence of* Proof of malice is essential to support a suit for damages for the wrongful

wantonly and without the exercise of any caution in investigating the necessity for them, have been held to be malicious. At the same time, to make an act malicious, it must be shown that it was done with a wrongful intention. Acts done in good faith and without any wrongful intention, though

2. ———— Suit for damages for malicious attachment—*Reasonable and probable cause.* In an action for damages for a malicious

Court ought to have known, is evidence that the

MALICE—*concld.*

applicant has reasonable cause upon those facts for the application. CHOUDHAREE SHEORAJ SINGH *v.* DWARKA DOSS . . . . 4 N. W. 42

MALICIOUS ARREST.

——————— *Action not maintainable when arrest ordered by officer invested with discretionary power, before whom the full facts were placed by the defendant* An action for malicious arrest is not sustainable, when the defendant has placed all the facts before the officer having the discretionary power to order such arrest and when such officer, with full knowledge of all the facts, exercised his discretion and ordered the arrest. In an action for false imprisonment the onus is on the defendant to plead and prove affirmatively the existence of reasonable cause, whereas, in an action for malicious prosecution the plaintiff must allege and prove affirmatively its non-existence *Hicks v. Foulkner, 51 L J. Q B 268,* referred to. THAKDI HAJJI *v.* BUDRUDIN SAID (1906)

I. L. R. 29 Mad. 208

MALICIOUS PROSECUTION.

See ABATEMENT OF SUIT—SUITS
I. L. R. 13 Bom. 677

See APPEAL TO PRIVY COUNCIL—CASES IN WHICH APPEAL LIES OR NOT—SUBSTANTIAL QUESTION OF LAW.
I. L. R. 25 Bom. 332
4 C. W. N. 781

See CAUSE OF ACTION.
I. L. R. 29 Bom. 368

See FALSE CHARGE.
I. L. R. 29 Calc. 479

See JURISDICTION—CAUSES OF JURISDICTION—CAUSE OF ACTION—MALICIOUS PROSECUTION . . 6 B. L. R. 141

See LIMITATION ACT, 1877, ART. 23 (1859, S. 1, CL. 2) . . 1 B. L. R. S. N. 17
8 W. R. 443
I. L. R. 23 Mad. 24

See LIMITATION ACT, 1877, SCH. II, ARTS. 24 AND 25 I. L. R. 24 All. 368

See MADRAS LOCAL BOARDS ACT, S. 128.
I. L. R. 13 Mad. 442

See PROBATE AND ADMINISTRATION ACT, SS. 69, 89 . 8 C. W. N. 337; 745

See SMALL CAUSE COURT, MOFUSSIL—JURISDICTION—DAMAGES.
2 Mad. 254
I. L. R. 14 Bom. 100

See SUBORDINATE JUDGE, JURISDICTION OF . . I. L. R. 11 Bom. 370
I. L. R. 12 Bom. 358

See TORT . . 10 C. W. N. 723
I. L. R. 31 All. 333

1. ——— **Right to sue**—*Previous criminal prosecutions—Offence under s. 211, Penal Code—Compounding offence.* A criminal prosecution

MALICIOUS PROSECUTION—*contd.*

for an offence under s. 211, Penal Code (false

ANNA *v.* NAGAYYAH . . I. L. R. [illegible]

2. ——————— *Reasonable and probable cause—Effect of order of discharge of a person accused of an offence before a Magistrate—Presidency Magistrates' Act (IV of 1877), s. 87.* The discharge of an accused person by a Presidency Magistrate, under s. 87 of the Presidency Magis-

3. ——————— *Liability for mere* [illegible] A complainant who

not being malicious or groundless, should not be held civilly responsible for an injury or loss thereby sustained by the person prosecuted. KISHOREE LALL *v.* ENAETH HOSSEIN KHAN. ENAETH HOSSEIN KHAN *v.* KISHOREE LALL

1 N. W. Pt. 11, Ed. 1873, 71

4. ——————— *Application for sanction to prosecute—Criminal Procedure Code, s. 195—Cause of action Held,* that an unsuccessful application under s 195 of the Criminal Procedure Code for sanction to prosecute for offences under the Penal Code, in which the only loss or injury entailed on the party against whom such application was directed was the expense he incurred in employing counsel to appear in answer to such appli-

cause of action in a suit for [illegible] account of malicious prosecution. EZID BAKHSH *v.* HARSUKH RAI . . . I. L. R. 9 All. 59

5. ——————— **Necessary evidence**—*Reasonable cause, proof of want of.* In a suit for damages on account of a charge brought by defendant in a [illegible] which charge was ultimately dis-

not evidence in the civil [illegible] 14 W. R. [illegible]
ROY *v.* RADHIKA PERSAD BOSE .

6. ——————— *Reasonable and* [illegible] *want of* In an action for damages [illegible] sufficient to [illegible] It must [illegible] at reason- [illegible] SINGH

11 B. L. R. P. C. [illegible] R. 263

MALICIOUS PROSECUTION—*contd.*

Affirming decision of lower Court in MUGNEERAM CHOWDHRY *v.* GUNNESH DUTT SINGH 5 W. R. 134

7. ———— *Requisites for ac-*

8. ———— *Proof of malice or want of reasonable cause—Costs* Held, that, there being no proof that the defendant acted maliciously or without probable cause, the suit was not maintainable; and under the circumstances the defendant was entitled to his costs. DUNNE *v.* LEGGE 1 Agra 38

9. ———— *Omission to allege malice and want of reasonable and probable cause* Where a plaint alleges the cause of action to be the prosecution of a false charge of forgery, and the statement of the subject-matter imports that the

10. ———— *Malice—Want of reasonable and probable cause* An action for

11 ———— Onus probandi—*Proof of malice and want of reasonable or probable cause* In an action for malicious prosecution, it is for the

6 B. L. R. 371

s.c. GOUR HUREE DOSS *v* HYAGRIB DOSS 14 W. R. 425

NOWCOWREE CHUNDER SURMAH *v.* BIRMOMOYEE DABEA . . . . . . 3 W. R. 169

12. ———— *Action for dam-*

v. NABIN CHANDRA GHATAK 6 B. L. R. 377 note: 12 W. R. 402

13. ———— *Proof of reasonable and probable cause.* But if the charge were found to be false, the onus would be on the defendant to show that he had reasonable and sufficient cause for making the charge, and on his failure to show any such cause, malice may be inferred. BISWANATH RAKHIT *v.* RAMDHAN SIRKAR 6 B. L. R. 375 note

s.c. BISHONATH RUKHIT *v.* RAM DHONE SIRCAR 11 W. R. 42

14. ———— *Proof of want of reasonable cause—Inference of malice* In a suit for a malicious prosecution, the plaintiff is entitled

15. ———— *Want of reasonable cause—Inference of malice.* In a suit for

who dismissed the charge:—*Held*, that the essence of the case lay in the question whether or not the

16. ———— *Suit against person whose name was not on record of prosecution case—Absence of reasonable and probable cause—*

17 ———— *Acquittal, effect*

18. ———— *Effect of acquittal of plaintiff in Criminal Court—Evidence of malice—Reasonable and probable cause.* The mere

MALICIOUS PROSECUTION—*contd.*

maliciously, that is, from some indirect motive and that there was no reasonable or probable cause for their action. MODY *v.* QUEEN INSURANCE CO.

I. L. R. 25 Bom. 332
4 C. W. N. 781

19. ———————— *Absence of probable cause—Malice, proof of—Burden of proof.* In a suit for damages for malicious prosecution it was found that the charge brought by the defendant against the plaintiff was unfounded, and that it was brought without probable cause. *Held*, that the absence of probable cause did not imply malice in law, and that, on the failure of the plaintiff to prove that the defendant did not honestly believe in the charge brought by him, the suit should have been dismissed. HALL *v.* VENKATAKRISHNA.

I. L. R. 13 Mad. 394

20. ———————— *Suit for damages for malicious prosecution—Malice—Dishonest motive—Effect of bringing a charge of assault for "criminal intimidation"—Damages—Reasonable and probable cause—Penal Code (Act XLV of 1860), ss. 211, 352, 503.* Where, in a suit for damages for malicious prosecution on a charge of assault which was dismissed, it appeared from the facts as found by the lower Courts that there was "criminal intimidation" on the part of the plaintiff although he was not charged with that offence by the defendant:—*Held*, that the plaintiff was not entitled to any damages, as no malice or dishonest motive could be imputed to the defendant in bringing the charge of "assault." MANIK LAL ASHU GAYAWAL *v.* SANT PANDE DHAMI . I. L. R. 27 Calc. 382

21. ———————— *Suit for damages for loss of reputation owing to defendant giving false information to police—Malicious prosecution—Defamation—False charge—Want of reasonable and probable cause—Malice—Privilege—Penal Code (Act XLV of 1860), ss. 182, 211, and 499.* Certain property belonging to the defendant having been stolen, he informed the chief police constable entrusted with the inquiry that he suspected the stolen property to be concealed in plaintiff's house. Accordingly the plaintiff's house was searched, and its floor dug up, and the plaintiff was placed in confinement for an hour or so. No property was, however, found. Thereupon the plaintiff sued the defendant to recover damages for loss of character suffered by him in consequence. Both the lower Courts decreed the plaintiff's claim, holding that it lay on the defendant to prove reasonable and probable cause for the suspicion communicated to the police and the search of the plaintiff's house. On second appeal the High Court reversed the decrees and dismissed the suit. *Held* (per JARDINE, J.), that the rule as to the burden of proof in suits for malicious prosecution should be extended to a case like the present. The onus therefore lay on the plaintiff not only to allege in the plaint, but also to prove against the defendant, malice and absence of reasonable and probable cause for the information given by him to the police. The plaintiff, however, had given no evidence of his own innocence nor that the suspicion of the defendant was groundless, nor that the defendant had any malice. *Per* RANADE, J.—The present case was governed by the principles which governed suits for defamation, and under the circumstances the action of the defendant fell within the exception which protects information given to a person in authority in the discharge of a public or private duty, where no malice in fact is shown to exist. *See Nobin Chundro v. Surjo Kahlya, 11 W. R. 524.* There is a distinction between the case of a false charge falling under s. 211 of the Penal Code and that of false information given to the police under s. 182. A person prosecuting another for an offence under the latter section need not prove malice and want of reasonable and probable cause except so far as they are implied in the act of giving information known to the police with the knowledge or likelihood that such information would lead a public servant to use his power to the injury or annoyance of the complainant. In an inquiry under s. 211, on the other hand, the absence of just and lawful ground for making the charge is an important element. *Ganesh Dutt Singh v. Mugneeram Chowdhry, 11 B. L. R. 321; 19 W. R. 212, distinguished.* RAGHAVENDRA *v.* KASHI NATH BHAT

I. L. R. 19 Bom. 717

22. ———————— *Prosecution by police constable in private as well as official capacity—Malice—Suit for damages.* A police constable, who is in effect the prosecutor and not acting merely in his official capacity, who does not take reasonable care to inform himself of the truth of the case, and who does not honestly believe in the charge preferred by him, and is actuated by an indirect motive in preferring it, is liable in a suit for damages for malicious prosecution. MUNISAMI-SUNDRAM PILLAI *v.* ANNAMALAI

I. L. R. 18 Mad. 139

23. ———————— *Procuring wrongful execution of a warrant of arrest—Reasonable and probable cause.* The plaintiff sued the Municipal Commissioner of Bombay for damages, alleging that the Commissioner had maliciously and without reasonable and probable cause procured a warrant to be issued against him on the [illegible] March 1892 and subsequently procured that warrant to be executed at a time when its force was spent, and under circumstances when it ought not to have been executed. From the evidence it appeared that on the [illegible] December 1891 a notice was served on the plaintiff under s. [illegible] of the City of Bombay Municipal Act (III of 1888) requiring him to do certain work upon premises belonging to him. The work not having been done, a summons was issued against him on the 11th February 1892, requiring him to appear before the Presidency Magistrate to answer a charge of not having complied with the above notice. The summons was returnable on the [illegible] February 1892, and on that day the plaintiff appeared, but the hearing was postponed until the [illegible] March 1892. On the [illegible] February [illegible] the plaintiff wrote to the defendant [illegible]

MALICIOUS PROSECUTION—*contd.*

nature of the work he was required to do, and adding, "After this explanation I will leave the matter in the hands of the Drainage Department to do the work and will pay the expenses" In reply to

for not complying with the requirements of the notice served on him The Courts held that the non-appearance of the plaintiff on the 24th March was not caused by the receipt of this letter On the 24th idem in consequence of the non appearance of the plaintiff in obedience to the summons, a warrant of arrest was issued against him The date originally inserted in the warrant for the plaintiff's appearance before the Magistrate was the 7th April, but this date was subsequently altered to the 2nd June There was no evidence as to how or by whom this alteration was made The plaintiff, having heard on the 5th March of the issue of the warrant, appeared next day (the 26th) before the Magistrate and surrendered, showing to the Magistrate the defendant's letter of the 23rd March and explaining why he had not attended on the 24th A note was made of his surrender, and he was told by the Magistrate to appear on the 7th April The plaintiff, however, did not get the warrant cancelled. He stated that at the office of the Presidency Magistrate's Court he was informed that the warrant was with the

pal officers had left the Court before he arrived.

MALICIOUS PROSECUTION—*contd.*

of the warrant of the 24th March The evidence was that on that morning at 8 o'clock, a Municipal inspector, *H*, who was not called as a witness at the hearing, accompanied by a Police sepoy, went to the plaintiff's house and pointed out the plaintiff to the sepoy who arrested him and took him in custody to the police station and subsequently before the Magistrate He was released on depositing R25 as security for appearing when required. On the 16th June the plaintiff again appeared in the Police Court, when the summons was withdrawn The plaintiff claimed R10,000 as damages for malicious prosecution, wrongful arrest, and detention in custody and false imprisonment. The defendant denied that he had applied for or obtained the warrant for the plaintiff's arrest or that he or his servants had anything to do with the arrest or was responsible for it, save that a sub-inspector who knew nothing of the warrant had pointed out the plaintiff to a police officer at the latter's request. He further denied that the proceedings were malicious and without reasonable and probable cause. The lower Court (STARLING, *J.*) held that the de-

question was a spent warrant, and could not be properly executed, as it was, on the 31st May. As the warrant was issued by the Magistrate of

in the warrant as to taking bail, not explained in any way and which could not have been made by the police, pointed to the warrant having been, if not in the actual keeping of the Municipal authorities, at any rate under their control, and to the police

ACWORTH *v* SHAVAKSHA DHUNJIBHAI
I. L. R. 19 Bom. 485

24.———— **Right to sue**—*Information given to police—Prosecution by police after investigation—Acquittal of accused—Suit for malicious prosecution against informant of police—Maintainability.* *A* gave certain information to the police regarding *B* The police, after holding an investigation, instituted a prosecution against *B*, who was tried and

MALICIOUS PROSECUTION—*contd.*

acquitted. *B* now sued *A* for damages for malicious prosecution. *Held*, that the suit was not maintainable, as *A* had not instituted the prosecution. NARASINGA ROW *v.* MUTHAYA PILLAI (1902)

I. L. R. 26 Mad. 362

25. ———— *Conviction of plaintiff by Court of first instance, and acquittal on*

competent Court and has been acquitted on appeal The true principle is that the suit will lie if the plaintiff was ultimately acquitted on appeal by

26. ———— *Suit for damages for malicious prosecution—Plaintiff not prosecuted by defendant, though named by him as having some connection with an assault made upon him—Prosecution initiated by Magistrate suo motu* One Dudhnath Kandu lodged a complaint before a Magistrate that he had been assaulted and severely beaten by four persons whom he named. He subsequently added the name of a fifth person as one of his assailants When required to make a statement upon oath in support of his complaint, he stated *inter alia* that in the course of the assault one Mathura Prasad came from behind and called out "beat." Thereupon the Magistrate issued a warrant against Mathura Prasad also, as well as against the persons named in the complaint Mathura Prasad was acquitted, and thereafter brought a suit for damages for malicious prosecution against the complainant. *Held*, that the plaintiff had never been prosecuted by the complainant, but that his prosecution was due to the action of the Court *suo motu*, and that the plaintiff had no cause of action against the defendant complainant. DUDHNATH KANDU *v.* MATHURA PRASAD (1902) . I. L. R. 24 All. 317

defending the prosecution. Subsequently *A* died while the suit was pending The legal representatives of *A* then applied for, and obtained, leave from the Court to place their names upon the record in the place of *A*. At the hearing of the suit the question arose as to whether the cause of action survived. *Held*, that the cause of action does not survive to the legal representative of *A*, inasmuch as the pecuniary loss which *A* suffered by reason of expenses incurred in defending the prosecution is not an injury to his estate, and cannot be treated as separate and distinct from the original cause of action. *London* v. *London Road Car Co*, *4 T. L. R*

MALICIOUS PROSECUTION—*contd.*

448, referred to. KRISHNA BEHARI SEN *v.* THE CORPORATION OF CALCUTTA (1904)

I. L. R. 31 Calc. 406

28. ———— Right of appeal by legal representative—*Final judgment delivered in life-time of defendant—Subsequent death of defendant—Right of defendants' legal representative to prosecute appeal against decree.* In a suit for damages for malicious prosecution, the District Munsif decreed in plaintiff's favour and gave damages Defendant appealed to the District Judge, who confirmed the decree and dismissed the appeal Defendant preferred a second appeal, but died before it was heard. The appeal was prosecuted by defendant's legal representative, when it was objected that, inasmuch as the cause of action for damages for malicious prosecution could not survive after the death of the defendant, his legal representative was not entitled to prosecute the appeal. *Held*, that the legal representative was entitled to prosecute the appeal. PARAMEN CHETTY *v.* SUNDARARAJA NAICK (1902)

I. L. R. 26 Mad. 499

29. ———— Malicious prosecution or illegal arrest—*Interposition of judicial act between charge and imprisonment.* When any illegal arrest takes place in the course of criminal pro-

concerned, ceases as soon as he puts the law in motion When the opinion and judgment of a judicial officer comes between the charge and imprisonment of the person charged, the complainant cannot be held liable for false imprisonment. *Austin* v. *Dowling, L. R 10 C. P. 534*, followed. *Bates* v. *Pilling, 6 B & C. 38*; *Secretary of State for India* v. *Jagat Mohini Dassi, I. L. R. 28 Calc. 540*; *Lock* v. *Ashton, 12 Q B. 871*, referred to.

III of 1884. The Magistrate, who was also ... Secretary of the Municipality, issued the summons which, however, was never served An endorsement, however, was made by the serving officer that service had been effected. On the returnable date

... signed by two Magistrates, one

the service of summons, ... defendant left him wrongly served, and that the defendant left him in ignorance of any service at all and that the defendant maliciously and falsely procured the issue

MALICIOUS PROSECUTION—*contd.*

of a warrant and maliciously, without reasonable and probable cause, procured his illegal arrest. *Held*, that no action lay for illegal arrest. The service of summons is the act of the Court and the familiar procedure of identification is altogether outside the law, and is in no way legally necessary.

not lie on part only of the criminal proceedings. MONMOTHO NATH DUTT *v* THE CHAIRMAN OF THE COMMISSIONERS OF THE COSSIPORE-CHITPORE MUNICIPALITY (1905) . . 9 C. W. N. 736

30. ——— Suit for damages for malicious prosecution—*Commencement of prosecution bonâ fide—Continuance malo animo—Reasonable and probable cause—Question of fact* The plaintiff was a member of a joint Hindu family to which a house in Jambusar belonged The tax in respect of this house fell into arrears. Summary pro-

suit for damages for malicious prosecution against five defendants, namely, (i) the Municipality of Jambusar, (ii) and (iii) the members of its Managing Committee, (iv) its Secretary, and (v) its *Daroga* The first Court dismissed the suit The lower Appel-

facts failed to establish a sufficient ground for legal liability. Though a suit will lie for malicious

I. L. R. 30 Bom 37

31. ——— *Malicious prosecution—Suit for damages—Prosecution started by police upon information from defendant—Real prosecutor liable.* A private individual, upon whose information to the police a prosecution

referred to HARI CHARAN SANT *v* KAILASH CHANDRA BHUYAN (1903) I. L. R. 36 Calc. 278
12 C. W. N 817

32. ——— *Suit for damages—Information to police—Informant engaging pleader to prosecute—Reasonable and probable cause—Conviction of plaintiff by Court of first instance, if conclusive.* Where a person gives false informa-

considered in determining whether there was reasonable or probable cause, but it cannot be regarded as conclusive in favour of the defendant. BHUL CHAND PATRO *v.* PALUN BAS (*foot-note*) (1903)
12 C. W. N. 818

33. ——— *Information given to police—Prosecution by police after investi-*

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MALICIOUS PROSECUTION—*contd.*

cedure Code (Act V of 1898) a private person may be allowed to conduct a prosecution and "any person conducting it may do so personally or by pleader" and where it is permitted this is obviously an element to be taken into consideration in judging who is the prosecutor and what are his means of information and motives. The foundation of the *action for malicious prosecution is malice*, which may be shown at any time in the course of the inquiry. *Fitzjohn* v. *Mackinder, 9 C. B. N. S. 505*, referred to. Where the defendants, though their names did not appear on the face of the proceedings, except as witnesses, were directly responsible for a charge of rioting being made against the plaintiff, had produced false witnesses to support the charge at the investigation by the police, had taken the principal part in the conduct of the case before the

of the plaintiff, who was acquired, being found not to have been present at the rioting —*Held*, that they were rightly found liable for damages in an action for malicious prosecution GAYA PARSAD TEWARI v. SARDAR BHAGAT SINGH (1908)

I. L. R. 30 All. 525
L. R. 35 I. A. 189
s.c. 12 C. W. N. 1017

34. ——— Onus probandi—*Proof of plaintiff's innocence—Insufficiency of proof that the*

of the Magistrate dismissing the charge under s. 209 of the Code of Criminal Procedure, and adduced oral evidence The latter was not accepted as reliable, the falsity of the charge being taken as established solely by the said order of dismissal. *Held*, that this was insufficient, the *onus* being on the plaintiff to prove that he was innocent and that his innocence had been pronounced by the tribunal

410.

APPA

I. L. R. 24 Mad. 59

35. ——— *Innocence—Reasonable and probable cause—Malice—Judge of law and facts* In a suit for malicious prosecution in order to enable the plaintiff to succeed he must prove, *first*, that he was innocent of the charge brought against him, *secondly*, that the defendant acted without reasonable and probable cause in instituting the prosecution; and, *thirdly*, he must satisfy the Court that the defendant was actuated by feelings of malice in the course which he took. The question of reasonable and probable cause is, if the case is tried by a Judge with a jury, a question for the Judge, and not for the jury; but, in India, where there is no jury, the Judge becomes himself the Judge of the law and the facts. *Pestonji Mody* v. *The Queen Insurance Company, I. L. R. 25 Bom. 332*, referred to. HARISH CHANDRA NEOGY v. NISHI KANT BANERJEE (1901)

I. L. R. 28 Calc. 591 : s.c. 6 C. W. N. 159

36. ——— *Suit for damages for—Reasonable and probable cause.* In a suit for damages for malicious prosecution, the *onus* of proving that the plaintiff is innocent of the charge brought against him, that the defendant acted

37. ——— Evidence of reasonable and probable cause—*Conviction by Magistrate and acquittal in Sessions Court.* In a suit to recover damages for a malicious prosecution, it was proved that the case for the prosecution having been that the plaintiffs had dishonestly broken open the defendant's grain-pit, and the defence that it was done under a claim of right, the Joint Magistrate convicted the accused, but that his sentence was reversed by the Court of Session. *Held*, that, in the absence of any special circumstances to rebut it, the judgment of one competent tribunal against the plaintiffs afforded very strong evidence of reasonable and probable cause. PARIMI BAPURAZU v. BELLAMKONDA CHINNA VENKAYYA

3 Mad. 238

38. ——— *Evidence—Conviction of plaintiff by a Criminal Court* The fact that the plaintiff in a suit for damages for malicious prosecution has been convicted by a competent Court, although he may subsequently have

JADUBAR SINGH v. SHEO SARAN SINGH

I. L. R. 21 All. 26

39. ——— *Conviction by*

mining the same, ... treated by the *criminal* authorities; and when it was found that the plaintiff had actually been convicted by one Court, that might well be regarded as a weighty circumstance to show that the defendant acted from some adequate cause and not maliciously. GUNGA RAM v. HOOLASEE

3 N. W. 88

40. ——— *Malice—Negligence, inference from.* The defendant had charged the plaintiff with cheating by personation in falsely pretending that his (plaintiff's) wife had been delivered of a son, and procuring a child and passing him off as the son so born. The case was dismissed by the Magistrate, and the plaintiff brought the present suit for malicious prosecution. The defendant alleged reasonable and probable cause and

MALICIOUS PROSECUTION—*contd.*

the absence of malice The Civil Judge awarded R50,000 damages to the plaintiff Upon appeal, it was contended that the charge was not malicious, though the facts upon which it was based were allowed to be false. *Held* that this depended upon the question of the absence of reasonable and probable cause and in case of the absence, upon the cogency of the inference derivable from it The test which has received the most approbation is partly abstract and partly concrete Was it reasonable and probable cause for any discreet man? Was it so to the maker of the charge? Upon the facts of this case —*Held*, that, if defend-

GODAY NARRAIN GAJPATHI RAU *v.* ANKITAM VENKATA NARSING RAU 6 Mad. 85

41. ——— — *Guilty knowledge —Criminal intention—Proof of malice* It is not to be presumed, as a matter of course, from the existence of an overcharge in an account, although the error may be an important error, that the trades-

guilty knowledge and criminal intention W manufactured and delivered to *D* a punkha with iron supports In the bill delivered to *D* the iron-work was entered and charged as weighing four maunds *D* paid a certain sum on account, promising to pay the balance if he was satisfied that the charge for the iron-work was not exorbitant

dismissed the claim in respect of the punkha and iron-work, on the ground that the payment already made was sufficient On 3rd February *D* applied to the Judge for sanction to prosecute W for making a false claim On the next day, without making any inquiry or asking W for an explanation, and without awaiting the result of

In a suit by W against *D* to recover damages for a malicious prosecution —*Held*, that the institution of the charge in the Magistrate's Court, after the defendant had brought the matter before the Judge

MALICIOUS PROSECUTION—*contd.*

of the Small Cause Court and knew it was under the

lice, and that on the facts there was no reasonable cause for criminal proceedings. WEATHERALL *v.* DILLON . . . . . 6 N. W. 200

42. ——— — *Reasonable and probable cause—Onus probandi.—Question of malice and*

suit holding that the plaintiff had not proved ...

I. L. R. 25 Bom 332

43. ——— —*Finding on reasonable and probable cause* Plaintiff had been charged by defendant with the destruction of defendant's crop, and convicted, the conviction being upheld on appeal. A revision petition was then filed in the High Court, when the case was remanded to the lower Appellate Court, which again upheld the conviction. The High Court, however, quashed the conviction, and plaintiff now sued for damages for malicious prosecution. The District Munsif dismissed the suit, holding that defendant had reasonable and probable

MAMLATDAR—*concld.*

See MAMLATDAR, JURISDICTION OF.

See MAMLATDARS' COURTS ACT.

See WITNESS—CIVIL CASES—PERSONS COMPETENT OR NOT TO BE WITNESSES
I. L. R. 17 Bom. 299

Court of—

See SANCTION TO PROSECUTION—WHERE SANCTION IS NECESSARY OR OTHERWISE.
I. L. R. 5 Bom. 137

———— **disqualification of, to try case—**
See JUDGE—QUALIFICATIONS AND DISQUALIFICATIONS.
I. L. R. 19 Bom. 608

———— **order of—**

See BOMBAY LAND REVENUE ACT, V OF 1879, s. 87 . I. L. R. 8 Bom. 188

See HIGH COURT, JURISDICTION OF—BOMBAY—CIVIL . 9 Bom. 249

See LIMITATION ACT, 1877, ART. 47.
10 Bom. 479
I. L. R. 15 Bom. 299
I. L. R. 18 Bom. 348
I. L. R. 20 Bom. 270
I. L. R. 23 Bom. 525

See LIMITATION ACT, ART. 144—ADVERSE POSSESSION . I. L. R. 18 Bom. 348

See POSSESSION—EVIDENCE OF POSSESSION . I. L. R. 5 Bom. 387

See RES JUDICATA—JUDGMENTS ON PRELIMINARY POINTS.
I. L. R. 6 Bom. 477
I. L. R. 21 Bom. 91
I. L. R. 24 Bom. 251

———— *Math—Manager—Possessory suit in Mamlatdar's Court in a personal and private capacity—Subsequent civil suit in a representative capacity—Civil Procedure Code (Act XIV of 1882), s. 13, explanation II.* An order in a Mamlatdar's suit does not give rise to the bar to which explanation II of s. 13 of the Civil Procedure Code (Act XIV of 1882) relates. BABAJIRAO *v.* LAXMANDAS (1904)
I. L. R. 28 Bom. 215

MAMLATDARS' COURT.

See JURISDICTION OF CIVIL COURTS.
I. L. R. 31 Bom. 545

MAMLATDAR, JURISDICTION OF.

See LIMITATION ACT, 1877, s 14.
I. L. R. 18 Bom. 734.

See MAMLATDAR.

See MAMLATDARS' COURTS ACT.

I. L. R. 20 Bom. 630
I. L. R. 21 Bom. 731; 775

MAMLATDAR, JURISDICTION OF—*contd.*

1. ———— **Bom. Act V of 1864**—*Possession—Right of way. Held,* that an order passed by a Mamlatdar under Act V of 1864 (Bombay) ...

2. ———— **Jurisdiction of Mamlatdar over officers of Government sued in their official capacity**—*Bombay Civil Courts Act (Bom. Act XIV of 1869), s. 32—Bombay Revenue Jurisdiction Act (X of 1876), s. 15.* A Mamlatdar has jurisdiction, under Bombay Act III of 1876, to hear and determine a suit brought against officers of Government for acts purporting to have been done by them in their official capacity. A Mamlatdar has no power to inquire into matters not covered by the issues laid down by the Act itself. BALVANTRAO *v.* SPROTT I. L. R. 23 Bom. 761

3. ———— **Effect of order of Mamlatdar as to possession**—*Act XVI of 1838, s 1, cl. 2—Mamlatdar's Court a Revenue Court within contemplation of Bom. Reg. XVII of 1827—Maxim, "Optimus legum interpres consuetudo," application of—Remedy when suit to set aside order as to possession is barred—Title, suit based on.* On the 13th December 1863, prior to the passing of the Mamlatdars' ... defendants 1 and 2 ...

... then dead, his widow (defendant 3) executed in favour of the plaintiff a miraspatra in respect of the lands in dispute, which was also ratified by her adopted son (defendant 4). In 1871 the plaintiff sued to recover possession of the lands. Defendants 1 and 2 contended, *inter alia*, that the lands were their private property and had never ... of H or his widow. The suit ...

... affirmative, being of opinion that ... was in possession at the time the miraspatra was executed to the plaintiff. The defendants appealed, and the Subordinate Judge confirmed the lower Court's decree. He treated the Mamlatdar's Act, and order as one made under the Mamlatdars' Act, and as such, binding conclusively on the defendants, as it had not been set aside within three years from its date. On appeal to the High Court:—*Held,* that the Subordinate Judge with appellate powers was wrong in treating the Mamlatdar's order as passed under the Mamlatdars' Act. The order

MAMLATDAR, JURISDICTION OF—*contd.*

was one of a Revenue Court under s 1, cl 2, of

regarded as a Revenue Court empowered to deal with a claim to possession, and that in construing that Act the maxim "*optimus legum interpres consuetudo*" might be properly applied The

ant 3 was in possession in 1856 when she granted the miraspatra, the appellant could not have acquired any title by possession before the plaintiff's suit in 1871. BAPU KHANDU *v.* BAJI JIVAJI I. L. R. 14 Bom. 372

4. ———— Parties, substitution of—*Code of Civil Procedure (Act XIV of 1882), Ch. XXI, ss 361-372, applicability to a suit in a Mamlatdar's Court—Procedure.* The Bombay Mamlatdars' Act (III of 1876) makes no provision for the substitution of the names of heirs in the case of the death of one of the parties, and Ch. XXI of the Code of Civil Procedure (Act XIV of 1882) cannot be held to apply to proceedings in a Mamlatdar's Court Accordingly, where a possessory suit was filed by two persons in a Mamlatdar's Court, and one of

no alternative but to dismiss the suit. GANPATRAM JEBHAI *v.* RANCHHOD HARIBHAI I. L. R. 17 Bom. 645

5. ———— Superintendence of High Court—*Mamlatdars' Courts Act (Bom. Act III of 1876), ss. 15, cl. (a), sub-cls. (1) and (2), and 18—Execution of decree for possession against a third party.* A third party cannot be ousted from possession of property in the execution of a decree for possession made by a Mamlatdar against a defendant under Bombay Act III of 1876, and it is beyond the power of Government by Resolution to give a Mamlatdar authority to oust a third party. *A* obtained an order in a Mamlatdar's Court against *G* for possession of a house, and in execution *N*, who

MAMLATDAR, JURISDICTION OF—*contd.*

High Court would not interfere in its extraordinary jurisdiction. NATHEKHA *v.* ABDUL ALLI I. L. R. 18 Bom. 449

6 ———— Possessory suit—*Mamlatdars' Courts Act (Bom Act III of 1876), s. 15—Possession of mortgagee.* The possession by a

7. ———— Possessory suit by landlord—*Mamlatdars' Courts Act (Bom. Act III of 1876),*

See BHIMAJI JAYAJI PATEL *v.* GOPALA MAHADU SALE . . I. L. R. 20 Bom. 264 note

8. ———— Dispossession of a third person not a party in execution of decree

9. ———— Delivery of possession in execution of a decree of a Civil Court—*Subsequent lease to the judgment-debtor—Refusal of the Mamlatdar to restore possession after the expiration of the lease—Suit for possession—Cause of action* *V* obtained possession of land from *B* in execution of a decree of a Civil Court After obtaining possession *V* leased the land to *B*. On *B's* refusal to vacate the land on the expiration of the lease, *V* brought a possessory suit in the Mamlatdar's Court. The Mamlatdar rejected the plaint, holding that he ought not to order restoration of possession of the land again and again. *Held*, that a fresh cause of action accrued to *V* on the refusal of *B* to give possession on the expiry of the lease, and that the Mamlatdar was wrong in declining to accept the plaint. VINAYAK VISHWANATH BHOPLE *v.* BALU . I. L. R. 20 Bom. 491

10. ———— Irregular decree of Mamlatdar made by consent of parties—*Mamlatdars' Courts Act (Bom. Act III of 1876).* The applicant brought two possessory suits against the opponent in the Mamlatdar's Court for the

MAMLATDAR, JURISDICTION OF— *contd.*

recovery of certain pieces of land. By consent decrees were passed *in these suits that, unless the*

tendered to the applicant, but had been wrongfully refused by him. He ordered execution to issue as to costs, but declined to make any order as to possession The applicant thereupon applied to the High Court in its extraordinary jurisdiction and alleged that the money had not been duly tendered. *Held*, that the decrees were such as the Mamlatdar could not legally make under the provisions of the Mamlatdars' Courts Act (Bombay Act III of 1876), and the consent of parties could not give him power to do so. RAMRAO TATYAJI PATIL *v.* BABAJI DHONJI BIBVE **I. L. R. 20 Bom. 630**

11. ———— Possessory suit against lessee's heirs after the determination of the term—*Death of lessee during the term of lease* If heirs succeed to their fathers' rights under a lease, the jurisdiction of the Mamlatdar in a suit for possession arises on the determination of that lease against such heirs as though the original tenant were then alive AMARCHAND HINDUMAL *v.* SAVALYA **I. L. R. 21 Bom. 738**

12. ———— Dispossession of a third person not a party to suit—*Remedy of person so dispossessed—Civil Procedure Code, 1882, s. 622. G* got a decree for possession against *P* in a Mamlatdar's Court. In execution the Mamlatdar directed the ouster of *C*, who was in possession and who was not a party to the decree. *Held*, that the Mamlatdar's order for the execution of the decree by the ouster of *C* was without jurisdiction, and that it should be set aside under s 622 of the Civil Procedure Code CHINAYA *v* GANGAVA **I. L. R. 21 Bom. 775**

13. ———— Person ousted in execution no party to the decree—*Suit for possession in Mamlatdar's Court by person ousted* A person ousted in execution of a decree of the Mamlatdar's Court, to which he was no party, can himself bring a suit for possession in the Mamlatdar's Court against the person by whom he was ousted, and the defendant in such a suit cannot rely on the fact of his having obtained possession in execution of a decree *against other parties as a bar to the jurisdiction of* the Mamlatdar. NINGAPPA *v* ADVEPPA **I. L. R. 24 Bom. 397**

14. ———— Remedy as between joint owners put into possession under decree of Civil Court In execution of the decree obtained in 1886 in a Civil Court, the plaintiff and the defendants were put into joint possession of certain land. The plaintiff subsequently brought this suit in the Mamlatdar's Court to recover possession of the said land, alleging that the defendants, by taking cocoanuts from trees standing thereon, had dispossessed

MAMLATDAR, JURISDICTION OF— *concld.*

him of the said land ...

growing thereon. *Held*, that the Mamlatdar had no jurisdiction to pass the decree. The Civil Court had passed a decree giving the parties joint possession of the land, and the Mamlatdar had no jurisdiction to override that decision and to place the plaintiff in exclusive possession. By the decree of the Civil Court they were determined to be joint owners, and the remedy in case of unequal possession or taking of produce was a suit for an account or for partition. BHAU *v.* DADE KRISHNAJI BHAGVI . . **I. L. R. 21 Bom. 777**

15. ———— Possessory suit—Jurisdiction—*Previous order of Magistrate under s 145, Criminal Procedure Code (Act V of 1898).* On the 22nd of December 1900 a Magistrate passed an order under s. 145 of the Criminal Procedure Code (Act V of 1898), deciding that, on the 20th of October 1900 one Sayad Martooza was in actual possession of certain land. On the 6th of March 1901 the plaintiff brought this suit against the defendants (of whom the said Sayad Martooza was one) to recover possession of the said land, alleging that on the 10th of October 1900 the defendants had wrongfully dispossessed him of it. The Mamlatdar held that, having regard to the ... 22nd of December 1900,

Bom 387, distinguished. NAGAPPA *v.* BADRUDIN (1901) . . . **I. L. R. 26 Bom. 353**

MAMLATDARS' COURTS ACT (BOM. ACT V OF 1864).

See EXECUTION OF DECREE—MODE OF EXECUTION GENERALLY—POWERS OF OFFICERS IN EXECUTION. **5 Bom. A. C. 158**

See HIGH COURT, JURISDICTION OF—BOMBAY—CIVIL . **9 Bom. 249**

See JURISDICTION OF REVENUE COURT—BOMBAY REGULATIONS AND ACTS. **I. L. R. 1 Bom. 624**

See LIMITATION ACT, 1877, ART. 47. **9 Bom. 424**
I. L. R. 5 Bom. 25; 27
10 Bom. 479
I. L. R. 18 Bom. 348

See MAMLATDAR, JURISDICTION OF. **5 Bom. Cr. 46**

See PENAL CODE, S. 188 **3 Bom. Cr. 53**
5 Bom. Cr. 21

See RIGHT OF SUIT—COSTS. **8 Bom. A. C. 29**

MAMLATDARS' COURTS ACT (BOM ACT III OF 1876).

See LIMITATION ACT (XV OF 1877), APPLICABILITY OF I. L. R. 30 Bom. 415

See MAMLATDAR, JURISDICTION OF.

See MAMLATDAR'S COURT.

See MINOR—REPRESENTATION OF MINOR IN SUITS . I. L. R. 21 Bom. 88
I. L. R. 24 Bom. 238

See PRACTICE—CIVIL CASES—REFERENCE TO HIGH COURT
I. L. R. 21 Bom. 806

See SPECIFIC RELIEF ACT, s. 9
I. L. R. 15 Bom. 685

———— exercise of powers conferred by—

See BOMBAY LAND REVENUE CODE (BOM. ACT V OF 1879), s. 15
I. L. R. 25 Bom. 318

1. ———— Jurisdiction—*Possessory suit—Suit against Collector in his official capacity—Mamlatdars' jurisdiction to entertain the suit* Mamlatdars empowered by the Mamlatdars' Courts

2. ———— "Houses"—"Premises." The intention of Bombay Act III of 1876, as stated in the

Court consequently extends over a house for pur-

Ahmedabad. BAI JAMNA *v.* BAI JADAV
I. L. R. 4 Bom. 168

———— s. 3, cl. 1—*Head karkun taking temporary charge of office of Mamlatdar—Decree*

MAMLATDARS' COURTS ACT (BOM. ACT III OF 1876)—*contd.*

———— s. 3—*concld.*

III of 1876). He is an officer exercising on an extraordinary occasion some such powers under the

1. ———— s. 4—*Jurisdiction of Mamlatdars' Courts in redemption suits—Construction of sta-*

I. L. R. 11 Bom. 599

2. ———— *Award of partial*

3. ———— *Jurisdiction—Disputes between riparian proprietors.* A Mamlatdar's Court has no jurisdiction to determine questions arising between riparian proprietors as to the amount of water each can take from a stream. A suit will lie in a Mamlatdar's Court where a person has been dispossessed or deprived of the use, or when he has been disturbed or obstructed, or when attempt has been made to disturb or obstruct him in the use of water of which he is in possession or was in possession within six months before suit. BABAJI RAMJI *v.* BABAJI DEVJI
I. L. R. 23 Bom. 47

4. ———— *Jurisdiction of Mamlatdar—Water-course—Riparian owners, right*

special custom, he has no right to dam it back, or exhaust it so as to deprive other riparian owners of like use. What would constitute an unreasonable

MAMLATDARS' COURTS ACT (BOM. ACT III OF 1876)—contd.

——— s. 4—*contd.*

5. ——— cl. 2—*Jurisdiction to grant an injunction—Possession—Physical possession—Disturbances of possession* Under s. 4, cl. 2, of the Mamlatdars' Act (Bombay Act III of 1876), a Mamlatdar can grant an injunction in those cases only in which an interruption of physical possession or enjoyment is sought to be removed DESAI MALABHAI BAPUBHAI v. KESAVBHAI KUBERBHAI
I. L. R. 12 Bom. 419

6. ——— *Jurisdiction of Mamlatdar—Removal of earth from field—Profit of*

I. L. R 7 Bom. 425

7. ——— *Injunction—Possession—Constructive possession—Landlord and tenant* A landlord who has only a constructive possession of lands through his tenant cannot obtain relief by way of injunction under cl 2 of s. 4 of the Mamlatdars' Act (Bombay Act III of 1876). *Desai Malabhai Bapubhai* v. *Keshavbhai Kuberbhai, I. L. R 12 Bom 419,* followed. NEMAVA v. DEVANDRAPPA **I. L. R. 15 Bom. 177**

8. ——— *Jurisdiction—Suit for injunction for disturbance of possession—Possession of landlord by tenant—Physical possession—Right of suit* There must be physical possession to enable an aggrieved person to invoke the Mamlatdar's assistance in a case falling under the second clause of s. 4 of the Mamlatdars' Courts Act (Bombay Act III of 1876) A person who is in possession through his tenant cannot sue for an injunction for

9. ——— *Natural water-course—Riparian proprietors—Obstruction to the flow of water—Injunction—Jurisdiction. Held* by the Full Bench (WHITWORTH, J., dissenting), that a *Mamlatdar* has, under the Mamlatdars' Courts Act (Bom. Act III of 1876), jurisdiction to inquire into a case in which it is alleged that an upper riparian proprietor has unduly interfered with the flow of water in a natural water-course from which a lower riparian proprietor also takes water. SOM GOPAL BHOGALE v VINAYAK BHIKAMBHAT (1900)
I. L. R. 25 Bom. 395

10. ——— *Mamlatdars' Courts Act (Bom Act III of 1876), s 4—Mamlatdars' Court Act (Bom II of 1906), s. 5—Suit for possession of a house situate within a town—Jurisdiction—Act of procedure—Repealed statute.* A suit for the recovery of possession of a house situate within a town was instituted in the Court of a Mamlatdar while the Mamlatdars' Courts Act (Bom Act III of 1876) was in force, but before the suit was finally decided that Act was repealed and the Mamlatdars' Courts Act (Bom. Act II of 1906) had come into operation. *Held,* that the Mamlatdar had no jurisdiction to decide the suit. *Per* CURIAM—The repealed statute is, with regard to any further operation, as if it had never existed. *Regina* v. *Denton, 18 Q B. 761,* followed and applied. VAJECHAND v. NANDRAM (1907) **I. L. R. 31 Bom. 545**

MAMLATDARS' COURTS ACT (BOM. ACT III OF 1876)—contd.

——— s. 4—*concld.*

——— ss. 4, 15, 18 and 21—*Limitation Act (XV of 1877), Sch II, Art 47—Possessory suit in Mamlatdar's Court—Rejection of plaint—Subsequent suit for possession on title in ordinary Court—Limitation* A plaintiff suing in the ordinary Courts on his title for the possession of land is not bound by reason of anything contained in Art. 47, Sch. II of the Limitation Act (XV of 1877) or s. 21 of the Mamlatdars' Courts Act

suit on title. TUKARAM v HARI (1904)
I. L. R. 28 Bom. 601

1. ——— s 8—*Amendment of plaint—*

Act is an amendment in writing on the plaint. CHENBASAYA v. RUDRAPA
I. L. R. 14 Bom. 581

2. ——— *Suit for possession ... Rejection of plaint*

fendant ... plaintiffs ... Mamlatdar's ... 2 and 3. ... ree was ... appli- ... he first ... and 3), ... he land- ... ng that ... me suit ... misjoinder of causes of ac... different ... *Held,* ... plaint and ... dant, who ... heard the suit ... had obtained possession under a decree which had

MAMLATDARS' COURTS ACT (BOM. ACT III OF 1876)—*contd*

——— s. 8—*concld.*

been reversed, could not improve his position by letting third parties into possession as his tenants They stood in the shoes of their lessor and were jointly liable with him to be ousted by proceedings taken in the Mamlatdar's Court. ANTU v VISHNU GOVIND BAWA . . . I. L. R. 22 Bom. 630

——— s. 13.

See RES JUDICATA—JUDGMENTS ON PRELIMINARY POINTS I L. R. 6 Bom. 477
I L. R. 21 Bom 91
I. L R. 24 Bom. 251

——— ——— *Limitation Act (XV of 1877), Sch II, Art 47—Possessory suit—Mamlatdar's Court* In a possessory suit instituted in a *Mamlatdar's* Court, neither the plaintiff nor the defendant appeared at the hearing The case was therefore disposed of by the *Mamlatdar*, under the first part of s. 13 of the Mamlatdars' Courts Act (Bombay Act III of 1876) *Held*, that the order of the *Mamlatdar* was an order rejecting the plaint A regular suit for possession having been brought in a Civil Court more than three years after the above order of the *Mamlatdar* —*Held*, that the suit was time-barred under Art 47, Sch II, of the Limitation Act (XV of 1877) PURUSHOTTAM DAYARAM v CHATARGIR GURU ARJUNGIR (1900)
I. L. R. 25 Bom 82

1. ——— s. 15, cl. (*c*)—*Mamlatdar's power to try subsequent suit in respect of the same subject-matter—Practice—Parties* The applicant had been dispossessed of certain land, in execution of a decree obtained by the opponent in the Court of the Mamlatdar of Karad, under cl (*c*) of s 15 of the Mamlatdars' Act, III of 1876, to which he (the

judicata The applicant applied to the High Court under its extraordinary jurisdiction. *Held*, that the decree made by the Mamlatdar in the former ... Courts ... by him ... present ... party ... it was

I. L. R. 10 Bom. 10

2. ——— *Suit for injunction—Person dispossessed in execution of decree—*

MAMLATDARS' COURTS ACT (BOM. ACT III OF 1876)—*contd.*

——— s. 15—*concld.*

of his land in execution of a decree of a Civil Court against a third party should proceed for the alleged obstruction of his possession not by a suit in the Mamlatdar's Court, but by an application under s. 332 of the Code of Civil Procedure (Act XIV of 1882), or by a regular suit GULABBHAI GOPALJI v JIVABHAI RATANJI . I. L R. 13 Bom. 213

1. ——— s. 17—*Decree for possession—Obstruction to execution of decree—Power to use force in execution of decree* When a Mamlatdar passes a decree for possession, it is his duty, under s. 17 of Bombay Act III of 1876, not merely to issue orders to the village officers to execute the decree, but also to see that effect is really given to his decision For this purpose he may use force, if necessary, to eject the person against whom the decree is passed. SHANKAR RAMLAL DIKSHIT v. MARTANDRAO BHAU TIPNIS I. L. R. 14 Bom. 157

2 ——— and s. 4—*Mamlatdar's power to levy costs—Costs of litigation in High Court.* A Mamlatdar acting under s 4 of Bombay

III of 1876 the Mamlatdar had the same power

Act. NEMAVA v. DEVANDRAPPA
I. L. R. 16 Bom. 238

3. ——— *Mamlatdar, duty*

MAMLATDARS' COURTS ACT (BOM. ACT III OF 1876)—*concld.*

——— s. 17—*concld.*

from interest or other cause unlikely to give proper effect to it. RAKHMA *v* TULAJI

I. L. R. 19 Bom. 675

4. ——— and s. 18—*Procedure applicable to such Courts.* Where a person is dispossessed in execution of a Mamlatdar's decree

in the Act of ...
of C
the
and

SHAH AHMED SAHEB *v.* MARUTI BIN RAMBHAJI

I. L. R. 13 Bom. 552

5. ——— *Mamlatdar's decree, by whom it may be questioned—Reference to High Court by Collector—Practice—Procedure—Right of suit.* A party aggrieved by a Mamlatdar's decree

I. L. R 14 Bom. 371

6. ——— *Possessory suit—Decision—Duty of the Mamlatdar to order village officers to give effect to his order—Duty absolute and unqualified—Limitation Act (XV of 1877) not applicable.* Where a Mamlatdar's decision awards possession, s. 17 of the Mamlatdars' Courts Act (Bombay Act III of 1876) imposes on him the duty to issue an order to the village officers to give effect thereto. The duty is in no sense conditional on an application being made to the Mamlatdar for the purpose; it is absolute and unqualified. Where such imperative duty is imposed upon a Court, then

——— s. 18—*Right of suit—Suit to set aside Mamlatdar's order* No suit will lie to set aside an order validly passed by a Mamlatdar under Bombay Act III of 1876, though such an order may be superseded by a decree of a Civil Court. TULJARAM *v.* BAMANJI KHARSEDJI I. L. R. 19 Bom. 828

MAMLATDARS' COURTS ACT (BOM. ACT II OF 1906).

——— ss. 7 and 23—*General Clauses Act (I of 1904), s. 7—Repeal of the Mamlatdars' Courts Act (Bombay Act III of 1876) by the Mamlatdars' Courts Act (Bombay Act II of 1906)—Suit commenced under the former Act—Effect of the latter Act.* The plaintiff filed a suit on the 24th February 1906 under the Mamlatdars' Courts Act (III of 1876) On the 20th October 1906 the Mamlatdars' Courts Act (II of 1906) came into operation, and by s. 2

be to affect a legal proceeding in respect of a right which had accrued under the old Act. To disturb

——— s. 19, cl. (*b*)—*Possessory suit—Landlord and tenant—Trespasser dispossessing the tenant during the duration of tenancy—Landlord suing to recover possession within six months from the determination of the lease.* On the 5th June

her was concerned. *Held,* that the remedy having been to bring his suit under clause (*b*) of s 19 of the Mamlatdars' Courts Act (Bombay Act II of 1906), on the expiry of the tenancy, the fact that a trespasser got into possession during the continuance of the tenancy, but more

MANAGEMENT OF ESTATE BY COURT.

See CRIMINAL PROCEDURE CODE, s 145.

I. L. R. 29 Calc. 392

MANAGEMENT OF ESTATE BY COURT—*concld.*

1. ——— Summary enforcement of contract made by the Court—*Izarah lease—Lessee—Application by a person not a party to a suit.* A Court has complete power to enforce summarily a contract made by it when managing or administering an estate, whatever that contract may be. Such power of enforcing subsisting contracts made by it is not affected by the fact that the Court has ceased to manage the estate before such contract is carried out by reason of the dismissal of the suit under an order in which the Court had derived its power of management. Case in which the Court passed summarily such an order on the application of a lessee, not a party to the suit in which the order completing the agreement for lease had been passed, and at the time when such suit was no longer in existence. SURENDRO KESHUB ROY *v.* DOORGA SOONDERY DOSSEE. *Ex parte* SAPODAPERSAUD SOOR . . . I. L. R. 15 Calc. 253

2. ——— *Rights of judgment-creditors.* There is no law or procedure under which a Court can, on the mere application of the parties interested, take over the management of properties belonging to an estate, and pass such orders as would place them entirely beyond the reach of the judgment-creditors of the estate. PURAN MAL *v.* JANKI PERSHAD SINGH (1901) . . I. L. R. 28 Calc. 680
s c. 6 C. W. N. 114

MANAGER.

See ACT XL OF 1858, s. 18
I. L. R. 4 Calc. 929

See BANKERS . I. L. R. 16 All 88

See BENGAL TENANCY ACT, s. 95
I. L. R. 22 Calc. 634
I. L. R. 23 Calc. 522
4 C. W. N. 769
10 C. W. N. 437

See COMMON MANAGER.

See COURT OF WARDS.
I. L. R. 33 Calc. 273

See FACTORIES ACT (XV of 1881), ss. 12, 15 (*1*) (*e*) . I. L. R. 29 Bom. 423

See HINDU LAW—JOINT FAMILY
I. L. R. 31 Mad. 318

See MAGISTRATE . I. L. R. 32 Calc. 287

——— application for—

See APPEAL—ACTS—BENGAL TENANCY ACT . . I. L. R. 14 Calc. 312

See BENGAL TENANCY ACT, s. 93
I. L. R. 20 Calc. 881

See LUNATIC.

——— appointment of, by Court of Wards—

See RIGHT OF SUIT—INTEREST TO SUPPORT RIGHT . 13 B. L. R. Ap. 14

MANAGER—*contd.*

——— liability of landlord for acts of—

See RIOTING . I. L. R. 28 Calc. 504

——— of company—

See POSSESSION, ORDER OF CRIMINAL COURT AS TO—PARTIES TO PROCEEDINGS . . I. L. R. 21 Calc. 915
I. L. R. 25 Calc. 423

——— of Court of Wards—

See PUBLIC SERVANT
I. L. R. 28 Calc. 344

——— of endowment—

See HINDU LAW—ENDOWMENT.

——— of endowment, removal of—

See ACT—1863—XX, s. 14.
I. L. R. 24 Mad. 243

——— of indigo concern—

See POSSESSION, ORDER OF CRIMINAL COURT AS TO—PARTIES TO PROCEEDINGS . . . 7 C. W. N. 208

——— of joint family—

See ARBITRATION—REFERENCE OR SUBMISSION TO ARBITRATION.
I. L. R. 27 Bom. 287

See HINDU LAW—JOINT FAMILY—

NATURE OF JOINT FAMILY, AND POSITION OF MANAGER;

DEBTS, AND JOINT FAMILY BUSINESS;
7 C. W. N. 725

POWERS OF ALIENATION BY MEMBERS—MANAGER.

See LIMITATION ACT, 1877, s. 19 (1871.

See MALABAR LAW—JOINT FAMILY.

See PARTITION—JURISDICTION OF CIVIL COURTS IN SUITS RESPECTING PARTITION . . I. L. R. 28 Calc. 769

——— of land—

See POSSESSION, ORDER OF CRIMINAL COURT AS TO—PARTIES TO PROCEEDINGS . . . 7 C. W. N. 825

——— of lunatic's estate—

See LUNATIC . I. L. R. 30 Calc. 973

——— of railway, agent of—

See RAILWAYS ACTS, s. 77.
I. L. R. 24 Calc. 306

——— service of summons on—

See CIVIL PROCEDURE CODE, 1882, s. 80.
13 C. W. N. 490

MANAGER—*concld.*

———— *Powers of Manager—Bengal Tenancy Act (VIII of 1885), ss. 93, 98—Mortgage by manager—Restraint on powers of co-owners while estates under management—Mortgage by co-owner of his share, effect of—Appeal to Privy*

include the power to mortgage or to sell the property. The restraint put upon the co-owners by s. 98, sub-s. (3), of the Act, whilst the estate is under management, is co-extensive with the power conferred on the manager; it does not extend to the exercise of individual rights Where one of the co-owners of

ager and as such was entitled to the benefit of a decree for redemption in a suit on a mortgage of the estate by the manager On an objection taken that the appeal had not been properly admitted:—*Held*, that the case was governed by *Webb v. Macpherson, I L R. 31 Calc. 57 L. R 30 I A 238*, and that the certificate of leave to appeal was sufficient. AMAR CHANDRA KUNDU *v* SHOSHI BHUSAN ROY (1904) . I. L. R. 31 Calc. 305
s.c. 8 C. W. N, 225
L. R. 31 I. A. 24

MANAGER OF ATTACHED PROPERTY.

See ACT XI OF 1859, s 5.
12 B. L. R. 297
L. R. 1 I. A. 89

See RECEIVER

1. ———— appointment of manager—*Discretion of Court—Civil Procedure Code, 1882, s 503 (1859, s. 249)*. It is discretionary with the Court to appoint a manager under this section. BROJENDER NARAIN ROY *v*. KASSESSUR ROY
1 W. R. Mis. 15

SINGH *v*. OTTOM RAM SURUN LALL
23 W. R 287

2. ———— *Consent of decree-holder—Civil Procedure Code, 1859, s. 243* A

3. ———— *Civil Procedure Code, 1859, s 243.* In appointing a manager under s. 243, Act VIII of 1859, a Court must exercise a reasonable discretion, and the sole reason for such appointment ought to be that, whilst the debts would be equally satisfied in that manner, and as surely as in any other, the arrangement would at the same time save the debtor from great prospective loss. ZUHOORUN *v*. NUJEEBOODDEEN
11 W. R. 505

MANAGER OF ATTACHED PROPERTY—*contd.*

4. ———— *Lease or mortgage of attached property—Civil Procedure Code, 1859,*

5. ———— *Civil Procedure Code, 1859, s. 243—Ground for allowing time to pay decree.* A Judge is not bound, under s 243, Act VIII of 1859, to allow a judgment-debtor a year's time to pay his decree, without the debtor assigning some good or sufficient reason for the delay, *e g*, that the money due to the judgment-creditor could be raised equally well in some other way than by immediate sale, and that the creditor would not by that arrangement be put to loss. RAM RUTTUN NEOGY *v*. LAND MORTGAGE BANK OF INDIA . . . . . . 17 W. R. 193

6. ———— *Ground for allowing time to pay decree—Civil Procedure Code, 1859, s. 243.* There should be a reasonable probability of the debt being discharged by the profits of the estate within a reasonable short period. SURUJ NARAIN SAHEE *v*. RAM PERSHAD MISSER
21 W. R. 146

7. ———— *Inquiry as to value of property—Rules of High Court, 11th July 1871.* Where property of a judgment-debtor is already in charge of a manager duly appointed, and it is proposed to put other properties belonging to the debtor also under his charge, an attachment of the property is necessary before appointing the manager to take charge of them. The rule of Court of 11th July 1871 does not limit the time for which a ... two years. The ... iscretion.

. R. 275

AJOODHYA DOSS *v*. DOORGA DUTT SINGH
17 W. R. 101

8. ———— *Time in which*

judgment-debtor where it would have ... years to pay off the debt from the profits of the property. But the High Court saw no objection to the appointment of a manager to dispose of portions of the property by sale, mortgage, and otherwise, under s 243, Code of Civil Procedure, if the debt could thereby be cleared off in six months. MOHINEE MOHUN DOSS *v* RAM KANT CHOWDHRY
15 W. R. 323

9. ———— *Distribution of estate under manager—Priority of creditors* After *A*, a judgment-creditor, had attached property of his debtor under the decree, the Court, at the in-

MANAGER OF ATTACHED PROPERTY—*contd*

under s 270, to some priority over the other creditors. The Court, finding that *A's* debt might be paid out of the proceeds of the estate in two years, and at the same time funds be left for the reduction of the other debts, ordered that it should be so PEAREE DEBEA *v* BOYDONAUTH BAUGH

Marsh. 413 : 2 Hay 537

10. ——— *Causing delay in giving satisfaction of decrees* Numerous decrees had been obtained against the defendants, part of whose property consisted of a village which was attached in 1859 The village was under the management of the Collector, whom the Courts below

decree-holders. The petitioner applied to the Civil Court for an attachment of the village in execution of his decree. The application was refused on the ground that the village was already under attachment in satisfaction of other decrees Upon appeal the High Court ordered a sale of the village, the sale-proceeds to be dealt with in accordance with the proper provisions of the Code, on the ground that it could never have been intended to give the Civil Courts for an indefinite length of time the management of the encumbered estates of the country, or to compel decree-holders to submit to such an unreasonable delay as fifteen or twenty years before obta

DADA SAHIB . . . . 5 Mad. 212

11. ——— *Power of Court to appoint manager—Decree on specially registered bond—Registration Act, 1866, s 55* Where the lower Appellate Court passed a decree on a specially-registered bond, setting aside an arrangement made by the first Court as to payment by instalments and its order about interest;—*Held*, that s 55 of the Registration Act applied to the case, and that the High Court was competent, in subse-

BIBEE . . . . 10 W. R. 1..

12. ——— *Ground for rejecting application—Civil Procedure Code, 1859, s. 243* The fact of the judgment-debtor's possessing properties other than the one attached, is no ground for rejecting an application under s. 243,

MANAGER OF ATTACHED PROPERTY—*contd.*

Act VIII of 1859, for the appointment of a manager. DEBEUMARI BIBEE *v* RAM LAL MOOKERJEE

3 B. L. R. Ap. 107 : 12 W. R. 6

13. ——— *Circumstances necessary for proof of necessity for order—Civil Procedure Code, 1859, s 243.* Where a judgment-debtor asks that a manager be appointed under Act VIII of 1859, s 243, he must show that the circumstances are such that the order for which he applies would be a reasonable and proper one. He should not only show what is the income of the particular property and the amount due under the decree, but he should also show whether that income is unincumbered, and if incumbered, to what extent. He cannot ask the Court to make an order under this section with respect to one single property before

.. L. R. 100

14. ——— *Civil Procedure Code, 1859, s 243—Order staying sale of property.*

2 N. W. 1

15 ——— *Civil Procedure Code, 1859, s 243—Decree on mortgage* S 243, Act VIII of 1859, does not apply to a decree on a mortgage, when the decree declares that certain property is to be sold in satisfaction of the mortgage-debt. A manager therefore cannot be appointed under s 243 in such a case. WOMDA KHANUM *v.* RAJROOP KOAR

I. L. R. 3 Calc. 335 : 1 C. L. R. 295

16. ——— *Power of Court to order payment out of proceeds of sale.* The Court has no power to order that the manager should, out of the proceeds of the estate, satisfy the claims of persons other than decree-holders THAKOOR CHUNDER *v* CHOWDHRY CHOTEE JINGH

Marsh 261 : 2 Hay 112

17. ——— *Civil Procedure Code, 1859, s. 243—Power of Courts in mofussil to appoint manager pending suit of administration. Held, per* PHEAR, J., that s 243, Act VIII of

Court's manager, under such circumstances, only acquires a right to charge his costs and expenditure against the parties to the suit or persons who have knowingly placed themselves in a like position relative to his management, and even then he can

MANAGER OF ATTACHED PROPERTY—*contd.*

only do so in respect of such expenditure as has been expressly sanctioned by the Court. MORAN *v.* MITTU BIBEE . . I. L. R. 2 Calc. 58

18. ———— *Civil Procedure Code, 1859, s 243—Effect on attachment of appointing manager.* An estate does not cease to be under attachment merely by the appointment of a manager under s 243, Act VIII of 1859. MOHABEER PERSHAD SINGH *v.* COLLECTOR OF TIRHOOT 13 W. R. 423

19. ———— *Power of Court to deal with property under manager.* The fact of a manager having been appointed to realize the profits of a property with a view to satisfy certain

reasonable time, causing the decree to be executed in the usual way. DIN DYAL LALL *v* RAM RUTTUN NEOGHEE . . . . . 16 W. R. 46

20. ———— *Power of manager—Officer of Court* A manager appointed under Act VIII of 1859, s. 243, so far as he is an officer of

the subject of the property itself, he must do so as the agent of the judgment-debtor, and not properly as an officer of Court. *In the matter of the petition of* TEIL & Co. TEIL & Co. *v* ABDOOL HYE 19 W. R. 37

21. ———— *Power of manager under Act VIII of 1859, s 243—Notice of enhancement—Civil Procedure Code (Act X of 1877), s. 503.* A manager appointed under s. 243 of Act VIII of

22. ———— Removal of manager—*Omission to file accounts.* Where a manager had not filed accounts and the Judge found that the management could not be continued with any prospect of

23. ———— *Summary remov-*

MANAGER OF ATTACHED PROPERTY—*concld.*

24. ———— Death of manager—*Discretion of Courts as to renewing managership* Where

MANAIKATS.

See TANJORE CUSTOM I. L. R. 27 Mad. 51

MANDAMUS.

See CALCUTTA MUNICIPAL ACT, 1863, s. 151 . . . 8 B. L. R. 433

See LEASE . I. L. R. 36 Calc. 271

See RULES OF HIGH COURT, CALCUTTA. 8 B. L. R. 433

See SPECIFIC RELIEF ACT. I. L. R. 31 Bom. 319

———— action for—

See CALCUTTA CORPORATION. I. L. R. 36 Calc. 671

———— order absolute for—

See LETTERS PATENT, HIGH COURT, cl. 15. 8 B L. R. 433

———— power of High Court to issue—

See TRANSFER OF CRIMINAL CASE—GENERAL CASES . I. L. R. 2 Calc. 278

1. ———— Ground for issue of writ— ... in respect of civil suit pending—

2. ———— *Discretion of* ... *criminal charge*

the charge. *Ex parte* VARADARA... 1 Mad. 66

MANDAMUS—*contd.*

3. ———————— *Magistrate finding evidence does not amount to offence charged—Error of law* A charge was made against the accused of using criminal force under s 141 of the Penal Code. The Police Magistrate heard the evidence for the prosecution, and, without disbelieving it, decided that it did not amount to the offence charged. *Held*, that, assuming that an error of law

his jurisdiction and heard the case. EMPRESS *v.* GASPER . . I. L. R. 2 Calc. 278

4. ———————— *Beng Act VI of 1863, s 180—Duties of Justices of Peace for Town of Calcutta—Supplying tanks for water* Under s 18 of Bengal Act VI of 1863, the Justices of the Peace are required to keep up and maintain the existing tanks, reservoirs, etc., vested in them ; or to substitute a new tank, reservoir, etc, for any existing tank, reservoir, etc, i e., new works of a like kind, each for each, in place of the old. There-

5. ———————— *Matter concerning revenue—License to sell liquor—Jurisdiction of High Court—Act XI of 1849, s. 9—Beng Act III of 1873, s 1—21 Geo III, c 70, s 8* Under Act XI of 1849, s 9, as amended by Bengal Act III of 1873, s. 1, whenever a license is granted for the retail sale of intoxicating liquors, the Collector is authorized to demand " such fee, tax, or duty as

CHUNDRA SHAW *In the matter of* ACT XI OF 1849 AS AMENDED BY BENGAL ACT III OF 1873 11 B. L. R. 250

6. ———————— *Company—Enforcement of director's right—Power of High Court.* The High Court has jurisdiction to enforce by mandamus the right of persons duly elected directors of a joint-stock company to exercise the functions of director of such company, if such rights are interfered with by the company acting through its other directors. *Semble :* That the Court will not

MANDAMUS—*contd.*

refuse to interfere by mandamus in such a case

COMPANY. NASARVANJI ASPANDIARJI *v.* SHIVJI MANIKBHAI . . . . 9 Bom. 438

7. ———————— *Refusal by company to register transfer of shares—Transfer signed by Judge of High Court—Civil Procedure Code, 1859, s 267.* Where a company refused to register a transfer of shares purchased by an execution-creditor, on the ground that no share certificate had been produced, but the sale had been confirmed and transfer signed by a Judge of the High Court under Act VIII of 1859, s. 267, a writ of mandamus was directed to issue out of the Court, ordering the company to register the transfer of such shares, and to issue fresh share certificates in respect of them QUEEN *v.* EAST INDIAN RAILWAY COMPANY Bourke O C. 395 : 1 Ind. Jur. N. S. 258

8 ———————— *Writ to compel registrar to register transfer of ship* A mandamus will lie to compel the registrar to register the transfer of a ship sold in execution of decree ; but where the form of transfer was not as it should have been

9. ———————— *Small Cause Court, Calcutta* A mandamus lies from the High Court to the Small Cause Court to compel it to act in accordance with law. *In re* TOOLSEE DOSS SEAL 2 Ind. Jur. N. S. 133 : 7 W. R. 228

10. ———————— *Power of High Court over Small Cause Court* The High Court has no jurisdiction to compel a Court of Small Causes to re-hear a suit dismissed by the latter Court on the ground of *res judicata.* BROMMO ROOP GOSSAIN *v* ANUND MOYEE DEBIA . 7 W. R. 316

11. ———— **Return to writ**—*Sufficiency of—Land Acquisition Act, VI of 1857.* By Act VI of 1857, s. 2 (for the acquisition of land for public purposes), it is enacted that, " wherever it

MANDAMUS—*contd.*

provisions of Act VI of 1857 of the Legislative Council of India, it was notified that, "Whereas it appeared to the Honourable the Lieutenant-Governor of Bengal that land was required to be taken by Government for a public purpose, *viz.*, for the Calcutta Water-Works, it was thereby declared that for the above purpose a public tank and square known as Wellington Square, etc, was required," and proceeded to justify under this notification, etc.:—*Held*, that the return was bad. REG. *v.* JUSTICES OF THE PEACE FOR THE TOWN OF CALCUTTA

2 Ind. Jur. N. S. 24

12. ——— *Pleading—Demurrer* The prosecutor could not, in India, both plead and demur to a return to a writ of mandamus without first obtaining leave of the Court. REG. *v* EAST INDIAN RAILWAY COMPANY

1 Ind. Jur. N. S. 244

13. ——— *Corporation—Bank of Bombay—Shareholders' register—Shareholders' right to inspect and take extracts—Special interest and definite object, necessary—Suit for declaration of right to inspect, in the nature of application for writ of mandamus—Conditions on which relief can be given* A suit brought against the Bank of Bombay by a shareholder for a declaration that he is entitled to inspect the register of shareholders and to copy and take extracts from such register is, in its nature, though not in its form,

[illegible]

allowed to issue, unless the applicant shows clearly that he has the specific legal right, to enforce which he asks for the interference of the Court, that he has claimed to exercise that right and none other and that his claim has been refused. When, therefore, before the suit, the plaintiff claimed an absolute right to inspect and take extracts from the Bank's register of shareholders—to which he was not entitled—and was refused, but in the suit claimed a more qualified or restricted right:—*Held*, that the suit could not succeed. The right to inspect the documents of a corporation, which at common law belongs to every member of such corporation, is not an absolute right, but is confined to cases where the member of the corporation has in view some definite right or object of his own and to those documents, which would tend to illustrate such right or object. Where it appeared that the plaintiff had no special interest in any of the matters he complained of or any interest other than or different

[illegible]

of securing their help in bringing about an improvement in the administration of the corporation's affairs:—*Held*, that no relief could be granted to the

MANDAMUS—*concld.*

plaintiff. *Rex* v. *Merchant Tailors Co*, *2 B. & Ad. 115*, followed. BANK OF BOMBAY *v.* SULEMAN SOMJI (1908) . . **I. L. R. 32 Bom. 466**
s.c. 12 C. W. N. 825
L. R. 35 I. A. 130

14. ——— *Attorneyship examination—Board of Examiners, discretion of—*

[illegible]

jurisdiction to interfere with the discretion of the Board of Examiners and cannot, where there is a discretion imposed on any body, issue a writ of mandamus to compel that body to exercise that discretion in any particular way, but can only compel the exercise of that discretion in a manner fair, candid and unprejudiced and not arbitrary, capricious or biased, much less warped by resentment or personal dislike. *Per* WOODROFFE, J.—

[illegible]

confided in them [illegible] DRA DUTT (1908) . **I. L. R. 35 Calc. 915**
s.c. 12 C. W. N. 873

MANDATORY INJUNCTION.

See INJUNCTION

See CIVIL PROCEDURE CODE, 1882, s 584
I. L. R. 27 All. 688

See EASEMENT . **I. L. R. 35 Calc. 661**

See INJUNCTION—CONTINUING NUISANCE.
I. L. R. 31 Calc. 944

See NUISANCE . **I. L. R. 31 All. 444**

See SPECIFIC RELIEF ACT, s 55
I. L. R. 31 Calc. 944

See TRESPASSER . **I. L. R. 28 Bom. 20**

1 ——— *Specific relief—* [illegible] *Court—In-* [illegible]

mandatory injunction upon the [illegible] by the appellant, defendant, area was reclaimed by the appellant, defendant, and that others (the plaintiffs included), who have done the same, have been allowed to build on the areas thus reclaimed without any objection, and that no special damage was done." *Held*, that this [illegible] to grant a mand- [illegible] was under [illegible] appeal within [illegible] Procedure [illegible] PAL

RAM BAHADUR PAL *v.* RAM L[illegible] (1905) . . . **I. L. R. 27 All. 683**

MANDATORY INJUNCTION—*concld.*

2. ——— *Ancient lights, obstruction of—Infringement—Nuisance—Acquiescence—Decree for damages—Mandatory injunction.*

amount of the reflected light, which now comes to

could by making internal alterations improve the light coming thereto, is not relevant *Colls* v *Home and Colonial Stores, Limited,* [*1904*] *A. C. 179,* followed. Inasmuch as the plaintiff was shown the plans of the proposed new building in May 1907 and no proceedings were instituted, until the 27th September 1907, when the defendant's building had reached a height of 30 ft, and as on that date permission was given to the defendant to go on building at his own risk, that the defendant had

ages
the
B v.
Calc. 661

MANORIAL DUES.

See CUSTOM . . I. L. R. 1 All. 440

MANUFACTURE.

See SALTPETRE . I. L. R. 36 Calc. 267

MANUFACTURER.

See TRADE-MARK . I. L. R. 35 Calc. 311

MAPILLAS.

See MALABAR LAW—CUSTOM
I. L. R. 15 Mad. 60

See MALABAR LAW—JOINT FAMILY
I. L. R. 15 Mad. 19
I. L. R. 17 Mad. 69

See MALABAR LAW—MAINTENANCE
I. L. R. 6 Mad. 259

——— **adoption of Hindu law**—*Presumption as to joint property* Although Mapillas in Malabar ordinarily follow the Hindu custom of holding family property undivided, yet, as they are not subject to the same personal law as the Hindus, their claims cannot be governed by the legal presumption of joint ownership AMMUTTI *v.* KUNJI KEYI . . . . I. L. R. 8 Mad. 452

MAPS.

See EVIDENCE—CIVIL CASES—MAPS.

——— **inspection of—**

See CHUR LANDS . 6 B. L. R. 677
13 Moo. I. A. 607

MARGINAL NOTES TO ACTS.

MARINE INSURANCE.

See INSURANCE

1. ——— *Policy of insur-*

free from the particular average, unless the vessel be sunk or burnt." The memorandum at the foot, after enumerating certain articles, proceeded: "All other goods free from average under three per cent, unless general or occasioned by the

Calicut up to arrival at the seaport town of Karachi

Pembroke, 2 App. Cas 284; Glynn v *Margetson & Co*, [*1893*] *A. C 351; Gumm* v. *Tyrie, 33 L. J. Q. B. 97;* and *Beier* v. *Chhotalal, 6 Bom L R. 948;* the memorandum did not create a liability, which was expressly exempted in the body of the policy, and thus was never undertaken HAJI HASUM *v.* CHUNILAL (1905) I. L. R. 29 Bom. 360

2. ——— *Inland Navigation—Construction of policy—Warranty—Condition*

MANDAMUS—*contd.*

provisions of Act VI of 1857 of the Legislative Council of India, it was notified that, "Whereas it appeared to the Honourable the Lieutenant-Governor of Bengal that land was required to be taken by Government for a public purpose, *viz.*, for the Calcutta Water-Works, it was thereby declared that for the above purpose a public tank and square known as Wellington Square, etc, was required," and proceeded to justify under this notification, etc.:—*Held*, that the return was bad. REG. *v.* JUSTICES OF THE PEACE FOR THE TOWN OF CALCUTTA
2 Ind. Jur. N. S. 24

12. ———— *Pleading—Demurrer.* The prosecutor could not, in India, both plead and demur to a return to a writ of mandamus without first obtaining leave of the Court. REG *v.* EAST INDIAN RAILWAY COMPANY
1 Ind. Jur. N. S. 244

13. ———— *Corporation—Bank of Bombay—Shareholders' register—Shareholders' right to inspect and take extracts—Special interest and definite object, necessary—Suit for declaration of right to inspect, in the nature of application for writ of mandamus—Conditions on which relief can be given* A suit brought against the Bank of Bombay by a shareholder for a declaration that he is entitled to inspect the register of shareholders and to copy and take extracts from such register is, in its nature, though not in its form,

allowed to issue, unless the applicant shows clearly that he has the specific legal right, to enforce which he asks for the interference of the Court, that he has claimed to exercise that right and none other and that his claim has been refused. When, therefore, before the suit, the plaintiff claimed an absolute

documents of a corporation, which at common law belongs to every member of such corporation, is not an absolute right, but is confined to cases where the

of securing their help in bringing about an improvement in the administration of the corporation's affairs:—*Held*, that no relief could be granted to the

MANDAMUS—*concld.*

plaintiff. *Rex* v. *Merchant Tailors Co.*, 2 B. & Ad. 115, followed BANK OF BOMBAY *v* SULEMAN SOMJI (1908) . . I. L. R. 32 Bom. 466
s.c. 12 C. W. N. 825
L. R. 35 I. A. 130

14. ———— *Attorneyship examination—Board of Examiners, discretion of—Mandamus—Jurisdiction of the Court to interfere—Letters Patent, 1865, cls. 9 & 10—Specific Relief Act (I of 1877), s. 45—Rules of the High Court, Nos. 111 to 118 and 132. Semble.* The Court has no jurisdiction to interfere with the discretion of the Board of Examiners and cannot, where there is a discretion imposed on any body, issue a writ of mandamus to compel that body to exercise that discretion in any particular way, but can only compel the exercise of that discretion in a manner fair, cardid and unprejudiced and not arbitrary, capricious or biased, much less warped by resentment or personal dislike. *Per* WOODROFFE, J.—The Court cannot dispense with the production of the certificate mentioned in Rule No. 116 of the Original Side of the High Court The Court will not interfere with the conscientious exercise by the examiners of the discretion which the Court has confided in them. *In the matter of* PURNA CHANDRA DUTT (1908) . I. L R. 35 Calc. 915
s.c. 12 C. W. N. 873

MANDATORY INJUNCTION.

See INJUNCTION.

See CIVIL PROCEDURE CODE, 1882, s. 584.
I. L. R. 27 All. 688

See EASEMENT . I. L. R. 35 Calc. 661

See INJUNCTION—CONTINUING NUISANCE
I. L. R. 31 Calc. 944

See NUISANCE . I. L. R. 31 All. 444

See SPECIFIC RELIEF ACT, s. 55
I. L. R. 31 Calc. 944

See TRESPASSER . I. L. R. 28 Bom. 20

1. ———— *Specific relief—*

mandatory injunction upon the
area was *reclaimed* by the appellant, defendant,
and that others (the plaintiffs included), who have
done the same, have been allowed to build on the
areas thus reclaimed without any objection, and
that no special damage was done" *Held*, that this
was not a valid reason for refusing to grant a mand-
atory injunction; and that such refusal was under
the circumstances a good ground of appeal within
the meaning of s. 584 of the Code of Civil Procedure.
RAM BAHADUR PAL *v.* RAM SHANKAR PRASAD PAL
(1905) . . . . I. L. R. 27 All. 688

MANDATORY INJUNCTION—*concld.*

2. ——————— *Ancient lights, obstruction of—Infringement—Nuisance—Acquiescence—Decree for damages—Mandatory injunction*

user thereof. Where there has been such a substantial diminution of light as to amount to a nuisance, evidence that the plaintiff's office has more light left than many other offices in Calcutta or that the light coming to the plaintiff's premises is sufficient for business purposes, or that the plaintiff could by making internal alterations improve the light coming thereto, is not relevant. *Colls* v *Home and Colonial Stores, Limited,* [*1904*] *A. C. 179,* followed. Inasmuch as the plaintiff was shown the plans of the proposed new building in May

the proper remedy would be a decree for damages and not a mandatory injunction to demolish the defendant's new building. ANATH NATH DEB *v.* GALSTAUN (1908) . . **I. L. R. 35 Calc. 661**

MANORIAL DUES.

See CUSTOM . . **I. L. R. 1 All. 440**

MANUFACTURE.

See SALTPETRE . **I. L. R. 36 Calc. 267**

MANUFACTURER.

See TRADE-MARK . **I. L. R. 35 Calc. 311**

MAPILLAS.

See MALABAR LAW—CUSTOM.
I. L. R. 15 Mad. 60

See MALABAR LAW—JOINT FAMILY.
I. L. R. 15 Mad. 19
I. L. R. 17 Mad. 69

See MALABAR LAW—MAINTENANCE
I. L. R. 6 Mad. 259

their claims cannot be governed by the legal presumption of joint ownership. AMMUTTI *v.* KUNJI KEYI . . . . **I. L. R. 8 Mad. 452**

MAPS.

See EVIDENCE—CIVIL CASES—MAPS.

——— inspection of—

See CHUR LANDS . **6 B. L. R. 677**
13 Moo. I. A. 607

MARGINAL NOTES TO ACTS.

See STATUTES, CONSTRUCTION OF.
I. L. R. 20 Calc. 609
I. L. R. 23 Calc. 55
I. L. R. 25 Calc. 858

MARINE INSURANCE.

See INSURANCE.

1. ——————— *Policy of insurance—Memorandum in a policy—Written conditions—Printed conditions—Particular average loss—*

free from the particular average, unless the vessel be sunk or burnt" The memorandum at the foot, after enumerating certain articles, proceeded: "*All other goods free from average under three per cent*, unless general or occasioned by the ship's being stranded." And then there was added a note in Gujarati, which as translated ran: "Dhanji Madat Rahman Nakhwa Osman from the seaport town of Cochin and the seaport town of Calicut up to arrival at the seaport town of Karachi

L. J. Q. B. 97; and *Beier* v. *Chhotalal*, *6 Bom. L. R. 948*; the memorandum did not create a liability, which was expressly exempted in the body of the policy, and thus was never undertaken. HAJI HASUM *v.* CHUNILAL (1905) **I. L. R. 29 Bom. 360**

2. ——————— *Inland Navigation—Construction of policy—Warranty—Condition*

MARINE INSURANCE—*contd.*

precedent—Impossibility of performance—Exception from risk—Onus probandi—Waiver—"Month," meaning of, in a contract—"Lunar Month"—

contained, *inter alia*, the following conditions and warranties :—" It is further warranted :—2. That the risk of loss or damage by fire is not insured

hereunder. 8. That no smoking nor cooking shall be carried on in the said boat, but in a dinghy provided for the purpose. 9. That in the event of loss :—(*a*) The Manji or Charandar *must* report to the nearest Police Station within 24 hours and must state that the cargo is insured. (*f*) It is furthermore hereby expressly provided, that no suit or action of any kind against the said Company for the recovery of any claim upon, under or by virtue of this policy, shall be sustainable, in any Court of law or equity unless such suit or action shall be commenced within the term of six months next after any loss or damage shall occur ; and in

thereof has been effectually waived. *Hudson* v. *Walton, 2 Cowp. 785*, *Thomson* v. *Weems, L. R. 9 App. Cas 671*, *Barnard* v. *Faber*, *[1896] 1. Q. B. 340*, referred to. The warranty in clause 2 (*a*) was an exception from the risk which the insurers were

MARINE INSURANCE—*concld.*

a condition precedent to the liability of the insurers

term "month" in a contract means, in India as in England, "lunar month" and not "calendar month." *Simpson* v. *Margetson, 17 L. J. Q. B 81;* *Turner* —

[1904] .

referred

and had not been complied with.

if the term "month" in the policy meant "calendar month," the plaintiff was out of time. *Radcliffe* v. *Bartholomew, [1892] 1 Q. B. 161*, referred to. SOUTH BRITISH FIRE AND MARINE INSURANCE CO. *v.* BROJO NATH SHAHA (1909)
I. L. R. 36 Calc. 516

MARITIME LIEN.

See ADMIRALTY OR VICE-ADMIRALTY JURISDICTION I. L. R. 22 Calc. 402

MARKET.

See BOMBAY MUNICIPAL ACT.
I. L. R. 30 Bom. 126

See MADRAS DISTRICT MUNICIPALITIES ACT, ss. 191, 197.
I. L. R. 29 Mad. 165

See JOINT TRIAL . 11 C. W. N. 1128

See MADRAS DISTRICT MUNICIPALITIES ACT, s. 193 . I. L. R. 10 Mad. 216

——— license for—

See BENGAL MUNICIPAL ACT, 1884, s. 337.
I. L. R. 20 Calc. 654

1. ——— *Right of zamindar to establish a market on his own land—Regulation No. XXVII of 1793, Regulation No. VII of 1822, s. 9.* There is no legal objection to the holding by any person of a "hat" or market whenever and wherever he may please, provided that he does so on his own land and in such a way as not to be a nuisance to neighbouring landholders who have equal rights with him. *Kedarnath* v. *Raghunath, N.-W. H. C. 104 ; Sheikh Bisharut Ally* v. *Seetul Misser, N.-W. H. C. 40 ; Metta Sahoo* v. *Sheikh Surwur Ali, 14 S. D. A. N.-W. P. 139 ;* and *Bhiaok Choudhree* v. *The Collector of Jaunpore, N.-W. H. C. 271*, referred to. SUKHDEO PRASAD *v.* NIHAL CHAND (1907) . I. L. R. 29 All. 740

2. ——— *Rights of owner of market—Foreign goods, sale of—Law for carrying on of a market.* In this country there is no special law for regulating the establishment and the carry-

MARKET—*concld.*

establishing the market close to another existing

who are mere licensees, are entirely under the control of the owner of the market. These rights of the proprietor can be exercised by the *ijaradar* of the market during the term of his *ijarah* Where the *ijaradar* of a market with a view to prevent the sale of foreign articles used force and caused hurt to certain itinerant stall-keepers:—*Held*, that the *ijaradar* exceeded his right under the law and was punishable But he could not be bound down to

MARKET RATE.

See DAMAGES—MEASURE AND ASSESSMENT OF DAMAGES—BREACH OF CONTRACT

See EVIDENCE—CIVIL CASES—MISCELLANEOUS DOCUMENTS—MARKET RATE.
I. L. R. 10 Calc. 565

MARKET VALUE.

See CALCUTTA MUNICIPAL ACT.
14 C. W. N. 289

See COMPENSATION.
I. L. R. 34 Calc. 599
9 C. W. N 655

———— **of land**—

See LAND ACQUISITION ACT, 1894, s 23.
I. L. R. 33 Bom 483
13 C W. N. 1046

———————— *Valuation—Mode of valuation when no recent sales—Compensation—Land Acquisition Act (I of 1894), s. 18.* In cases where the valuation of land cannot be based on what the property was producing at the time of the notice of acquisition, and where there have been no recent sales of the land to guide the Court, the market value must be determined by sales of similar land in the neighbourhood *In the matter of* KARIM TAR MAHOMED (1909)
I. L. R. 33 Bom. 325

MARRIAGE.

See BIGAMY.

See CONSIDERATION . 2 Mad. 128

See HINDU LAW—INHERITANCE—DIVESTING OF, EXCLUSION FROM, AND FORFEITURE OF, INHERITANCE—MARRIAGE.

MARRIAGE—*contd.*

See HINDU LAW—
MARRIAGE;
WIDOW—DISQUALIFICATIONS—REMARRIAGE.

See HINDU LAW . 10 C. W. N. 338
I. L. R. 28 All. 458

See JURISDICTION OF CIVIL COURT—MARRIAGES.

See MAHOMEDAN LAW.
I. L. R. 28 All 496
I. L. R 36 Calc. 23

See MAHOMEDAN LAW—MARRIAGE.

See PARSIS . . 3 Bom. A. C. 113
I. L. R. 11 Bom. 1
I. L. R. 13 Bom. 302
I. L. R 17 Bom. 146
I. L R. 22 Bom. 430
I. L R. 23 Bom. 279

———— **agreements or contracts concerning**—

See CONTRACT ACT, s 23—ILLEGAL CONTRACTS—AGAINST PUBLIC POLICY
I. L. R. 23 All. 495
11 B. L R. 129
22 W. R. 517
25 W. R. 32
I. L. R. 10 Calc. 1054
I. L. R. 10 Bom. 152
I. L. R. 17 Mad. 9
I. L. R 13 Bom. 126; 131
I. L. R. 13 Mad. 83
I. L. R. 16 Bom. 673
I. L. R. 22 Bom. 658

See HINDU LAW—HUSBAND AND WIFE
I. L. R. 28 Calc. 751

See MAHOMEDAN LAW.
I. L. R. 36 Calc. 23

See SMALL CAUSE COURT, PRESIDENCY TOWNS—JURISDICTION—BREACH OF PROMISE OF MARRIAGE
I. L. R. 24 Mad. 652

See SPECIFIC PERFORMANCE—SPECIAL CASES . . 7 Bom O. C. 122
5 N. W. 102
I. L. R. 1 Calc. 74

———— **asura form**—

See HINDU LAW—MARRIAGE.
I. L. R. 33 Bom. 433

———— **between Christians and Mahomedans**—

See SUCCESSION ACT, 1865, s. 84.
I. L. R. 31 All. 239

———— **by fraud**—

See MAHOMEDAN LAW—MARRIAGE.
I. L. R. 31 All. 243

MARRIAGE—*contd.*

——— Buddhist laws of—

See BURMA CIVIL COURTS ACT, 1875, s. 4.
I. L. R. 10 Calc. 777
L. R. 11 I. A. 109
I. L. R. 39 Calc. 492

——— consummation of—

See MAHOMEDAN LAW.
I. L. R. 30 Bom. 122

——— dissolution of—

See COSTS—SPECIAL CASES—DIVORCE.
I. L. R. 28 Calc. 84

See DIVORCE ACT.

——— effect of—

See MARRIED WOMEN'S PROPERTY ACT.

See SUCCESSION ACT, s. 4.
I. L. R. 23 Calc. 506

——— expenses of—

See HINDU LAW—ALIENATION—ALIENATION BY MOTHER.
I. L. R. 18 All. 474

See HINDU LAW—INHERITANCE—IMPARTIBLE PROPERTY I. L. R. 16 Mad. 54

——— intermarriage between Panchals and Sudras—

See HINDU LAW—MARRIAGE.
I. L. R. 33 Bom. 693

——— lawful polygamous—

See SUCCESSION ACT, s. 56.
I. L. R. 1 Calc. 148

——— nullity of—

See DIVORCE ACT, ss. 4 AND 18.
13 B. L. R. 109

See HUSBAND AND WIFE.
I. L. R. 21 Bom. 77

——— presumption of—

See MAHOMEDAN LAW—ACKNOWLEDGMENT.

See PENAL CODE, s. 498.
8 B. L. R. Ap. 63

——— proof of—

See ADULTERY.

See BIGAMY.

See DIVORCE ACT, s. 14.
I. L. R. 16 Mad. 455

See PENAL CODE, s. 498.
I. L. R. 9 Mad. 9
I. L. R. 20 All. 166

See RESTITUTION OF CONJUGAL RIGHTS.
I. L. R. 28 Calc. 37

See WILL—CONSTRUCTION.
I. L. R. 13 Mad. 379

MARRIAGE—*contd.*

——— registration of—

See EVIDENCE—CIVIL CASES—MISCELLANEOUS DOCUMENTS—MARRIAGES, REGISTRATION OF. I. L. R. 10 Calc. 607

——— re-marriage—

See HINDU LAW—INHERITANCE—DIVESTING OF, EXCLUSION FROM, AND FORFEITURE OF, INHERITANCE—MARRIAGE . I. L. R. 19 Calc. 289
I. L. R. 22 Calc. 589
I. L. R. 22 Bom. 321

See JURISDICTION OF CIVIL COURT—CASTE . . I. L. R. 13 Mad. 293

——— unauthorized solemnization of—

See MARRIAGE ACT, 1872, s. 68.
I. L. R. 14 Mad. 342
I. L. R. 17 Mad. 391
I. L. R. 18 Mad. 230
I. L. R. 20 Mad. 12

——— validity of—

See ADULTERY . . 7 C. W. N. 143

See HIGH COURT, JURISDICTION OF—BOMBAY—CIVIL.
I. L. R. 16 Bom. 136

See MAHOMEDAN LAW—ACKNOWLEDGMENT . . I. L. R. 21 Calc. 666
L. R. 21 I. A. 56

——— with deceased wife's sister—

See MARRIAGE . . . 2 Hyde 65
I. L. R. 12 Calc. 708
I. L. R. 32 Calc. 187
I. L. R. 35 Calc. 381

1. ——— *Adoption by Christians of Mahomedan religion for purpose of marriage—Bigamy Quære* Whether a marriage, according to Mahomedan rules, between a married Christian man and a Christian woman, both of whom became Mahomedans in order to effect the marriage, is valid. SKINNER *v.* ORDE
10 B. L. R. 125 : 14 Moo. I. A. 309
17 W. R. 77

2. ——— *Law of domicile—Law of place of celebration. Semble.* A marriage [illegible]

v. GONSALVES . . . . .

3. ——— *Marriage with deceased wife's sister—Stat. 5 & 6 Wm. IV, c. 54.* The marriage of an East Indian, domiciled in Calcutta, with the sister of his deceased wife, is not void under 5 & 6 Will. IV, cap 54. DAS MERCES *v.* CONES . . . . . 2 Hyde 65

4. ——— *Marriages of Native Christian converts.* The question as to the validity of the marriage of Native Christian converts does not depend on the presence or otherwise of

MARRIAGE—*contd*

an ordained minister of religion. Kristo Mohun Christian v Anunda . . 16 W. R. 249

5. ———— *Prohibited degrees —Roman Catholics—East Indians—Customary law —Dispensation, proof of—Presumption—Divorce Act (IV of 1869), ss. 19 and 53—Deceased wife's sister, marriage with.* In a suit for restitution of conjugal rights the parties were East Indians, and

a previous marriage had, on 6th December 1871, been performed between the respondent and the petitioner's sister, and the respondent prayed that the second marriage might be declared a nullity. The ceremony of 6th December 1871 had taken place while the petitioner's sister was on her death-

degrees prohibited by the law of England All that was known in respect of the parties to the marriage being that they were Roman Catholic subjects with Portuguese names, and it not having been found whether they were of English or any other European descent, or of native or mixed parentage:—*Held*, that the prohibited degrees for

degrees

is pro-

which

of the

Roman Catholic Church as applied in this country. *Held* by the Division Bench (Garth, C.J, and Wilson, J.), on the case being returned to it.

husband and wife, and a ceremony of marriage was

MARRIAGE—*contd.*

performed between them by a clergyman competent to perform a valid marriage *Held*, that the Court was bound to presume that a dispensation necessary to remove the obstacle to the marriage on the ground of affinity had been obtained. Lopez v. Lopez . . . I. L. R. 12 Calc. 706

6 ———— *Suit for nullity of marriage—Divorce Act (IV of 1869), ss 18, 19 (2)—Domicile of origin—Religious communion* Where the petitioner, a member of the Church of England, came to India about the year 1867, his domicile of origin being then English, and in 1871 married the illegitimate sister (since deceased) of his second wife, whom he subsequently married in 1887, it

7. ———— *Personal status—Christian marriage followed by Mahomedan marriage —Rights of widow under Mahomedan law—Divorce.* In a suit to obtain a widow's share under Mahomedan law in the estate of the deceased, it was proved that the plaintiff and deceased had been married in 1855 as professed Christians in a Church at Meerut;

ceased being at the time of his death that of a Mahomedan, and the plaintiff's personal status being that of his wife under the same law, she was

mit a fraud on the law, effects any change in those rights Skinner v Skinner

I. L. R. 25 Calc. 537
L. R. 25 I. A. 34
2 C. W. N. 209

8 ———— *Suit by wife for nullity of marriage—General and relative impotency —Impotency quoad hanc—Parsi Marriage Act (XV of 18 5), s 28.* In March 1882 the plaintiff and

MARRIAGE—*contd.*

consummation of the marriage. There was no physical defect in either plaintiff or defendant, nor any unwillingness in the plaintiff to consummate the marriage; but the defendant had always entertained such hatred and disgust for the plaintiff as to result, in the opinion of the medical experts, in an incurable impotency in the defendant as regards the plaintiff. The delegates unanimously found, on the evidence, that the consummation of this marriage had from its commencement been impossible; because the defendant was, from a physical cause, namely, impotency as regards the plaintiff, unable to effect consummation. They also found that there was no collusion or connivance between the parties. *Held*, on this finding, that such impotency *quoad* the plaintiff must be regarded as one of the causes going to make consummation of a marriage impossible under s 28 of Act XV of 1865, there being nothing in the Act to suggest a contrary opinion. The observations of DR. LUSHINGTON and of LORD WATSON in *G* v. *M*, *L. R. 10 A C. 171*, as to impotency *quoad hanc* and practical impossibility of consummation, approved and followed. S *v.* B.

I. L. R. 16 Bom. 639

9. ———————————— *Brahmo Samaj—Polygamy—Act III of 1872, s. 19.* A marriage performed in accordance with the rights of the Brahmo Samaj is invalidated by the fact that either of the parties thereto has a husband or wife by a previous marriage alive. SONALUXMI *v.* VISHNUPRASAD (1904)

I. L. R. 28 Bom 597

10. ———————————— *Validity of marriage—Roman Catholic of Indian domicile—Marriage with deceased wife's sister—Nullity of marriage—Domicile.* The Courts in India will not disallow a Roman Catholic of Indian domicile, who has obtained the necessary dispensations, from marrying his deceased wife's sister who, by the law of her own Church, may be incapable of contracting the marriage. The husband's capacity renders the marriage valid in law *Lopez* v *Lopez, I. L. R. 12 Calc. 706*, referred to. *Per* MITRA, *J.*—In India there is no enactment forbidding absolutely the

[illegible]

s.c. 9 C. W. N. 567

11. ———————————— *Practice—Petition, service of—Substituted service—Unreasonable delay—Divorce Act (IV of 1869), ss. 14 and 50.* The practice of this Court as to service of petition on the respondent is governed by what prevails in the Matrimonial Courts in England. It is essential, in suits for dissolution of marriage, that the petition of the plaintiff should be personally served under s. 50 of the Indian Divorce Act on the respondent or that sufficient notice of its contents should be given to him. Unless satisfactory explanation is given for the long delay in presenting and prosecuting a *petition*, a Court is obliged to refuse a decree for dissolution of marriage under s. 14 of the Divorce Act. ARABELLA CLARESSA ELIZA MITTER *v.* JOHN CHARLES MITTER (1908)

12 C. W. N. 1009

12. ———————————— *Presumption of marriage from cohabitation with habit and repute in Siamese Shan States—Presumption different in different countries—Proof of repute—Entry of "wife" in Consular Certificate of Nationality given to British subjects in Siam—New point taken on appeal.* A domiciled Burman having a residence and a wife in Moulmein went on business to the Siamese Shan States, where he lived for many years with the first appellant and died there leaving her and her son (by him), the second appellant, both of whom claimed a share of his property from his wife in Moulmein, who was his administratrix, on the ground that a presumption of marriage arose from the above cohabitation with habit and repute, whereby she had acquired the status of a legitimate wife. *Held*, that the habit and repute, which alone is effective, must be habit and repute of that particular status, which in the country in question was lawful marriage. Among English people open cohabitation without marriage is so uncommon that the fact of cohabitation in many classes of society of itself sets up as a matter of fact a repute of marriage But that is not the case in countries where customs are different and where there exist connexions between the [illegible]

applied it to persons, whose status was no[illegible] monial. A certificate of nationality as a British subject proposing to travel in Siam given to the deceased by the British Consulate was produced in which the first appellant was described as his "sister-[illegible] "wife" and another female relation as his [illegible] the first [illegible] ed in [illegible] ed's [illegible] was [illegible] on of [illegible] cery [illegible] ence [illegible] that [illegible] and [illegible] ugh

and the first appella[illegible] disreputable, and allowed in Siam was considered disreputable, were against any that concubinage was customary, were against any such presumption of marriage. No presumption.

MARRIAGE—*concld.*

tained by the Judicial Committee on appeal Ma Wun Di v. Ma Kin (1907) **I. L. R. 35 Calc 232** s.c. **12 C. W. N. 220 : L. R. 35 I. A. 41**

13. ———— *Nullity of marriage—Deceased wife's sister—Illegitimate child—*

the purpose of maintaining a joint home for the infant and his or her parents, and an account of the amount allowed for maintenance will not be ordered so long as the infant is properly maintained Bomwetsch v. Bomwetsch (1908) **I. L. R. 35 Calc. 381**

MARRIAGE ACT (CHRISTIAN) V OF 1865.

———— **s. 56**—*Offence of solemnizing illegal*

of the same Act. The Sessions Judge discharged the accused without trial on the ground that the

view of the law was erroneous, and that the accused was *primâ facie* liable under s. 56 of the Act Anonymous Case . . . **6 Mad. Ap. 20**

MARRIAGE ACT (XV OF 1872).

———— **ss. 5, 10, 12, 13, 38, 68, 70 and 73** —*Person authorized to perform marriages—Omission*

MARRIAGE ACT (XV OF 1872)—*contd.*

———— **s. 5**—*concld.*

Bishop of the Syrian Church was not solemnized

ordained persons Caussavel v Saurez **I. L. R. 19 Mad. 273**

———— **ss. 18 and 66**—*False declaration—Penal Code (Act XLV of 1860), s 193—Maxim, "ignorantia juris non excusat."* The maxim *ignor-*

1. ———— **s. 68**—*Unauthorized marriage of a Christian child—Persons professing Christian*

2. ———— *"Solemnize,"*

I. L. R. 20 Mad. 12

3. ———— **and s. 5**—*Marriage solemnized by an unauthorized person—"Knowingly"—Pre-*

Church of England. The Marriage Registrar attended the ceremony in a private and unofficial capacity. The person who solemnized the marriage

I. L. R. 14 Mad. 342

MARRIAGE ACT (XV OF 1872)—*concld.*

———— s. 68—*concld.*

4. ———— *Solemnization of marriage under Hindu rites between a Native Christian and a Hindu by a person not authorized to perform marriages under s. 5 of the Act.* A person who performs a ceremony of marriage according to Hindu form between a Native Christian and a Hindu commits an offence under s 68 of Act XV of 1872, unless he is authorised to solemnize marriages under s. 5 of the Act See *Anonymous case, 6 Mad Ap. 20.* QUEEN-EMPRESS *v.* YOHAN
I. L. R. 17 Mad. 391

MARRIAGE PRESENTS.

———— suit to recover—

See CONTRACT—ALTERATION OF CONTRACTS—ALTERATION BY THE COURT.
13 B. L. R Ap 34

MARRIAGE SETTLEMENT.

See CONTRACT . **I. L. R. 29 All. 151**

See HUSBAND AND WIFE
I. L R. 10 Calc. 951

See WILL—CONSTRUCTION
I. L. R. 4 Calc. 514

———— order as to—

See DIVORCE ACT, s. 40
14 B. L. R Ap. 6

———— **Construction of settlement**—*Trust funds.* *S*, being entitled to personal estate by a settlement executed upon her marriage with *R*, vested it in trustees on terms which conferred upon [illegible]

the purchase of real estate *R* died in the lifetime of *S*, and a portion of the trust fund was invested by the trustees in the purchase from *S* of real estate vested in her as representative of *R*. *S* afterwards married *P*, and during her second coverture a further portion of the trust fund was, with the consent of *S*, invested in the purchase of real estate. *S* survived *P*, and died intestate, leaving a son and daughter and the children of another daughter her next of kin. *Held, first,* that the events contemplated by the settlement not having arisen, the trust fund became the absolute property of *S*; and, *secondly*, that the devolution of the trust fund was to be governed by the state of its investment at the time of her death, and that therefore so much of it as was invested as above must descend as real [illegible]

European British subjects in India, the real estate, whether situated within or without the local limits of the jurisdiction of the Court, would descend to the heir-at-law. RIGORDI *v.* SMITH
1 Ind. Jur. N. S. 290

MARRIED WOMAN.

See ADULTERY . **I. L. R. 30 Calc. 910**

See GUARDIAN AD LITEM.
I. L. R. 29 All. 728

See MAINTENANCE, ORDER OF CRIMINAL COURT AS TO . **I. L. R. 18 Bom. 468**

See MARRIED WOMEN'S PROPERTY ACT.

See MINOR—REPRESENTATION OF MINOR IN SUITS . **I. L R. 17 Calc. 488**
I. L. R. 23 All. 459

———— enticing away—

See ADULTERY . . **7 C. W. N. 143**

See COMPOUNDING OFFENCE
I. L. R. 1 Mad. 191

See PENAL CODE, s. 498

———— liability of—

See SUCCESSION ACT, s 4
13 B. L. R. 383

———— **property of**—*Civil Procedure Code (Act XIV of 1882), s. 266, and Small Cause Court Rule 220—Attachment of married woman's property subject to restraint on anticipation—Transfer of Property Act (IV of 1882), s 10, Married Women's Property Act (III of 1874) s. 8—Property of married woman subject to restraint on anticipation not attachable in execution of a decree under s. 8 of the Married Women's Property Act* The income of property belonging to a married woman subject to a restraint on anticipation, accruing due after the [illegible] such married woman's [illegible]

Presidency Court of Small Causes [illegible] affect the [illegible] *Hippolite* [illegible] om. *In* [illegible] ollowed. [illegible] recognises [illegible] raint of [illegible]

the latter Act against the separate [illegible] passed married woman cannot be considered as [illegible] from anticipation [illegible] property which she is restrained [illegible] ocedure is [illegible] tive. It [illegible] tachment [illegible] ntive law [illegible] erty Act, [illegible] ed by the [illegible] GOODALLY [illegible] **I. L. [illegible] Mad. 378**
(1907) [illegible]

MARRIED WOMEN'S PROPERTY ACT (III OF 1874).

See SUCCESSION ACT, s. 4. **13 B. L. R. 383**

MARRIED WOMEN'S PROPERTY ACT (III OF 1874)—*concld*

——— ss. 4, 7, and 8—

See HUSBAND AND WIFE
I. L. R. 4 Calc 140
2 C. L. R. 431

——— ss. 7 and 8—

See HUSBAND AND WIFE
I. L. R. 1 Calc. 285

——— s. 8—

See MARRIED WOMAN, PROPERTY OF.
I. L. R. 30 Mad. 378

See PARTIES—PARTIES TO SUITS—HUSBAND AND WIFE 10 C. L. R. 536

1. ——— *Husband and wife —Settlement—Property settled on married woman to her separate use and without power of anticipation —Power of married woman to charge such property with payments of debts incurred subsequently to marriage* Held, that under s 8 of Act III of 1874, a married woman has power to charge property settled upon herself, for her separate use without power of anticipation, with the payment of debts incurred by her subsequently to her marriage, and such a charge is valid and binding CURSETJI PESTONJI TARACHAND *v.* RUSTOMJI DOSSABHOY
I L R. 11 Bom. 348

2. ——— and s. 9—*Restraint on anticipation—*
S 8 of A
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of Property Act merely excepts from the general

...Property Act of 1874 and the decisions upon it untouched HIPPOLYTE *v.* STUART
I. L. R. 12 Calc. 522

3. ——— *Insolvency of married woman—Property settled on her for separate use without power of anticipation, whether comprised in the vesting order or not—Insolvency Act (11 & 12 Vict, c. 21), s 63.* A creditor's right to be satisfied out of the separate property of a married woman is, in the case of post nuptial debts, restricted to the property as to which there is no restraint on anticipation. S.
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522, dissente
I. L. R. 18 Mad. 19

MARSHALLING OF SECURITIES.

See MORTGAGE—MARSHALLING.

See RES JUDICATA.
I. L. R. 31 Calc. 95

MARUMAKKATAYAM LAW.

See MALABAR LAW—INHERITANCE.
I. L. R. 27 Mad. 77

MARUMAKKATAYAM LAW—*concld.*

1. ——— *Separate property of member of tarwad...*

J —The separate property of a member of a tarwad is inherited by his tavazhi *Kallati Kunju Menon v Palat Erracha Menon, 2 Mad. H C R 162*, referred to GOVINDAN NAIR *v* SANKARAN NAIR (1909)
I. L. R. 32 Mad. 351

2. ——— *Validity of gift, excluding male issue, to wife and daughter—Right of last surviving daughter—Construction of gift.* A person governed by the Marumakkatayam law executed a deed of gift in favour of...

there remained any female descendant of any of the donees That the last surviving daughter had no interest which she could validly convey. KUNHAMINA *v* KUNHAMBI (1908)
I. L. R. 32 Mad. 315

3. ——— *Gift to woman ...*

...Upon the property becomes the ...

...RUVATH PATHUMMA *v.* MANNAMKUNNIYIL ABDULLA HAJI (1907) . . . I. L. R. 31 Mad. 228

MARZ-UL-MAUT.

See DIVORCE . I L. R. 30 Bom. 537

See MAHOMEDAN LAW—GIFT.
I. L. R. 31 Calc. 319

See MAHOMEDAN LAW—MARZ-UL-MAUT.

——— *Death of the husband before expiration of the period of iddat —Hanafi Sunnis—Divorce Talak-ul-bain by one pronounce-*

MARZ-UL-MAUT—*concld.*

ment in the absence of the wife—Execution of talaknama in the presence of the Kazi—Communication of the divorce to the wife—Mahomedan Law In order to establish *Marz-ul-maut* there must be present at least three conditions :—(i) Proximate danger of death, so that there is, as it is phrased, a preponderance (*ghaliba*) of *khauf* or apprehension, that is that at the given time death must be more probable than life ; (ii) there must be some degree of subjective apprehension of death in the mind of the sick person · (iii) there must be some external indicia, chief among which would be the inability to attend to ordinary avocations. Where an irrevocable divorce has been pronounced by a Mahomedan husband in health, and the husband dies during the period of the discarded wife's *iddat*, she has no claim to inherit to the husband SARABAI *v.* RABIABAI (1905) . . I. L. R. 30 Bom. 537

MASONRY BUILDING.

———— permission to erect—

See CALCUTTA CORPORATION
I. L. R. 36 Calc. 671

MASSES.

———— bequest for performance of—

See WILL—CONSTRUCTION . 2 Hyde 65
2 B. L. R. O. C. 148
5 B. L. R. 433
I. L. R. 15 Mad. 424

MASTER AND SERVANT.

See ARMS ACT, 1878
I. L. R. 20 Calc. 434
3 C. W. N. 394
I. L. R. 16 All. 276
I. L. R. 24 Bom. 423
I. L. R. 22 All. 118

See CHARGE—FORM OF CHARGE—SPECIAL CASES—MASTER AND SERVANT.
3 Bom Ap. 1

See GOVERNMENT . 7 B. L. R. 688

See JUDGE—QUALIFICATIONS AND DISQUALIFICATIONS I. L. R. 9 Bom. 172

See LIBEL . I. L. R. 36 Calc. 907

See LIMITATION ACT, 1877, s. 10 (1859, s. 2) . . . 1 B. L. R. S. N. 11

See PREVENTION OF CRUELTY TO ANIMALS ACT (XI OF 1890), s. 3
I. L. R. 26 Bom. 609

See PRINCIPAL AND AGENT—LIABILITY OF PRINCIPAL . I. L. R. 30 Calc. 207

See SERVANT.

See SECRETARY OF STATE . 1 N. W. 118
Bourke A. O. C. 106
5 Bom. Ap. 1

See TORT . . 10 C. W. N. 723

MASTER AND SERVANT—*contd.*

———— liability of master for misconduct of servant—

See MASTER AND SERVANT.
I. L. R. 36 Calc. 647

———— liability of servant—

See BENGAL EXCISE ACT (VII OF 1878), s. 53 . . I. L. R. 29 Calc. 496

1. ———— **Liability of master for acts of servant**—*Acts within scope of servant's duty.* A master is responsible for the acts of his servants done within the scope of his duties, and for the master's benefit. ANUNT DASS *v.* KELLY
1 N. W. Part 7, p. 107 : Ed. 1873, 194

2. ———— *Trespass.* The appellant, having obtained a decree for khas possession of a share in a zamindari, had refused to recognize the raiyats whom the farmers under her co-sharers had settled in the estate ; and her servants cut and carried off the crops of those raiyats. *Held* by GLOVER, J , that the appellant was liable for the acts of her servants, which were done in furtherance [illegible] for her benefit *Held* [illegible] case the circumstances gave rise to a strong presumption that the acts were done with her knowledge, which presumption had not been rebutted, and therefore she was liable SHAMASUNDARI DEBI *v.* DUKHU MANDAL . . 2 B. L. R. A. C. 227

S C SHAMASOONDUREE DEBIA *v.* MALLYUT MUNDUL . . . . 11 W. R. 101

3. ———— *Master of ship—Damage done to person by subordinate officer or crew.* Where a servant in the course of his employment, and in doing what he believed to be for the interests [illegible] recklessly, wantonly, [illegible] re the [illegible] some [illegible] re[illegible] mer[illegible] done [illegible] sub[illegible] in[illegible]jured. ANONYMOUS . Bourke A. O. C. 144

4. ———— A boat which *S* let to *G A & Co.* for unloading the ship *B*, was lost in consequence of the negligence of the mate. *S* sued the captain for the damage sustained, and the lower court dismissed the suit with costs, on the ground that *G A & Co*, the ships' agents, who had hired the boat, and not the captain were liable. *Held*, on appeal, reversing the judgment of the [illegible] costs, that the captain [illegible] injury [illegible] bough[illegible] was the [illegible] be con[illegible] was a [illegible]

MASTER AND SERVANT—*contd.*

part of that duty; and that the fact of the owners of the ship having agents in Calcutta did not alter the relations between the captain and the public SUTHERLAND *v* SHAW . Bourke A. O. C. 92

5. ———————— *Negligence of servant—Bailor and bailee—Proprietor and driver of public conveyance—Bom Act VI of 1863.* The

the buggy and the use of two horses for the day to be used entirely at the driver's discretion for the purpose of plying for hire The driver was to pay three rupees a day for the use of the buggy and horses All that he made above that sum was his perquisite for his labour, and any deficiency he had to make good. *Held,* that the relation between the proprietor and driver of the buggy was that of master and servant, and that the proprietor was liable for the driver's negligence The relation between the proprietor and driver of a public conveyance established by Bombay Act VI of 1863 is similar to that existing in England under the English Acts. BOMBAY TRAMWAY COMPANY *v* KHAIRAJ TEJPALL . . . I. L. R. 7 Bom. 119

6. ———————— *Offer of money by defendant to avoid litigation—Suit for damages* The servant of the defendant, who was staying in the plaintiff's hotel, broke a filter, the property of the plaintiff. In a suit by the plaintiff for damages it appeared that the servant, when he broke the

7. ———————— *Damage by cutting trees on land—Liability of employer not estab-*

scope of the employment of any of the defendants. The co-respondent employers were not therefore under any legal responsibility in the matter. CASPERSZ *v.* KISHORI LAL ROY CHOWDHRY

I. L. R. 23 Calc 922
1 C. W. N. 12

8. ———————— *Trespass—Ratification—Damages.* The plaintiff let a cargo-boat to *U C*, who had been employed by the defendants

MASTER AND SERVANT—*contd.*

cumstances to an assistant in defendant's firm, who afterwards went with *U C* and forcibly took the goods from the plaintiff's boat without satisfying the plaintiff's lien thereon, and the defendants received them into their godowns. It was proved that *U C* and the assistants acted without the knowledge or authority of the defendants, and that the defendants received the goods without any knowledge of how they had been obtained. *Held,* that, in the absence of such knowledge on their part, the receipt of the goods by them did not amount to a ratification of the wrongful act of their assistant and *U C* so as to render them liable in an action by the plaintiff for damages for the same GIRISH CHANDRA DASS *v.* GILLANDERS, ARBUTHNOT & Co . 2 B. L. R. O. C. 140

9. ———— **Liability of master for criminal acts of servant**—*Express authorization.* A master is not criminally responsible for the wrongful act of a servant, unless he can be shown to have expressly authorized it. SUFFER ALI KHAN *v* GOLAM HYDER KHAN . . 6 W. R. Cr. 60

10. ———————— *Abetment or in-*

1 N. W. Ed. 1873, 310

11. ———————— *Indian Ports*

12 ———— **Action for harbouring or**

13 ———— **Wrongful dismissal, suit for**—*Claim for wages—Damages.* Every master and employer has an undoubted right to dismiss his servant or agent at any time for justifiable cause. After the dismissal, whether wrongful or not, the servant cannot claim wages. The remedy for wrongful dismissal is by action for the damages

MASTER AND SERVANT—*contd.*

sustained by the servant in consequence of the breach of the master's contract to employ him. USMUT KOONWAR v. TAYLER . 2 W. R. 307

ISSUR CHUNDER MOOKERJEE v. PUDDO LOCHUN GOOPTO . . . . . 5 W. R. Mis. 18

14. ———————— *Misconduct*

15. ———————— *Unskilfulness—Insolence—Justifiable dismissal.* Unskilfulness in a servant is no ground for dismissal unless it amounts to absolute incompetence. A solitary instance of insolence is not sufficient to justify a master in dismissing a skilled servant. Where no time was specified for a day's work in a contract,

16. ———————— *Probability of similar employment—Disobedience of orders—Intemperate language* If a firm brings out persons to a distant country and undertakes to give a return passage, and does not stipulate for putting an end to the contract on either side by specified notice, either party is entitled to the full benefit of the contract in the event of its being put an end to by the other before the expiration of the term of the engagement without regard to the probabilities of his obtaining similar employment. The dismissal of a servant is justified by refusal to disobey lawful orders, and acts of insubordination by the use of intemperate language to his employers. REID v SCOTT THOMSON & CO. . . 2 Hyde 172

17. ———————— *Misconduct of servant—Right to portion of pay due at end of month.* A servant is not liable for his misconduct to forfeit such portion of his arrears of pay as had become due to him at the expiration of a month's service. The servant's misconduct may have justified his discharge in the middle of a month: if so, he is entitled to no pay for any portion of such month. BROJO MOHUN MYTEE v SWAYNE. SWAYNE v. BROJO MOHUN ROY . . . 1 Hay 297

MASTER AND SERVANT—*contd.*

this notice in September 1861. When the six months' notice expired, the plaintiff was driving ballast trains, receiving (under his agreement) R174-8-8 per month. He continued to be so employed, and to receive pay at the same rate, without interruption or objection until the beginning of 1864, when he was employed to drive passenger trains for the defendants, who thereupon increased his salary. The plaintiff did

previously claimed the pay so withheld In 186[illegible] he had applied to be restored to his position under his original agreement, and was refused. The Court below gave *C* a decree for the amount claimed, ... *Held* on appeal rever-

acquiescence by the servant in his dismissal, that in such a case the servant serves under a fresh contract, not at the rate of wages previously received by him, but at the rate he is actually receiving; that a servant whose wages have for one month been stopped during suspension for alleged misconduct, and who, continuing in the service, has not claimed them for several years, has acquiesced in the stoppage. CAMPBELL v EAST INDIAN RAILWAY COMPANY . . Bourke A. O. C. 56

19. ———————— *Incompetence—* ... *accounts* The plaintiff,

... other ... l to him, ...ower, or ... was also

... or under his control ...

MASTER AND SERVANT—contd

perienced assistant in a tea garden might reason-

20. —— Justification,

21. —— Right to wages

22. —— Justification—

MASTER AND SERVANT—contd.

23. ———— Wages, suit for—*Subsequent misconduct—Forfeiture of wages.* A finding of fact that an employé is entitled to his wages notwithstanding subsequent misconduct, is not wrong in law. KALEE CHURN RAWANEE *v* BENGAL COAL COMPANY . . . . 21 W. R. 405

24. ———— Admission by servant after illegal dismissal—*Dismissal without notice* A manager's authority to make any admission which can be binding on his employers is withdrawn when he is dismissed, whether the dismissal is or is not upon such a notice as the manager has a right to demand KALEE CHURN RAWANEE *v.* BENGAL COAL COMPANY . . . 21 W. R. 405

25. ———— Servant leaving after due notice, right of—*Right to wages—Custom of office* Where a servant leaves his service after giving due notice, he is entitled to receive at once all pay then due to him, without reference to the custom of the office or master he serves. THOMAS *v* MANAGER OF THE PIONEER PRESS

2 Agra Mis. 1

26. ———— Monthly servant leaving without notice—*Forfeiture of wages.* Where

27. ———— *Forfeiture of wages—Contract Act (IX of 1872), s. 74.* Where the

28 ———— *Monthly service —Wrongful leaving of employment, consequence of*

I. L. R. 13 Calc. 80

29. ———— *Theft and forgery by servants, no duty to guard against.* There is no duty incumbent upon mercantile men, any more than upon other people, to anticipate and to take precautions against the possibility of a theft of letters or of forgery being committed. *Societe, Generale v. Metropolitan Bank, 27 L. T. 819* referred to. MORRISON *v.* VERSCHOYLE (1901)

6 C. W. N. 429

MASTER AND SERVANT—*contd.*

30. ——————— *Agreement with Native of India to depart out of India by sea to work as an artisan—Agreement made without the permission of the Protector of Emigrants—Liability of*

of 1902), ss 6, 107, 111. Where penal statute has been infringed by servants, and criminal proceedings are taken against the master although it lies upon the prosecutor to establish the master's liability, yet the question whether he is liable turns necessarily upon what is the true construction to be placed upon the statute. The statute should be construed, not merely with reference to its language, but also its subject-matter and object. EMPEROR *v* JEEVANJI (1907) I. L. R. 31 Bom. 611

31. ——————— *Emigration Act (XXI of 1883), s. 107—Servant offending under the Act in the course of his master's employment for his master's benefit—Master's liability.* If a servant

ledge of or consent to the act is not necessary, because by the very fact of the appointment of the servant as an agent in such a business, the master's knowledge of or consent to every act done by the servant or agent within the scope of his employment is implied by law. EMPEROR *v.* HAJI SHAIK. MAHOMED SHUSTARI (1907) I. L. R. 32 Bom. 10

the liability of the master for misconduct of the servant is that a master is liable for the fraud of his servant committed in the course of his service and for the master's benefit, though it is not necessary that the benefit should accrue to the master; and that a master is not liable for misconduct of the servant committed for the servant's own private benefit. A cheque was given to the plaintiff by the District Board for repairs done to certain roads. On presentation of the cheque for payment at the Government Treasury Office, the amount was not paid to the plaintiff, but was misappropriated by the *poddar* and a *mohurer* employed in the Treasury to their own use. The plaintiff brought a suit for the recovery of the amount

MASTER AND SERVANT—*concld.*

tary of State or for purposes of the agency. *Barwick v. English Joint Stock Bank, L. R. 2 Exch. 259,* ... *A. C.* ... *The* ... *B. D.* ... *Mirza*

111, referred to. GOPAL CHANDRA BHATTACHARJEE *v.* THE SECRETARY OF STATE FOR INDIA (1909) I. L. R. 36 Calc. 647

MASTER OF SHIP.

——— liability of—

See BILL OF LADING . 13 B. L. R. 394

See CHARTER PARTY . 8 B L R. 340
I L. R. 7 Bom. 51

——— lien of, for wages and disbursements—

See BOTTOMRY-BOND . 5 B. L R. 258
6 B. L. R. 323
1 Ind. Jur. N. S. 303

MATE'S RECEIPT.

See CONTRACT . I. L R. 33 Calc. 547
I. L. R 34 Calc. 173

MATERIAL ERROR.

See ERROR . I. L. R. 29 Calc. 481

MATERIAL IRREGULARITY.

See CIVIL PROCEDURE CODE, 1882, ss. 373, 622 . I. L R. 33 Bom. 723

MATH.

See HINDU LAW—ENDOWMENT.

See MAMLATDAR . I. L. R. 28 Bom. 215

See MUTTA.

MATRIMONIAL OFFENCES.

See RESTITUTION OF CONJUGAL RIGHTS
I. L. R. 34 Calc. 971

MATWALI.

See MAHOMEDAN LAW—ENDOWMENT.

See MUTWALLI.

MATWALI LANDLORD.

See LANDLORD AND TENANT.
8 C. W. N. 659
L. R. 31 I. A. 144

See MAHOMEDAN LAW—ENDOWMENT.

MAURASI MUKARARI LEASE.

See HINDU LAW . I. L. R. 33 Calc. 315

See LEASE.

MAXIMS.

——— "actio personalis moritur cum persona"—

See ABATEMENT OF SUIT—APPEALS. I. L. R. 26 Bom. 597

See MALICIOUS PROSECUTION. I. L. R. 20 Mad. 499

See RIGHT OF SUIT—SURVIVAL OF RIGHT. I. L. R. 13 Bom. 677

——— "actus curiæ neminem gravabit"—

The maxim "*Actus curiæ neminem gravabit*" observed upon as requiring qualification. KAMBINAYANI JAVAJI SUBBARAJULU NAYANI VARU *v* UDDIGHIRI VENKATARAYA CHETTY 2 Mad. 288

——— "ædificare in tuo proprio solo non licet quod alteri noceat"—

See CUSTOM . I. L. R. 10 All. 358

See PRESCRIPTION—EASEMENTS—PRIVACY. I. L. R. 10 All. 358

——— "audi alteram pertem"—

See CLUB . I. L. R. 7 Mad. 319

——— "certum est quod certum reddi potest"—

See MORTGAGE—FORM OF MORTGAGES I. L. R. 9 All. 158

——— "communis error facit jus"—

See OUDH ESTATES ACT (I OF 1869) 5 C. W. N. 602

——— "contra non valentem agere nulla currit præscriptio"—

See LIMITATION ACT, 1877, ART. 144—ADVERSE POSSESSION I. L. R. 8 Bom. 585

——— "cujus est solum ejus est usque ad cœlum"—

See INJUNCTION—SPECIAL CASES—CUTTING TREES . I. L. R. 24 All. 499

——— "debitum et contractus sunt nullius loci"—

See JURISDICTION—CAUSES OF JURISDICTION—CAUSE OF ACTION—NEGOTIABLE INSTRUMENTS . . 1 Mad. 436

——— "de minimis non curat lex"—

See DEFAMATION . I. L. R. 13 Mad. 34

——— "expressio unius personæ est exclusio alterius"—

See DEED—CONSTRUCTION . 10 Bom. 51

——— "expressum facit cessare tacitum"—

See TRANSFER OF PROPERTY ACT, s. 119. I. L. R. 21 Mad. 69

MAXIMS—*contd.*

——— "ignorantia legis neminem excusat"—

See EMBANKMENT . 7 C. W. N. 286

See MARRIAGE ACT, 1872, s. 18. I. L. R. 16 All. 212

1. ——— *Suit to set aside illegal adoption.* A suit to set aside the adoption of a second son must be made within twelve years from cause of action. The maxim "*Ignorantia legis neminem excusat*" applies to questions of the Hindu law of inheritance and adoption as well as to other laws. RADHAKISSEN MAHAPATER *v* SREEKISSEN MAHAPATER . . 1 W. R. 62

See as to this maxim, SADHO SINGH *v* KISHNEE 3 N. W. 318

See (*contra*) SOORBURNOMONEE DABIA *v* PETUMBER DOBEY . Marsh. 221 : 1 Hay 497

2. ——— *Presumption as to knowledge of law and limit of.* Where loss of

fendants had taken steps to prevent passengers from taking fireworks into the carriage, the Court cannot presume that the fireworks were taken

——— "in pari delicto potior est conditio possidentis"—

See CONTRACT—WAGERING CONTRACTS. I. L. R. 9 Bom. 358

See ESTOPPEL—ESTOPPEL BY DEEDS AND OTHER DOCUMENTS. I. L. R. 1 All. 403

——— "no one can be Judge in his own cause"—

See CONTRACT—CONDITIONS PRECEDENT. I. L. R. 5 Mad. 173

MAXIMS—*contd.*

——— "**nova constitutio futuris formam imponere debet, non præteritis.**"

See STATUTES, CONSTRUCTION OF.
5 Moo. I. A. 109

——— "**nullum tempus occurit regi**"—

1. ——— *Hindu law.* This maxim is a rule of Hindu and Mahomedan as well as English law. VYAKUNTA BAPUJI *v.* GOVERNMENT OF BOMBAY . 12 Bom. Ap. 1

2 ——— *Legislation in Bombay Presidency.* The extent to which the maxim *nullum tempus occurit regi* has been restrained by legislation in the Presidency of Bombay considered. VYAKUNTA BAPUJI *v.* GOVERNMENT OF BOMBAY . . . . 12 Bom. Ap. 1

GOVERNMENT OF BOMBAY *v.* HARIBHAI MONBHAI . . . . . 12 Bom. Ap. 225

——— "**omnia præsumuntur contra spoliatorem**"—

See ESTOPPEL—ESTOPPEL BY DEEDS AND OTHER DOCUMENTS.
3 Bom. A. C. 116

See SALT—ACTS AND REGULATIONS RELATING TO—BOMBAY.
7 Bom. A. C. 89

——— "**omnia præsumuntur rite esse acta**"—

See APPELLATE COURT—OBJECTION TAKEN FOR FIRST TIME ON APPEAL—SPECIAL CASES—GUARDIAN.
2 N. W. 89

See EXECUTION OF DECREE—NOTICE OF EXECUTION . . 22 W. R. 5

See INFORMATION OF COMMISSION OF OFFENCE . I. L. R. 7 Mad. 436

See SUPERINTENDENCE OF HIGH COURT —CIVIL PROCEDURE CODE, 1882, s. 622.
I. L. R. 10 All. 119

1. ——— *Proceedings of public officer.* The proceedings of a public officer must be presumed to be regular; and if they took place long ago (*e g*, twenty years previously), it is not just to require a proof of such circumstances as due service of notice KHAN *v.* BAMA SOONDUREE DOSSEE . . . . . . 25 W. R. 62

2. ——— *Publication of Government order, presumption as to.* There being no proof given by either party as to whether an *istahar* said to have been published by Government was or was not duly published:—*Held*, that the publication of the *istahar* must be presumed, having regard to the presumption in favour of the due performance of official acts PROSUNNO COOMAR ROY *v.* SECRETARY OF STATE FOR INDIA
I. L. R. 26 Calc. 792

3. ——— *Revenue cases.* As in civil suits so in revenue cases all things must be presumed to have been correctly done. It is not necessary to inquire into the instructions which revenue agents receive, and until the contrary is shown, the parties must be held to have been properly represented and to be bound by the decisions. AHSANOLLAH *v.* JUSODA . . 23 W. R. 79

4. ——— *Sale in execution for arrears of rent.* Where a tenure is sold in execution of a decree for arrears of rent, and a certificate of sale is granted by the Collector, it must be presumed that all the ordinary proceedings relating to the payment of the purchase-money have been fulfilled. FYAZOODDEEN BHOOYA *v.* SHUMSUNNISSA BIBEE . . . . . 12 W. R. 508

See RAM RUKHÁ ROY JEMADAR *v.* GOBIND DOSS BYRAGEE . . . . . 15 W. R. 291

5. ——— *Certificate of sale —Proof of title without production of certificate.* A plaintiff who has purchased land at a sale in

6 ——— *Transfer of case not recorded.* Where an estate which was subject to a mortgage was attached in execution, but was leased out to fresh tenants and under-tenants

void against the new lessees and under-lessees *Held*, that the lower Court should have assumed that the sale transfer was regular and the sale good, and that all proceedings after the attachment were of no avail against the judgment creditors. HOSSEINA *v.* JHAMUN SINGH . 25 W. R. 323

7. ——— *Irregularities in proceedings.* Where irregularities had clearly occurred in proceedings, the Court refused to presume a person had been made a party and was therefore bound by them. CHOWDHRY MAHOMED ZUHOORUL HUQ *v.* MAHOMED YAKOOB
23 W. R. 367

——— "**optimus interpres rerum usus**"—

See LANDLORD AND TENANT—EJECTMENT —GENERALLY . 13 B. L. R. 416

——— "**optimus legum interpres consuetudo**"—

See MAMLATDAR, JURISDICTION OF.
I. L. R. 14 Bom. 372

——— "**qui facit per alium, facit per se**"—

See SIGNATURE . I. L. R. 24 All. 319

MAXIMS—*concld.*

——— "quod fieri non debet factum valet"—

See Hindu Law—Adoption—Doctrine of Factum Valet as respects Adoption.

See Hindu Law—Adoption—Requisites for Adoption—Authority
I. L. R. 12 All. 328

See Hindu Law—Adoption—Who may or may not be adopted.
I. L. R. 14 All. 67
I. L. R. 21 All. 460
L. R. 26 I. A. 113

See Hindu Law—Marriage—Right to give in Marriage, etc.
I. L. R. 11 Bom. 247
I. L. R. 22 Bom. 812

See Madras Towns Improvement Act III of 1871, ss. 61, 62
I. L. R. 7 Mad. 65

——— "respondeat superior"—

See Abetment . I. L. R. 20 Bom. 394

——— "sic utere tuo ut alienum non lœdas"—

See Custom . I. L. R. 10 All. 358

See Prescription—Easements—Privacy . I. L. R. 10 All. 358

——— "*stare decisis*"—

See Penal Code (Act XLV of 1860), ss. 230, 235 and 243 I. L. R. 28 All. 9

——— "volenti non fit injuria"—

See Negligence . I. L. R. 13 Bom. 183

MAYUKHA

See Hindu Law . I. L. R. 39 Bom. 431

MEASUREMENT OF LANDS.

See Appeal—Measurement of Lands.

See Bengal Tenancy Act, ss. 90, 52 and 188 . . . . . 7 C. W. N. 93

See Lease—Construction
I. L. R. 14 Calc. 99
L. R. 13 I. A. 116

See Res Judicata—Competent Court—Revenue Courts
I. L. R. 10 Calc. 507

See Res Judicata—Estoppel by Judgment . . . I. L. R. 3 Calc. 271
3 C. L. R. 74

——— by a co-sharer landlord—

See Bengal Tenancy Act, s. 91.
I. L. R. 35 Calc. 417

——— power of ameen in—

See Penal Code, s. 186.
I. L. R. 22 Calc. 286

MEASUREMENT OF LANDS—*contd*

——— question of standard of—

See Bengal Tenancy Act, s. 158.
I. L. R. 17 Calc. 277

See Special or Second Appeal—Orders subject or not to Appeal.
I. L. R. 22 Calc. 477
I. L. R. 25 Calc. 34
I. L. R. 26 Calc. 556

1. ——— "Jurisdiction"—*Valuation of suit—Bengal Rent Act, 1869, s. 37.* The word "jurisdiction" in Bengal Act VIII of 1869, s 37, refers not merely to local jurisdiction, but also to jurisdiction as to value PEAREE MOHUN MOOKERJEE *v.* RAJ KRISTO MOOKERJEE . 20 W. R. 385

2. ——— *Suit to measure land—Bengal Rent Act, 1869, s. 37.* A suit to establish a zamindar's right to measure land must be brought in the Court which would have had jurisdiction in a suit to recover such land SHURO SOONDUREE DEBIA *v.* BULORAM GOOHO
24 W. R. 423

tor of an estate is entitled, under s. 9, Bengal Act VI of 1862, to measure the lands of any subordinate tenure within the limits of his estates, whatever the character or size of the tenure or the amount of rent paid in respect of it. RUN BAHADOOR SINGH *v* MULOORUM TEWARRE
8 W. R. 149

4. ——— *Zamindar—Bengal Rent Act, 1869, s 37 (Bengal Act VI of 1862, s 9)* There must be some express restriction be-

5. ——— *Proprietor in possession—Bengal Rent Act, 1869, s 27 (Beng. Act VI of 1862, s 9)* Under s. 9, Bengal Act VI of 1862, the proprietor who can claim to measure

6. ——— *Right of proprietor to survey and measure—Bengal Rent Act, 1869, s 37.* A proprietor of an estate or tenure has a right to make a general survey and measurement of the lands comprised in his estate, under the provisions of s. 37 of the Rent Act, without proving that he is in receipt of the rents, there being nothing in law which prevents him from making

MEASUREMENT OF LANDS—*contd.*

due rents, one suit may be brought against a number of them, under s 10, Bengal Act VI of 1862, for measurement and ascertainment by the Collector of the details of the tenures of each raiyat. SOLANO *v.* SOOBRON ROY

6 W. R., Act X, 4

29. ——— *Necessary proof —Bengal Rent Act, 1869, s. 38 (Beng. Act VI of 1862, s 10).* An applicant under s. 10, Bengal Act VI of 1862, must first prove what steps he has taken to obtain the knowledge of the tenures in his estate, and that he is unable to measure because he is unable to ascertain them If his averments are objected to, and the Collector proceeds without inquiry, the proceedings are invalid and without jurisdiction. An applicant under the above section must be the proprietor of the estate, and not a shareholder only in the proprietary body. MAHOMED BAHADOOR MOJOOMDAR *v* RAJ KISHEN SINGH

15 W. R. 522 : 10 B. L. R. 401 note

30. ——— *Bengal Rent Act, 1869, s. 38 (Beng Act VI of 1862, s 10)—Enhancement of rent and resumption of rent-free lands* S 10, Bengal Act VI of 1862, was intended to assist a proprietor to measure the lands comprised in his estate when he cannot ascertain who the raiyats are, what lands are in their occupation, and what rents they have to pay; but not to enable him to enhance the rents of the raiyats; or resume rent-free lands by throwing the onus on the lakhirajdar to prove his rent-free holding. SHARODA PERSHAD GANGOOLY *v.* RAJ MOHUN ROY

18 W. R. 165

31. ——— *Necessary evidence—Beng. Act VIII of 1869, s 38* Before a proprietor in possession as a ticcadar or proprietor for the time being, standing in the shoes of the proprietor, can apply under Bengal Act VIII of 1869, s. 38, to have his estate measured, he must show that he is in need of the help which the section proposes should be granted, and that he cannot ascertain who are the persons liable to pay rent to him or the nature of their holdings Proceedings taken without inquiry as to the existence of the state of facts required under s 38 are invalid, whether taken by the Collector or by the Civil Court. JAMALOODDEEN HOSSEIN *v.* RAMADHIN MISSER . . . . **24 W. R. 331**

Affirmed on appeal under the Letters Patent

25 W. R. 136

32. ——— *Right of auction-purchaser to measure—Beng. Act VIII of 1869, s 38.* Where an auction-purchaser at a sale for arrears of Government revenue applied, under Bengal Act VIII of 1869, s 38, for measurement

[illegible]

—A zamindar cannot insist upon a measurement simply by alleging inability to measure, but must, in ordinary circumstances, prove such inability. ABDOOL BAREE *v.* NITTYANUND KOONDOO

21 W. R. 103

33. ——— *Bengal Rent Act, 1869, s 38 (Beng. Act VI of 1862, s. 10)—Power of revenue officers.* S 10, Bengal Act VI of 1862, merely empowers revenue officers to decide what rate of rent the tenant of a particular parcel of land has been paying, and does not empower them to [illegible]

[illegible]

SREE MISSER *v.* CROWDY . . **15 W. R. 243**

34. ——— *Bengal Rent Act, 1869, s. 38 (Beng. Act VI of 1862, s 10)—Duty of Collector—Rate of rent, determination of* The Collector's duty under Bengal Act VI of 1862, s. 10, is to ascertain the actually existing rates of rent payable by the raiyat to the zamindar: he has no jurisdiction to assess the rent at enhanced rates. CROWDY *v.* OMRAO SINGH . **22 W. R. 476**

RUTTOO SINGH *v.* CROWDY

22 W. R. 477 note

NEEM CHAND SAHOO *v.* RAM GHOLAM SINGH

24 W. R. 424

35. ——— *Bengal Rent Act, 1869, s. 38 (Bengal Act VI of 1862, s 10)—Power of Collector—Question of title.* On an application to measure the lands of a particular estate, the Collector is not empowered by Bengal Act VI of 1862 to determine summarily the character of every [illegible]

[illegible] cular tenants claimed to hold as [illegible] a Civil Court would have jurisdiction to determine a title on which a cloud had been cast by his proceedings. WISE *v.* LAKHOO KHAN

16 W. R. 50

36. ——— *Power of Collector—Assessment of rents—Bengal Rent Act, 1869, s 38 (Bengal Act VI of 1862, s. 10).* Under the [illegible]

[illegible] tion of his estate is, what are the [illegible] what the names of his tenants, and what the rents they are paying. *Anunt Manjhee v Joy Chunder Chowdhry, 12 W. R 371,* followed In a suit for rent by one co-sharer, the plaintiff claimed that the rent should be calculated at the rate fixed by the Collector, in a proceeding held by him under s. 10 of Bengal Act VI of 1862. It appeared that the [illegible] had notice of the proceeding [illegible] e rate [illegible] erties. [illegible] were [illegible], and

MEASUREMENT OF LANDS—*contd*

that they were not binding on the defendants for the purpose of showing the rate at which rent was payable by them BABA CHOWDHRY *v* ABEDOODDEEN MAHOMED . . I. L. R. 7 Calc. 69

S C. RUPENNESSA BIBI CHOWDHRANI *v* ABEDUDDIN MAHOMED . 8 C. L. R. 73

37. ———— **Fixing rates of rent**—*Duty of Collector—Beng Act VIII of 1869, s 38—Finality of proceedings* In a suit in which defendant had admitted his tenancy, but had disputed the amount of the rent claimed by plaintiff, and plaintiff had not made a special application to the Collector, under s. 38, Act VIII of 1869, for the determination and record of tenures, under-tenures, and rates of rent in the land in suit :—*Held*, that, in the absence of special order of the Collector fixing the rates of rent, there was no legal order which could be considered final, and the matter was open to the Civil Court JAMALOODDEEN HOSSEIN *v* RAMADHEEN MISSER 25 W R. 136

affirming on appeal under the Letters Patent, s c. 24 W. R. 331

38. ———— *Duty of Collector —Bengal Rent Act, 1869, s 38—Delegation of powers by Collector to Ameen.* In a suit under s 38, the Collector cannot delegate his powers to an Ameen or accept absolutely without reservation the whole report of that officer, and order assessment in accordance with the rates found by him; such report being only a part of the evidence to be taken into consideration SHETUL SHAIKH *v* HILLS 24 W. R. 184

39. ———— *Ameen deputed to measure, duty of—Bengal Rent Act, 1869, s 38 (Beng Act VI of 1862, s 10)* An Ameen deputed to make a measurement under the provisions of s 10, Bengal Act VI of 1862, is bound to record the state of things as actually existing, and has no business to record what he thinks ought to be the rates If, however, the Ameen, or the Collector superintending his proceedings, does any act not in conformity with this section, the remedy for any party dissatisfied is to appeal to the Civil Court within the time and in the manner prescribed by Act X of 1859 BALA THAKOOR *v* MEGHBURN SINGH . . . . . 14 W. R. 269

40 ———— *Beng. Act VIII of 1869, s. 38—Power of Collector.* Where an application is made to a Collector under Bengal Act VIII of 1869, s 38, for the measurement of certain lands without any "special application" to him to determine the rates of rent, any proceedings regarding the rates of rent are inadmissible CROWDY *v.* POORUN SINGH . . 22 W. R. 480

41. ———— **Resistance to measurement** —*Right to intervene—Intermediate tenant—Bengal Rent Act, 1869, s 38 (Beng. Act VI of 1862, s 10)* The fact of a measurement and jamabandi having been effected under the provisions of Bengal Act VI of 1862, s. 10, cannot deprive an intermediate tenant of the right of intervening under Act X of 1859, s. 77, nor is the intervenor deprived of that protection, even though Act X no longer exists. MUDHOO SOODUN SHAHA *v.* GOPAL SHAIKH . . . . . 22 W. R. 508

42. ———— *Interference by third party—Duty of Collector—Bengal Rent Act, 1869, s. 38 (Beng. Act VI of 1862, s. 10)* Where the progress of a measurement under s 10, Bengal Act VI of 1862, is interfered with by a third party claiming the land, the proper course for the Collector is to hold his hand, leaving it to the parties to seek their remedy in the Civil Court. He cannot, however, make any order which will prevent the intervenor coming under s 77, Act X of 1859. WISE *v.* BANSEE SHAHA . . 16 W. R. 51

43. ———— **Objections to measurement** —*Bengal Rent Act, 1869, s 38—Power of Collector in dealing with objections to measurement Quære:* After having commenced proceedings under s. 38 of Bengal Act VIII of 1869, has a Collector power to refer some of the objections taken to one Deputy Collector and some to another? OMED ALI *v* NITTYANUND ROY . . . 24 W. R 171

44. ———— *Bengal Rent Act, 1869, s 38 (Beng. Act VI of 1862, s 10)—Objections to measurement proceedings* Where a measurement under Bengal Act VI of 1862 was completed without any objections having been made to it [illegible]

[illegible] MAJHEE . . . . . [illegible] W. R. 23

45. ———— *Measurement of chur lands according to agreement—Effect of error as distinguished from fraud—Omission to object to measurement at time it was taken* A superior owner of chur land, and his tenants, who held it in "howladari" tenure, agreed, with reference to alluvion and diluvion, that the chur should be measured from time to time, on notice, and that, unless the tenants should give a separate "daul kabuliat" for the land found to be accreted, the superior owner should take possession of it. A measurement by the superior owner was made on notice to the tenants and *bonâ fide*; but it was incorrectly made,—the tenants, however, raising no objection at the time. They afterwards, when a suit was brought against them by the superior owner for possession of alleged accreted lands, set up the defence that the measurement had been made in their absence and was incorrect *Held*, by the Privy Council, that the tenants could not [illegible]

which the plaintiff was entitled to recover. ALIMUDDIN *v.* KALI KRISHNA TAGORE I. L. R. 10 Calc. 895

46. ———— **Measurement of waste lands**—*Bengal Rent Act, 1869, s 38—Bengal*

MEASUREMENT OF LANDS—*contd.*

Civil Courts Act (VI of 1871), s. 22—Appeal. An application for the measurement of a whole estate under s. 38 of Bengal Act VIII of 1869 cannot be granted where waste lands in that estate have been brought into cultivation by various raiyats, and the landlord is unable to ascertain which of the raiyats have appropriated such waste lands as part of their jotes. Before a measurement can be ordered under that section, it is necessary to establish by evidence the facts set out in the petition for measurement and to show that the lands sought to be measured are known, but that the tenants liable to pay rent in respect of such lands are unknown. LALLA CHEDI LAL *v.* RAMDHUNI GOPE

I. L. R. 13 Calc. 57

47. ———— **Measurement of chur lands**—*Accretion to tenure—Measurement made in absence of tenants—Notice.* Where a kabuliat stipulated that on the accretion to a certain howla of any new cultivable chur, a fresh measurement should be made of the chur and howla, and that excess rent should be paid for the excess land at a stipulated rate up to five drones, and at purgannah rates for the residue: in default thereof rent to be realized according to law, or service made on the tenants of a notice "requiring them to take a settlement of the excess land, and to file a kabuliat and fixing the time at fifteen days," otherwise the excess land to be settled with others,—the kabuliatdar measured the howla and accreted without notice to the tenants and in their absence, then served on the tenants a notice thereof, and of the increased rent demanded, requiring them to appear within fifteen days and file a kabuliat for the said amount and rent, or that he would take khas possession. In a suit, amongst other things, for assessment of rent of the excess land:—*Held*, that the tenants were not bound by the measurement made by the kabuliatdar in their absence RAM COOMAR GHOSE *v.* KALI KRISHNA TAGORE

L. R. 13 I. A. 116 : I. L. R. 14 Calc. 99

48. ———— **Procedure**—*Inquiry and evidence as to inability to ascertain tenants—Beng. Act VIII of 1869, ss. 38, 39—Appeal from order—Separate appeal.* The Court to which an application under s. 38 of Bengal Act VIII of 1869 is made on the ground that the applicant is unable to ascertain who are the persons liable to pay rent, ought not to make an order in his favour except upon inquiry and proof of his alleged inability. Where an order has been passed by the Civil Court

[illegible]

v. Rajkishen Singh, 10 B. L. R. 40 note : 15 W. R. 522, followed LALOO SIRKAR *v.* JOGUT KISHORE ACHARJEA . . . . . **13 C. L. R. 203**

49. ———— ———— *Proof of conduct of proceedings in accordance with Act—Bengal Rent Act, 1869, s. 38 (Beng. Act VI of 1862, s. 10)—Proceedings of revenue officers—Per* JACKSON, J. —The High Court will not hold any person bound by the finding specified in Bengal Act VI of 1862, s. 10, unless it is shown beyond a doubt that the proceedings of the revenue officers referred to have been conducted in strict accordance with the terms of that section. DINOBUNDHOO CHOWDHRY *v.* DINONATH MOOKERJEE . . **19 W. R. 168**

50. ———— *Notice—Bengal Rent Act, 1869, s. 38—Ex parte orders—Proceedings for measurement of land.* In proceedings under s 38 of the Bengal Rent Law, Act VIII of 1869, the Collector should, as a rule, pass no order *ex parte* without previously giving timely notice to the other party or parties sought to be affected by the order. *In the matter of the petition of* PROTAP CHUNDER GHOSE KALLY CHURN DUTT *v.* PROTAP CHUNDER GHOSE

I. L. R. 8 Calc. 848 : 12 C. L. R. 407

51. ———— *Notice—Measurement of lands in order to enhance—Notice of enhancement—Act X of 1859, s. 26.* An under-tenant or raiyat is not bound by measurement under Act X of 1859, s. 26, made in his absence, unless he has received notice. JADUB CHUNDAR HALDER *v.* ETAWAREE LUSHKUR . . . **Marsh. 498**

S.C. ETWAREE LUSKUR *v.* JADUB CHUNDER HALDAR . . . . . **2 Hay 599**

52. ———— *Notice—Khasra or appraisement of land—Dannabandi tenant—Presence of tenant—Notice to tenant of khasra.* In a

[illegible]

when the khasra was about

NARAIN SINGH *v.* BELJEET JHA . **24 W. R. 125**

53. ———— *Attendance of witnesses—Inquiry—Bengal Rent Act, 1869, ss. 38 40—Order that tenures have lapsed.* The [illegible]

JOGENDRO NATH ROY

I. L. R. 6 Calc. 673 : 8 C. L. R. 39

54. ———— *Right to appeal—Bengal Rent Act 1869 ss. 38, 39.* According to [illegible]

55. ———— **Appeal**—*Bengal Act 1869, s 38 (Beng. Act VI of 1862, s 10)—Objection to measurement, time for.* In order to object

MEASUREMENT OF LANDS—*contd.*

to the proceeding of the Collector under s 10 of Act VI of 1862, the proper course for the raiyat is to appeal to the District Judge, and not wait until the zamindar brings a suit for arrears of rent on the basis of the rate fixed by the Collector. HURRY SANKUR PATWARI v. RADHA CHOWDHOORY
25 W. R. 346

56. ———— **Decision of Collector**—*Re-consideration of order—Right of appeal* The decision of the Collector referred to in s 39 of Bengal Act VIII of 1869 must be taken to include any order made under the preceding section in the course of proceedings before him, and the provisions in the latter section for obtaining a reconsideration of any order does not deprive any one of the right of appeal RASHBEHARY GHOSE v BARRODA PROSAD MOOKHOPADHYA . **7 C L. R. 380**

57. ———— **Standard of measurement**—*Bengal Rent Act, 1869, s. 41 (Beng. Act VI of 1862, s 11)* Under s 11 of Bengal Act VI of 1862, the

58. ———————— *Bengal Rent Act, 1869, s 41—Standard pole of measurement* The standard pole of measurement alluded to in s 41 must mean a standard officially known, i e, known to the Collector SHETUL SHAIKH v HILLS
24 W. R 184

59. ———————— *Power of Collector* The Collector is the depository of the standard pole of each pergunnah; and it is exclusively within his province to declare what the standard of such pole is. TARUCKNATH MOOKERJEE v MEYDEE BISWAS . . . **5 W. R., Act X, 17**

60. ———————— *Power of Collector to determine standard of measurement—Bengal Rent Act, 1869, s 41 (Beng Act VI of 1862, s 11).* In an application for assistance to measure the land of a raiyat under s 9, Bengal Act VI of 1862, the Collector has no power under s 11 to fix with what pole the measurement is to be made, but

s c. ROMANATH RAKHIT v. DHOOKHEE SHAM BHOOYA . . . . . . **11 W. R. 510**

61. ———————— *Power of Collector—Bengal Rent Act, 1869, s 41 (Beng Act VI*

the length of the standard pole BRAJA KISHOR SEN v. KASIM ALI . . **3 B. L. R. Ap 78**

s.c. BROJO KISHORE SEIN v. KASSIM ALI
11 W. R. 562

MEASUREMENT OF LANDS—*concld.*

62. ———————— *Power of Collector*

surement of a tenure is disputed, solely on the

length of the standard pole, the Collector has jurisdiction to inquire into and decide as to the true length of the standard pole. COUCH, C.J, and BAYLEY and JACKSON, JJ (contra) MANMOHINI CHOWDHRAIN v. PREMCHAND ROY
6 B. L. R. 1 : 14 W. R. F. B. 4

63. ———————— *Power of Judge on appeal* A Judge on appeal has power under s 9, Bengal Act VI of 1862, s. 9, to declare by what standard measurements are to be made. MACKINTOSH v. KOYLAS CHUNDER CHATTERJEE
W. R. 1864, Act X, 59

64. ———————— *Bengal Rent Act, 1869, s 41 (Beng. Act VI of 1862, s 11)—Measuring rod of tuppah* S 11, Bengal Act VI of 1862, does not preclude the use of the standard measuring rod of a tuppah. SURBANUND PANDEY v. RUCHIA PANDEY . . . **W. R., Act X, 32**

MEDAL.

———— **taking pawn of, from soldier**—

See ARMY DISCIPLINE ACT, 1881, s. 156.
I. L. R. 10 Mad. 108

MEDICAL ATTENDANCE, FEES FOR

See CIVIL PROCEDURE CODE, 1882, s 43
I. L R. 29 All. 256

See MEDICAL OFFICER.

———————— *Suit to recover fees for medical attendance—Fees partly secured by a promissory note—Separate suits upon the promissory note and for the unsecured balance—Latter suit barred.* A, a doctor, agreed with B to accompany B to Hardwar as his medical attendant on a fee of R100 a day After seven days B gave A a promissory note for R700 representing seven days' fees B, who was a vakil, also promised to assist A professionally in certain litigation. B, however, died before he could fulfil his agreement to render professional

under the alleged agreement and for fees for later attendance at Benares *Held*, that the second suit was barred by the provisions of s. 43 of the Code of Civil Procedure so far as the fees for attendance at Hardwar were concerned, though not in respect of the other fees claimed. PREONATH MUKERJI v. BISHNATH PRASAD (1906) . **I. L. R. 29 All. 256**

MEDICAL EVIDENCE.

See EVIDENCE—CRIMINAL CASES—MEDICAL EVIDENCE.

MEDICAL EXAMINATION.

See HINDU LAW—MARRIAGE—RESTRAINT ON, OR DISSOLUTION OF, MARRIAGE
I. L. R. 1 All. 549

MEDICAL JURISPRUDENCE.

——— *Homicide or death from epilepsy—Scratches on the neck.* Where amongst other marks noticed on the body of the deceased, there appeared certain scratches on the front part of the neck running downwards:—*Held*, upon a consideration of medical authorities, that though in the opinion of the Civil Surgeon it was probable that the deceased met with his death from throttling, the alternative theory was equally probable that the scratches were self-inflicted whilst the deceased was labouring under an epileptic or other fit and of which he died. Having regard to this as also to the nature of the evidence adduced in support of the prosecution, the accused who were charged with murder were acquitted. EMPEROR *v.* GAYANATH DAS (1909)
13 C. W. N. 622

MEDICAL OFFICER.

See MEDICAL ATTENDANCE, FEES FOR.

——— **Remuneration for professional attendance.** The amount of remuneration for the professional attendance of a medical officer on the family of a public servant in the absence of an express agreement should be determined with reference to the circumstances in each case, and the principle adopted by the Judge in estimating the amount, that reference must be had not only to present means, but to prospects, without considering other matters, was not correct. *Held*, under the circumstances of the case, that one-fifth of the monthly income of the defendant was the fair amount to which the plaintiff was entitled for his professional attendance for the year. RAWLINS *v.* DANIEL . . . . . 2 Agra 56

MELA, PROFITS OF.

See CESS, ASSESSMENT OF.
11 C. W. N. 1033; I. L. R. 35 Calc. 82

MELWARAM.

——— *Civil Procedure Code, s. 266—A hereditary allowance out of melwaram of lands attachable.* A hereditary grant of an allowance of paddy out of the melwaram of certain land is not a right to future maintenance such as is exempted from attachment under s. 266 of the Code of Civil Procedure. VAIDYANATHA SASTRIAL *v.* EGGIA VENKATARAMA DIKSHITAR (1907)
I. L. R. 30 Mad. 279

MEMORANDUM OF AGREEMENT.

See STAMP DUTY . I. L. R. 35 Calc. 111

MEMORANDUM OF APPEAL.

See APPEAL.

See COURT-FEE . I. L. R. 33 Calc. 11

See LIMITATION, PLEA OF.
I. L. R. 33 Calc. 941

MERCANTILE USAGE.

See CUSTOM . . 7 Moo. I. A. 263
I. L. R. 11 Mad. 459
I. L. R. 14 Mad. 420

MERCHANDISE BOOKED AS 'LUGGAGE.'

——— loss of —

See RAILWAY COMPANY.
I. L. R. 36 Calc. 819

MERCHANDISE MARKS ACT (IV OF 1889).

See CAUSE OF ACTION 10 C. W. N. 107

See TRADE MARK.

——— *Books are goods within the meaning of the Act—Penal Code (Act XLV of* [illegible] Books

[illegible]

that it was not done to defraud any VALU NAIDU *v.* SUNDRAMURTHI MUDALI (1907)
I. L. R. 31 Mad. 512

——— s. 2, cl. 4—*Penal Code (Act XLV of 1860), s. 486—Selling books with counterfeit property mark—Goods.* Books are the subject of trade, and are goods within the meaning of s. 2, cl. (4), of the Indian Merchandise Marks Act (IV of 1889); therefore, when a person sells books with a counterfeit property mark, he commits an offence under s. 486 of the Indian Penal Code. KANAI DAS BAIRAGI *v.* RADHA SHYAM BASACK
I. L. R. 26 Calc. 232

——— ss. 4, 6—

See TRADE MARK.
I. L. R. 26 Bom. 289

——— ss. 6 and 7—

See CRIMINAL PROCEDURE CODE, s. 401
I. L. R. 23 Calc. 174

See TRADE MARK. I. L. R. 31 Calc. 411
8 C. W. N. 307

MERCHANDISE MARKS ACT (IV OF 1889)—*concld.*

——— s 10, 11—

See DETENTION OF GOODS.
I. L. R. 34 Calc. 511

MERCHANT SEAMEN'S ACT (I OF 1859)

See MAGISTRATE, JURISDICTION OF SPECIAL ACTS—MERCHANT SEAMEN'S ACT, 1859 . . 4 Mad. Ap. 23
7 Mad. Ap. 32

See MERCHANT SHIPPING ACT, 1854, s 243.
8 Mad. 85

See SHIPPING LAW—MARITIME LIEN
2 Hyde 273
6 Bom O. C. 138

——— 17 & 18 Vict., c. 104, ss. 243 (cls 1 and 2), 288—*Merchant Shipping Act, 1854—43 & 44 Vict, c 16, s 10—Merchant Seamen's (Payment of Wages and Rating) Act, 1880—Imprisonment for desertion* The amendment of cls 1 and 2 of s 243 of 17 & 18 Vict, c 104, by 43

——— s. 111—

See EVIDENCE—CRIMINAL CASES—DEPOSITIONS . . . . 1 Hyde 195

——— ss 201, 202—

See SHIPPING LAW—CERTIFICATES.
1 Mad. 270

MERCHANT SHIPPING ACT, 1854 (17 & 18 VICT., C. 104).

——— ss. 24, 26—*Applicability of Act to India as regards the rules of measurement—Act XIX of 1838, ss 4, 13—Act X of 1841—Temporary additions to open vessels—"Strake," meaning of the term—*

Departmen

of 1854 (1

the rules

having been made, the accused was prosecuted,

MERCHANT SHIPPING ACT, 1854 (17 & 18 VICT., C. 104)—*contd.*

——— ss. 24, 26—*concld.*

under s. 13 of Act XIX of 1838, for omitting to register the vessel anew, and obtain a fresh certificate of registry under s. 4 of the Act. The accused was

dian Acts (XIX of 1838 and X of 1841) or in the Merchant Shipping Act of 1854, the rules of measurement issued in 1873 by the Marine Department were *ultra vires*, so far as they insisted on the mea-

end of the voyage, did not come within the meaning of "strake," which is a structural portion of the vessel def

plates on

stern"

——— ss. 43, 66—

1. ——— Non-registration of ship—*Letter creating charge on ship.* A letter, purport-

Bourke O. C. 388

2. ———Attachment—*Mortgagee—Power*

3. ——— Shipping Master, power of—*Discharge of seamen with consent of captain and men—Regulations of Board of Trade* Where the

Ind. Jur. N. S. 371

——— ss. 53, 55—

See SHIP, SALE OF.
2 Ind. Jur. N. S. 251
1 Ind. Jur. N. S. 263

——— s. 207—*Discharge of seamen—Power*

MERCHANT SHIPPING ACT, 1854 (17 & 18 VICT., C. 104)—*concld*

———— s. 243—

See OFFENCE ON HIGH SEAS.
I. L. R. 21 Calc. 782

———— *Act I of 1859, s. 83, cl. 5—Disobedience of commands by sailors.*

petition of REARDON . . . 8 Mad. 85

———— s. 267—

See OFFENCE ON HIGH SEAS
I. L. R. 21 Calc. 782

———— *Trial of British seamen for offences committed on British ship on the high seas—Procedure at such trial—Murder—Admiralty Courts—British seamen on British ship—Letters Patent, High Court, 1865, cl 26—Case certified by Advocate-General* A British seaman who stood charged with the murder of a fellow-sailor on board a British ship on the high seas was tried by a Judge of the High Court under the Code of Criminal Procedure , the chief evidence against the prisoner being that given in the depositions of the captain and second officer of the ship taken on commission , this evidence was admitted in evidence, and the prisoner was convicted and sentenced. It was objected that, under s 267 of the Merchant Shipping Act of 1854, the prisoner ought to have been tried in every respect as though the trial had been held at the Central Criminal Court in London, and that the law of evidence to be applied was that prevailing in England. *Held*, on a case certified by the Advocate-General under cl 26 of the Letters Patent, that the prisoner had been

MERCHANT SHIPPING ACT, 1855 (18 & 19 VICT., C. 91)

———— 2 —

See OFFENCE ON HIGH SEAS
I. L. R. 21 Calc. 782

MERCHANT SHIPPING ACT (25 & 26 VICT., C. 63).

———— s. 3—

See SHIP, SALE OF.
I. L. R. 21 Mad. 395

———— (IV of 1875), ss. 3, 5, 6, 7, and 18—*Jurisdiction, Admiralty Courts—Board of Trade certificates—Incompetency or misconduct of holder—Statement of grounds* The powers conferred on Courts of Admiralty by s. 5 of Act IV of 1875, of investigating charges of incompetency or misconduct against the holders of Board of Trade

MERCHANT SHIPPING ACT (25 & 26 VICT., C. 63)—*concld.*

———— s. 3—*concld*

certificates, is totally distinct from the power of enquiry into wrecks or casualties conferred on tribunals by the same Act. It is not correct to say that all the sections in Ch. II of Act IV of 1875 subsequent to s. 5 apply only to inquiries under that section , nor that the Courts mentioned in that sec-

with, to cancel a Board of Trade certificate, or to make a report to the Local Government, upon which the Government may cancel its own certificate under s. 18 In investigating charges of incompetency or misconduct under s. 5 of Act IV of 1875, it is not necessary, in order to give the Court jurisdiction, that such incompetency or

WHITTARD
I. L. R. 5 Calc. 453 : 5 C L. R. 307

———— s. 5—*Proof of Board of Trade certi-* ... Act IV of 1875, s 5,

Trade *In the matter of a collision between the* " AVA " *and the* " BRENHILDA."
I. L R. 5 Calc. 568 : 5 C. L. R. 331

MERCHANT SHIPPING ACT (57 & 58 VICT., C. 60).

———— ss. 24, 57—*No Bill of sale necessary where vendor sells only equitable interest.* The ... of an equitable interest in a ship can ... he income ... e. S. 24 ... which ... apply to ... governed ... Chetty v. *Nagooda Maracayar,* I. L. R. ... Mad. 295, dissented from. *Chateauneuf* v. *Capeyron, L. R. 7 A. C. 127,* followed ALAGAPPA CHETTY v. CHIDAMBARAM CHETTY (1906)
I. L. R. 29 Mad. 526

MERCHANT SHIPPING ACT (V OF 1883).

See EVIDENCE I. L. R. 35 Calc. 751

MERCHANT, LAW OF.

See ENGLISH LAW . . 13 W. R. 420

MERGER.

See AWARD . I. L. R. 33 Calc. 88

See BENGAL TENANCY ACT, s 22
9 C. W. N. 249

See EXECUTION OF DECREE—APPLICATION FOR EXECUTION AND POWERS OF COURT.
I. L. R. 7 Calc. 82

See LANDLORD AND TENANT
I L R. 34 Calc. 104

See LANDLORD AND TENANT—TRANSFER BY LANDLORD I. L. R. 24 All. 487

See LIMITATION ACT, 1877, ART. 47.
I L. R. 18 Bom 348

See MORTGAGE—MARSHALLING.
I. L R. 13 Mad. 383
I. L R. 15 Mad. 268

See MORTGAGE—REDEMPTION—REDEMPTION OTHERWISE THAN ON EXPIRY OF TERM . I. L. R. 14 Bom. 78

See MORTGAGE—SALE OF MORTGAGED PROPERTY—MONEY-DECREES ON MORTGAGES I. L R 9 All. 23

See MORTGAGE—SALE OF MORTGAGED PROPERTY—PURCHASERS

See MORTGAGE—SALE OF MORTGAGED PROPERTY—RIGHTS OF MORTGAGEES.
I. L. R. 16 Mad 94

See PATNI TENURE.
I L R 28 Calc 744

See SALE FOR ARREARS OF REVENUE—INCUMBRANCES—ACT XI OF 1859
I L R 30 Calc 1071

See RIGHT OF OCCUPANCY—TRANSFER OF RIGHT . I. L R. 21 Calc. 869

See WILL . I. L. R. 31 Mad. 283

——— of tort in felony—

See EVIDENCE 13 C. W. N 501

1. ——— Doctrine of merger—*Applicability of, to mofussil of India. Quære* Whether the doctrine of merger applies to lands in the mofussil in this country. WOOMESH CHUNDER GOOPTO *v.* RAJNARAIN ROY . . 10 W. R. 15

It does not. SAVI *v.* PUNCHANUN ROY
25 W. R. 503

1 B. L. R. O. C. 35

MERGER—*contd*

3. ——— Purchase by patnidar of zamindari rights—*Cessation of rent as patnidar.* The patnidar of a mehal which formed a portion of a zamindari purchased the zamindari rights in the

[illegible]

4 ——— Merger of securities. On the

[illegible]

5. ——— Patni interest, merger of, in that of zamindar—*Co-sharers—Rent, suit for—Land Registration Act (Beng. Act VII of 1876), s. 78* The doctrine of merger does not apply to the case of a patni interest coming into the same hands as the zamindari interest. *A* and *B*, two joint zamindars, having brought a pătni within their zamindari to sale for arrears of rent, purchased it themselves During the existence of the patni a dar-patni had been created, of which *C* was in pos-

[illegible]

missed the suit on this latter ground (among

MERGER—*contd.*

6. ——— **Mukarari and shikmi interests**—*Purchase of mukarari interest by shikmi tenure-holder—Mortgage—Acquisition of subordinate tenure by mortgagor—Mortgagee's right to acquisition—Sale of mortgaged property—Purchasers—Sale in execution of decree on mortgage—Purchaser's right to accessions—Transfer of Property Act (IV of 1882), s. 70, s. 111, cl. (d).* *A*, on behalf of himself and his four brothers, acquired the *shikmi* interest in a *chuck*, which at the time was subject to a *mukarari lease* *A* and two of his brothers mortgaged the *chuck*, and subsequently *A* on behalf of himself and his four brothers acquired the *mukarari* interest in the *chuck*. It was doubtful whether the *mukarari* lease was a lease for agricultural purposes or not. *Held*, that whether s. 111, cl. (*d*) of the Transfer of Property Act applied or not on the *shikmi* and the *mukarari* interests becoming vested at one time in the same persons, the *mukarari* interest merged in the superior tenure. *Kishen Dutt Ram* v. *Mumtaz Ali Khan, I. L. R 5 Calc 198*, referred to. *Held*, further, that, even if there was no merger, the purchase of the *mukarari* was an accession to the mortgaged property under s. 70 of the Transfer of Property Act, and the purchaser of the *chuck* at the sale in execution of the decree on the mortgage was entitled to ths of the *mukarari* interest as well as to that of the *shikmi* interest. *Kishen Dutt Ram* v. *Mumtaz Ali Khan, I. L. R. 5 Calc 198;*

anda Chandra
rasad v. *Man-*
SURJA NARAIN

I. L. R. 33 Calc. 1212

7. ——— *Mokarari interest—Merger of mokarari interest in superior landlord's interest—Transfer of Property Act (IV of 1882), ss. 2, cl. (c), (d), 111, cl. (d)* The original owner of a share in a certain *mouza* granted a

...onal on
of the
to her
share,
...st, but

subsequent to the grant of the *mokarari* and the *usufruct*, the original owner and the *mokararidar* mortgaged their interest to *R*. On the 17th September 1892, the defendant purchased the *mokararidar's* interest in the share subject to the mortgage. On the 7th October 1898, *R* obtained a decree in a suit brought on his mortgage against *F*, *W* and the defendant, and finally became the purchaser of the proprietary and the *mokarari* interest of the share at an auction sale. The defendant, however, failed to exercise his right of redemption In consequence of default made in payment of the revenue, *R*'s interest in the property was sold on the 25th April 1899 under the Revenue Sale Law, and was purchased by *D*. A further default having been made by *D*, the latter's interest in the property was sold and the plaintiff purchased the same. The plaintiff, thereupon, brought a suit for *khas* possession and mesne

MERGER—*concld.*

profits against the defendant who claimed the *mokarari* interest under his purchase from *W*,

and *Surja Narain Mandal* v. *Nanda Lal Sinha, I. L. R. 33 Calc. 1212*, followed. *Jibanti Nath*

I. L. R. 3 Calc. 802

8. ——— **Cause of action, merger of**—*Decree in civil suit for rent bars subsequent summary proceedings under Rent Recovery Act by distress—Rent Recovery Act (Madras Act VIII of 1865), s. 39.* A cause of action merges by reason of the judgment of a Court of record in a suit brought on such cause of action and without the ... *Hoare, 13 M.*

...nt is a single
be recovered
...en the land-
, such claim

9. ——— **Lands in mofussil.** It is at least doubtful whether the doctrine of merger applies to lands in the mofussil *Hoomesh Chandra Gupto* v. *Rajnarain Roy, 10 W. R. 15; Jibanti* v. *Gokool, I. L. R. 19 Calc. 760*, and *Prosunno Nath* v. *Jogut Chunder, 3 C. L. R. 159*, referred to ... the doctrine as obtaining in

is case,
Act, it
...olding
v. *Ram*
c. 115,
...HOMED

...N. 913

MESNE INCUMBRANCES.

See MADRAS RENT RECOVERY ACT, ss. 10, 41 . I. L. R. 27 Mad. 401

MESNE PROFITS.

See APPEAL TO PRIVY COUNCIL. I. L. R. 33 Calc. 1286

See ATTACHMENT—SUBJECT OF ATTACHMENT—MESNE PROFITS.

MESNE PROFITS—*contd.*

See Civil Procedure Code, 1882, ss. 13, 43 . I. L. R. 31 Bom. 527

See Civil Procedure Code, 1882, s 211.

See Civil Procedure Code, 1882, ss 232, 244 . I. L. R. 28 Mad. 64

See Contribution, Suit for. I. L. R. 35 Calc 303

See Court Fees Act (VII of 1870), s 2 I. L. R. 30 Mad. 32

See Court Fees Act (VII of 1870), s. 11. I. L. R. 33 Calc. 1232

See Decree—Construction of Decree—Mesne Profits.

See Debutter . 10 C. W. N 1000

See Decree—Form of Decree—Mesne Profits

See Execution . . 12 C. W. N 3

See Hindu Law—Gift I. L. R. 33 Calc. 23

See Hindu Law—Stridhan—Description and Devolution of Stridhan. 3 B. L. R. A. C 121

See Interest—Miscellaneous Cases—Mesne Profits

See Limitation Act, Sch II, 1877, Art 109

See Mortgage—Redemption—Right of Redemption I. L. R. 26 Bom. 312

See Onus of Proof—Mesne Profits.

See Partition—Miscellaneous Cases. *6 C. W. N 698*

See Res Judicata—Matters in Issue I. L. R. 25 Bom 115

See Right of Suit—Mesne Profits 1 Ind. Jur. O. S 83
2 C. W. N. 43
3 C. W. N. 279

See Shebait, trespass by. I. L. R. 35 Calc. 691

See Small Cause Court, Mofussil—Jurisdiction—Mesne Profits.

See Specific Performance *13 C. W. N. 669*

See Transfer of Property Act (IV of 1882), ss. 92, 94 . I. L. R. 30 All. 36

———— **decree for**—

See Court Fees Act, s. 7. 13 C. W. N. 815

———— **illegal putni sale**—

See Limitation Act, 1877, Sch II, Art. 109. . . 13 C. W. N. 15

———— **remedy for recovery of**—

See Civil Procedure Code, 1882, s. 244. I. L. R. 31 All. 551

MESNE PROFITS—*contd.*

———— **suit for**—

See Bengal Tenancy Act, ss. 101 to 111A . . I. L. R. 28 Calc. 28

See Civil Procedure Code, 1882, s 501. 6 C. W. N. 710

See Relinquishment of, or Omission to sue for, Portion of Claim
5 B. L. R. 184 ; 187 note
21 W. R. 223
22 W. R. 424
25 W. R. 113
I. L. R. 3 All. 543

See Res Judicata—Causes of Action.
2 B. L. R. S. N. 16 : 10 W. R. 486
Marsh. 93
9 W. R. 594

See Small Cause Courts, Mofussil—Jurisdiction—Mesne Profits
2 N. W. 18
I. L. R. 18 Calc 316
I. L. R. 22 Mad. 196, 196 note

See Special or Second Appeal—Small Cause Court Suits—Mesne Profits.

See Specific Relief Act, s 9. I. L. R. 24 All. 501

———— **suit for, and for possession**—

See Relinquishment of, or Omission to sue for, Portion of Claim.
5 N. W. 172
4 B. L. R. F. B. 113
I. L. R. 9 Calc. 283
I. L. R. 3 All. 660
I. L. R. 19 Calc. 615
I. L. R. 11 Mad. 151, 210
I. L. R. 17 All. 533

See Res Judicata—Relief not granted.
I. L. R. 17 Calc. 968
I. L. R. 14 Mad. 328
I. L. R. 21 Calc. 252
I. L. R. 21 All. 425

See Valuation of Suit—Suits—Mesne Profits . . Marsh. 165
W. R. 1864, 327
I. L. R. 17 Calc. 704
I. L. R. 15 Bom. 416
I. L. R. 21 Mad. 371

1. RIGHT TO, AND LIABILITY FOR.

1. ———— **Suit for partition and account**

v. Jowahir Singh . I. L. R. 14 Calc. 493
L. R. 14 I. A. 37

2. ———— **Right to mesne profits previous to partition**—*Joint family—Manager's*

MESNE PROFITS—*contd.*

1. RIGHT TO, AND LIABILITY FOR—*contd.*

liability to account—Mesne profits subsequent to partition, how recoverable—Civil Procedure Code, 1882, s. 244—Right of suit. Although, as a general rule, no member of an undivided Hindu family can have any claim to mesne profits previous to partition, yet mesne profits may be allowed on partition where one member of the family has been entirely excluded from the enjoyment of the property, or where it has been held by a member who claimed to treat it as impartible, and therefore exclusively his own. Where a decree for partition is silent about mesne profits subsequent to the institution of the suit, a party is at liberty to assert his right to such profits by a separate suit. S. 244, para. 2, of the Code of Civil Procedure (Act XIV of 1882) expressly reserves such a right of suit. BHIVRAV *v.* SITARAM . . . I. L. R. 19 Bom. 532

3. ——— Right to mesne profits—*Damages for being kept out of possession.* Regard being had to the constitution of the Courts of this country which are Courts of justice, equity, and good conscience, a decree-holder should be reim-

RAMANOOJ DOSS . 16 W. R. 240

4. ——— *Period for which suit is pending.* There is no objection to the award of mesne profits or interest during the whole period for which a suit is pending, however long that period may be. KAKAJI BIN RANOJI *v.* BAPUJI BIN MADHAVRAV . . . 8 Bom. A. C. 205

5. ——— *Legal owner—*

ROY . . . . . . 1 Hay 178

S.C. KHETTURMONEE DOSSEE *v.* GOPEEMOHUN ROY . . . . 1 Ind. Jur. O. S. 83

6. ——— The right to sue for mesne profits is not transferable. DURGA CHUNDER ROY *v.* KOILAS CHUNDER ROY 2 C. W. N. 43

7. ——— *Co-sharer claim-*

8. ——— *Co-sharers—Mortgage after foreclosure.* *A* obtained a decree declaring him entitled to possession under a mortgage of one-third of the property in dispute, with mesne profits. *B* subsequently obtained a decree against *A* and the other co-sharers for possession of the whole estate, with mesne profits, under another mortgage; but instead of taking full advantage of his decree he received from all the co-sharers the amount due to him on the original transaction, and restored the property to them. *Held*, that *A* was entitled to recover mesne profits due to him under the original decree. BISNOO CHUNDER BISWAS *v.* TROYLUCK NATH BANERJEE . 6 W. R. Mis. 28

9. ——— *Co-sharers—Excess land.* Plaintiff and defendant and certain others were co-sharers of an *abad.* Each agreed to cultivate certain portions, and afterwards to give up any excess land cultivated by him. Defendant cultivated 399 bighas in excess of his share.

mesne profits. DEB NARAYAN DEB *v.* KALI DAS MITTER . 6 B. L. R. Ap. 70 : 14 W. R. 397

affirming on appeal KALEE DOSS MITTER *v.* DEB NARAYAN DEB . . . . 13 W. R. 412

10. ——— *Persons not in actual possession—Right of suit.* *Held*, that, where the plaintiffs made over the management of their lands to their bankers, but did not part with the property in the lands, even for a temporary period, they were entitled to maintain a suit for mesne pro-

11. ——— *Decree-holder in possession—Rents due previous to his possession.* When a decree-holder obtains possession of an estate in execution, he is not at liberty to sue the raiyats for rents falling due before the date of his taking possession. His proper course is to sue the late wrongful possessor for mesne profits, including the rents. UMES CHANDRA *v.* SHASTEDHAR MOOKERJEE . . . . 3 B. L. R. Ap. 99

S.C. WOOMESH CHUNDER ROY *v.* MARKUND MOOKERJEE . . . . 12 W. R. 34

12. ——— *Mortgagor after*

13. ——— *Redemption of usufructuary mortgage—Mortgagee refusing to give up possession.* An estate was mortgaged for ... was not in possession, and it ... ruct is ... to re- ... ncipal. ... the ... to sale

mortgagee set up a false claim upon ...

MESNE PROFITS—*contd.*

1. RIGHT TO, AND LIABILITY FOR—*contd.*

and forced the plaintiffs into a regular suit in which possession was decreed to them on payment of the principal *Held*, that they were entitled to mesne profits for such period as was not barred by the statute of limitation *Held*, also, that plaintiffs were entitled to interest from the date of suit LULEET SINGH v. ALI REZA . 8 W. R. 322

14. ——— *Unlawful resumption by Government* Property which had been

15 ——— *Upanchowki of istemrari tenure.* *A* sued *B* for possession with mesne profits of a share in certain taluks, alleging that he purchased it in execution of a decree. *B* proved that he held the lands under an upanchowki title. The lower Court, however, awarded to *A* mesne profits for six years. *Held* that B has

16. ——— Liability for mesne profits —*Person declared to be in wrongful possession.*

JEY NARAIN v. TORABUN . . 3 Agra 216
HERA LALL THAKOOR v. GRIDHAREE LALL 8 W. R. 450

17. ——— *Bonâ fides.* Parties in possession are liable for wasilat to the

18 ——— *Holder of property for another.* The mere possession by one

19. ——— *Nature of pos-*

property, offering to pay the amount of a *kanam*

MESNE PROFITS—*contd*

1 RIGHT TO, AND LIABILITY FOR—*contd.*

for possession and the cancellation of both the assignment and the kanam deed; but this decree was

title, instituted a suit in August 1884, praying for a decree that the sale to him be set aside without praying for possession. *Held*, that defendant No 1 was not a trespasser merely, and the plaintiffs were entitled to a deduction of the profits for the whole

20. ——— *Person preventing raiyats from paying rent.* A lessor who prevents raiyats from paying rent to the lessee when the latter comes to take possession is liable for mesne profits, even though he may not himself collect the rents BHEEKUMBER SINGH v RAJ CHUNDER GHOSE . . 15 W. R. 196

21. ——— *Keeping owner out of possession.* A party who has been active in wrongfully keeping another out of the possession

They should only be calculated for any period during which the defendant was active in keeping the plaintiff out of possession. INDURJEET SINGH v. RADHEY SINGH . . . 21 W. R. 269

22. ——— *Person in wrongful possession without knowledge of defect in his title.* *Held*, dissenting from a ruling of the late Sudder Court, that mesne profits are always recoverable from a person who has enjoyed them, even though he has been in *bonâ fide* possession without knowledge of the defect in his title. He would, if he bought with sufficient inquiry, have a remedy against his vendor MUGUN CHUNDER CHUTTORAJ v. SURBESSUR CHUCKERBUTTY . 8 W. R. 479

23. ——— *Person in possession apparently of right afterwards legally dispossessed.*

the plaintiff, if he had been in possession, would himself have received. ABDOOL KUREEM BISWAS v. CAMPBELL . . . . 8 W. R. 172

MESNE PROFITS—*contd.*

1. RIGHT TO, AND LIABILITY FOR—*contd.*

24. ——— *Suit by purchaser with notice of defect of title, for reversal of sale.* Where a purchaser, by the institution of a suit for the reversal of the sale, had full notice of the defect of his title, he was, on the reversal of the sale in that suit, held liable for mesne profits. UMAMOYI BURMONEA *v* TARINI PRASAD GHOSE 7 W. R. 225

25. ——— *Vendor and purchaser—Sale by elder brother during younger brother's minority.* A sale by an elder brother during a younger brother's minority having been set aside and the vendee ejected, the vendee alone, and not the vendor, whose connection with the property ceased with the sale, was held to be liable for mesne profits received and expended by the vendee whilst in possession. SHURUTCHUNDER DEY SIRCAR *v.* JADUBNARAIN NUNDEE . . 1 W. R. 90

26. ——— *Possession taken by third party after suit.* About the time that [illegible]

which the defendant was put out of possession by the third party. *Held*, that, as under s. 223, Code of Civil Procedure, plaintiff might have executed his decree by removal of the party who had got possession under a title created by defendant subsequent to the institution of the suit, he had the means of recovering possession while defendant had not. Under these circumstances, defendant could not be held liable for the profits HARADHUN DUTT *v.* JOYKISTO BANERJEE . . 11 W. R. 444

27. ——— *Obstruction to possession—Dispossession.* Obstruction to possession may be the ground of a claim for damages, but it cannot support a claim for wasilat unless there has been dispossession and the claimant has been prevented from enjoying rents and profits. CHURN SINGH *v.* RUNGOO SINGH . . 15 W. R. 221

28. ——— *Joint judgment-* [illegible]

[illegible] has recovered a decree against several persons as joint wrong-doers, he is not at liberty to single out one or more of them only as defendants in the suit for wasilat. SUTTYA NUNDO GHOSAUL *v.* SUROOP CHUNDER DOSS . . . . 14 W. R. 76

29. ——— *Joint liability—Wrong-doers not in possession.* The plaintiff purchased a house with land attached, and sub-let the property to his vendor, one of the defendant. The defendants having in collusion prevented his enjoying rent, he sued for rent, but on their intervention the suit was dismissed. He then brought a regular suit, and obtained a decree from the Civil Court for *khas* possession. In a suit to recover wasilat:—*Held*, that, although the defendants were not all in possession, yet, as they all continued to oppose the plaintiff's possession, they were jointly liable for the wasilat. SHAMASUNKER CHOWDHRY *v.* SREENATH BANERJEE . . 12 W. R. 354

30. ——— *Ijmali property where defendants have divided estate.* In a suit to recover possession of land from the ijmali enjoyment of which the plaintiff had been excluded by the joint action of all the defendants who had divided the property between themselves:—*Held*, that the defendants were all equally responsible for the damage sustained by the plaintiff, and that none of them could restrict their liability for mesne profits to that portion only of which they were in posses- [illegible] *Held* also, that the plaintiff was entitled to [illegible]

LALLJEE PAUREY *v.* [illegible] . . 19 W. R. [illegible]

31. ——— *Actual occupier* [illegible]

to the actual occupiers, may be held to have committed a joint trespass, and to be jointly liable for the damages caused by such trespass. *Doe v. Harlow, 12 A. & E. 40*, followed MUDUN MOHUN SINGH *v.* RAM DASS CHUCKERBUTTY 6 C. L. R. 357

32. ——— *Apportionment of liability.* Where intermediate holders combine wrongfully to keep an auction-purchaser out of [illegible]

RAM CHUNDER PAL . . . [illegible]

33. ——— *Apportionment of damages between joint tort-feasors.* In a suit for mesne profits against a number of defendants who have been in possession of distinct portions of a newly-formed chur, and are proved to have no [illegible]

feasors all persons who [illegible] land ultimately found to belong to a neighbouring estate, and for applying the rule of contribution or apportionment between joint tort feasors. [illegible] profits against a [illegible]

MESNE PROFITS—*contd*

1. RIGHT TO, AND LIABILITY FOR—*contd.*

formed chur to which they have no title, and it is fair and equitable in such a case that the defendants should be severally made liable for mesne profits in respect of the parcels occupied by them respectively KRISHNA MOHUN BASACK *v.* KUNJO BEHARY BASAK . . . 9 C. L. R. 1

34. ———————— *Assessment of liability for—Suit for mesne profits with several defendants* In a suit for mesne profits where there are several defendants, the liability of the several defendants should be assessed in proportion to the amount of profits which each had derived from his wrongful possession. NAWAB NAZIM OF BENGAL *v.* RAJ COOMAREE DEBEE . . W. R. 113

COLLECTOR OF BOGRAH *v.* SHAMA SUNKUR MOJOOMDAR . . . 6 W. R. 230

35. ———————— *Representative of debtor until sale of property taken in execution.* Where execution is ordered to be taken out against the estate of a deceased judgment-debtor, and the property is sold, the representative of the debtor cannot be called to account in execution for the mesne profits of the property while in his hands. MUZHUR ALI *alias* SAT COWREE MEAH *v.* NAWAB NAZIM OF BENGAL . . . 7 W. R. 308

36. ———————— *Liability of*

against the ijaradar's landlord. BIDYAMAYA DEBIA CHOWDHRAIN *v.* RAM LAL MISSER
8 B. L. R. Ap. 80: 17 W. R. 148

37. ———————— *Dispossession of usufructuary mortgagee.* The plaintiff for a consideration obtained from the defendant a zur-i-peshgi lease which contained an undertaking that in the event of the plaintiff's possession being interfered with by the defendant, or the defendant's pre-

of possession by the previous ticcadar, gave the plaintiff a decree for the original money advanced, with interest and mesne profits for the unexpired portion of the lease. *Held*, that mesne profits should not have been awarded KHERODHUR LALL *v.* DOOLEE CHUND . . 19 W. R. 424

38. ———————— *Decree-holder*

MESNE PROFITS—*contd.*

1. RIGHT TO, AND LIABILITY FOR—*contd.*

39. ———————— *Beng. Regs. XV of 1793 and I of 1798.*—A granted a zur-i-peshgi lease of certain lands to the defendants for a fixed term which was to continue after the expiry of the term so long as the money advanced remained unpaid. Shortly afterwards *A* evicted the defendants and sold the land to *C* and *D*. The defendants sued *A*, *C*, and *B*, and obtained a decree for possession and mesne profits They never got possession, but they recovered the mesne profits from *A*. On the expiry of the lease, *C* and *D* were held, in a suit brought by them, entitled to redeem. *Held*, that the defendants were not liable, under Regulation XV of 1793 or I of 1798, to account for the mesne profits which they had recovered. WUZEEROONNISSA *v.* SAEEDUN
B. L. R. Sup. Vol. 613: 6 W. R. 240

40. ———————— *Mortgagee in possession* A mortgagee in possession occupies a fiduciary position towards all the persons interested as proprietors in the mortgaged estate, and to all he is answerable for whatever mesne profits he may receive in excess of the amount which he is entitled to receive by law or agreement And when some of the proprietors assert claims, and assert such claims on behalf of themselves alone, he is entitled to require the claimants to establish the extent of their claims DEONARAIN SINGH *v.* NAUK PERSHAD
2 N. W. 217

41 ———————— *Liability of mortgagor after decree for foreclosure.* Where a

as it was not barred by limitation. SUROOP CHUNDER ROY *v.* MOHENDER CHUNDER ROY
22 W. R. 539

42 ———————— *Vendor and purchaser—Trustee for person out of possession* Where in a suit for partition it appeared that the vendor of the portion sued for had kept the vendee out of possession, the vendor, though liable for mesne profits, was not in the position of trustee of the rents for the party kept out of possession NIL KAMAL LAHURI *v.* GUNOMANI DEBI
7 B. L. R. 113; 15 W. R. P. C. 38

43. ———————— *Ejectment of mortgagee's tenant of sir land by mortgagors*

MESNE PROFITS—*contd.*

I. RIGHT TO, AND LIABILITY FOR—*contd.*

them, they entered on the sir land and ousted mortgagees' tenant, they rendered themselves liable for mesne profits. BAKHAT RAM *v.* WAZIR ALI

I. L. R. 1 All. 448

44. ———————— *Ejectment and taking possession on expiry of lease without notice of ejectment—N.-W. P. Rent Act (XII of 1881), s. 36.* Where upon the expiry of the term of a lease, but without the written notice of ejectment required by s. 36 of the N.-W. P. Rent Act having been given by the lessor, possession was taken and rents collected by persons claiming under a subsequent lease: —*Held*, that the tenancy of the first lessees did not cease upon the determination of the term of their lease, and that the second lessees were wrong-doers in usurping possession and collecting rents and profits, and were liable in a suit for damages by way of mesne profits after deduction of a sum paid by them for Government revenue, but without deduction of what they had paid the lessor or of the expenses they had incurred in collecting the rents. SHITAB DEI *v.* AJUDHIA PRASAD . I. L. R. 10 All. 13

45. ———————— *Resumption by Government—Lakhirajdar—Fraud.* In a suit for

and required no further inquiry to ascertain the amount due, interest had been properly awarded from date of suit. COOMAREE DABEE *v.* MAHTAB CHUND . . . . W. R. 1864, 380

46. ———————— *Assessment of mesne profits—Land out of jurisdiction.* Where application was made for execution of a decree for possession with mesne profits of five mouzahs situated within the Court's jurisdiction, and Government revenue was so assessed upon these five mouzahs, and two other mouzahs situated in another district, that the amount paid on account of the five mouzahs and the two mouzahs respectively could not be apportioned, the Court had no jurisdiction to determine and award mesne profits for the two mouzahs not within its jurisdiction, but should have made an apportionment to the best of its ability. Nor
mesne profits
papers made
some thirty y
actual rents
period of dispossession. PURAN CHUNDER ROY *v.* JUGGESSUR MOOKERJEE . 17 W. R. 298

47. ———————— *Forfeiture of property—Liability of Government.* Where property is confiscated by Government, it is only responsible

MESNE PROFITS—*contd.*

I. RIGHT TO, AND LIABILITY FOR—*contd.*

48. ———————— *Amount to which plaintiff is entitled—Decree—Civil Procedure Code (Act XIV of 1882), s. 211.* A successful plaintiff in a suit for possession and mesne profits is not entitled to claim mesne profits accrued after the institution of the suit for more than three years from the date of the decree if that event occurred before the actual delivery of possession. *Bhup Indir Bahadur Singh* v. *Bijay Bahadur Singh, I. L. R. 23 All. 152; L. R. 27 I. A. 209; Uttamram* v. *Kishoredas, I. L. R. 24 Bom. 149,* and *Narayan Govind Manik* v. *Sono Sadashiv, I. L. R. 24 Bom. 345,* followed in principle. TRAILOKYA NATH RAY CHAUDHURI *v.* JOGENDRA NATH RAY (1908)

I. L. R. 35 Calc. 1017

49. —— Allowance of expenses of collection of rents to a trespasser against whom a decree for mesne profits has been passed—*Civil Procedure Code, s. 211—Principle upon which such expenses should be allowed or disallowed.* In estimating the mesne profits which the owner of land is entitled to recover from a trespasser, the costs of collecting rents, which are ordinarily incurred by the owner, should be allowed to the trespasser only where such trespasser entered on the land in the exercise of a *bonâ fide* claim of right. But when the trespass is altogether tortious and malicious, in other words, when the trespasser has entered or continued on the property without any *bonâ fide* belief that he is entitled to do so, where, in defiance of the rights of another, he has thrust himself into an estate, although he may still claim all necessary payments, such as Government revenue or ground rent, it is not imperative on the Court, in estimating damages, to allow the wrong-doer even such charges as would ordinarily but voluntarily be incurred by an owner in possession. *Altaf Ali* v. *Lalji Mal, I. L. R. 1 All. 518,* followed. *McArthur* v. *Cornwall, [1892] A. C. 75; Girish Chunder Lahiri* v. *Shoshi Shikhareswar Roy, L. R. 27 I. A. 110,* referred to. *Abdul Ghafur* v. *Rala Ram, I. L. R. 23 All. 252,* distinguished. DUNGAR MAL *v.* JAI RAM (1902)

I. L. R. 24 All. 378

50. — — — Interest—*Execution—Civil Procedure Code (Act XIV of 1882), ss. 211, 583—Appeal—Parties—Adding parties—Respondents—Power of Appellate Court to add respondent—Limitation Act (XV of 1877), s. 22.* Where a decree granted mesne profits and said nothing about interest, the amount of the mesne profits being left for determination in execution of the decree. *Held,* that the decree-holder was entitled to interest upon the mesne profits due to him, until such mesne profits are actually paid to him by the judgment-

Shoshi Shikhareswar ... the Limi-
... Court
... allow
... in the
... at the
... added as

MESNE PROFITS—contd

1. RIGHT TO, AND LIABILITY FOR—concld.

respondents, and it makes no difference whether an application is made by the appellant to bring in

Calc 642, referred to GIRISH CHANDER LAHIRI v SASI SEKHARESWAR ROY (1905)
I. L R. 33 Calc. 326

2. ASSESSMENT IN EXECUTION AND SUITS FOR MESNE PROFITS

1. ——— **Assessment of mesne profits**—*Power of Court executing decree to assess mesne profits.* A Court executing a decree has no power to assess mesne profits, unless it is ordered by the decree that the mesne profits are to be assessed in execution; and it is an essential part of a decree which orders mesne profits to be assessed in execution, to fix the period in respect of which such mesne profits are to be assessed WISE v RAJENDRA COOMAR ROY . . 11 W. R. 200

2. ——— *Order in execution of decree giving mesne profits not awarded by*

3. ——— *Execution of decree—Decree silent as to date to which mesne profits are to run—Subsequent mesne profits* Where a decree is silent as to the date up to which mesne profits, are to run, and merely gives a decree for possession with mesne profits, those mesne profits can only be reckoned, for the purposes of assessment in execution, up to the date of the institution of the suit. RAM MANICKYA v. JUGGUNNATH GOPE . . . . I. L. R. 5 Calc. 563

HURONATH ROY v. INDRO BHOOSUN DEB ROY
6 W. R Mis. 33

JANOKEE NATH MOOKERJEE v. RAJ KISTO SINGH
15 W. R. 292

4. ——— *Decree for possession—Civil Procedure Code, 1859, ss. 196, 197.* A decree for possession was construed to include mesne profits where the High Court was satisfied that such was the intention of the Court which passed the decree A decree of a Court should, under ss. 196 and 197, Act VIII of 1859, state

MESNE PROFITS—contd

2. ASSESSMENT IN EXECUTION AND SUITS FOR MESNE PROFITS—contd.

5. ——— *Court with power to pass decree.* Although the assessment of mesne profits is reserved for the period of execution of decree, it is an essential part of the decree itself, and not a mere process in execution, and must therefore be made by a Court authorized to pass the decree. MEHER JAN v. GERDA
25 W. R. 270

6. ——— *Act XXIII of 1861, s. 11—Profits assessable by Court in execution* The mesne profits which, under the provisions of s 11, Act XXIII of 1861, are assessable by the Court executing the decree, are only such as have been by the decree made payable in respect of the subject-matter of the suit between the date of the suit and the date of the execution of the decree Any question of mesne profits not determined by the Court making the decree is not properly cognizable by the Court executing the decree. RAM LOCHAN v MUNSOOR ALI CHOWDHRY . . . . . . 11 W. R. 339

7. ——— *Act XXIII of 1861, s 11—Suit for mesne profits.* Where no liability to mesne profits is imposed by a decree, s. 11 of Act XXIII of 1861 does not give a power to extend the relief granted by the decree in respect of the right to mesne profits, but only to determine

4 Mad. 231

8. ——— *Decree silent as to mesne profits—Power of Court executing decree.* Plaintiff sued for possession of certain lands and for mesne profits. He obtained a decree for possession, but the decree was silent as to mesne profits. *Held*, that the Court executing the decree was not competent to entertain a claim for mesne profits made by the decree-holder CHUNDER COOMAR ROY v. GONESH CHUNDER DASS
I. L R. 13 Calc. 283

9. ——— **Suit for mesne profits**—*Act*

recovery of possession of certain property and for

against *B* for mesne profits during the time that *A* was kept out of possession after the decree.

MESNE PROFITS—*contd.*

2. ASSESSMENT IN EXECUTION AND SUITS FOR MESNE PROFITS—*contd.*

HARAMOHINI CHOWDHRAIN *v.* DHANMANI CHOWDHRAIN . **1 B. L. R. A. C. 138 : 10 W. R. 62**

HURCHURN LAL *v.* TOORAB KHAN **2. N. W. 176**

SHUM SHEER SINGH *v.* RAMJEEAWUN RAE **2 N. W. 416**

ISSUR DUTT SINGH *v.* ALLUCK MISSER **7 W. R. 429**

SHUMBHO MOHUN ROY *v* TIRPOORA SUNKUR ROY . **12 W. R. 126**

10. ——— *Act XXIII of 1861, s. 11—Execution of decree—Decree for possession* Where, in a suit for land, the Court decreed to the plaintiff possession of the land, but made no decree in respect of mesne profits —*Held* the plaintiff could not, under s 11 of Act XXIII of 1861, obtain an order from the Court executing his decree declaring him entitled to any or what amount of mesne profits. Under s. 11, the question must relate to something comprised in the decree EKOWRI SINGH *v.* BIJAYNATH CHATTAPADHYA . **4 B. L R. A. C. 111 : 13 W. R. 11**

AMEER AHMUD *v* ZAMEER AHMUD **18 W. R. 122**

RAM ROOP SINGH *v.* SHEO GOLAM SINGH **25 W. R. 327**

11. ——— *Decree for possession—Act XXIII of 1861, s 11.* *A*, in execution of a decree of the lower Court against *B*, obtained possession of certain land therein mentioned. On appeal by *B*, the High Court reversed the decree of the lower Court, and ordered restitution of the property to *B*; but no mention of mesne profits was made in the decree. *B* then sued for recovery of mesne profits for the period during which *A* had been in possession. *Held*, that such a suit would not lie. The question of mesne profits ought to have been decided in execution under s 11 of Act XXIII of 1861. SHIB NARAYAN POHRAJ *v.* KISHOR NARAYAN POHRAJ . **1 B. L. R. A. C. 146** **10 W. R. 131**

12. ——— *Suit for possession—Civil Procedure Code, ss. 2, 7, and 196—Act XXIII of 1861, s 11.* The plaintiff brought a suit for possession of land with mesne profits. The suit was dismissed. He appealed on the question of possession only, and obtained a decree for possession without any mention of mesne profits ; and afterwards, in execution of the decree, he obtained possession of the land. *Held*, that the plaintiff could afterwards bring his suit to recover mesne profits from the date of decree for the period of six years next before the commencement of the suit. [illegible]

[illegible] MAYI. SWARNAMAYI *v* PRATAP CHANDRA BURUA **4 B. L. R. F. B. 113 : 13 W. R. F. B. 15**

MESNE PROFITS—*contd.*

2. ASSESSMENT IN EXECUTION AND SUITS FOR MESNE PROFITS—*contd*

13. ——— *After suit for im-* [illegible]

profits was the deliberate act of the Court, the defendant may set that up as a defence in the separate suit SITARAM AMRUT *v.* BHAGVANT JAGANATH **6 Bom. A C. 109**

14. ——— *Profits between* [illegible]

profits accruing between the filing of the plaint [illegible]

[illegible] *Nathuna, 3 Bom. A. C. 31,* overruled. RADHABAI *v.* RADHABAI . . **4 Bom. A. C. 181**

CHOWDHRY IMDAT ALI *v.* BOONYAD ALI **14 W. R. 92**

15. ——— *Act XXIII of 1861, s 11.* A plaintiff, in possession under a decree for land and mesne profits, applied for further execution as to mesne profits and obtained an [illegible]

matter of the former suit. LAKSHMI [illegible] HALU *v.* CHATRAZU JAGANNADHAM PANTALU *alias* SRINIVASA RAU. *Ex parte* RUDDRAVAZU VISAM RAZ *alias* KONAMARAZE . **3 Mad. 287**

16. ——— *Power of Court executing decree to assess mesne profits not decreed.* Where a decree was silent as to the plaintiff's right to mesne profits after the date of filing the suit, and did not reserve any question of mesne profits for further investigation, the Court which executed the decree was held to have acted *ultra vires* in ordering an investigation into mesne profits which may have accrued due pending the suit and up to the time of execution. BHOLONATH *v.* PERSHAD SEN . . . . **19 W. R. 151**

17. ——— *Act XXIII of 1861, s. 11—Separate suit—Question in execution*

MESNE PROFITS—*contd.*

2. ASSESSMENT IN EXECUTION AND SUITS FOR MESNE PROFITS—*contd.*

of decree. D obtained a decree for an undivided share of certain property, but the defendants having apportioned the entire property amongst themselves and held each his own portion exclusively. D seized in execution a part of the share of one of them. P On appeal the possession was ordered to be given up P then sued to recover mesne profits for the period of D's possession. *Held*, that the damages in question ought to have been sought in the execution proceedings when the possession itself was recovered, and not by the

for such loss as he had thereby sustained DULJEET GORAIN *v.* REWUL GORAIN . . 22 W. R. 435

18. ——— *Act XXIII of 1861, s. 11—Question to be decided in execution of decree.* Certain decree-holders, having been sued successfully for possession by the judgment-debtors in the first Court, appealed to the High Court, who reversed the decision, and whose order was confirmed by the Privy Council. The decree-holders on this applied for execution and for mesne profits for the interval during which they had been kept out of possession. *Held*, that they were entitled to what they claimed in execution without bringing a regular suit, as the effect of the High Court's decree was to replace the parties *in statu quo*. UNUNT RAM HAZRAH *v* KURALEE PERSHAD MISTREE . . . . . 23 W. R. 441

19 ——— Assessment under Privy Council decree—*Execution of decree of Privy Council—Decree for possession* When the Privy Council declares an appellant entitled to real property, of which he was out of possession, and directs the High Court to make the inquiry necessary to

giving possession. LILANAND SINGH *v* LUCKMIPUR SING . . . . . 5 B. L. R. 605

s c LEELANUND SINGH *v* LUCHMESSUR SINGH 14 W. R. P. C. 23 : 13 Moo. I. A. 490

20. ——— Assessment of mesne profits under Privy Council decree—*Power of*

way militates against the Full Bench ruling in *Mosoodun Lall v Belaree Singh, B L. R Sup. Vol 602 : 6 W. R Mis. 109*, which laid it down that under s 11, Act XXIII of 1861, the Court executing a decree is not to determine whether mesne profits are to be awarded or not, but only the amount of such profits. RAMKANYE GHOSE *v* GOOROO PROSUNNO ROY . . 16 W. R. 30

MESNE PROFITS—*contd.*

2. ASSESSMENT IN EXECUTION AND SUITS FOR MESNE PROFITS—*contd.*

21. ——— *Power of Court as to mesne profits in execution of decree—Decree of Privy Council executed by Courts in India.* Where the Privy Council made an order in favour of a plaintiff, decreeing possession of certain property with mesne profits:—*Held*, that the intention was to award such a sum as would compensate the plaint-

22. ——— Mesne profits not given by decree—*Execution of decree—Interest* In con-

executing the decree cannot, under the section in

was made in the plaint for mesne profits accruing due after the date of suit, and the decree was silent in respect thereof An appeal against the decree having been brought by the defendant, execution was, from time to time, stayed by the Court on the defendant giving security, to abide the event of the appeal for the execution of the decree and for payment of the mesne profits accruing while the plaintiff remained out of possession. The decree having been confirmed on appeal, the plaintiff applied for execution in respect of the interim mesne profits. *Held*, in the Court below, that, as these were not provided for by the decree, they could not, under s. 11, Act XXIII of 1861, be awarded in execution, but must be made the subject of a separate suit. *Held* by the Judicial Committee, that the proceedings whereby the defendant led the Court to stay execution and continue him in possession, laid him under an obligation to account in the suit for the mesne profits which he engaged to pay; and that this

MESNE PROFITS—*contd.*

2. ASSESSMENT IN EXECUTION AND SUITS FOR MESNE PROFITS—*contd.*

obligation was capable of being enforced by proceedings in execution, notwithstanding the construction given by the Court to s. 11; since, even if the defendant's liability to account were not to be considered "a question relating to the execution of the decree" within the meaning of the section, he was, in any case, precluded by the ordinary principles of estoppel from contending that the mesne profits in question were not payable under the decree. SADHASIVA PILLAI *v.* RAMALINGA PILLAI **15 B. L. R. 383 : 24 W. R. 193 L. R. 2 I. A. 219**

S C. in High Court, RAMALINGA PILLAI *v.* SATTEASIVA PILLAI . . . . **7 Mad. 97**

CHOWDHREE NAIN SINGH *v* JAWAHUR SINGH **1 N. W. 167 : Ed. 1873, 246**

BHOOBUNESSUREE CHOWDHRAIN *v* MANSON. **22 W. R. 160**

ABDOOL ALI *v* ASHRUFFUN . **25 W. R. 315**

23. ——— *Act XXIII of 1861, s. 11.* A decree of 1854 for possession and

was disallowed, on the ground that there was no provision in the original decree awarding mesne profits, and that an agreement to which the decree-holder had referred was not forthcoming. *Held,* that, as the original decree of 1854 evidently intended to give mesne profits of some kind, the Courts in 1862 and 1863 had jurisdiction, under s. 11, Act XXIII of 1861, to determine what mesne profits were due; and that, as the decree-holder was seeking to maintain the order in the Civil Courts in 1864 and 1865, his application of July 1866 was in time, and he was entitled under an order of a competent Court to receive the mesne profits claimed HURO SOONDERY DOSSEE *v.* NOROODEEN . . . . **11 W. R. 325**

24. ——— *Decree for possession without mesne profits—Mesne profits afterwards allowed.* Where an auction-purchaser, who prayed for possession as well as mesne profits, obtained a decree for possession which said nothing about mesne profits, and no reason appeared why mesne profits should be refused, the High Court allowed mesne profits in execution. KALEENATH DOSS *v.* RAJAH MEAH . . . **22 W. R. 406**

25. ——— **Question of amount of mesne profits**—*Decree for possession with mesne*

MESNE PROFITS—*contd.*

2 ASSESSMENT IN EXECUTION AND SUITS FOR MESNE PROFITS—*contd*

profits from date of suit. A decree awarding possession with wasilat from the date of suit was held to be rightly construed as awarding mesne profits until the date when delivery of possession should be effected, and reserving the question of the amount for adjustment in execution. BUNSEE SINGH *v* NAZUF ALI . . . . . . **22 W. R. 328**

26. ——— *Suit for possession and mesne profits—Inquiry as to the latter deferred by the judgment—Decree silent as to mesne profits—Decree, Form of—Civil Procedure Code, ss. 45, 212, and 244.* A Court, which had virtually adjudged mesne profits to the claimant in the same judgment in which it decided that she was entitled to the immoveable property claimed, left

ABDUL AZIZ . . . **L. R. 24 I. A. 22**

27. ——— *Mesne profits between decree and possession—Power of Court executing decree.* In a suit for possession and wasilat, the first Court awarded wasilat but the lower Appel-

CHOWDHRY . . . . .

28. ——— *Act XXIII of 1861, s. 11—Suit for damages for illegal appropriation of produce—Suit for mesne profits.* A suit by a raiyat against another for damages on account of illegal appropriation of the produce of the land in- . . . during . . . nd is . . . 1861. . . . led in . . . SHEY

execution, but by separate suit. . . . **3 W. R. 1**
MOOKERJEE *v* JODOONATH GHOSE

29. ——— *Suit for mesne profits of land taken in excess under decree and restored* Where a decree-holder in execution takes . . . by the de- . . . ter inquiry . . . elinquished . . . h arises be- . . . ence to the . . . t XXIII of

MESNE PROFITS—*contd*

2 ASSESSMENT IN EXECUTION AND SUITS FOR MESNE PROFITS—*contd.*

1861, s. 11, be determined by the Court executing the decree, and not by a separate suit. BAMA SOONDUREE DABEE *v.* TARINEE KANT LAHOOREE 20 W. R. 415

See RADHA GOVIND SAHA *v.* BROJENDER COOMAR ROY CHOWDHRY . 7 W. R. 372

30 ———————— – *Execution of decree for possession, stay of—Right to mesne profits.* Execution of a decree for possession merely of certain land having been stayed, and the defendant, pending an appeal to the Privy Council, continued in possession by the High Court upon his giving security for the "due performance of such order as

the circumstances, the decree-holder was entitled to mesne profits from the date of the decree until he was put in possession, and that the amount of such profits should be determined by the execution department. See, however, the case of *Forester v. Secretary of State, L. R. 4 I. A. 137* GOGUN CHUNDER SIRKAR *v.* LAIDLAY . . 5 C. L. R. 188

31. ———— Decree for mesne profits—*Execution of decree made on compromise—Procedure—Possession.* *B* sued his brother *C* for possession of certain lands. *B* and *C* came to an amicable settlement, one of the terms of which was that *C* during his life should retain possession of certain of the lands, and that after his death they should pass to *B*. A decree was given in accordance with the terms of the compromise On *C*'s death, his widow refused to put *B* in possession of the lands. *B* sought to obtain possession of the lands, with mesne profits, by executing the decree under the compromise against *C*'s widow. *Held*, that he ought to proceed by regular suit. TARA MANI DASI *v.* RADHA JIBAN MUSTAFI

6 B. L. R. Ap. 142 : 14 W. R. 485

32. ———— Reversal of decree—*Decree for possession—Mesne profits in execution of decree.* *N* obtained a decree against *A* for certain lands, and was put in possession of them in execution of the decree On appeal the decree against *A* was reversed, and the lands were accordingly restored to him, but no provision was made as to the mesne profits received by *N* when he was in possession of

33. ———————— *Decree for pos-*

about mesne profits which had accrued during the

MESNE PROFITS—*contd*

2. ASSESSMENT IN EXECUTION AND SUITS FOR MESNE PROFITS—*contd.*

prived of by such enforcement. LATI KOOER *v.* SOBADRA KOOER

I. L. R. 3 Calc. 720 : 2 C. L. R. 75

34. ———————— *Decree for possession of immoveable property—Reversal of decree on appeal—Appellate decree silent as to mesne profits—Suit for recovery of mesne profits—Civil Procedure Code, 1882, s. 244.* The plaintiff in a suit for possession of immoveable property obtained a decree for possession thereof, and in execution of the decree obtained possession of the property. This

question raised by such suit, although it might

arisen or was in existence), and therefore not one in respect of which a separate suit is barred by that section *Pertab Singh v. Beni Ram, I. L. R. 2 All 61,* distinguished by OLDFIELD, J. *Per* MAHMOOD, J.—That the suit was not barred by s. 244, the mesne profits sought to be recovered not having been realized in execution of the decree reversed on appeal. *Per* DUTHOIT, J.—The words in cl. (c) of s 244, "any other question arising," etc., should be read as "any other questions directly arising" otherwise the most remote inquiries would be possible in the execution department. RAM GHULAM *v.* DWARKA RAI I. L. R. 7 All. 170

35. ———————— *Decree for possession of immoveable property—Execution of decree—Reversal of decree on appeal—Mesne profits—Civil Procedure Code, s. 583.* *G* obtained a

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Ghulam v. Dwarka Rai, I. L. R. 7 All. 170, he

MESNE PROFITS—*contd.*

2. ASSESSMENT IN EXECUTION AND SUITS FOR MESNE PROFITS—*contd.*

could not, in execution of that decree, recover mesne profits. GANNU LAL *v.* RAM SAHAI

I. L. R. 7 All. 197

36. ——— *Execution of decree—Possession under decree—Restitution of property after reversal of decree—Civil Procedure Code, 1882, s 244.* A Court reversing a decree under which possession of property has been taken, has power to order restitution of the property taken possession of and with it any mesne profits which may have accrued during such possession. MOOKOOND LAL PAL CHOWDHRY *v.* MAHOMED SAMI MEAH . . . I. L. R. 14 Calc. 484

37 ——— *Decree for possession of immoveable property—Reversal of decree on appeal—Suit for recovery of mesne profits from person who has taken possession under a decree which is subsequently reversed on appeal—Civil Procedure Code (Act XIV of 1882), s 244* A landlord sued his tenant for arrears of rent, and obtained a decree for a certain amount and a declaration that if the amount were not paid within fifteen days, the tenant should be ejected under s 52, Bengal Act VIII of 1869. The amount was not paid, and the landlord executed the decree and obtained possession The tenant appealed and succeeded in getting the decree set aside and the amount found due from him for arrears by the first Court was reduced, and a decree made directing that, if the reduced amount were not paid within fifteen days, he should be ejected He paid the amount found due by the Appellate Court within the fifteen days and recovered possession of his holding. He then brought a suit in the Munsif's Court to recover mesne profits from his landlord for the time he was in possession after the execution of the first Court's decree It was contended on second appeal that the suit would not lie, as the matter might and should have been determined in the execution department under s 244 of the Civil Procedure Code. *Quære* Whether such a suit does not lie, and whether the decisions in *Lati Kooer* v. *Sahodra Kooer, 2 C. L. R. 75,* and analogous cases to the effect that such a suit does not lie, are correct RAM GHULAM *v.* *Dwarka Rai, I. L R. 7 All. 170,* cited and approved. AZIZUDDIN HOSSEIN *v.* RAMANUGRA ROY. I. L. R. 14 Calc. 605

38. ——— *Civil Procedure Code, s 583. Claim for mesne profits on reversal of decree for possession of land executed.* A decree for possession of immoveable property having been

relief claimed KALIANASUNDRAM *v.* EGNAVEDESWARA . . . I. L. R. 11 Mad. 261

MESNE PROFITS—*contd.*

2. ASSESSMENT IN EXECUTION AND SUITS FOR MESNE PROFITS—*contd*

39. ——— *Execution of decree in suit for possession—Execution pending appeal—Reversal of decree on appeal and restoration of possession—Right to restitution of mesne profits—Civil Procedure Code, 1882, ss 244 and 583—Separate suit.* R brought a suit against K for possession of certain land, and obtained a decree. K appealed, but pending the appeal R took possession of the land in execution of his decree. K was successful in the appeal, and was restored to possession in execution of the decree of the Appellate Court, which, however, was silent as to mesne profits. In an application by K for mesne profits for the period during which R was unlawfully in possession *Held,* that K was entitled to restitution of such

583 of the Civil Procedure Code upon the Court

taken under the erroneous decree set aside in appeal *Mookoond Lal Pal Chowdhry v Mahomed Sami Meeah, I. L R. 14 Calc. 484,* referred to RAJA SINGH *v.* KOOLDIP SINGH . I. L. R. 21 Calc. 989

40. ——— *Decree for possession and mesne profits for certain date to be fixed in execution—Civil Procedure Code, 1882, s. 211* Where a decree directed that plaintiffs should

was not delivered

GOVIND MANIK *v.* SONO SADASHIV I. L. R. 24 Bom. 345

UTTANORAM *v.* KISHORDAS I. L. R. 24 Bom. 149

41. ——— Separate suit for mesne profits—*Decree holder kept out of possession—Act XXIII of 1861, s. 11.* Mesne profits for the period during which the decree-holder was executing the decree and was kept out of possession by the opposite party may be awarded by the Court under s. 11, Act XXIII of 1861 It is not necessary to bring a separate suit. HOOKUM BEBEE *v* MAHOMED MOOSA KHAN . . . 6 W. R. Mis. 13

42. ——— *Mesne profits accruing after decree. Held,* that no separate suit would lie for mesne profits accruing during the pendency of the suit and delivery of possession. S. 10, Act VIII of 1859, provides for mesne profits accruing before the suit. OONKUR DAS *v* HEERA SINGH 1 Agra 141

MESNE PROFITS—*contd.*

2 ASSESSMENT IN EXECUTION AND SUITS FOR MESNE PROFITS—*contd*

RAM SHUNKER *v.* LALEE BAEE . 2 Agra 268

SHUNKER LALL *v.* RAM LALL
1 N. W. 177 Ed. 1873, 256

43. ——— *Act XXIII of 1861, s. 11—Mesne profits accruing after decree* Even with the permission of the Civil Court, a separate suit cannot be brought for mesne profits between the institution of the original suit and the execution of the decree thereon Act XXIII of 1861, s. 11 commented on CHENNAPA NAYUDU *v.* PITCHI REDDI . 1 Mad. 453

NARAYANA AIYAN *v.* SRINIVASA AIYAN
2 Mad. 435

44. ——— *Prior suit for possession without mesne profits.* A party can bring a suit for mesne profits after he has obtained a decree for possession in a prior suit, in which no provision had been made in the valuation of the suit for mesne profits SHIVASUNDARI DEVI *v.* RAMSHAMA YAT KURMI . 1 B. L. R. S. N. 3

from making a further application of the same

46. ——— *Decree for mesne profits to be subsequently assessed—Application for assessment of mesne profits not an application in execution, but an application in the suit.* *Held*, that where a decree awards mesne profits to be subsequently assessed, an application for the assessment of such mesne profits is not an application in execution of the decree, which does not become an "operative decree" until such assessment is completed, but is an application in the suit in which the decree is made *Radha Prasad Singh* v. *Lal Sahib Rai*, *I L. R. 13 All 53*, and *Puran Chand* v. *Roy Radha Kishen*, *I. L R. 19 Calc. 132*, followed. *Kallu Rai v Fahiman*, *I L. R. 13 All 124; Tarsi Ram* v *Man Singh*, *I. L R. 8 All 492;* and *Daya Kishan* v. *Nanhi Begam*, *I. L. R 20 All. 304*, referred to. MUHAMMAD UMARJAN KHAN *v.* ZINAT BEGAM (1903)
I. L. R. 25 All. 385

47. ——— **Attachment of property of wrong person**—*Damages and mesne profits, suit for—Attachment of the property of a wrong person at the instance of a third person—Criminal Procedure Code (Act V of 1889), s. 88—Secretary of State for India in Council—Damages—Liability of the person at whose instance the property was attached—Act for the protection of Judicial Officers (Act XVIII of 1850).* A suit was brought by the plaintiff to recover possession of certain immoveable property, with mesne profits, against the Secretary of State for India in Council, Messrs. Ralli Brothers & Co, and another person (defendants

dispute which belonged to her was not released. The defence of defendants Nos 1 and 2 was that they were not liable, whilst defendant No. 3 did not enter appearance. *Held*, that, as the property in suit belonged to the plaintiff, and was attached as the property of defendant No 3, who did not appear within the time specified in the proclamation, or at any time subsequently, and as, if the property had belonged to defendant No 3, it would have been at the disposal of the Secretary of State for India in Council (defendant No. 1) under s 88 of the Criminal Procedure Code, the defendant No 1 was liable for damages and mesne profits in respect of the period subsequent to the date when the property, if rightly attached, could have come to be at the disposal of the Government. *Held*, further, that defendants No. 2 were also liable for damages, as they, private prosecutors, through

s c. 6 C. W. N. 75

48. ——— **Principle of assessment**—*Possession—Principle of assessing amount of mesne profits—Civil Procedure Code (Act XVI of 1882), s. 244—Second appeal—Determination of mesne profits.*

I. L. R. 29 Calc. 622
s c. 6 C. W. N. 409

49. ——— **Profits not awarded by decree**—*Execution of decree—Jurisdiction—Civil*

MESNE PROFITS—*contd*

2. ASSESSMENT IN EXECUTION AND SUITS FOR MESNE PROFITS—*concld.*

Procedure Code, ss. 211, 244. An order passed in execution, giving to the plaintiff mesne profits not awarded by the decree, is without jurisdiction. *Kalka Singh* v. *Paras Ram, L. R. 22 I. A. 68,* followed *Muhammad Abdul Majid* v. *Muhammad Abdul Aziz, I. L. R. 19 All. 155,* distinguished. ISHARI PERSHAD *v.* RAM NARAIN SAHA (1902) 6 C. W. N. 672

50. ——— Reversal of decree—*Civil Procedure Code, s. 155—Decree reversed on appeal, after possession obtained thereunder—Application for possession and mesne profits—Disallowance of application—Separate suit for mesne profits* S N obtained a decree for foreclosure on a mortgage against *R R.* Against this decree *R R* appealed to the High Court; but, pending the appeal, *S N* obtained an order absolute for foreclosure, and got possession of the mortgaged property. Subsequently the High Court set aside the order for foreclosure, and modified the decree of the first Court. *R R* paid up the amount found by the decree of the High Court to be due by him. He then applied to the Court for restoration of possession of the mortgaged property, under s 583 of the Code of Civil Procedure, and for mesne profits for the time during which he had been out of possession. His application for mesne profits was rejected, and he thereupon filed a separate suit for mesne profits. *Held,* that such a suit would not lie, the plaintiff not having appealed from the order refusing his application for mesne profits. *Raja Singh* v. *Kooldip Singh, I. L. R. 21 Calc 989,* referred to. SRI NATH SAHAI *v.* RAM RATAN LAL (1902) . . . . I. L. R. 24 All. 361

expended on funeral ceremonies of late owner. A

widow; and (iii) that the widow was entitled to set off such reasonable amounts as might have been expended b
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allowed in respect of the funeral ceremonies under the circumstances, considered *Nittokissoree Dossee* v. *Jogendro Nauth Mullick, L. R. 5 I. A. 55,* referred to. DALEL KUNWAR *v.* AMBIKA PARTAP SINGH (1903) . . I. L. R. 25 All. 266

MESNE PROFITS—*contd.*

3. MODE OF ASSESSMENT AND CALCULATION.

2. ——— Ascertainment of mesne profits—*Execution before all the mesne profits are ascertained—Power of Court executing decree.* Execution may issue with respect to ascertained wasilat, pending inquiry as to unascertained wasilat. In ascertaining and declaring the amount of wasilat due under a decree, the Court executing it has no power to alter the decree in respect to interest awarded. ARFUNNISSA CHOWDHRAIN *v.* KOKIBUNNISSA CHOWDHRAIN . . . 24 W. R. 444

3 ——— *Act XXIII of 1861, s 11—Criminal Procedure Code, 1859, s. 196*

of mesne profits is not expressly admitted, the Court is bound to deal with it as if disputed, and either to determine the amount at the trial or to reserve it for assessment in execution DHURAM NARAIN SINGH *v.* BUNDHOO RAM . 12 W. R. 75

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4. ——— *Power of Court executing decree* Where the suit is for mesne pro-

5. ——— *Construction of* of the High Court simply

cept the assessment of the rents and share from which the defendants had wrongfully kept the plaintiff out of possession DWARKA LALL MUNDUR *v.* NIBUNDRO NARAIN SINGH 22 W. R. 461

6. ——— Mode of calculation of Court The sum to profits by a Court on its

which is charged with the merits; and it is impossible to lay down a rigid rule according to which those damages should always be calculated. HOGG *v.* DINONATH SEEMANEE . . . . 8 W. R. 447

7. ——— *Interest—Damages—Wasilat.* Interest calculated upon yearly rates of rent may, when claimed by the plaintiff in his plaint, be given as an essential portion of the

MESNE PROFITS—*contd.*

3 MODE OF ASSESSMENT AND CALCULATION—*contd*

include interest year by year on those profits. *Hurro Durga Chowdhrain v Surut Sundari Dabi, I L R 8 Calc 332*, followed Principles stated on which the calculation of mesne profits should be based. BROJENDRO COOMAR ROY *v.* MADHUB CHUNDER GHOSE **I. L. R. 8 Calc. 343**

See RAMDHUL SINGH *v* PUPMESSUREE PERSHAD NARAIN SINGH . . . . **7 W. R. 78**

8. ——— *Interest, loss of —Interest on mesne profits year by year.* The term "mesne profits" means the amount which might have been received from the land, deducting the charges for collection; and does not include damage resulting from their not having been paid as they became due, or loss of interest year by year. HURRO DURGA CHOWDHRANI *v* SURUT SUNDARI DEBI . . . . **I. L. R. 8 Calc. 332**
L R. 9 I. A. 1

reversing on appeal the decision of the High Court in HURRO DURGA CHOWDHRANI *v* SHARRAT SOONDERY DABEA
I. L. R. 4 Calc. 674 : 3 C. L. R. 417

9 ——— *Profits obtained from land by ordinary diligence* Mesne profits mean those profits which the person in actual wrongful possession of the land did actually receive, or might with ordinary and due diligence have received, from that land DWARKANATH MITTER *v.* RAMDHUN BISWAS . . . **8 W. R. 103**

DESILVA *v.* TEHERANEE . **9 W R. 374**

10 ——— *Collections by wrong-doer in excess of what could have been collected ordinarily.* A decree-holder is entitled as

11. ——— *Cultivation of lands by person in wrongful possession.* When person in wrongful possession of land has himself

S C ASMED KOOER *v* INDURJEET KOOER **9 W. R. 445**

BINDABUN CHUNDER SIRCAR *v.* ROBERTS. **B. L. R. Sup. Vol. 1004 not**

CHARDON *v.* AJEET SINGH . **12 W. R. 52**

MESNE PROFITS—*contd*

3. MODE OF ASSESSMENT AND CALCULATION—*contd.*

TRIPOORA SOONDUREE DEBIA *v.* COOMAR PROMOTHONATH ROY . **11 W. R 533**

BISHESSUREE DEBIA *v* MOHUN CHUNDER BOSE **5 W. R. Mis. 35**

12. ——— *Proper principle of determining amount of damages* The plaintiffs obtained a decree for ejectment against the defendants on the 4th Bhadra 1299 F., but they did not obtain possession till Assar 1301 F., they

would have been a fair and reasonable rent for the land if the same had been let to a tenant during the period of unlawful occupation of the wrong-doer. *Asmed Koer v Indurject Koer, 9 W. R 445; B. L R Sup Vol. 1003; Luchmessur Singh v Chairman of the Darbhanga Municipality, L R 17 I A 90, 97*, followed RAGHU NANDAN JHA *v.* JALPA PATTAP **3 C. W. N. 748**

13. ——— *Principle on which they should be assessed—Interest.* In determining the amount payable to the holder of a decree for mesne profits, a Court is bound to consider, not what has been, or what with good management

is entitled to interest on such profits from the time at which they would have come to him if he had not been dispossessed. LUCKHY NARAIN *v.* KALLY PUDDO BANERJEE
I. L. R. 4 Calc. 882 : 4 C. L. R. 60

14. ——— *Principle on which they should be assessed.* In a case of wrongful dispossession, the principle upon which wasilat should be assessed is to ascertain what the actual rents or proceeds of the estate were, and to make the wrong-doer account for them to the party dispossessed, everything being assumed against the wrong-doer DOORGA SOONDUREE DEBIA *v.* SHIBESHUREE DEBIA . . . **8 W. R. 101**

15. ——— *Assets which might have been realized—Amount actually col-*

W. R. Mis. 10

THAKOOR DOSS ROY CHOWDHRY *v* NOBIN KRISTO GHOSE . . . . . **22 W. R. 126**

16. ——— *Claim in plaint —Rent not received, but which might have been*

MESNE PROFITS—*contd.*

3. MODE OF ASSESSMENT AND CALCULATION—*contd.*

received. When a party is declared entitled to a decree for mesne profits, he is entitled not only to recover as those profits such sums as may have been collected and appropriated by others in wrongful

for mesne profits claims only rents and profits collected and received by the defendant, the plaintiff is not entitled to recover in respect of rents not received, but which by the wrongful dispossession he has been prevented from collecting; but if there is an appropriate allegation he will be entitled to recover in respect of such rents. KOMEERUNNISSA BEGUM *v.* HUNOOMAN DOSS

Marsh. 122 · W. R. F. B. 40
1 Ind. Jur. O. S. 42 : 1 Hay 266

17. ——————— *Collection charges* The principle on which wasilat should be assessed where defendant has been compelled to relinquish possession is, that he should be made to pay that which plaintiff (decree-holder) would have enjoyed if he had not been kept out of possession by the wrongful act of defendant. ERFOONISSA CHOWDHRAIN *v.* RUKEEBOONISSA . . **9 W. R. 457**

MOBARUK ALI *v* BOISTUB CHURN CHOWDHRY **11 W. R. 25**

18. ——————— *Trespasser not allowed expenses of obtaining decrees for rent during the term of his possession* Held, that a tres-

profits expenses incurred by him in obtaining decrees for rent against tenants on the property in suit SHARFUD-DIN KHAN *v* FATEHYAB KHAN

I. L. R. 20 All. 208

19. ——————— *Liability on ejectment of raiyat—Loss by dispossession* A superior holder who dispossesses a raiyat is liable, not merely for the profit which he makes by letting

which the

HURUCK

10 W. R. 428

20. ——————— *Cultivating raiyat ejected by zamindar* When a cultivating raiyat is ejected by his zamindar, the mere rent of the land realized by the zamindar from another tenant is not necessarily the measure of the damage sustained by the raiyat and recoverable by him as mesne profits. BHIRO CHANDRA MOZOOMDAR *v.* BAMUNDAS MOOKERJEE

3 B. L. R. A. C. 88 : 11 W. R. 461

21. ——————— *Sale by occupancy-tenant—Decree in favour of land-holder against purchaser for mesne profits—Mesne profits how to be*

MESNE PROFITS—*contd*

3. MODE OF ASSESSMENT AND CALCULATION—*contd.*

assessed. Where in a suit against an occupancy-tenant and his vendor, the zamindar obtained a decree for cancelment of the deed for sale, for possession of the land by ejectment, and for mesne profits from the date of suit to the date of recovery of possession :—*Held*, that the mesne profits award-

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SINGH *v.* ALI NAQI . . I. L. R. . . 15

22. ——————— *Rate of rent.* In claiming wasilat for the period of wrongful dispossession, the owners are entitled to recover either any profit which the wrong-doer derived from the land or any rate of rent which they were receiving at the time of dispossession JOY KISHEN DOSS *v* TURNBULL . . . . **24 W. R. 137**

23. ——————— *Held*, that the

of the amount of mesne profits, and may be accepted by the Court unless the contrary be proved RUGHO NATH DOBEY *v.* HUTTEE DOBEY, **1 Agra Mis. 17**

The onus being on the person in wrongful possession to show that the usual rents were not collected. OMAN *v.* RAM GOPAL MOZOOMDAR **18 W. R. 251**

have himself to blame if the ... Court is larger than the actual mesne profits DINOBUNDHOO NUNDEE *v* KESHUB CHUNDER GHOSE **3 W. R. Mis. 25**

RAMNATH CHOWDHRY *v.* DIGUMBER ROY **3 W. R. Mis. 30**

TELUCK CHAND BABOO *v.* SOUDAMINEE DOSSEE **23 W. R. 108**

25. ——————— *Proof of actual* ... has been ... entitled ... od during ... necessary which he was dispossessed, and it is ... for him to prove the actual collections made during his dispossession. It is sufficient to show what is

MESNE PROFITS—*contd*

3. MODE OF ASSESSMENT AND CALCULATION—*contd*

the annual profit which in ordinary years can be collected. Thus it is sufficient to show the profits for the years preceding or subsequent to the period of dispossession BHAWANEE DEEN SAHOO v MOHUN SAHOO 1 N. W. 188 : Ed. 1873, 273

26 ———— *Rents not received—Expenses of collecting rents* In estimating mesne profits, not merely the amount of rents actually received by the defendant, but also those which

payments But he cannot be charged with payments of rent made by the plaintiff to the zamindar. BESSUNESSOOREE DABEA v TARASOONDEREE BRAHMINEE. MAHOMED HAJRA v TARASOONDEREE BRAHMINEE . . Marsh. 201 : 1 Hay 577

27 ———— *Failure of decree-holder to prove rate of rent* In estimating the amount of mesne profits where a decree-holder could not give satisfactory evidence as to the rates at which he received rents and the collections he made, the judgment-debtor was held liable for the amount stated in the Collector's jammabandi, *minus* the cost of collection, leaving him to recover from Government what he has paid on account of revenue, unless the sums so paid had already been refunded by Government to the decree-holder PALMER v BAL GOBIND DOSS . 7 W. R. 230

28. ———— *Landlord and tenant. Held*, that the mode of estimating the

therefrom by the wrongful act of defendant; and that, as there was no necessary relation between those profits and the amount of revenue payable by the latter on account of the inferior holding, such revenue could not be treated as an element in the calculation; but that the amount of rent payable by plaintiff to defendant ought to be deducted from the gross calculation of the talukh. *Held*, also, that there seemed no reason why the same rule should not be adopted in this case merely because the wrong-doer was the landlord BHYRUB CHUNDER MOJOOMDAR v HURO PROSUNNO BHUTTACHARJEE. HURO PROSUNNO BHUTTACHARJEE v. BHYRUB CHUNDER MOJOOMDAR 17 W. R. 257

29. ———— *Remission of rent or neglect to make collection.* The rule for the

MESNE PROFITS—*contd.*

3. MODE OF ASSESSMENT AND CALCULATION—*contd*

thing for which he is entitled to credit, such as

MODHOO SOODUN CHOWDHRY 10 W. R. 111

30 ———— *Gross produce of estate—Value of produce.* Mesne profits should not be estimated on the gross produce of an estate except when all other means of ascertaining them fail The rents due from the actual cultivators, or, if he cultivate the land by his own servants, the value of the produce, should be taken as the amount of the mesne profits KHEMONKUREE DEBIA v. MODHOOMUTTY DEBIA . . 4 W. R. Mis. 23

31. ———— *Fair and reasonable rent* In a suit for possession and wasilat, where the plaintiff was the actual cultivator of the land and obtained a decree, it was held that the Full Bench ruling in *Asmut Koer* v *Inderjeet Koer*, *B L R Sup Vol 1003 9 W R. 446*, and not that in the case of *Saudamini Debi* v. *Anand Chandra Haldar, 7 B L R 178 note 13 W. R 37*, was applicable, and that plaintiff was entitled to such

14 W. R. 264

32. ———— *Person not himself cultivating the land* The mode of calculation

33 ———— *Principle of assessment—Person cultivating land.* A suit by a raiyat having been remanded with a view to the

wrong with reference to *Madhub Chunder Dutt* v. *Haradhun Paul, 14 W. R. 291 Held*, further, that the later decision did not overrule the earlier one, but referred to a different case, *viz.*, that of a large

MESNE PROFITS—*contd.*

3. MODE OF ASSESSMENT AND CALCULATION—*contd.*

zamindar entitled to rent only; and that the Full Bench ruling referred to in the later decision did not intend to lay it down that a party who is himself a cultivator is not entitled to recover the profits which he would have made out of the land by his own cultivation. NURSINGH ROY *v.* ANDERSON . . . . . 19 W. R. 125

34. ———————— *Zerayet and bhowli lands—Production of accounts to show value*

last legal occupant whom the plaintiff claims to succeed to, if the plaintiff himself never entered into possession. A difference in assessment should be made between zerayet and bhowli lands, a deduction being allowed as to the former on account of expenses of cultivation. As regards the produce and value of the lands in such cases, it is the duty of the judgment-debtor to produce his accounts and to prove what were the real assets of the property. ROOKUMEE KOOER *v.* RAM TUHUL ROY 17 W. R. 156

35 ———————— *Suit by cultivator—Damages.* Where the plaintiff, who was a cultivator, sued for possession of certain land, of which he had been dispossessed by the defendant, with mesne profits, and the Judge gave him a decree for possession, and as to mesne profits decreed that the plaintiff should have the actual profits realized from the land, and if that could not be ascertained (as to which the burden of proof, he

of prices, and cost of seed; and in the case of indigo the value of the raw produce and not of the manufactured article:—*Held*, that the principle on which damages were awarded was a correct principle, where the plaintiff was himself a cultivator. WATSON *v.* PYARI LAL SHAHA . 7 B. L. R. 175

SAUDAMINI DEBEE *v.* ANAND CHANDRA HALDAR 7 B. L. R. 178 note: 13 W. R. 37

36. ———————— *Cultivator.* Where the party recovering possession of land of which he was wrongfully dispossessed, and claiming wasilat, is himself the cultivator, he is entitled to recover the profits which he would have made out of the land by the cultivation had he not been dispossessed NUR SINGH ROY *v.* ANDERSON 16 W. R. 21

SHISTEE PERSHAD CHUCKERBUTTY *v.* KUMLA KANT ROY . . . . . 17 W. R. 348

37. ———————— *Amount which might have been received.* Where one party illegally dispossesses another and lets his estate in farm, the amount of the rent which the party wrongfully ousted might have ordinarily received had he been in possession, and not the amount of the farm rents received during the wrongful possessor's incumbency, will, unless any special custom be proved, be the measure of mesne profits to be awarded. JUGURNATH SINGH *v.* AHMEDOOLLAH 8 W. R. 132

38. ———————— *Unprofitable lands.* In executing a decree for mesne profits a

DASS *v.* BROJONATH PAL CHOWDHRY 8 W. R. 300

39. ———————— *Value of produce of jalkar.* In a suit for wasilat, where it was decreed that the value of the produce of a jalkar

40. ———————— *Cancelment of darpatni tenure.* A zamindar granted a patni to . . . The patni was

hts *Held*, that D was entitled . . . the amount of rent which he had paid to his patnidar, *C*, and with the expenses of collection. NUFFAR ALI BISWAS *v.* RAMESHAR BHUMICK 3 C. L. R. 28

41. ———————— *Decree-holder* . . . A decree-holder . . . , but . . . on of . . . lease, . . . ment- . . . cree- . . . sion.

. . . 273

42. ———————— *Suit for mesne profits against trespasser—Costs and expenses of trespasser in collection of rent.* *Held*, by the majority of the Full Bench, that a trespasser on the land of another should, in estimating the mesne profits which the owner of the land is entitled to recover from him, be allowed such costs of collecting the rents of the land as are ordinarily incurred by the owner, where such trespasser has entered

MESNE PROFITS—*contd.*

3. MODE OF ASSESSMENT AND CALCULATION—*contd*

or continued on the land in the exercise of a *bonâ fide* claim of right ; but where he has entered or continued on the land without any *bonâ fide* belief [illegible]

should be allowed such costs ALTAF ALI *v.* LALJI MAL I. L. R. 1 All 518

43 ——— *Allowance for extraordinary profits* Where a party is decreed entitled to mesne profits, the trespasser cannot be allowed to urge that the owner would not have realized as much from the land as he (the trespasser) did, but if he had obtained extraordinary profits by the expenditure of capital on the land, allowance should be made for such expenditure. SREENATH BOSE *v.* NOBIN CHUNDER BOSE 9 W. R. 473

44. ——— *Damages incurred by tenant in consequence of ejectment* A landlord who ejects his tenant illegally and holds possession as a wrong-doer, although he settles another tenant on the land, is liable, not only for the rent he receives under such possession, but also for the damages incurred by the tenant whom he has ejected, in consequence of the ejectment MAHOMED AZMUL *v.* CHADEE LALL PANDEY 12 W. R. 104

45. ——— *Co-sharers—Decrees for and against different parties* The mode of calculating mesne profits in cases of decrees for and against each of the parties is to calculate and rateably divide them, and then to allow a set-off to the extent of the profits actually received by each sharer, the deficit in each year being made good by the party who received in excess of his share BIJOY GOBIND NAIK *v.* KALEE PROSUNNO NAIK 16 W. R. 294

46. ——— *Co-sharers—Fair rent* Where the parties to a suit for certain land and for the payment of mesne profits in respect of the same were co-sharers in the estate comprising [illegible]

GUNGA PROSAD *v.* GAJADAR PRASAD I. L. R. 2 All. 651

47. ——— *Costs of collec-* [illegible]

can collect rents without costs GOOROO DOSS ROY *v.* ANUND MOYEE DEBIA . 15 W. R. 203

48. ——— *Mustagiri tenures* Where the custom of collecting rents from mustagirs prevails, the mustagiri jumma is to be the basis of account of mesne profits to be recovered from a judgment-debtor. AHMED REZAH *v.* ENAET HOSSEIN . . 1 W. R. Mis. 20

49. ——— *Rent left un-* [illegible]

[illegible] MISSER [illegible]

50. ——— *Value of trees cut down—Decree for mesne profits* The value of trees cut down and appropriated by a judgment-debtor, against whom a decree with mesne profits has been [illegible] fits for [illegible] wrongful [illegible] SUDASEEB [illegible]

51. ——— *Surunjamee, upon what profits to be allowed.* Surunjamee should be allowed upon the amount actually collected and not upon the net proceeds coming to the zamindar. ERFOONISSA CHOWDHRAIN *v.* RUKEEBOONISSA . . . . . 9 W. R. 457

52. ——— *Average of several years* Decree of Sudder Court estimating the amount of mesne profits from the average of two preceding years, as ascertained in a former suit (the evidence in the present being unsatisfactory on both sides), upheld. SOORIAH ROW *v.* ENOOGUNTY SOORIAH 5 W. R. P. C. 125 : 2 Moo. I. A 12

53. ——— *Endowed lands —Expenses of worship* In the case of endowed [illegible]

CHATTERJEE . . . . . [illegible]

54. ——— *Mesne profits on accreted land—Presumption as to quantity of* [illegible]

the end of that time, an area of a certain number [illegible]

MESNE PROFITS—*contd.*

3. MODE OF ASSESSMENT AND CALCULATION—*contd.*

the increase had been; but these documents they withheld. *Held*, by the Privy Council, that on the above fact the Courts had properly presumed against them that the entire area of all the bighas above mentioned had come under cultivation from the beginning of the period. MAHABIR PERSHAD v. RADHA PERSHAD SINGH **I. L. R. 18 Calc. 540**

55. ——— *Mesne profits, ascertainment of—Deductions claimed.* Where a

and that it was not competent to the Court to do that in executing the decree :—*Held*, that the mesne profits could only be ascertained after making de-

cuting the decree to inquire into the payments

of the suit were rent-free KACHAR ALA CHELA v OGHADBHAI THAKARSHI. OGHADBHAI THAKARSHI v. KACHAR ALA CHELA . **I. L. R. 17 Bom. 35**

56. ——— *Assessment of mesne profits in execution—Civil Procedure Code (Act XIV of 1882), s. 211—Local investigation by Ameen—Civil Procedure Code, ss 392, 393—Dakhilas or rent-receipts of tenants—Rents which by ordinary diligence might have been obtained—Interest—Discretion of Court in declining to take evidence after the report.* The Court executing a decree for mesne profits commissioned an Ameen, under s. 392 of the Civil Procedure Code, to make a local investigation as to them He was unable to obtain the rent dakhilas of tenants. He inquired as to the prevailing rates of rent for the land which he measured, and included in his estimate of the mesne profits rents which with ordinary diligence might have been obtained. Upon objections taken the questions arose (i) whether the assessment should have proceeded only upon the rent actually realized, or the Ameen was right in taking the rent last mentioned into the account; (ii) whether the evidence of the rent dakhilas was essential: (iii) whether interest, not mentioned in the decree, should have been allowed; (iv) whether or not evidence on the application of the objector should have been taken by the Court after return of the evidence taken in the locality by the Ameen together with his report. *Held*, as to (i), that in-

essentially necessary. As to (iii), that the expression "mesne profits" included, under s 211, interest on them; but this could only be allowed for not more than three years from the decree, or until possession within that time. As to (iv),

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I. A. 88

57. ——— *Oudh Talukhdars' Relief Act, 1870—Interest on mesne profits* An under-proprietor, having been dispossessed by a manager of the superior estate, appointed under the Oudh Talukhdars' Relief Act, 1870, recovered possession under a decree, and afterwards sued for mesne profits. *Held*, that a person who had not himself received the mesne profits having come into possession of the talukh upon its being released from management under the above Act, would not be chargeable with sums which, as it was alleged, might have been received by way of mesne profits,

upon consideration of

58. ——— *Interest on mesne profits not given by decree—Interest not obtainable in execution—Civil Procedure Code, 1882, s 211—Costs of collection of rents by a trespasser in possession not to be set off against mesne profits* A plaintiff sued for cancellation of a certain lease, and for ejectment of the defendant as a trespasser, and for mesne profits with interest on such mesne profits The decree which he obtained was a decree for cancellation of the lease and ejectment of the defendant, and ordered that mesne profits should be ascertained in the execution department, but was silent as to interest *Held*, that interest on the mesne profits could not be obtained in execution of the decree. *Hurro Durga Chowdhrani* v. *Surut Sundari Debi*, *I. L. R 8 Calc. 332*, and *Kishna Nand* v. *Kunwar Partab Narain Singh*, *I. L. R. 10 Calc. 792*. *L. R 11 I. A. 88*, referred to. *Held*, also, that, as the defendant had thrust himself into an estate and not acted in the exercise of a *bonâ fide* claim of right, he was not entitled to charge collection expenses in reduction of the mesne profits *McArthur & Co.* v. *Cornwall*, *[1892] A. C. 75*, distinguished ABDUL GHAFUR v RAJA RAM **I. L. R. 23 All. 263**

MESNE PROFITS—*contd*

3. MODE OF ASSESSMENT AND CALCULATION—*contd.*

59. ———————— *Experience of Judge deciding case—Evidence* In estimating mesne profits for a period of wrongful dispossession, the lower Courts were held to have pursued an incorrect course in deciding upon the supposed personal experience of the Judges instead of upon evidence laid before them The Court ought to have done its best to estimate, from the evidence before it, what would have been the net profits which the dispossessed owner would have earned by the cultivation during that period had he been in possession KISHEN PERSHAD SINGH *v.* CROWDY

23 W. R. 15

60 ———————— *Amount claimed less than amount proved.* The Court cannot give a larger amount of mesne profits than is claimed, although more is proved SOORIAH ROW *v* COTACHERY BOOCHIAH

5 W. R. P. C. 127 : 2 Moo I. A. 113

GOOROO DOSS ROY *v* BUNSHEE DHUR SEIN

15 W. R. 61

KAROO LALL THAKOOR *v* FORBES

7 W. R. 140

61. ———————— *Decree for amount larger than that claimed* A decree for [illegible]

that the sum decreed had been found due after two careful local investigations PEAREE SOONDUREE DOSSEE *v* ESHAN CHUNDER BOSE 16 W. R. 302

62. ———————— *Execution of decree—Amount awarded in execution larger than that claimed in plaint—Court Fees Act (VII of 1870), s 11, para. 2.* The plaintiff brought a suit for possession and for a certain sum as mesne profits, which he assessed at three times the annual rent paid to the defendant by tenants in actual possession of the land He obtained a decree for possession [illegible]

63. ———————— *Amount claimed in plaint—Larger amount found due by Ameen* [illegible]

not bound down to the amount claimed in his plaint; but if more is found due to him he is [illegible]

64 ———————— *Execution of decree—Amount stated in plaint—Estoppel* When, in a suit for possession of land and mesne profits at a rate stated in the plaint, a decree is passed which directs that the amount of mesne profits be ascertained in execution of the decree, the plaintiff is not limited to the amount or rate stated in his [illegible]

HURRO GOBIND BHUKUT *v* DIGUMBUREE DEBIA.

9 W. R 217

65. ———— **Plaintiff both landlord and tenant combined**—*Mesne profits, assessment of—Landlord and tenant, combined position of—Costs.* Where the position of the plaintiff is that of landlord and tenant combined, and the defendant, a sub-tenant, notwithstanding a notice served upon him under s 167 of the Bengal Tenancy Act, 1885, withheld possession from the plaintiff, the mesne profits must be assessed on the value of the crops raised by the defendant, and not upon the basis of the rent which the rightful owner had been realising from the tenants before dispossession. GOPAL CHUNDER MANDAL *v.* BHOOBUN MOHUN CHATTERJEE (1903)[1] . . . I. L R. 30 Calc. 536

66. ———— **Raiyati land**—*Civil Procedure Code (Act XIV of 1882), s 211—Decree for possession of zerait land* When land is *raiyati*, and both the true owner and the trespasser are, under ordinary circumstances, merely rent-receivers, assessment of mesne profits should be made on the basis of fair and reasonable rent. *Ranee Asmed Kooer v. Maharanee Indurjeet Kooer, 9 W. R. 445 ; Raghu Nandan Jha v. Jalpa Pattap, 3 C W. N.* [illegible]

a decree for possession against a trespasser on his *zerait* land, which was in the direct possession of the former : *Held*, that the decree-holder was entitled to get from the defendant as mesne profits the price of the crops raised on the land, less the expenses for

MESNE PROFITS—*contd.*

3. MODE OF ASSESSMENT AND CALCULATION—*concld.*

cultivation. *Rookumee Kooer* v. *Ramtuhul Roy*, *17 W. R 156*, and *Surja Prosad Narain Singh* v. *L D. Reid*, *6 C. W. N. 409*, referred to. LALJEE SHAHAY SINGH v. WALKER (1902)

6 C. W. N. 732

67. ——— **Trespasser**—*Civil Procedure Code, s 211—Execution of decree—Allowance of collection expenses to a trespasser against whom a decree for mesne profits has been passed* Ordinarily, in the case of a decree for mesne profits against a

when the trespass is of a very aggravated character that the Court, in the exercise of its discretion, may refuse such expenses *McArthur & Co.* v *Cornwall*, *[1892] A. C. 75*, followed. *Hurro Doorga Chowdhrani* v. *Maharani Surut Soondari Debi*, *L. R 9 I. A. 1*, *Girish Chunder Lahiri* v. *Shoshi Shikhareswar Roy*, *L R. 27 I. A 124*; *Altaf Ali* v. *Lalji Mal*, *I. L. R 1 All 518*, *Sharf-ud-din Khan* v *Fatehyab Khan*, *I. L. R. 20 All. 208*, and *Shitab Dei* v *Ajudhia Prasad*, *I. L R. 10 All. 13*, referred to. ABDUL GHAFUR v RAJA RAM (1901) . . . **I. L. R. 23 All. 252**

68. ——— **Khamar land—Interest**—*Mesne profits.* In determining the amount of mesne profits payable in respect of khamar land, 5 per cent on the value of the actual produce was held to be a sufficient allowance to meet the cost of supervision and any other incidental charges for which a proprietor, who is not an ordinary cultivator of his khamar land, may be liable Principles upon which mesne profits of khamar land should be assessed discussed Interest as forming a part of the mesne profits or damages cannot be allowed for any period subsequent to that limited by s. 21 of the Civil Procedure Code (Act XIV of 1882) Interest at 6 per cent and not 12 per cent. was allowed on mesne profits after possession was delivered. IJATULLA BHUYAN v. CHANDRA MOHAN BANERJEE (1908)

12 C. W. N. 285

69. ——— **Zerait land**—*Rent—Competition rent—Assessment, principle of.* As regards zerait land, mesne profits should be assessed on the basis of produce or competition rent and not customary rent. The character of the possession before trespass should be ascertained to arrive at the true measure of damages, because such possession is a fair index of intention as to the mode of occupations if there were no trespass *Ijatulla Bhuyan* v *Chandra Mohan Banerjee*, *12 C W N 285*, and *Gopal Chunder Mandal* v. *Bhooban Mohun Chatterjee*, *I. L R 30 Calc. 536*, approved. Principle upon which mesne profits should be assessed on the basis of produce or competition rent discussed *Thakooranee Dassee* v. *Bisheshur Mookerjee*, *B L. R. F. B. 202*; *3 W. R. (Act X) 29*, referred to. LACHMI NARAIN v MAZHAR ABBAS (1908) . **I. L R. 35 Calc. 1000**

MESNE PROFITS—*concld.*

4 LIMITATION.

——— *Limitation—Limitation Act (XV of 1877), s. 14, Sch. II, Art. 109—"Cause of a like nature"—Res judicata—Past and future mesne profits, previous suit for—Civil Procedure Code (Act XIV of 1882), s 13, Expl. III.* For the purpose of limitation, mesne profits must be regarded as accruing due from day to day, unless shown to fall due otherwise so that all mesne profits due for the period antecedent to the three

S. 14 of the Limitation Act does not entitle a plaint-

advertence or because the claim was not specially pressed. *Deo Prosad Singh* v. *Partab Kairee*, *I. L. R. 10 Calc. 86*; *Hem Chandra Chowdhry* v. *Kali Prosanna Bhaduri*, *I. L. R 30 Calc. 1033*; *Sheth Kahandas Narandas* v *Dahiabhai*, *I. L. R. 3 Bom 182*, and *Putali Meheti* v *Tulja*, *I. L R 3 Bom 223*, distinguished S. 13 of the Civil Procedure Code does not bar a suit for mesne profits, which was claimed in a previous suit between the parties, but in regard to which the decree was

dra v. *Jagannatha*, *I. L. R. 14 Mad. 323*, follo… G. S. HAYS v PADMANAND SINGH (1905)

I. L. R. 32 Calc. 118

MIGRATING FAMILY.

See HINDU LAW—INHERITANCE—MIGRATING FAMILIES.

MILITARY AUTHORITIES, JURISDICTION OF.

See JURISDICTION OF CRIMINAL COURT—EUROPEAN BRITISH SUBJECTS.

13 B. L. R. 474

I. L. R. 5 Calc. 124

MILITARY CODE.

See SMALL CAUSE COURT, MOFUSSIL—LAW OF SMALL CAUSE COURTS.

5 Bom. A. C. 99

MILITARY COURTS OF REQUEST.

See APPEAL—ACTS—MILITARY COURTS OF REQUESTS ACT . 2 N. W. 229

3 N. W. 75

See JURISDICTION—QUESTION OF JURISDICTION—GENERALLY . 1 Agra 222

MILITARY COURT OF REQUEST—*concld*

See SMALL CAUSE COURT, MOFUSSIL—JURISDICTION—MILITARY MEN
1 Mad. 443
2 Mad. 389 ; 439

1 ———— **Jurisdiction**—*Act XLII of 1860—Stat 20 & 21 Vict, c 66, s 67* S 6 of Act XLII of 1860 did not alter or interfere with the jurisdiction of the Military Courts of Requests established by Stat. 20 & 21 Vict., c. 66, s. 67 SHANMUGA v. MEDDLETON . . 1 Mad 443

2 ———— **Act XI of 1841**—*Military Bazars Act (XII of 1842)—Right of suit.* The

3 ———— **Suit against Cantonment Magistrate** Act XI of 1841 did not confer jurisdiction on a Military Court of Request to entertain a suit against the Cantonment Magistrate as representing the Government. JODHRAJ v. CANTONMENT MAGISTRATE OF MORAR
1 N. W. 174 ; Ed. 1873, 253

4. ———— **Procedure**—*Civil Procedure Code, 1859, ss 114, 119* The Code of Civil Pro-

regulated by the Act, and ss 114 and 119 of the Civil Procedure Code do not apply. GUNSAM DOSS v. MOOLTAN MULL . 2 N. W 192

5. ———— **ss. 2, 17**—*Persons beyond British territory* Ss 2 and 17 of Act XI of 1841 must be read together as regards persons amenable to Military Courts of Request beyond British territory. MOOLTAN MULL v GUNSAM DOSS . . . . 3 N. W. 75

being in force. It is not competent for a Court of Requests to pronounce a decree (by default) in favour of defendant without considering the evidence before it. GHUNTHAM DOSS v MOOLTAN MULL . . . . . 2 N. W. 229

MILITARY DECORATION.

———— **taking pawn of, from soldier**—

See ARMY ACT, 1881, s 156.
I. L. R. 10 Mad. 108

MILITARY OFFICER.

See ATTACHMENT—SUBJECTS OF ATTACHMENT—SALARY . 7 N. W. 331
I. L. R 1 All. 730
I L. R. 9 Mad. 170
I. L. R. 24 Calc. 102
I. L. R. 25 Mad. 402

MILITARY OFFICER—*concld.*

See SMALL CAUSE COURT, MOFUSSIL—JURISDICTION—MILITARY MEN.
2 B. L. R. S. N. 3
2 Mad. 389 ; 439

See SUMMONS, SERVICE OF.
11 B L. R. Ap 43

MILKIAT PROPERTY.

See LAND REGISTRATION ACT (BENG ACT VII OF 1876), s. 78.
I. L. R. 35 Calc. 747

MINERAL RIGHTS LITA

See INJUNCTION . I. L. R. 33 Calc. 462

See LANDLORD AND TENANT
10 C. W. N. 17, 425 ; 738

See LEASE

See MINES AND MINERALS.

See UNDERGROUND RIGHTS.

1. ———— **Mukarari lease**—*Mines and Minerals—Underground rights—Transfer of Property Act (IV of 1882), s 108, cl. (o)* The grant of a mukarari lease of a whole mouza

Shama Charan Nandi v. Abhiram Goswami, I. L. R. 33 Calc. 511, referred to *In re Purmandas Jeewandas, I. L R 7 Bom 109, Prince Mahomed Bukhtyar Shah v Rani Dhojamani, 2 C L. J. 20, Titaram Mukerji v. Cohen, I. L R 33 Calc.*

I. L. R 34 Calc. 588

2. ———— **Income-tax and road cess**—

term "owner" in s 72 of the Bengal Cess Act of 1880 is used in a limited sense; it means an owner, who is in possession of the mine or who has control over it, and does not include a person or body corporate, who merely receives a royalty. MANINDRA CHANDRA NANDI v. SECRETARY OF STATE FOR INDIA (1907) . I L. R. 34 Calc. 257

MINERALS.

See Debutter . I. L. R. 33 Calc. 511

See Grant . . 9 C. W. N. 1073

See Mines and Minerals

See Underground rights.

MINES AND MINERALS.

See Landlord and Tenant. I. L. R. 33 Calc. 54

See Mineral Rights.

MINING COMPANY.

See Injunction . 10 C. W. N. 173

MINISTERIAL OFFICER.

See Appeal—Orders 3 B. L. R. A. C. 370; 14 W. R. 328

See Superintendence of High Court—Charter Act, s 15—Civil Cases 19 W. R. 148; 20 W. R. 470

1. ———— **Appointment**—*Act XII of 1856, s 3—Civil Court Ameens* The High Court had no authority to interfere in the case of a person who was not confirmed in an acting appointment of Civil Court Ameen for which the Judge considered some other candidate to be more fit. *In the matter of* Doorga Doss Doss . 17 W. R. 226

2. ———— *Act XVI of 1868—Power of Subordinate Judges.* Act XVI of 1868 contemplated that the selection and appointment of persons to fill ministerial offices in the establish-

sons so as to influence the inferior Judge towards the appointment of a particular candidate. *In the matter of the petition of* Oolfut Hossein 13 W. R. 197

3 ———— *Act XVI of 1868, s 9—Munsif's Court* Under s. 9, Act XVI of 1868, the nomination and appointment of the ministerial officers of a Munsif's Court rested with the Munsif, subject to the approval of the District Judge. If the District Judge did not approve, he could refuse his sanction, but the law did not permit him to appoint any other person. *In the matter of* Raj Coomar Goopto . . . . 11 W. R. 354

4. ———— *Act XVI of 1868, s 9—Appointment of serishtadar.* In the matter of the appointment of a serishtadar in a Munsif's Court, it was held to be no irregularity or impro-

MINISTERIAL OFFICER—*concld.*

5. ———— *Power of Judge to interfere with appointment of serishtadar by Munsif.* Where a Munsif appointed a person as serishtadar in his Court and it did not appear that the person so appointed was in any respect disqualified

Dhoyrub Chunder Deb . . 7 W. R. 10[illegible]

6. ———— *Removal of officer—Power of Zillah Judge.* A Zillah Judge may refuse to confirm the appointment, by a Subordinate Court, of a disqualified person as a ministerial

an appointment to stand for nine months, to displace the person so appointed and to appoint another in his stead. *In the matter of the petition of* Kally Prosunno Chatterjea . 7 W. R. 224

7. ———— **Removal**—*Removal of mohurrir—Power of Zillah Judge* A Zillah Judge is not

7 W. R. [illegible]

8 ———— **Dismissal**—*Ground for dismissal* The fact of a ministerial officer carrying on a shop is not such an irregularity in his conduct as to justify his dismissal. *In re* Komul Lochun Bhadoory . . . . 2 Hay 674

9. ———— *Ground for dismissal.* Private concerns of a ministerial officer

Hossein 7

MINOR.

MINOR—*contd*

See ACT XL OF 1858

See ARBITRATION—REFERENCE OR SUBMISSION TO ARBITRATION.
I. L. R. 24 Mad. 326
I L R 27 Bom. 287

See CHEATING I L R 32 Calc 775

See CIVIL PROCEDURE CODE, 1882, s 335.
I. L. R. 32 Bom. 404

See CIVIL PROCEDURE CODE, 1882, s 440
I L R. 31 Bom. 413

See CIVIL PROCEDURE CODE, 1882, s 462
I. L. R. 28 All. 585
10 C W. N. 898

See COMPROMISE—

CONSTRUCTION, ENFORCING, EFFECT OF, AND SETTING ASIDE DEEDS OF COMPROMISE I. L R 30 Calc. 613

CIVIL PROCEDURE CODE, 1882, s 462
13 C W N. 163

COMPROMISE OF SUITS UNDER CIVIL PROCEDURE CODE
I. L. R. 26 Bom. 109
7 C W N 90
I L. R 34 Calc. 70

See CONTRACT ACT, 1872, s 11
I. L. R. 31 All 21

See COURT OF WARDS 12 C. W. N. 1065

See DECLARATORY DECREE, SUIT FOR—ADOPTION I. L. R. 30 Calc. 613

See GUARDIAN.

See GUARDIAN AND MINOR

See GUARDIAN AND WARD.

See GUARDIANS AND WARDS ACT (VIII OF 1890).

See HINDU LAW—

ALIENATION—

ALIENATION BY MOTHER ;

ALIENATION BY FATHER ;

ALIENATION BY WIDOW—ALIENATION FOR LEGAL NECESSITY OR WITH CONSENT OF HEIRS OR REVERSIONERS . 6 C. W. N. 905

See HINDU LAW—JOINT FAMILY.
I. L. R. 32 Bom. 259

GUARDIAN.

See HINDU LAW—JOINT FAMILY.

See HINDU LAW—PARTITION.

See INSOLVENT ACT, s. 7.
I. L. R. 17 Bom. 411
I. L R. 13 Calc. 68

See LIMITATION ACT, 1877, s. 7.
I. L. R. 28 Calc. 465
I. L. R. 29 Calc. 813

s. 7 AND SCH II, ART. 11.
I. L. R. 26 Bom. 730

MINOR—*contd.*

See LIMITATION ACT, 1877—

ss. 7 AND 8 AND SCH. II, ART 106
I. L. R. 25 Mad. 26

ss. 7 AND 8 AND SCH. II, ART. 179
I. L. R. 25 Mad. 431

s. 8 . . 6 C. W. N. 348
I. L. R. 25 All. 155

s. 19—ACKNOWLEDGMENT OF DEBTS
I. L. R. 13 Calc. 292
13 C. L R. 112
I. L R. 17 Mad. 221
I. L. R. 18 Mad. 456
I. L. R. 20 Bom 61
I L. R. 23 Calc. 374
I. L. R. 26 Calc. 51

See MAHOMEDAN LAW—GUARDIAN.

See MAJORITY ACT.

See MAJORITY, AGE OF.

See MINOR WIFE—MINORITY.
I. L. R. 31 Bom. 80

See MINORITY.

See PARTIES—PARTIES TO SUITS—JOINT FAMILY . . I. L. R. 25 All. 378

See PARTITION . I. L. R. 28 Bom 330

See PAUPER SUIT—SUITS
I. L. R. 3 Mad. 3
11 B. L. R. 373

See PLAINT—FORM AND CONTENTS OF PLAINT—PLAINTIFFS
I. L. R. 12 Calc 48
17 W. R 144
20 W. R. 453
10 Bom. 414

See PRACTICE—CIVIL CASES—NEXT FRIEND . I. L R 16 Calc. 771

See REGISTRATION ACT, 1877, s. 35
I L. R. 1 All. 465
L. R. 4 I. A. 166
I. L. R. 5 All. 599
I. L. R. 8 Calc. 967
I. L. R. 21 Calc. 872
I. L. R. 21 All. 281

See REVIEW—FORM OF, AND PROCEDURE ON, APPLICATION . 16 W. R. 231

See SUCCESSION ACT, ss. 2 AND 3
12 B. L. R. 358

See SUCCESSION CERTIFICATE ACT.
I. L. R. 28 Bom. 330 ; 344

——— adoption of—

See HINDU LAW—ADOPTION.

——— agreement on behalf of—

See HINDU LAW—PARTITION—

REQUISITES FOR PARTITION.
I. L. R. 30 Calc. 738

EFFECT OF PARTITION.
I. L. R. 30 Calc. 725

MINOR—*contd.*

—— custody of—

See CRIMINAL PROCEDURE CODE, s. 551.
I. L. R. 16 Calc. 487

See CUSTODY OF CHILDREN.

See HABEAS CORPUS 5 B. L. R. 418; 557
13 B. L. R. 160

—— liability of, on contract—

See ESTOPPEL—ESTOPPEL BY CONDUCT.
I. L. R. 30 Calc. 539

See HINDU LAW—CONTRACT—PROMISSORY NOTE . I. L. R. 26 Mad. 330

See PLEADER—REMUNERATION.
I. L. R. 17 Mad. 306

—— minority of wife—

See RESTITUTION OF CONJUGAL RIGHTS.
I. L. R. 28 Calc. 37

—— non-appearance of guardian in suit—

See CIVIL PROCEDURE CODE, 1882, s. 108
5 C. W. N. 58

—— obtaining possession of, for purposes of prostitution—

See PENAL CODE, ss. *372, 373*

—— partition suit—

See MAHOMEDAN LAW—PARTITION.
13 C. W. N. 152

—— payment of interest on behalf of—

See LIMITATION ACT, 1877, s. 20.
I. L. R. 29 Calc. 647

—— power of, to adopt or give permission to adopt—

See HINDU LAW—ADOPTION—WHO MAY OR MAY NOT ADOPT 15 W. R. 548
I. L R. 1 Calc. 289
I. L. R. 15 Bom. 565
I. L. R. 18 Calc. 69

—— representation of minor in suits—

See CIVIL PROCEDURE CODE, 1882, s. 108.
I. L. R. 24 All. 383

See CIVIL PROCEDURE CODE, 1882, s. 244.
I. L. R. 31 All. 572

See PRACTICE—CIVIL CASES—NEXT FRIEND . I. L. R. 28 Calc. 264

—— right of, to raise objection on attaining majority—

See LIMITATION—QUESTION OF LIMITATION . . 6 C. W. N. 348

—— right of, to revive execution proceedings—

See LIMITATION . 11 C. W. N. 831

MINOR—*contd.*

—— sale of share of—

See HINDU LAW—JOINT FAMILY—POWERS OF ALIENATION BY MEMBERS.

See HINDU LAW—JOINT FAMILY—SALE OF JOINT FAMILY PROPERTY IN EXECUTION, ETC.

—— suit by—

See ESTOPPEL—ESTOPPEL BY CONDUCT.
I. L. R. 29 Calc 126

See MORTGAGE . 11 C. W. N. 1078

See REVENUE SALE LAW, s. 33.
13 C. W. N. 518

1. EVIDENCE OF MINORITY.

1. —— Plea of minority, determination of—*Personal appearance of minor.* The plea of minority should be decided on positive evidence, and not merely on the appearance of the alleged minor. KHETTER MOHUN GHOSE *v.* RAMESSUR GHOSE . . . W. R 1864, 304

KALEE HALDAR *v.* SREERAM GHOSE.
W. R. 1864, 366

2. LIABILITY OF MINOR ON, AND RIGHT TO ENFORCE, CONTRACTS.

2. —— Power to contract—*Necessaries—Authority to third person—Settlement of* [illegible] fied power of contract- [illegible]

3. —— Voidable contract—*Act IX of* [illegible] *oblige.* A con- [illegible] voidable [illegible] nothing to [illegible] contract [illegible] DUTT *v.* JADU NATH DUTT . I. L. R. [illegible] Calc. 552

See HARI RAM *v* JITAN RAM
3 B. L. R A. C. 426

4. —— *Contract by a minor.* A contract entered into with a minor is only voidable at the option of the minor. *Shashi Bhusan v. Jadu Nath Dutta, I. L R. 11 Calc. 552,* followed. MAHAMED ARIF *v.* SARASWATI DEBYA
I. L. R. 18 Calc. 259

5. —— *Contract Act (IX of 1872), ss. 10 and 11—Suit on a bond passed to a minor.* A money-bond taken by a minor is good in law, and may be sued on. HANMANT LAKSHMAN *v.* JAYRAO NARSINHA . I. L. R. 13 Bom. 50

6. —— Purchase from minor—*Validity of purchase.* A purchase from a minor is not

MINOR—*contd.*

2. LIABILITY OF MINOR ON, AND RIGHT TO ENFORCE, CONTRACTS—*contd*

ipso facto invalid. RENNIE *v.* GUNGA NARAIN CHOWDHRY . . . 3 W. R. 10

7. ———— Pre-emption—*Guardian.* The circumstance that a co-sharer of a village was a minor at the time of the preparation of the wajib-ul urz, and that document was not attested on his behalf by a guardian or duly authorized representative, is not a reason for excluding him from the benefit of the provisions of that document relating to pre-emption. LAL BAHADUR SINGH *v.* DURGA SINGH . . . I. L. R. 3 All. 437

8. ———— Right of minor to contract—*Contract by a minor—Specific performance of contract, right of minor to enforce—Contract Act (IX of 1872), s. 11.* A minor in this country cannot

I. L. R. 18 Calc. 259, and *Hanmant Lakshman v. Jayarao Narsinha, I. L. R. 13 Bom. 50,* referred to. FATIMA BIBI *v.* DEBNATH SHAH I. L. R. 20 Calc. 508

Dissented from in KRISHNASAMI *v.* SUNDARAPPAYYAR . . I. L. R. 18 Mad. 415

and KHAIRUNNESSA BIBI *v.* LOKE NATH PAL I. L. R. 27 Calc. 276

9. ———— Capacity of minor to contract—*Law of domicile—Contract Act (IX of 1872), ss. 11 and 128—Suit on bond executed by minor and not ratified on his attaining majority—Liability of surety of minor.* By the law of England, the question of the capacity of a person to enter into a contract is decided by the law of his domicile. This principle of English law is adopted by s. 11 of the Contract Act. A minor cannot be sued on a bond executed by him during minority, and

I. L. R. 19 Bom. 697

10. ———— Bond executed by minor—*Necessaries—Suit against a minor on a registered bond executed by him for necessaries—Contract Act (IX of 1872), s. 68.* On the 20th April 1886,

that he was not liable to *A* for the amount advanced; that it was not advanced for "necessaries" that he was not liable under the bond. *Held,* that, the liberty of the minor being at stake, the money advanced must be taken to have been borrowed for "necessaries" within the meaning of s. 68 of the Contract Act In such a case the bond being the basis of the suit, could not be ignored and treated as non-existent, and, on its being proved to have been executed by the minor in respect of money advanced for necessaries, the plaintiff was entitled to a decree. SHAM CHARAN MAL *v.* CHOWDHRY DEBYA SINGH PAHRAJ I. L. R. 21 Calc. 872

11. ———— Loans to a minor—*Inquiries necessary to be made by lender—Burden of proof.*

without such inquiries cannot thereafter successfully have recourse to the minor's estate for the satisfaction of the debt *Hanooman Pershad Panday v. Munraj Koonweree, 6 Moo I. A. 393,* referred to. KANDHIA LAL *v.* MUNA BIBI I. L. R. 20 All. 135

12 ———— Capacity to contract—*Contract Act (IX of 1872), s 10—Ratification—Release by minor father of his interest in joint property to his son—Family arrangement—Voluntary conveyance by father to son—Transaction impeached by subsequent creditors—Transfer of Property Act (IV of 1882), s. 7.* Per FARRAN, C.J., and RANADE, J. (FULTON

MINOR—*contd.*

2. LIABILITY OF MINOR ON, AND RIGHT TO ENFORCE, CONTRACTS—*contd.*

questioned. Such conveyances are well known in English law, and there have been cases in India also where Courts have given effect to such voluntary conveyances or gifts by a father to his son. *Ganga Sahai* v. *Hira Singh, I. L. R. 2 All. 809* Such transactions do not become colourable merely be-

paid by the party benefited. *Per* FULTON, *J.*—Apart from s 7 of the Transfer of Property Act, 1882, which was not in force in the Presidency of Bombay when the release of 1887 was executed, a conveyance depends on a preceding contract, and cannot be valid unless the party making it is competent to contract Without an antecedent agreement to give and receive, there can be no transfer at all The power to convey must depend on the power to contract. Unless it can be held that the provisions of s. 10 of the Contract Act were not meant to be exhaustive, and it was intended to leave out of consideration agreements by minors, we must hold that a minor is incompetent to contract. *Held* by FARRAN, *C. J.*, and FULTON, *J* (RANADE, *J.*, dissenting), that the release was inoperative, and that the plaintiff was entitled to attach the property in execution of his decree. By FARRAN, *C. J*, on the ground that it had not been ratified by *V* after he attained his majority. By FULTON, *J.*, on the ground that the release was absolutely void and incapable of ratification. *Per* FARRAN, *C.J*, and RANADE, *J.*, (FULTON, *J*, dissenting), that the release was voidable only at the option of the minor (*V*), and was not void, and, if it was ratified or not repudiated by him on attaining majority, it was, in the absence of fraud, a valid transaction, at least as against judgment-creditors whose debts were of a subsequent date SADASIV VAMAN DHAMANKAR *v.* TRIMBAK DIVAKAR KARUNDIKAR

I. L. R. 23 Bom. 146

13. ——— **Mortgage by infant whether void or voidable**—*Contract Act, s. 64—Evidence Act, s 111—Misrepresentation.* In a suit by

of such mortgage; (i) that the question of the validity of the prior mortgages can be determined in this suit between the co-defendants. The prior mortgages were executed when the mortgagor was over 18, but under 21. A guardian of his person had been appointed under Act XL of 1858, but

MINOR—*contd.*

2. LIABILITY OF MINOR ON, AND RIGHT TO ENFORCE, CONTRACTS—*contd.*

there was no evidence as to whether a certificate of administration had also been granted under that Act. The prior mortgagees thereupon contended (1) that under Act XL of 1858 a guardian of the person could not be appointed unless a certificate of administration was also granted, and there being no evidence of the latter being granted, this appointment of a guardian of the person alone was *ultra vires*; (2) that there was a fraudulent representation by the mortgagor as to his power to mortgage by which those claiming under him were estopped; (3) that the prior mortgages were not void, but only voidable; and that therefore the prior mortgagees were entitled to such relief as is ... *Held*,

as though he were an adult, but it must be established that there was a fraudulent misrepresenta-

of the decisions ... bound to hold, though dissenting from the same, but held that the mortgages were only voidable, ...

Dabya, I. L. R. 18 Calc. ... that such rights as might be created under s. 64 of the Contract Act could not be enforced between the co-defendants in this suit. RAJ COOMARY *v.* PREO MADHUB NUNDY . 1 C. W. N. 453

14. ——— **Liability of minor in equity** ...—*Action*

the representation ... that he was of age.—*Held* that no suit to recover the money could be maintained against him. ... binding upon the infant ... either at ... should not ... Calc. 265 ... W. N 270

15. ——— **Fraudulent representation by minor that he was of age**—*Mortgage* A sum of money was advanced to a minor by a mortgagee secured by a mortgage of house property on the representation by the minor that he was of

MINOR—*contd.*

2. LIABILITY OF MINOR ON, AND RIGHT TO ENFORCE, CONTRACTS—*contd.*

age, and the mortgagee was deceived by such false

16. ——— Mortgage by minor—*Voidable mortgage—Estoppel—Evidence Act (I of 1872), s. 115—Fraud—Contract Act (IX of 1872), s. 64—Restoration of benefit by minor.* The general law

fraudulent minor of the benefit of a plea of infancy;

from. *Sarat Chunder* v. *Gopal Chunder Laha, I. L. R. 20 Calc. 296*; *Mills* v. *Fox, L. R. 37 Ch. D. 153*, *Wright* v. *Snow, 2 De Gex & S. 321*; and *Nelson* v. *Stocker, 4 De Gex & J. 458*, discussed If money advanced to an infant on a mortgage declared void is spent by him, then there is no benefit which he is

Held (on appeal affirming the above decision)—S. 115 of the Evidence Act has no application

distinguished. BROHMO DUTT *v* DHARMO DAS GHOSE . . . . I. L R. 26 Calc. 381
3 C. W. N. 468

17. ——— Fraudulent representation by minor that he was of age—*Contract by minor.* A minor representing himself to be of full age sold certain property to *A* and executed a registered deed of sale. The deed contained a recital that he was 22 years of age *Held*, in a suit by him to set aside the sale on the ground of his minority, that he was estopped. GANESH LALA *v* BAPU . . . . I. L. R 21 Bom. 198

18 ——— Enhancement of rent, effect of—*Acts of mother and guardian how far binding on minor son—Kabuliat given by widow in possession to bind her son and successor to pay enhanced rent decreed against her* A patnidar

it was not to be presumed that the mother held adversely to her son; also as she had come to what she believed to be and was, a proper arrangement, the son, on his attaining full age and entering into possession of the tenancies, was bound by the kabuliats. WATSON & CO *v* SHAM LALL MITTER
I. L. R. 15 Calc. 8
L. R. 14 I. A. 178

19. ——— Mortgage—*Power of minor to take a mortgage* Observations by STUART, *C J.*, on the competency of a minor to take a mortgage. BEHARI LAL *v.* BENI LAL . I. L. R. 3 All. 408

20. ——— *Act XL of 1858, s. 18—Guardian and minor—Mortgage without the sanction of the Civil Court—Void contract—Ratification by minor* A minor cannot ratify a mortgage of his immoveable property made by his guardian appointed under Act XL of 1858, without the sanction of the Civil Court, such a mortgage being under s 18 of that Act void *ab initio* MAUJI RAM *v.* TARA SINGH . I. L. R. 3 All. 852

21. ——— *Sale in execution of decree—Usufructuary mortgage—Right of purchaser*

chaser the reversionary right of the judgment-

distinct act on attaining majority, it must be considered valid. HARI RAM *v.* JITAN RAM
3 B. L. R. A. C. 426 : 12 W. R. 378

MINOR—*contd.*

2. LIABILITY OF MINOR ON, AND RIGHT TO ENFORCE, CONTRACTS—*contd.*

See SASHI BHUSAN DUTT *v.* JADU NATH DUTT
I. L. R. 11 Calc. 552

22 ———————— *Guardian and minor—Act VIII of 1890 (Guardians and Wards*

Land-revenue Act), ss 203, 205B A mortgage executed by a minor is not void, but only voidable, even where the minor has a certificated guardian appointed by the Court Where, therefore, a person during his minority had mortgaged with

possession. MADAN MOHAN *v* RANGI LAL
I. L. R. 23 All. 288

23. ———————— *Guardians and Wards Act (VIII of 1890) ss 29 and 30—Guardian and minor—Mortgage by guardian of minor's property —Previous permission of the Court of Wards not obtained—Effect of mortgage.* A mortgage, purporting to bind the estate of a minor, was executed on behalf of the minor by his mother, who was not only the natural guardian of the minor, but a certificated guardian under the provisions of the Guardians and Wards Act, 1890 The guardian, however, had not obtained the permission required by s 29 of the above-mentioned Act. *Held*, that the mortgage was not void, but, if the minor had in

24. ——— Contract with minor void —*Refund of money—Specific Relief Act (I of 1877), s. 41.* The decision in *Mohori Bibee* v. *Dharmodas Ghose, I. L. R. 30 Calc. 539*, is to the effect that a contract by a minor, such as a mortgage, is void and that a money-lender, who has advanced money to a minor on the security of the mortgage, is not entitled to repayment of the money on a decree being made declaring the mortgage invalid That decision, however, is also an authority for the proposition that the circumstances of a particular case may be such that having regard to s. 41 of the Specific Relief Act (I of 1877), the Court may, on adjudging the cancellation of an instrument, require the party to whom such relief is granted, to make any compensation to the other, which justice may require. DATTA RAM *v.* VINAYAK (1904) . . . I. L. R. 28 Bom. 181

MINOR—*contd.*

2. LIABILITY OF MINOR ON, AND RIGHT TO ENFORCE, CONTRACTS—*contd*

25. ——— Contract on behalf of minor—*Mutuality—Specific performance of contract, right of minor to enforce* *Held* by the Full Bench, that, if a contract is validly entered into on behalf of a minor and there is mutuality in such contract, it might be specifically enforced It is difficult to lay down any general rule, but each case must depend upon its own particular circumstances. MIR SARWARJAN *v* FAKHARUDDIN MAHOMED CHOWDHURY (1906) . I. L. R. 34 Calc. 163

of a contract entered into by a guardian on behalf of a minor, if the contract be one which being within the guardian's power binds the minor An agreement for sale and purchase entered into on behalf of a minor may be specifically enforced notwithstanding the fact that it involves a personal liability to pay the price if the agreement be carried out, and also damages in lieu of or in addition to specific performance if the agreement be broken *Waghela Rajsanji v. Sheik Masludin, L. R. 14 I. A 89*, referred to MIR SARWARJAN *v.* FAKHRUDDIN MAHOMED CHOUDRY (1906) . 11 C. W. N. 207
I. L. R 34 Calc. 163

27. ———————— *Guardian and minor—Bond by guardian—Liability of minor—Necessaries—Bond to keep alive debt due for necessaries—When binds minor's estate—Limitation—Personal liability.* The proposition that a guardian of a minor cannot bind his ward personally by a simple contract debt, by a covenant or by any promise to pay money or damages, is subject to the modification that the promise will not bind the minor, unless it has been made merely to keep alive a debt for which the ward's property was liable *Subramania Ayyar* v. *Arumuga Chetti, I. L. R 26 Mad. 330*, referred to Where there is a promise to pay money, which has been expended for necessaries, the estate of the minor may be liable not on the promise, but because the money has been supplied. *Sundararaja Ayyangar v. Pattanathusami Tever, I. L. R 17 Mad. 306*, referred to. It is established law that a guardian cannot bind his wards' estate except by a document purporting to bind it *Maharana Shri Ranmal Singji* v. *Vadilal Vakhat Chand, I. L. R. 20 Bom. 61*, referred to. When a third person enters into dealings with the guardians of a minor and advances money for necessaries for the minor or for the benefit of his estate and takes a bond for the debt from the guardian, the responsibility rests on him to take care that the bond is so drawn

MINOR—*contd.*

2. LIABILITY OF MINOR ON, AND RIGHT TO ENFORCE, CONTRACTS—*contd.*

as to render the estate of the minor in law liable for the debt BHAWAI SAHU *v.* BAIJ NATH PERTAB NARAIN SINGH (1907) . I. L. R. 35 Calc. 320
s.c. 12 C. W. N. 256

28. ——— "Necessaries," what are—*Contract with minor—Benefit of Minor—Wedding presents—Guardian, discharge or death of—Majority Act (IX of 1875), s. 3—Guardians and Wards Act (VIII of 1890), s. 52.* Where a guardian has once been validly appointed or declared the minority does not cease till the attainment of 21 years by the ward, and it is immaterial whether the guardian dies or is removed, or otherwise cease to act. *Rudra Prokash Misser* v. *Bhola Nath Mukerjee, I. L. R. 12 Calc. 612, Khawahish Ali* v. *Surju Prasad Singh, I. L. R. 3 All. 598, Gordhandas* v. *Harivalubhdas, I. L. R. 21 Bom. 281,* and *Gopal Chunder Bose* v. *Gonesh Chunder Sremani, 4 C. L. J. 112* referred to. *Paters* v. *Champa Lal, 11 All. W. N. 115,* dissented from. *Birj Mohun Lal* v. *Rudra Perkash Misser, I. L. R. 17 Calc. 914,* explained. *Shivram* v. *Krishnabai, I. L. R. 31 Bom. 80, Yelnath* v. *Warubai, I. L. R. 13 Bom. 285,* and *Mungniram Marwari* v. *Gursahai Nand, I. L. R. 17 Calc. 347,* referred to. *Nagardas Vackraj* v. *Anandrao Bhai, I. L. R. 31 Bom. 590,* distinguished. If an order of Court, which has been erroneously made or irregularly obtained is subsequently revoked, the position of the party is the same as if the order had never been made. *In re Newman, [1899] 2 Q. B. 587,* followed. 'Necessaries' include articles fit to maintain the particular person in the state, degree and station in life in which he is. *Peters* v. *Fleming, 6 M. & W. 42, 55 R. R. 495,* followed. *Ryder* v. *Woombwell, L. R. 3 Exch. 90, 4 Exch. 32,* and *Walter* v. *Everard, [1891] 2 Q. B. 369,* referred to. 'Necessaries' must be determined with reference to the fortune and circumstances of the particular infant. Wedding presents for the bride may be 'necessaries.' *Jenner* v. *Walker, 19 L. J. N. S. 398, Juggessur Sircar* v. *Nilumbar Biswas, 3 W. R. 217,* and *Makundi* v. *Sarabsukh, I. L. R. 6 All. 417,* referred to. Though a particular article furnished may correspond in quality and price with the infant's means, yet if it should turn out that the infant was already plentifully supplied with the thing purchased, it does not fall within the description of 'necessaries' in that particular case. *Johnstone* v. *Marks, 19 Q. B. D. 509,* followed. Infant can always show that he was already plentifully supplied with similar goods, and it is immaterial whether the seller knew it or not. *Barnes* v. *Toye, 13 Q. B. D. 410,* and *Ford* v. *Fothergill, 1. Peak. 301; 3 R. R. 695,* followed. It is incumbent upon one who sells [illegible] the particular case the purchaser had need for it, for if the infant did not require it, the seller cannot recover it. *Johnson* v. *Lynes, 6 Watts & Sergeant 80,* relied on. The question as to what are 'necessaries' [illegible] use of the infant. *Cain* v. *Ward, 4 Watts & Sergeant 119,* followed. JAGON RAM MARWARI *v.* MAHADEO PROSAD SAHU (1909) I. L. R. 36 Calc. 768
s.c. 13 C. W. N. 643

3. LIABILITY FOR TORTS.

1. ——— Responsibility of minor for his acts—As regards torts, a minor is responsible for his own acts. LUCHMON DOSS *v.* NARAYAN
3 N. W. 191

4. CUSTODY OF MINORS (ACT IX OF 1861, ETC.)

1. ——— Right to choose custody—*Habeas corpus, return to.* A girl under sixteen years of age has not such a discretion as enables her by giving her consent to protect any one from the criminal consequences of inducing her to leave the protection of a lawful guardian; but where the return to the writ of *habeas corpus* stated that a girl was above the age of sixteen (though her mother stated her to be of the age of thirteen years [illegible]

5 B. L. R. 418

In the matter of KHATIJA BIBI 5 B. L. R. 557

2. ——— Application for custody of minor daughter—*Act XL of 1858, s. 2—Principal Civil Court of original jurisdiction.* An application was made [illegible]

[illegible] B. L. R. Ap. 38
s.c. HURO SOONDUREE BOISTOBEE *v.* JOY DOORGA BOISTOBEE . . 13 W. R. 112

KRISTO CHUNDER ACHARJEE *v.* KASHEE THAKOORANEE . . . . 23 W. R. 340

3. ——— Act IX of 1861—*Construction of Act—Principal Civil Court of original jurisdiction. Semble.* In Act IX of 1861, "the principal Civil Court of original jurisdiction in the district"

MINOR—*contd*

4. CUSTODY OF MINORS (ACT IX OF 1861, ETC)—*contd.*

means the principal Court of ordinary original civil jurisdiction RAM BUNSEE KOOMAREE v. SOOBH KOOMAREE . . **2 Ind. Jur. N. S. 193**

s c. RAM BUNSEE KOONWAREE v SOOBH KOONWAREE . . . . . **7 W. R. 321**

4. ——— **Pegu—European British minors.** Act IX of 1861 applied to Pegu, and also to *minors, the lawful children of European* natural-born British subjects *In re* HUTTON **3 W. R. Rec. Ref. 5**

5. ——— **European British minors, custody of**—*Jurisdiction of Zillah Judge.* Appellant having presented a petition to a Zillah

6. ——— **ss. 1, 3, 4**—*District Judge, Jurisdiction of—Civil Procedure Code, s 17—Majority Act (IX of 1875), s 3—Discretion of Court—Guardian—Certificate of guardianship* An application was made to the District Judge of Allahabad, under s 1 of Act IX of 1861, by a relative of a minor, alleging that the minor had, by the acts and with the connivance and assistance of the defendants, at Allahabad, been removed from the plaint-

at Lahore. *Held*, that, under ss 1 and 4 of Act IX of 1861, read with s 17 of the Civil Procedure Code, the application was cognizable by the District Judge of Allahabad, where the cause of action arose; and that, even apart from s 17 of the Code, the

a certificate of guardianship The words in s. 3 of Act IX of 1861, "and thereupon proceed to make such order as it shall think fit in respect to the custody or guardianship of such minor," confer on the Court an absolute discretion to make an order as to custody or guardianship, or to refrain from making such an order where the circumstances do not call for such an order being made. Where a

MINOR—*contd*

4 CUSTODY OF MINORS (ACT IX OF 1861, ETC)—*contd.*

——— **ss. 1, 3, 4**—*concld.*

minor Hindu over the age of sixteen who had embraced Christianity and left the house of his elder brother by whom he had been maintained and brought up, appeared to be well able to take care of and provide for himself and preferred to be left as he was, and had sufficient mental capacity to judge

CHAKARBATI v. FORMAN . I. L. R. 1[illegible] All. [illegible]

7. ——— **s. 7**—*Act XL of 1858, s 12—Jurisdiction of Civil Court.* Where appli-

TOR OF RAJSHAHYE . . **18 W. R. 265**

8. ——— **Outcast for criminal offence**—*Wife.* P, whose minor wife had refused to return to cohabitation with him on the ground that he was out of caste in consequence of having committed a criminal offence, applied to the District Court under Act IX of 1861 for the custody of her person. *Held*, that that Act did not apply to such a case PAKHANDU v. MANKI **I. L. R. 3 All. 509**

9. ——— **Wife**—*Dispute on fact of marriage.* Where a person claims the custody of a female minor on the ground that she is his wife, and such minor denies that she is so, Act IX of 1861 does not apply. Such person should establish his claim by a suit in the Civil Court. BALMAKUND v. JANKI . . . . **I. L. R. 3 All. 403**

10. ——— **Injunction**—*Jurisdiction of District Judge—Marriage* The paternal uncle of a female Hindu minor, whose *father was dead*, applied to the District Judge, under Act IX of 1861 for the custody of the minor and for an

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contended that the District Judge ... to give tion to determine the right of any party to an infant in marriage on an application under Act IX of 1861, or to grant an injunction; and it was also contended that the Magistrate was wrong in entering into the question of the factum of the marriage *Held*, that, under the provisions of Act IX of 1861, the District Judge had jurisdiction. *Balmakund v. Janki, I. L. R. 3 All. 403*; *Holter*

MINOR—*contd.*

4. CUSTODY OF MINORS (ACT IX OF 1861, ETC.)—*contd.*

——— s. 7—*concld.*

Lampton Waterworks Co. v. Hawkesford, 28 L. J.

in entering into the question of the factum of the marriage, though his finding on that point would have no effect in determining its validity. *In the matter of the petition of* KASHI CHUNDER SEN. BROHMOMOYEE *v.* KASHI CHUNDER SEN

I. L. R. 8 Calc. 266 : 10 C. L. R. 91

ground that the minors were in her possession. *Held*, that the cause of action did not survive as against the widow of the deceased defendant, and that therefore the suit could not proceed. The cause of action which gave rise to the suit was extinguished when the defendant Mukimbhai died. SHARIFA *v.* MUNEKHAN (1901)

I. L. R. 25 Bom. 574

5. REPRESENTATION OF MINOR IN SUITS.

1. ——— Disability to sue—*Objection*

2. ——— Defence of minority—*Civil*

I. L. R. 10 Mad. 341

3. ——— Disability to carry on suit—*Suit by minor—Next friend.* Plaintiff being a minor, his suit was not dismissed, but he was directed to appoint a next friend to sue for him. ROLLO *v.* SMITH . . . . 1 B. L. R. O. C. 10

4. ——— Suit by minor whose guardian has omitted to sue. A minor, when he comes of age, is not precluded from suing in his own name for anything that his guardian, either through ignorance or negligence, has omitted to prosecute.

MINOR—*contd.*

5. REPRESENTATION OF MINOR IN SUITS—*contd.*

KYLASH CHUNDER SIRCAR *v.* GOOROO CHURN SIRCAR. GOOROO CHURN SIRCAR *v.* KYLASH CHUNDER SIRCAR . . . . . . 3 W. R. 43

5. ——— Suit on behalf of minor—*Act XL of 1858, s. 3—Suit of small value.* A suit can be prosecuted or defended by a relative on behalf of a minor without a certificate under Act XL of 1858 when the subject-matter of the suit is of small value. A suit to recover real and personal property of the value of R7,260 was allowed to be

6. ——— *Objection to minor's representative.* Where a suit was brought by a manager, appointed by the Court of Wards on behalf of an infant who had a right to sue, an objection to the manager's authority was disallowed as merely technical. HARDI NARAIN SAHU *v.* RUDER PERKASH MISSER

I. L. R. 10 Calc. 627
L. R. 11 I. A. 26

7. ——— *Next friend of minor—Uncle representing minor nephew—Mahomedan law—Guardian.* The rule of Mahomedan law that an uncle cannot be the guardian of the property of a minor, does not prevent an uncle representing his infant nephew, under the Code of Civil Procedure, as next friend in a suit. ABDUL BARI *v.* RASH BEHARI PAL . . . 6 C. L. R. 413

8. ——— *Suit to set aside alienation affecting minor's interest—Mad. Reg. V of 1804, s. 8—Manager appointed under Regulation—Collector—Next friend of minor.* The holder of an impartible zamindari governed by the law of primogeniture, having a son, executed a mining lease of part of the zamindari for a period of twenty years by which no benefit was to accrue

the suit as next friend of the minor. The suit was one against the assignee of the lease to have the lease set aside. *Held*, by PARKER, J., that the plaint-

9. ——— Married woman—*Next friend—Civil Procedure Code (Act XIV of 1882), s. 445.* A married woman may act as the next friend of an infant plaintiff. *Guru Pershad Sing v. Gossain*

MINOR—*contd.*

5. REPRESENTATION OF MINOR IN SUITS—*contd.*

Munraj Puri, I. L. R., 11 Calc. 733, overruled. ASIRUN BIBI *v* SHARIF MONDUL

I. L. R. 17 Calc. 488

10. ———— **Mamlatdar's Court**—*Suit by minor in Mamlatdar's Court for possession—Mamlatdars' Courts Act (Bom Act III of 1876)—Right to sue by next friend.* A minor may sue for possession in the Mamlatdar's Court by his next friend, although the Mamlatdars' Courts Act (Bombay Act III of 1876) makes no provision for such a suit. DATTATRAYA KESHAB *v* VAMAN GOVIND

I. L. R. 21 Bom. 88

11. ———————— A minor may sue or be sued in a Mamlatdar's Court in a suit for possession, if he is represented by a properly constituted guardian. SAIFULLA *v.* HAJIMAYA

I. L. R. 24 Bom. 238

12. ———— **Improper representation of minor**—*Effect on proceedings.* Where on appeal the Court was of opinion that certain minors were not properly represented in a suit brought by them, it declared all the proceedings in the suit to be null and void as far as the minors were concerned With regard to the party acting as their next friend, the Court allowed her to withdraw the suit with liberty to bring a fresh suit, and returned the plaint. GURU PERSHAD SINGH *v.* GOSSAIN MUNRAJ PURI I. L. R. 11 Calc. 733

13. ———— **Representation by Collector**—*Representation of minor heirs as defendants by including Collector as defendant, as their guardian ad litem—Civil Procedure Code, 1882, ss. 13, 211, and 312—Power of a Hindu son to question the alienation of an impartible estate by his father.* Representation by a Collector of all minor sons of a deceased zamindar as their guardian ad litem under the order of the Court, the Collector being added as a defendant [illegible]

MANYA PANDYA CHOKKA TALAVAR *v* SIVA SUBRAMANYA PILLAI . . I. L. R. 17 Mad. 316

14. ———— **Objection to representation**—*Application for execution not being properly made—Objection not taken at proper time disallowed where minor afterwards properly represented.* An application for execution of a decree was made, the applicant being a minor and being represented by a sub-manager under the Court of Wards It was decided against the minor and he then appealed. The Court of Wards subsequently released the decree-holder's estate, and, pending the appeal, a next friend was put on the record to represent the minor. On an objection being raised that the application [illegible]

perly represented in appeal by a next friend, the objection could not be entertained. *Bhoopendro Narain Dutt v. Baroda Prosad Roy Choudhry, I. L. R. 18 Calc. 500,* distinguished. NORENDRA NATH PAHARI *v.* BHUPENDRO NARAIN RAI

I. L. R. 23 Calc. 374

15. ———————— *Representation of minor by party not authorized to consent to decree—Invalid decree against minor on an alleged consent—Proof of authority to bind minor by consent—Beng. Reg. X of 1793—Manager of Court of Wards, power of.* A decree-holder, who rests his case upon his decree [illegible]

a decree for land was made adversely to a minor, of whose persons, or for the suit, no guardian had been appointed. The minor's estate was under the [illegible]

decide whether the minor was substantially a party to the suit in the Settlement Court, or [illegible]

and said that he had authority [illegible] claimant's right The decree of the Settlement Court was set aside on this last ground. The [illegible] this suit, that the [illegible] not proved [illegible] also affirmed [illegible]

[illegible] 23 Calc. 931
L. R. 23 I. A. 75

16. ———— **Wrongful admission of title against a minor**—*Suppression of facts by a manager appointed by the Court of Wards—Order of Settlement Court cancelled* At a settlement of a district in Oudh a sub settlement was decreed in conformity with Act XXVI of 1866,

MINOR—*contd.*

5. REPRESENTATION OF MINOR IN SUITS—*contd.*

which legalizes rules as to claims in respect of subordinate rights to land. The claimant alleged himself to be, in virtue of a birt tenure held by him, under-proprietor of a village within the talukh of a talukhdar then a minor, whose estate was under

... a decree for sub-settlement was made

which the manager had suppressed, were facts proved in this suit. The defendants attempted, but failed, to establish by evidence the existence of the alleged birt. *Held,* that the admission in the Settlement Court in 1871 was not binding on the plaintiff, and that, even assuming that the defendants' ancestor had been in some way in occupancy before 1857, the evidence was quite insufficient to show that a grant of a perpetual under-proprietary right had been obtained The

L. R. 24 I. A. 107
1 C. W. N. 417

17. ——— Guardian ad litem—*Guardians and Wards Act (VIII of 1890), s. 53*—

18. ——— Ex parte decree against minor—*Minor's right to sue to set aside ex parte decree—Proof of negligence on the part of*

administrator, sued to recover possession of two houses. With respect to one of the houses, there had been previous litigation. The plaintiff was the defendant, a minor represented by his guardian, and one of the present defendants was the plaintiff in that litigation, and an *ex parte* decree was passed against the plaintiff. *Held,* that the decision in the previous litigation barred the present claim with respect to the house which was the subject of that litigation, no negligence being proved on the part of the plaintiff's guardian therein HANMANTAPA *v.* JIVUBAI . . . I. L. R. 24 Bom. 547

See LALLA SHEO CHURN LAL *v.* RAMANANDAN DOBEY . . . I. L. R. 22 Calc. 8

and CURSANDAS NATHA *v* LADHAVAHU
I. L. R. 19 Bom. 571

19. ——— Effect of decree in suit brought by elder brothers—*Manager.* The

There was no evidence to show that in that suit they had assumed to act on behalf of the family, or that any one of them had been a *de facto* manager of the family property *Held,* that the plaintiffs were not sufficiently represented in the previous suit, and that therefore their present suit was maintainable. *Durgapersad* v. *Kesho Persad, I L. R. 8 Calc. 656; L. R. 9 I. A. 27,* explained PADMAKAR VINAYAK JOSHI *v.* MAHADEV KRISHNA JOSHI
I. L. R. 10 Bom. 21

20. ——— Suit against minor—*Parties—Guardian—Act XL of 1858, s. 3—Declaratory decree* In a suit to set aside "the allegation of the defendant that her son *S* had been adopted by the father of the plaintiff, and had therefore inherited his property," the defendant was described in the plaint as *M*, the mother of *S*; and subsequently the words "a minor" were inserted after the name

S.C MONGOLA DOSSEE *v* SARODA DOSSEE
20 W. R. 48

21. ——— Sufficiency of representation—*Improper representation of minor—Suit for "self and as guardian."* *Semble* That the fact of a suit being brought by *A* for self and as guardian

MINOR—*contd*

5. REPRESENTATION OF MINOR IN SUITS—*contd*

of *C*, a minor, is not conclusive evidence that *C* is not so far a party to the suit as to be bound by the decree *Sreenarain Mitter* v. *Kishen Soondery Dassee, 11 B. L. R. 171*, and *Mongola Dossee* v. *Saroda Dossee, 12 B L. R Ap. 2*, cited. GRISH CHUNDER MOOKERJEE v. MILLER 3 C. L. R 17

22. ——— *Civil Procedure Code, 1877, ss. 440, 44—Liability of pleader to pay costs* The plaintiff, who sued for confirmation of possession of certain land on behalf or her minor sons thus described herself in the heading of the plaint: "*S B*, widow of the late *C B*, mother and guardian on behalf of the minors, *S* and *K*, plaintiff." The suit being dismissed, an appeal was preferred under the same heading On second appeal the appeal was headed "*S B*, widow of the late *C B*, mother and guardian of *S* and *K*, minors, appellant." The plaint alleged that the plaintiff had held possession as guardian of the minor sons. *Held*, that the proceedings were bad in law, the plaint not having been framed in accordance with the provisions of s 440 of the Civil Procedure Code The High Court further directed that the pleader who filed the original suit and the pleaders who filed the appeal in the lower Appellate Court should be called upon to show cause, before the presiding officers of the original and the lower Appellate Courts, respectively, why they should not be ordered, under s 444 of the Civil Procedure Code, to pay the costs of the suit and the appeal. SHONAI BEWA v. MONORAM MUNDUL . . 11 C. L. R. 15

23. ——— *Civil Procedure Code (Act XIV of 1882), s 440—Suit by next friend on behalf of minor—Act XL of 1858, s 3—Certificate* The effect of s 3 of Act XL of 1858, read with s. 440 of the Code of Civil Procedure, is that a minor plaintiff must not only always sue by his next friend, but, when the suit relates to the minor's estate, the person representing the minor must either hold a certificate under the Act, or must obtain the sanction of the Court for the suit to proceed. The mere admission of a plaint by the Court does not sufficiently indicate that sanction is accorded DURGA CHURN SHAHA v NILMONEY DASS . I. L. R. 10 Calc. 134 : 13 C. L. R. 369

See (contra) AUKHIL CHUNDER v. TRIPOORA SOONDUREE . . . . . 22 W. R. 525

24. ——— *Next friend—Certificate under Act XL of 1858, s 3—Civil Procedure Code (Act XIV of 1882), s. 440.* S 440 of the Civil Procedure Code, read with s. 3 of Act XL of 1858, does not make the receipt from the Court of a written permission to sue compulsory upon the next friend of an infant plaintiff. NEWAJ v. MAKSUD ALI . . I. L. R. 12 Calc. 131

25. ——— *Insufficient appearance on behalf of infant—Succession Act, s. 261—Civil Procedure Code (Act X of 1877), Ch. XXXI, ss. 440-4:4—Act XL of 1858, s. 3.* No judgment or order passed in a suit, to which a minor

MINOR—*contd.*

5. REPRESENTATION OF MINOR IN SUITS—*contd.*

subject to the provisions of Act XL of 1858 is a party, will bind him on his attaining majority, unless he is represented in the suit by some person who has either taken out a certificate or has obtained the permission of the Court to sue or defend on his behalf without a certificate. Permission granted to sue or defend on behalf of minor, under s. 3 of Act XL of 1858, should be formally placed on the [illegible]

26. ——— *Suit on behalf* [illegible]

[illegible] the defendant and the [illegible]

formally granted to be of effect, such decision might fairly be accepted as in this case a sufficient and [illegible] and he was [illegible] *Dabia* [illegible] ed to. [illegible] All. I

27. ——— *Permission of Court to guardian to sue—Discretion of Court—Act XL of 1858—Civil Procedure Code (Act XIV of 1882), s. 440—Return of plaint* A volunteer [illegible]

suit is brought in violation of s. 440 of the [illegible] Civil Procedure, or of the provisions of Act XL of [illegible] to pursue is to [illegible] may be rec- [illegible] PREONATH MISREE . I. L. R. 10 Calc. [illegible] C. L. R. 405

28. ——— *Act XL of 1858, s. 3—Order granting certificate to act as guardian of minor—Obtaining a certificate—Majority Act* [illegible] Court to which application [illegible] 858 for a [illegible] titled to [illegible] although [illegible] e. Hav- [illegible] nce com- [illegible] o way as, [illegible] ll have a [illegible] has then [illegible] inor had [illegible] who had [illegible] but had [illegible] rtificate [illegible] entitled [illegible] eedings [illegible] een pro-

MINOR—*contd.*

5. REPRESENTATION OF MINOR IN SUITS—*contd.*

perly represented MUNGNIRAM MARWARI *v.* GURSAHAI NAND LIAKUT HOSSEIN *v.* GURSAHAI NAND
I. L. R. 17 Calc. 347
L. R. 16 I. A. 195

29. ———————— *Improper representation of minor—Appearance by a guardian not sanctioned—Act XL of 1858, s. 3—Act VIII of 1859—Suit against minor—Presumption when no permission recorded by Court—Misdescription of minor—Act XIV of 1882, s. 443* A suit was brought against a mother "for self and as guardian of *A* and *B*, minor sons of *C*, deceased," at a period when Act VIII of 1859 was in force. The mother

[illegible]

was made in the suit, and in execution thereof certain property belonging to *A* and *B* was sold and purchased by *X*, the decree-holder. Subsequently

[illegible]

mother to defend under s. 3 of Act XL of 1858;

[illegible]

in form, and did not affect the merits of the case,

[illegible]

KUNJ BEHARI SINGH . I. L. R. 11 Calc. 509

30 ———————— *Civil Procedure Code, 1882, s. 440—Suit brought on behalf of a minor by a person other than the minor's certificated guardian—Minor not properly represented* Where a suit was filed on behalf of two minors by a person who is not the certificated guardian of the minors, there being a guardian duly appointed by a competent Court in existence at the time: *Held*, that the suit was wrongly brought, having regard to s. 440 of the Code of Civil Procedure, and that the plaint should have been returned for amendment, and that the defect in form of the suit was not cured by the fact, if it was one, that the

[illegible]

31. ———————— *Objection to*

[illegible]

MINOR—*contd.*

5. REPRESENTATION OF MINOR IN SUITS—*contd.*

an order recorded in the order-sheet, there is, nevertheless, nothing in the nature of the sanction provided by s. 3 of Act XL of 1858 which takes it out of the general rule of evidence that sanction may be proved by express words or by implication Where on a construction of the plaint and the pleadings it is found that the minor is the real plaintiff, the mere fact of his not having been properly described in accordance with s. 440 of the Civil Procedure Code is no ground for setting aside a decree passed in the suit. BHABA PERSHAD KHAN *v.* SECRETARY OF STATE FOR INDIA I. L. R. 14 Calc. 159

32. ———————— *Error in the frame of a suit against a minor defendant, effect of—Guardian "ad litem" how appointed—Sanction of Court without formal order, effect of—Service of summons—Civil Procedure Code (Act XIV of 1882), ss. 100 and 443.* The plaint in a suit des-

[illegible]

suit on behalf of the minor. *Held*, that, having regard to the order of the Court and the allegations made in the plaint and written statement, the suit

[illegible]

that, although the matter of the appointment of a guardian *ad litem* is left to the discretion of the Court, it is always desirable that the appointment at the instance of the plaintiff should not be made, unless the minor, or his friends and relatives in whose care he may be, failed to move the Court for that purpose within a reasonable time after receiving notice of the institution of the suit. SURESH CHUNDER WUM CHOWDHRY *v.* JUGUT CHUNDER DEB . . . . I. L. R. 14 Calc 204

33 ———————— *Minor, suit against—Misdescription in title of the plaint and in decree, effect of.* In a suit brought against a minor widow as the heir of her deceased husband, she was described in the cause title of the plaint as "the deceased debtor *R A's* heir and minor widow

MINOR—*contd.*

5. REPRESENTATION OF MINOR IN SUITS—*contd*

of *C*, a minor, is not conclusive evidence that *C* is not so far a party to the suit as to be bound by the decree *Sreenarain Mitter* v. *Kishen Soondery Dassee, 11 B. L. R. 171*, and *Mongola Dossee* v. *Saroda Dossee, 12 B. L. R Ap. 2*, cited. GRISH CHUNDER MOOKERJEE *v.* MILLER . 3 C. L. R. 17

22. ——— *Civil Procedure Code, 1877, ss 440, 44 —Liability of pleader to pay costs.* The plaintiff, who sued for confirmation of possession of certain land on behalf or her minor sons thus described herself in the heading of the plaint: "*S B*, widow of the late *C B*, mother and guardian on behalf of the minors, *S* and *K*, plaintiff." The suit being dismissed, an appeal was preferred under the same heading. On second appeal the appeal was headed "*S B*, widow of the late *C B*, mother and guardian of *S* and *K*, minors, appellant." The plaint alleged that the plaintiff had held possession as guardian of the minor sons *Held*, that the proceedings were bad in law, the plaint not having been framed in accordance with the provisions of s 440 of the Civil Procedure Code. The High Court further directed that the pleader who filed the or ginal suit and the pleaders who filed the appeal in the lower Appellate Court should be called upon to show cause, before the presiding officers of the original and the lower Appellate Courts, respectively, why they should not be ordered, under s 444 of the Civil Procedure Code, to pay the costs of the suit and the appeal. SHONAI BEWA *v.* MONORAM MUNDUL . . 11 C. L. R. 15

23. ——— *Civil Procedure Code (Act XIV of 1882), s. 440—Suit by next friend on behalf of minor—Act XL of 1858, s. 3—Certificate.* The effect of s. 3 of Act XL of 1858, read with s 440 of the Code of Civil Procedure, is that a minor plaintiff must not only always sue by his next friend, but, when the suit relates to the minor's estate, the person representing the minor must either hold a certificate under the Act, or must obtain the sanction of the Court for the suit to proceed The mere admission of a plaint by the Court does not sufficiently indicate that sanction is accorded. DURGA CHURN SHAHA *v.* NILMONEY DASS . I. L. R. 10 Calc. 134 : 13 C. L. R. 369

See (contra) AUKHIL CHUNDER *v.* TRIPOORA SOONDUREE . . . . . 22 W. R. 525

24. ——— *Next friend—Certificate under Act XL of 1858, s. 3—Civil Procedure Code (Act XIV of 1882), s. 440.* S. 440 of the Civil Procedure Code, read with s 3 of Act XL of 1858, does not make the receipt from the Court of a written permission to sue compulsory upon the next friend of an infant plaintiff. NEWAJ *v.* MAKSUD ALI . . I. L. R. 12 Calc. 131

25. ——— *Insufficient appearance on behalf of infant—Succession Act, s. 261—Civil Procedure Code (Act X of 1877). Ch. XXXI, ss. 440-444—Act XL of 1858, s. 3.* No judgment or order passed in a suit, to which a minor subject to the provisions of Act XL of 1858 is a party, will bind him on his attaining majority, unless he is represented in the suit by some person

[illegible]

Act XL of 1858, should be formally placed on the record. Ch. XXXI of the Civil Procedure Code

[illegible]

26. ——— *Suit on behalf*

[illegible]

right to sue was denied by the defendant, and the first of the issues framed was whether he had such

[illegible]

formally granted to be of effect, such decision might fairly be accepted as in this case a sufficient and

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27. ——— *Permission of Court to guardian to sue—Discretion of Court—Act XL of 1858—Civil Procedure Code (Act XIV of 1882), s. 44?—Return of plaint.* A volunteer guardian has no right to sue on behalf of a minor; the accord or refusal of permission to sue is a matter in the discretion of the Court Where a

[illegible] 440 of the Code of

Act XL of

rsue is to

return the plaint in order that the error may be rectified. RUSSICK DAS BAIRAGY *v.* PREONATH MISREE . I. L. R. 10 Calc. 102 : 12 C. L. R. 405

28. ——— *Act XL of 1858, s 3—Order granting certificate to act as guardian of minor—Obtaining a certificate—Majority Act (IX of 18.5).* When a Court, to which application for a has been made under s 3 of Act XL of 1858 certificate, has adjudged the applicant entitled to [illegible] ; although

[illegible]

MINOR—*contd.*

5. REPRESENTATION OF MINOR IN SUITS—*contd.*

perly represented MUNGNIRAM MARWARI *v.* GURSAHAI NAND LIAKUT HOSSEIN *v.* GURSAHAI NAND I. L. R. 17 Calc. 347 L. R. 16 I. A. 195

29. ——— *Improper representation of minor—Appearance by a guardian not sanctioned—Act XL of 1858, s 3—Act VIII of 1859—Suit against minor—Presumption when no permission recorded by Court—Misdescription of minor—Act XIV of 1882, s 443* A suit was brought against a mother "for self and as guardian of *A* and *B*, minor sons of *C*, deceased," at a period when Act VIII of 1859 was in force The mother [illegible]

was made in the suit, and in execution thereof certain property belonging to *A* and *B* was sold and purchased by *X*, the decree-holder Subsequently [illegible]

and that the fact of sanction having been given might be presumed by the Court, and that on the [illegible]

[illegible] minors have a decree [illegible] SINGH *v* [illegible] Calc. 509

30. ——— *Civil Procedure Code, 1882, s. 440—Suit brought on behalf of a minor by a person other than the minor's certificated guardian—Minor not properly represented.* [illegible]

31. ——— *Objection to description of minor—Permission to sue, Proof of—Civil Procedure Code, ss 440, 578—Act XL of 1858, s 3.* Although the proper and regular manner of giving permission to sue on behalf of a minor is by an order recorded in the order-sheet, there is, nevertheless, nothing in the nature of the sanction provided by s 3 of Act XL of 1858 which takes it out of the general rule of evidence that sanction may be proved by express words or by implication Where [illegible]

32. ——— *Error in the frame of a suit against a minor defendant, effect* [illegible]

the mother of the minor defendant was his guardian, and an affidavit having been made that the "minor defendant" was under the guardianship of the [illegible]

that, although the matter of the appointment of a guardian *ad litem* is left to the discretion of the Court, it is always desirable that the appointment at the instance of the plaintiff should not be made, unless the minor, or his friends and relatives in whose care he may be, failed to move the Court for that purpose within a reasonable time after receiving notice of the institution of the suit. [illegible] CHUNDER WUM CHOWDHRY *v.* JOYTY [illegible] DEB . . . I. L. R. 14 Calc. 204

33 ——— *Minor, suit against—Misdescription in title of the plaint and in decree, effect of.* In a suit brought against a minor widow as the heir of her deceased husband, she was described in the cause title of the plaint as "the deceased debtor *R A's* heir and minor widow

MINOR—*contd.*

5. REPRESENTATION OF MINOR IN SUITS—*contd.*

B D's mother and guardian *A D.*" The plaintiff

distinguished. GANGA PROSAD CHOWDHRY *v.* UMBICA CHURN COONDOO. I. L. R. 14 Calc. 754

34. ———— *Decree against guardian of a minor—Immaterial irregularity—Error in description of defendant* In a suit by an adopted son, after the death of his adoptive father, to recover ancestral land sold in execution of a decree against his adoptive mother therein described as

the plaintiff should be regarded as a party to the suit in which the decree executed against the land had been passed, and that the present suit should be dismissed NATESAYYAN *v.* NARASIMMAYYAR I. L. R. 13 Mad. 480

35. ———— *Suit in substance against minor—Sale-certificate, Irregular description in—Decree against widow representing her minor son—Decree, sale of infant's share under.* A sale-certificate expressed a rent-decree to have been made against *R*, the widow and heiress of *K*, and the mother of a minor son, name unknown.

v. PROTAP CHUNDER TALUKDAR I. L. R. 20 Calc. 11

36. ———— *Next friend—Suit filed by a minor without a next friend—Appli-*

would at once take steps to have her father appointed her next friend, and the plaint and proceedings

MINOR—*contd.*

5. REPRESENTATION OF MINOR IN SUITS—*contd.*

It appeared that the plaintiff was sixteen months under age. Nothing was done by either party for some weeks. On the 6th June the defendant's

friend. The Courts, as a rule, only

payment of costs in case the plaintiff fails in the claim. When the fact of minority is a *bona fide*

DAS LALLOOBHOY

37. ———— *Mesne profits—Decree made against a widow representing estate, enforced against a minor adopted son, through the widow as his guardian—Devolution of liability along with estate upon the minor without his having been made formally a party to the decree—His similar liability in a suit for mesne profits.* A minor, who had been adopted by a widow as a son to her deceased husband, was not made a party to an appeal which she preferred after the adoption from a decree made against her when she represented the estate. *Held*, that, as liability under the decree, made when the widow fully represented the

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16 Calc. 40
L. R. 15 I. A. 195

MINOR—contd

5. REPRESENTATION OF MINOR IN SUITS—*contd*

38. ——— *Costs—Minor not represented by a next friend or guardian—Costs against such minor's estate—Application for leave to sue as pauper—Civil Procedure Code (Act XIV of 1882), ss. 441, 442, 444* Neither s 441 nor 442 of the Code of Civil Procedure (Act XIV of 1882) gives any authority to a Court to make a minor's estate liable for costs. *A* applied for leave to file a suit *in formâ pauperis* against *B*. *B* resisted the [illegible]

[illegible] out of the minor's estate. The minor died soon afterwards The Collector then applied to the Court to attach certain property in *B*'s hands which [illegible]

[illegible] 1882) under which no order affecting a minor can legally be made without such minor being represented by a next friend or guardian *ad litem* AMICHAND TALAKCHAND v. COLLECTOR OF SHOLAPUR . . . . . I. L. R. 13 Bom. 234

39. ——— *Suit on behalf of a person alleged to be, but not in fact, a minor—Procedure to be adopted when suit is instituted through next friend on behalf of an alleged minor who is not so in fact—Plaint, amendment of* When a suit is instituted by a person alleging himself to be a minor, and the suit is brought through a next friend, and when it is found that the plaintiff was not at the date of the institution of the suit in fact a minor, the Court should not dismiss the suit, as the defendant can be fully indemnified by the payment of his costs. In such a case the proper [illegible]

I. L. R. 21 Calc. 866

NET LAL SAHOO v KAREEM BUX
I. L. R. 23 Calc. 686

40. ——— *Suit brought* [illegible]

MINOR—contd.

5 REPRESENTATION OF MINOR IN SUITS—*contd.*

which this application was supported, showed that she had been of full age at the time when the plaint was filed *Held*, that the suit must be dismissed *Taqui Jan v. Obaidulla, I. L. R. 21 Calc. 866*, dissented from. SHEORANIA v BHARAT SINGH
I. L. R. 20 All. 90

41. ——— *Representation by guardian of person, though not of estate—Bombay Minors Act (XX of 1864), s 2—Decree binding minors* In execution of a decree against [illegible]

was passed, being then minors, were not properly [illegible]

[illegible] Bom [illegible], followed. *Held*, also, that an issue having been raised and determined in the suit in which the decree was passed that *G* did represent the [illegible]

[illegible] Bom [illegible], and *Hari Saran Moitra v. Bhibaneswari Debi, I. L. R. 16 Calc. 40 : L. R. 15 I. A. 195*, followed. VASUDEV MORBHAT KALE v KRISHNAJI BALLAL GOKHALE
I. L. R. 20 Bom. 534

42. ——— *Guardian ad litem, appointment of—Act XIV of 1882, ss 443, 464—Act XL of 1858, s 3—Minors, suit against, improperly framed* In a suit intended to be brought against some minors, the defendants were set out in the heading of the plaint as "Sharoda Sunderi Debya, widow of Chundra Kanta Chuckerbutty, deceased, mother and guardian of the minors" (setting out their names) At the filing of the plaint, the plaintiff applied for and obtained an order making Sharoda guardian of the minors for the purposes of the suit. She was not, however, guardian of the property and persons of the minors under Act XL of 1858 *Held*, that the minors were not parties to the suit: that the order [illegible]

MINOR—*contd.*

5. REPRESENTATION OF MINOR IN SUITS—*contd.*

43. ——— *Suit against person of whose estate a certificate of administration is subsequently obtained—Right of guardian to defend.* A suit having been instituted upon a bond and no appearance entered by the defendant who ... of age on the date of

A ought not to have been made a defendant, the original defendant not being a minor when the suit was instituted KRISHNA MONGUL SHAHA *v.* AKBAR JUMMA KHAN . . 9 C. L. R. 213

44. ——— *Appearance for minor—Notice of decree—Presence of vakil* A minor ... appeared and

of the decree having been made ... BHUTTACHARJEE *v.* KUROONA MOYEE DABEE 25 W. R. 280

45. ——— *Civil Procedure Code, s 442.* S 442 of the Civil Procedure Code refers to a case where the plaint on the face of it appears to have been filed by a person who was a minor. BENI RAM BHUTT *v* RAM LAL DHUKRI I. L. R. 13 Calc. 189

46. ——— *Minor, when bound by proceedings against him—Minors Act (XX of 1864), s. 2—Suit by a minor one year after attaining majority, to recover property sold in execution of a decree obtained against him during minority.* In 1870 a creditor of the plaintiff's father brought a suit (No 573 of 1870) against the plaintiff, and obtained a money-decree against him The plaintiff was then a minor, and his estate was administered by the Collector of Ratnagiri. In this suit he was represented by his mother and guardian. At the sale held in 1871 in execution of the decree the property in question ...

I. L. R. 11 Bom. 150

47. ——— *Decision of Survey Officer under Boundary Act (XXVIII of 1860)—Representation by Manager appointed under Mad. Reg. V of 1804, s. 8.* A Survey Officer in 1875 held an enquiry under the Boundary Act, 1860, and demarcated certain land out of a zamindari. At that time the zamindar was a minor

MINOR—*contd*

5. REPRESENTATION OF MINOR IN SUITS—*contd.*

... to recover the land it was

properly represented by his guardian at the enquiry *Held*, that the decision of the Survey Officer was binding on the zamindar KAMARAJU *v* SECRETARY OF STATE FOR INDIA . I. L. R. 11 Mad. 309

48. ——— *Costs—Costs of defendants, Suit for—Necessaries—Contract Act, s 68.* Where a suit has been brought against a minor, the effect of which, if successful, would be to deprive the minor of his property, the costs of ... behalf may

49. ——— *Next friend—Solicitor's costs for proceedings undertaken on the next friend's instructions—Liability of minor for costs when he repudiates the proceedings—Necessaries.* A solicitor cannot recover the costs of litigation incurred by the next friend of a minor on his behalf from the quondam minor, who, on coming of age, repudiates the proceedings, there being no relation of contract bewteen them. Assuming that the legal proceedings were in the nature of necessaries, the next friend is the person responsible to the solicitor. *Watkins* v. *Dhunnoo Baboo, I. L. R. Calc. 140*, distinguished. BRANSON *v.* APPASAMI I. L. R. 17 Mad. 257

50. ——— *Suit on behalf of minor by Court of Wards—Personal liability of officer representing Court of Wards—Choice of ... innocent persons.* A suit on behalf of a ... the Deputy

... thority it had been instituted ... tried the suit, and that, though in an ordinary case the person who appeared on the record on behalf of the infant would be liable for the costs, in this case, as the Deputy Commissioner was no longer in office, one of two innocent persons must bear the costs, either the minor or the defendant. It was determined ... must suffer, as he ... suit to ... W. R. 312

v. COURT OF WARDS

51. ——— *Suit by legatees on behalf of themselves and other legatees—Civil Procedure Code (Act XIV of 1882), s 30—Costs against next friend* A legatee cannot sue on behalf of himself and other legatees without an order of the Court obtained under s. 30 of the Civil Pro-

MINOR—*contd.*

5 REPRESENTATION OF MINOR IN SUITS—*contd*

cedure Code enabling him so to sue Where a legatee, a minor, sued in that form by her next friend without such an order, the next friend was held liable for costs on his adducing no evidence to show that the suit was for the benefit of the minor GHEREEBALLA DABEE *v* CHUNDER KANT MOOKERJEE . . I L R 11 Calc. 213

52. ——— Certificate of heirship—*Bom Reg VIII of 1827* Under the provisions of Regulation VIII of 1827, a certificate of heirship cannot be granted to a minor BAI BAIBA *v* BAI DAGUBA . . I. L. R. 6 Bom. 728

53. ——— Setting aside a decree—*Representative of minor—Agreement to refer to arbitration—Guardian—Civil Procedure Code (Act XIV of 1882), ss 443 and 462* The step mother of a minor against whose estate the defend-

suit to set aside the decree, on the grounds (*a*) that the minor had not been properly represented, and

on the merits), (i) that there was nothing on the record to show that the minor had no guardian when the agreement to refer was made, and there was no allegation to that effect in the plaint, and (ii) that s 462 of the Civil Procedure Code did not apply. That section contemplates the existence of

I. L. R. 26 Bom. 298

54. ——— Hindu Law—*Joint Hindu family—Suit by sons to obtain exemption of their shares from sale under a decree on a mortgage—Plaintiffs parties to the suit in which the decree was passed, but minors, and not properly represented—Guardian and minor—Res judicata—Civil Procedure Code, s 457.* A suit was brought by

MINOR—*contd*

5. REPRESENTATION OF MINOR IN SUITS—*contd*

did not affect their interests in the joint family property, inasmuch as they had not been properly represented in the suit in which it was passed their mother being, as a married woman, incapable in law of acting as their guardian No question of fraud was shown to arise in the case *Held*, that the minors, on the facts stated above, were entitled to the decree asked for *Durga Persad v Kesho Persad Singh, I L R 8 Calc 656, Mungniram Marwari v Mohunt Gursahi Nund, L. R 16 I. A 195, Vishnu Keshav v Ramchandra Bhaskar, I. L. R. 11 Bom 130; Daji Himat v Dhirajram Sadaram, I. L. R. 12 Bom 18; Nawab Mahomed Nooroollah Khan v Harcharan Rai, 6 N.-W P. H. C 198; Daulat Singh v. Raghubir Singh, All. Weekly Notes (1894) 141,* and *Raghubar Dayal Sahu v Bhikya Lal Misser, I L R 12 Calc 69,* referred to SHAM LAL *v.* GHASITA (1901) . . I. L. R. 23 All. 459

55. ——— Gross negligence of next friend—*Suit on behalf of minor by next friend—Review—Right of minor to have suit restored—Minor consenting party to petition for withdrawal—Civil Procedure Code (Act XIV of 1882), s 462.* When the next friend of a minor plaintiff withdraws from the suit, it is open to the minor, through another next friend, to have the suit re-opened on

56. ——— Absence of formal order

in —*Substantial representation of minors in suit* Under s 443 of the Civil Procedure Code (Act XIV of 1882), the Court is bound, after satisfying itself of the fact of minority, to appoint a proper person to act on behalf of a minor in the conduct of a suit; and this rule should be strictly followed But where the Court, by its action, has

their mother, and with the sanction of the Court.

MINOR—*contd.*

5. REPRESENTATION OF MINOR IN SUITS—*concld.*

...r and under ...ggest ... pro-tected, and the defects in procedure not having prejudiced them, to be merely irregularities under s 578 of the Code of Civil Procedure, and not errors fatal to the suit. *Suresh Chunder Wum Chowdhury v. Jugut Chunder Deb, I. L. R. 14 Calc. 204,* and *Hari Saran Moitra v Bhubaneswari Debi, I. L. R. 16 Calc. 40,* referred to WALIAN *v.* BANKE BEHARI PERSHAD SINGH (1903)

I. L. R. 30 Calc. 1021: s.c. 7 C. W. N. 774; L. R. 30 I. A. 182

57. ———— Guardian ad litem, retention of—*Nazir—Court's power to relieve.* There is nothing that compels the Court to retain as guardian *ad litem* of a minor one of its officers, where the circumstances of the case make it clear that the interests of the minor will be thereby imperilled. The Court has power to relieve the Nazir of his position as guardian when the Nazir has no funds for the purpose of conducting adequately the defence of the minor. *Naraindas Ramdas v. Saheb Husein, I. L. R. 12 Bom 553,* referred to: GOPILAL *v.* AGARSINJI (1904) . . I. L R. 28 Bom. 628

58. ———— Minor not represented—*Suit.* Mere intention that a suit should be for the benefit of a minor would not bind the minor's interest, when the minor was not represented in this suit by a guardian, either natural or appointed, and the suit did not purport to be instituted on his behalf. Case of Hindu joint family distinguished. CHAUDHRI AHMED BAKSH *v.* SETH RAGHUBER DYAL (1905) . . . 10 C. W. N. 115

6. COMPROMISE DECREE.

———— *Minor—Compromise decree—Guardian—Practice—Suit to set aside compromise decree on ground other than fraud —Right of suit—Compromise filed without consent of guardian—Sanction of Court.* A suit was insti-...

... pleader engaged by their guardian in that suit against the express wishes of the latter. *Held,* that the suit would lie and that the plaintiffs were entitled to show by evidence that the compromise was filed without the consent of their guardian ...

MINOR—*contd.*

6. COMPROMISE DECREE—*concld.*

set aside the decree except on the ground of fraud, but where the decree is passed simply upon a compromise, a suit should lie to set aside the decree ...

7. CASES UNDER BOMBAY MINORS ACT (XX OF 1864).

See ACCOUNT, SUIT FOR. I. L. R. 8 Bom. 14

See GUARDIAN.

See SALE IN EXECUTION OF DECREE—DECREES AGAINST REPRESENTATIVES. I. L. R. 5 Bom. 14

1. ———— Application of Act—*Minors resident out of Presidency.* The Bomy Minors Act (XX of 1864) does not apply to minors who are not resident within the Presidency of Bombay. MAGANBHAI PURSHOTAMDAS *v.* VITHOBA BIN NARAYAN SHET . . . 7 Bom. A. C. 7

2. ———— *Alienation by a* ... *Natural* ...

I. L. R. ...

3. ———— s. 11—*Construction*—" *May* " ... s. 11 of the Minors Act ... con-... ector ... *In* ... I. L. R. ... 685 ... *re* BOFVEY

4. ———— Nazir of Court—*Officer of Government—Bombay Civil Courts Acts (XIV of 1869, s. 32, and X of 1876, s. 15)—Collector—Public Curator under Act XIX of 1841.* The nazir of a Civil Court who is appointed guardian of the estate of a minor under Act XX of 1864, is not an officer ... within the meaning of s. 32 of Act ... of 1876 ... within ... it is ... ernment

MINOR—*contd.*

7. CASES UNDER BOMBAY MINORS ACT (XX OF 1864)—*contd*

whom Act XX of 1864 contemplates as guardians of the estates of a minor in their official capacity are the Collector of the district and the public curator appointed as such under Act XIX of 1841. MOHAN ISHWAR *v* HAKU RUPA I. L. R 4 Bom 638

(*Contra*) VASUDEV VISHNU DIKSHIT *v* NARAYAN JAGANNATH DIKSHIT I L R 4 Bom. 642 note

5 ———— **Authority of the Political Agent appointed by Government as manager of the estate of a minor Chief to sue in respect of the Chief's property in British territory.** A suit was brought by the Political Agent, Southern Maratha Country, as administrator of the estate of the Chief of Mudhol, who was described in the plaint as being nineteen years of age, to eject the defendants from certain lands, belonging to the Chief, situated in the Satara District The defendants raised a preliminary objection to the institution of the suit by the Political Agent, on the ground (among others) that he was not a certificated guardian of the Chief under the Bombay Minors Act (XX of 1864) *Held*, that the ap-

under the Act. VENKATRAV RAJE GHORPADE *v*. MADHAVRAV RAMCHANDRA I. L R 11 Bom 53

6. ———— **Natural father of minor**—*Adoption—Residence of minor* The natural father of a minor who has been adopted into another family is not by Hindu law his proper guardian when either of the adoptive parents is living and willing to act as guardian The residence of the minor with the adoptive parents is a part of the

7. ———— **Foreign guardian**—*Suit by*

8. ———— **Certificate of administration**—*Father suing on behalf of minor son.* A father on behalf of his minor son entitled to property is his own right must obtain a certificate of

MINOR—*contd*

7 CASES UNDER BOMBAY MINORS ACT (XX OF 1864)—*contd.*

administration under s. 2 of Act XX of 1864. SITARAM BHAT *v* SITARAM GANESH

6 Bom. A. C. 250

9. ———— *Widow suing on behalf of son.* A widow without a certificate of administration under Act XX of 1864 is precluded from bringing a suit in her own name in respect of her minor son's property GOPAL KASHI *v* RAMABAI SAHEB PATVADHAN . . . 12 Bom. 17

10 ———— *Suit against minor—Power of District Judge.* S 2 of Act XX of 1864 does not prohibit a person having a claim against a minor from bringing a suit until a certifi-

make that appointment *In re* MOTIRAM RUPACHAND . . . . . 11 Bom. 21

11. ———— *Right to institute suit on behalf of minor* There is nothing in the Minors Act (XX of 1864) to prevent the institution of a suit by the next friend of a minor who has not obtained a certificate of administration to the minor's estate, but who claims no right to have

to refuse to accept the plaint, when there is no pressing necessity for its acceptance, or in case

12. ———— *Suit against*

DHONDIBA LAKSHUMAN *v*. KUSA

6 Bom. A. C. 219

13. ———— *Guardian without*

MINOR—*contd.*

7. CASES UNDER BOMBAY MINORS ACT (XX OF 1864)—*contd.*

to represent the minor. DAJI HIMAT *v.* DHIRAJRAM SADARAM . . . I. L. R. 12 Bom. 18

14. ———————— *Guardian—Act XX of 1864, s. 2—Procedure—Civil Procedure Code (Act X of 1877), s. 440.* Act XX of 1864 is not superseded by Act X of 1877. Where therefore a widow claimed to have charge of property in trust for her minor sons:—*Held*, that it was necessary, under s. 2 of Act XX of 1864, that she should obtain a certificate of administration if the whole estate was of greater value than R250; and that it was competent to the Court, if there was any pressing necessity (owing to the operation of the law of limitation) that a suit should be brought at once, to accept the plaint and stay proceedings until the mother had obtained a certificate under Act XX of 1864. MUHAMMAD *v.* SUPPU

I. L. R. 3 Bom. 149

15. ———————— *Next friend—Security of minor's estate—Act XX of 1864.* Where there is a next friend of a minor willing and competent to act for him, such next friend may file a suit on his behalf, or continue one already filed, without a certificate of administration. In the event of a decree being passed in the minor's favour, the Court can, in the absence of an administrator under Act XX of 1864, make such arrangements as it deems expedient for the security of the minor's estate, as by appointing an administrator under the Act. NAG THAKUR *v.* MADHAVJI SADASHIV

I. L. R. 8 Bom. 239

16. ———————— *Hindu law—Joint family—Undivided minor—Certificate of administration of minor's share when necessary—Manager.* Three brothers belonging to a joint Hindu family instituted a suit in the Court of a Subordinate Judge in their own names and on behalf of their minor brother to set aside an alienation of the family property made by their deceased father. The Subordinate Judge ruled that one of the plaintiffs must procure a certificate of administration under Act XX of 1864, s. 2, before the suit could proceed. *Held*, that no certificate was necessary. The manager of the family should be allowed to proceed with the suit as next friend of the minor, with permission, if necessary, to amend the plaint accordingly. NARSINGRAV RAMCHANDRA *v.* VENKAJI KRISHNA . . . I. L. R. 8 Bom. 395

17. ———————— *Proceedings to enforce award—Civil Procedure Code, 1877, s. 327—Bom. Act XX of 1864, s. 2.* As proceedings taken to file and enforce an award under s. 327 of the Civil Procedure Code are of the nature of a suit within the meaning of s. 2 of Act XX of 1864, a minor must be represented in such proceedings by a person holding a certificate of administration. VASUDEV VITHAL *v.* NARAYAN JAGANNATH

9 Bom. 283

18. ———————— *Guardian—Guardian of property—Guardian of person—Necessity for issue of certificate of administration in order to complete appointment of guardian of property.* The Bombay Minors Act (XX of 1864) does not in terms provide for the appointment of a guardian of the property of a minor, but only for the grant of a certificate of administration, so that, until the certificate is issued, there is no such appointment of the guardian of the property as will extend the age of the minority from sixteen to twenty-one. But it is different as regards the appointment of a guardian of the person. The Act provides, in terms, for such an appointment being made, and no certificate of appointment is contemplated by the Act, on the language of which it is plain that the appointment of a guardian of the person is complete on the order of the Court being made appointing him. The plaintiff's mother, G, died in 1861 possessed of property which she had inherited from her husband. The plaintiff, who was born in 1855, was then a minor of the age of eight years. In 1867 the plaintiff's maternal grandfather obtained a certificate of administration. On his death, an order of Court was made on the 21st March 1873 appointing the Nazir of the Court administrator of the property and the plaintiff's mother-in-law the guardian of the person of the plaintiff, but no fresh certificate of administration was granted. In 1891 the plaintiff brought the present suit against the defendants to recover from them the property left by her mother. The defendants contended, *inter alia*, that the plaintiff had attained her majority in 1874, when she arrived at the age of sixteen, and that the suit was therefore barred by limitation. The plaintiff, on the other hand, contended that the Indian Majority Act (IX of 1875) was applicable, and that, under its provisions, she did not attain majority until she was twenty-one, *i.e.*, until the year 1876, and that the present suit was therefore in time. *Held*, that the suit was not barred by limitation. The Indian Majority Act (IX of 1875) was applicable (except so far as its operation was excluded by s. 2), inasmuch as there was a guardian of the person of the plaintiff in existence both when the Act came into force and also when she arrived at the age of sixteen and eighteen, and therefore the period of minority of the plaintiff was extended to twenty-one years of age. YESHVANT *v.* WAMANRAI . I. L. R. 18 Bom. 266

19. ———————— *Act XX of 1864, s. 18—Assignment without sanction of Court.* S. 18 of the Minors Act XX of 1864 applies only to persons to whom a certificate has been granted under that Act. An assignment of a mortgage made by a widow, acting as natural guardian of her minor son, but who has not obtained a certificate under the Act (XX of 1864), is not invalid because it is made without the sanction of the Court. MAHADU *v.* PRANJIVAN *v.* BAI MONI . I. L. R. 18 Bom. 656

20. ———————— *Surety for guardian of a minor's estate—Bombay Minors Act (XX of 1864)—Release of surety—Contract Act IX of 1872, s. 139.* Where a surety for the guardian of a minor's estate

MINOR—*concld.*

7. CASES UNDER BOMBAY MINORS ACT (XX OF 1864)—*concld*

appointed under the Bombay Minors Act (XX of 1864) applied to be released from his obligation as surety on account of the guardian's maladministration of the estate :—*Held*, that the very object of requiring security was to guarantee the minor's estate against such misconduct or mismanagement on the part of the guardian ; that the surety therefore could not be discharged, and that s. 130 of the Contract Act (IX of 1872) was not applicable to the case. *Quære* Whether the surety may not apply to the Court for protection against the guardian. BAI SONI *v.* CHOKSHI ISHVARDAS MANGALDAS . . . I L R. 19 Bom. 245

MINOR WIFE.

See LETTERS OF ADMINISTRATION I L R. 34 Calc. 706

MINORITY.

See EVIDENCE . I. L. R. 29 All. 29

See GUARDIAN.

See LIMITATION ACT, s. 7. 9 C. W. N. 537

See MINOR.

——— disability of—

See LIMITATION—STATUTES OF LIMITATION—ACT XXV OF 1857, s. 9 13 B. L. R. 445

See LIMITATION—STATUTES OF LIMITATION—ACT IX OF 1859, s. 20 13 B. L. R. 292 L. R. 1 I. A. 167

See LIMITATION ACT, 1877, s. 7. I. L. R. 29 Bom. 68

See LIMITATION ACT, 1877, s 8. I. L. R 10 Bom 241 I. L R. 13 Mad. 236 I. L. R. 16 Mad. 436

See LIMITATION ACT, 1877, ART. 177. I. L R. 18 Mad. 484

See MADRAS REVENUE RECOVERY ACT, s. 59 . . I. L R. 17 Mad. 189

——— evidence of—

See EVIDENCE ACT, s 35. I. L. R. 17 Calc. 849 I. L. R. 18 All. 478

MINORS ACT (XL OF 1858).

See GUARDIAN.

See MINOR.

MIRAS TALUQ.

See GRANT, CONSTRUCTION OF. I. L. R 35 Calc. 1069

MIRASIDARS.

See LANDLORD AND TENANT—MIRASIDARS.

See LANDLORD AND TENANT—NATURE OF TENANCY . I. L. R. 17 Bom 475 I. L. R. 19 Mad. 485 I. L. R. 27 Mad. 291

See MIRASI TENANT.

See TANJORE CUSTOM. I. L. R. 27 Mad. 51

MIRASI TENANT.

See INAMDAR . I. L. R. 29 Bom. 415

See MIRASIDARS.

MISAPPROPRIATION OF PROPERTY.

See CERTIFICATE OF ADMINISTRATION—EFFECT OF CERTIFICATE. 5 B. L. R. 371

See COMPANY—WINDING UP—LIABILITY OF DIRECTORS AND OFFICERS. I. L R. 29 Calc. 688

See CRIMINAL MISAPPROPRIATION.

See RECEIVER . I. L. R. 17 Mad. 501 I. L R. 18 Mad. 23 I. L. R. 20 Mad. 224 I. L. R. 27 Calc. 279

——— by employees of Government—

See MASTER AND SERVANT. I. L. R. 36 Calc. 647

——— by grantee—

See ADMINISTRATOR. I. L. R. 35 Calc. 955

——— by servant—

See MASTER AND SERVANT. I. L. R. 36 Calc. 647

——— damages for—

See HINDU LAW—JOINT FAMILY—SALE OF JOINT FAMILY PROPERTY IN EXECUTION OF DECREE, ETC. I. L. R. 24 Calc. 672

MISCARRIAGE.

See PENAL CODE, ss. 312-315.

2. ——— *Penal Code, s. 312* —" *With child* "—*Stage of pregnancy immaterial.* A woman is with child within the meaning of s. 312 of the Penal Code as soon as she is pregnant. *Held*, therefore, where a woman was acquitted on a charge of causing herself to miscarry, on the ground that she had only been pregnant for one month, and that there was nothing which could be called even a

MISCARRIAGE—*concld.*

rudimentary fœtus or child, that the acquittal was bad in law. QUEEN-EMPRESS *v.* ADEMMA
I. L. R. 9 Mad 369

3. ———— **Attempt to cause miscarriage**—*Penal Code, ss. 312, 511.* In a case in which the child was full grown, the Court declined to convict the accused of causing miscarriage under s. 312 of the Penal Code—that section supposing expulsion of the child before the period of gestation is completed,—but convicted them of an attempt to cause miscarriage under ss. 312 and 511, read together. QUEEN *v.* ARUNJA BEWA
19 W. R. Cr. 32

MISCELLANEOUS PROCEEDINGS.

[illegible]

matter of the petition of JODOO MONEE DOSSEE
11 W. R. 494

MISCHIEF.

See ATTEMPT TO COMMIT OFFENCE
3 B L. R A. Cr. 55

See COMPLAINT—INSTITUTION OF COMPLAINT AND NECESSARY PRELIMINARIES
I. L. R. 21 Bom. 536

See COMPOUNDING OFFENCE
I. L. R. 22 Bom. 889

See CRIMINAL TRESPASS
11 C. W. N. 467

See JURISDICTION I. L. R. 36 Calc. 869

See LANDMARKS I. L. R. 30 Calc. 1084

See OFFENCE RELATING TO DOCUMENTS.
I. L R. 12 Mad. 54

See PENAL CODE, ss. 425 TO 440.

See THEFT . I. L. R. 15 Calc. 388
I. L. R. 17 Calc. 852
I. L. R. 35 Calc. 437

[illegible]

2. ———— *Probable consequential damage to other property.* To constitute the offence of mischief according to the Penal Code, the act done must be shown to have caused destruction of some property or such a change in the property, or the situation of it, as destroys or diminishes its value or utility, or affects it injuriously.

MISCHIEF—*contd*

The probable consequential damage to other property would not of itself constitute mischief. ANONYMOUS . . . . 4 Mad. Ap. 18

3. ———— *Penal Code, s. 425 —Wrongful intention.* In order to convict a person of the offence of mischief under s. 426, Penal Code, it is for the prosecution to prove that the accused caused damage with a wrongful intent with a knowledge that he was not justified in doing it, and that the party under whose orders he was acting had no real title. ISSUR CHUNDER MUNDLE *v.* ROHIM SHEIKH . . 25 W. R. Cr. 65

4. ———— **Damage to non-existent right**—*Penal Cod s. 425—Revenue sale—Damage done between date of sale and grant of certificate—Wrongful loss to property held under incomplete title.* The damage contemplated in s. 425 of the Penal Code need not necessarily consist in the infringement of an existing, present, and complete right, but it may be caused by an act done now with the intention of defeating and rendering infructuous a right about to come into existence Any person who contracts to purchase property, [illegible]

cause to him wrongful loss or damage [illegible] meaning of s. 425 DHARMA DAS GHOSE *v.* NUSSERUDDIN . . I. L. R. 12 Calc. 660

5. ———— **Invasion of right causing wrongful loss**—*Penal Code (Act XLV of 1860), ss 341-425—Wrongful restraint.* Where complainant had for the purpose of removal placed certain goods upon a cart, and accused came and unyoked the bullocks, and turned the goods off the cart on to the road, and complainant thereupon [illegible] —*Held*, that, [illegible] ders 341 [illegible] but that [illegible] ne offence [illegible] does not [illegible] necessarily contemplate damage of a destructive character. It requires merely that there should be an invasion of right, and diminution of the value of one's property, caused by that invasion of right which must have been contemplated by the doer of it when he did it. *In the matter of the petition of* JOGGESHWAR DASS. JOGGESHWAR DASS *v.* KOYLASH CHUNDER CHATTERJEE
I. L. R. 12 Calc 55

6. ———— **Person dealing with property under belief it is his own**—*Penal Code, s. 425.* If a person deals injuriously with property in the *bonâ fide* belief it is his own, he cannot be convicted of mischief. EMPRESS *v.* BUDH SINGH . . . I. L. R. 2 All. 101

7. ———— **Cutting and carrying away bamboos**—*Penal Code, s. 426* In a case in which the accused was charged with having cut and carried away bamboos, the right to which was disputed, it was held that he could not be convicted of mis

MISCHIEF—*contd.*

chief under s. 426 of the Penal Code. SHAKUR MAHOMED *v.* CHUNDER MOHUN SHA
21 W. R. Cr. 38

8. — . **Cutting trees on land in another's possession** A person commits mischief if he cuts trees on land which he claims, but of which possession, after an execution-sale, has been legally made over to another person, without any objection or formal intervention on his part. SONAI SARDAR *v.* BUKHTAR SARDAR
25 W. R. Cr. 46

9. ——— **Cutting Government trees without leave.** *Held*, that it was not illegal to convict prisoners of mischief as well as of theft, the offences charged being that they had cut down Government trees without leave, and appropriated them. REG. *v.* NARAYAN KRISHNA
2 Bom 416: 2nd Ed. 392

10. ——— **Cattle straying**—*Penal Code. s. 425—Act III of 1857, s 17—Negligence* S 425 of the Penal Code supposes that the destruction was caused with the intention to cause wrongful loss or damage, and does not apply to cases of mere carelessness, and s 17, Act III of 1857, supposes the mischief (cattle trespass) was done intentionally, and not by negligence QUEEN *v.* ARAZ SIRCAR
10 W. R Cr. 29

KASHINATH GHOSE *v.* DINOBUNDHOO MYTEE
16 W. R. Cr. 72

11. ——— *Allowing cattle to stray.* The mere fact of allowing cattle to stray, whereby damage is caused to the complainant, affords no evidence to support a conviction on the charge of mischief. ANONYMOUS 6 Mad. Ap 37

12. ——— *Trespass* Mere

the owner is convicted of the offence, it must be proved that he actually caused the cattle to enter, knowing that by so doing he was likely to cause damage FORBES *v.* GIRISH CHUNDRA BHUTTACHARJEE . 6 B. L R Ap 3: 14 W. R. Cr 31

13. ——— *Penal Code (Act XLV of 1860), s 425* In order to constitute the

or carelessness in allowing them to stray The prosecution is bound to show that there was an intention to cause wrongful loss or damage EMPRESS *v.* BAI BAYA . . I. L. R. 7 Bom. 126

14. ——— *Penal Code,*

MISCHIEF—*contd.*

commit the offence of mischief under s. 426 of the Penal Code. QUEEN-EMPRESS *v.* SHAIK RAJU
I. L. R. 9 Bom. 173

15 ——— *Cattle Trespass Act, 1857, s 18—Penal Code, s 425* In the case of a conviction by a Subordinate Magistrate, under s. 18 of Act III of 1857, of a person who through

4 Bom. Cr 14

16. ——— **Damage caused by cattle**—*Penal Code (Act XLV of 1860), ss 425, 426—Act (Local) No I of 1900 (N.-W. P and Oudh Municipalities Act), s 167* Certain cattle belonging to one ... of a ... the ... here ... these ... *orbes v Grish Chander Bhattacharjee, 14 W R 31*, and *Empress v Bai Baya, I L R 7 Bom 126*, followed. *Held*, also, that s 167 of the Municipalities Act, 1900 ...

I. L R 29 All. 565

17 ——— **Grazing cattle on waste lands.** ... under s ... cattle u... certain ... was entitled *Held*, that there was no evidence that the defendants caused mischief ANONYMOUS
5 Mad. Ap. 30

18 ——— **Interference with fishery**—*Penal Code, s 425—Wrongful loss—Proof of title* The right to a fishery was in dispute between the zamindar of Bally and the zamindar of Moharajpore The former obtained a decree in the Civil Court declaring the fishery to be his, in proceedings to which the latter was not a party, and the servants of the Bally zamindar thereupon removed a bam-

appear that the defendants were acting otherwise than from a *bond fide* belief that the Moharajpore zamindar was encroaching on their master's rights. BAKAR HALSANA *v* DINOBANDHU BISWAS
3 B. L. R. A. Cr. 17

s c. QUEEN *v.* DENOO BUNDHOO BISWAS
12 W. R. Cr. 1

MISCHIEF—*contd*

19. ——— Pulling up stakes lawfully placed at sea within territorial limits—*Penal Code, ss. 425 and 427.* Where certain of the inhabitants of the village of Manari in the Thana district sallied out in boats and pulled up and re-

chief within the meaning of ss 425 and 427 of that Code REG v. KASTYA RAMA . **8 Bom Cr. 63**

20. ——— Opening irrigation sluice at wrong time—*Penal Code, s 425.* The defendants were convicted of mischief under the following circumstances. During certain seasons of the year they received water through a sluice for the irrigation of their lands. At another season the sluice was closed and the water allowed to flow to the lands of other cultivators. This arrangement was prescribed by the revenue authorities and the defendants violated it by opening their sluice during the season prescribed for the irrigation of the lands of the other cultivators *Held,* that

MOUS . . . . . . Mad. Ap. 50

21. ——— Endangering safety of river embankment—*Intention.* Where the accused had, while extending a garden and laying the foundation of a house, encroached on the inner slope of a river embankment, and thereby endangered the safety of the whole station:—*Held,* that, in order to justify a conviction for the offence of mis-

engaged would be the first to be swept away in the event of the dreaded breach in the bund and consequent irruption of the river, such guilty knowledge or intent could not reasonably be inferred on his part. *In the matter of the petition of* PRAN NATH SHAHA. *In the matter of the petition of* ROMA NATH BANERJEE . **25 W.R. Cr. 69**

22. ——— Causing diminution of water-supply—*Act done without show of right—Penal Code, s. 430. Held,* by the majority of a Full Bench (INNES, J., dissenting), that it is not part of the definition of the offence of causing a

CHETTI v. PALANYANDI KUDAMBAR
I. L. R. 1 Mad. 262

MISCHIEF—*contd.*

the meaning of s 430 of the Penal Code *Ram Krishna Chetty v. Palanyandi Kudambar, I. L. R. 1 Mad. 262,* followed. QUEEN-EMPRESS v. JAGAN NATH BHIKAJI BHAVE . **I. L. R. 10 Bom. 183**

24. ——— Damage to bridge through floating logs. The accused were convicted of mischief. The acts were, that whilst the accused were employed in floating timber through a bridge, some of the logs struck against the arch of the bridge *Held,* that the conviction was bad. ANONYMOUS **5 Mad. Ap. 40**

25. ——— Erection by one joint owner of edifice without consent of others—*Land held by joint owners—Penal Code, s. 425*— ... of a parcel of land.

removed. B obtained ... and pulled it down. They servants went on the land and pulled it down. They were charged before the Deputy Magistrate with having committed mischief, and on this convicted and fined. Subsequently the accused found the men in the employ of A were putting up this erection, a nawbatkhana, again, and accordingly protested against its erection, pulled down the bamboos thrust aside the servants of A, throwing to the ground one man who was clinging to the bamboos *Held, per* JACKSON, J., that as there had been no causing of wrongful loss, the accused had not been guilty of mischief. *Held,* further, *per* CUNNINGHAM, J., that the acts of the complainants in erecting the nawbatkhana amounted to mischief and came within the purview of s 425 of the Penal Code EMPRESS v. RAJCOOMAR SINGH
I. L. R. 3 Calc. 573 : 1 C. L. R. 352
2 C. L. R. 69

26. ——— Destruction of carcass—*Village mahars—Custom—Right to skin of animals.* The owner of an animal who buries it after its death is not guilty of mischief or any other offence, although he does so with the express object of preventing the mahars of his village from taking its skin according to the custom of the country QUEEN-EMPRESS v. GOVINDA PUNJA
I. L. R. 8 Bom. 293

27. ——— Destruction of immoral document—*Penal Code, s. 426* The destruction of a document evidencing an agreement void for immorality may constitute the offence of mischief

MISCHIEF—*contd.*

within the meaning of s. 426 of the Penal Code. QUEEN v. VYAPURY . I. L. R. 5 Mad. 401

28. ——— **Bonâ fide claim of right**— [illegible]

vations with a view to supplement or add to his judgment. MADHU SUDAN DAS GUPTA v. SASTI PROSAD NANDY (1903) . 7 C. W. N. 859

29. ——— **Pollution of food**—*Caste—Penal Code (Act XLV of 1860), ss. 426, 298, 504—Wilful pollution of food served at a caste dinner* [illegible]

this conviction was wrong; neither could the accused be convicted under s. 298 or under s. 504 of the Indian Penal Code on the facts found. KING-EMPEROR v. MOTI LAL (1901)
I. L. R. 24 All. 155

30. ——— **Cutting channel**—*Indian Penal Code (Act XLV of 1860), ss. 426, 143—Riot—Cutting a channel across one's own lands into a jhil in possession of another—Defect in charge—Prejudice.* The accused, who were servants of *S*, were convicted by a Magistrate, under ss. 426 and 143 of the Penal Code, for having cut a channel from a *jhil* which was in the possession of *B*, and by so doing let out water and fish from the *jhil*. The Magistrate had [illegible]

(1903) [illegible]

31. ——— **Cutting paddy**—*Indian Penal Code (Act XLV of 1860), s. 426—Mischief—Cutting paddy, if mischief, when no finding that it was not fit to be cut—Theft.* A person could not be convicted of the offence of mischief under s. 426, Indian Penal Code, for cutting paddy which the Court found to belong to the complainant, when it was not found that the paddy

MISCHIEF—*concld.*

was not in a fit state to be cut. *In the matter of* MIRAS CHAUKIDAR (1903) . 7 C. W. N. 713

32. ——— **Intention**—*Indian Penal Code, ss. 403, 426—Criminal misappropriation of property—Dishonest intention—Deterioration of the value of mortgaged property.* When the reversioner of a mortgagor sold some of the bricks of the mortgaged house which had tumbled down, and appropriated the amount, and the Magistrate convicted him of criminal misappropriation of property, and mischief. *Held*, that, as no dishonest intention and no substantial deterioration of the mortgaged property was shown, the conviction was bad. BHUBAN MOHAN BANERJEE v. TANSUK ROY SERAOGI (1901)
6 C. W. N. 34

MISCONDUCT.

——— **of arbitrator**—

See ARBITRATION—AWARDS—VALIDITY OF AWARDS, AND GROUND FOR SETTING THEM ASIDE.

See ARBITRATION ACT, 1899, s. 14.
13 C. W. N. 63

MISDESCRIPTION

——— **of goods**—

See CARRIERS . I. L. R. 34 Calc. 419

——— ***of property, effect of***—

See PRACTICE—CIVIL CASES—SALE BY REGISTRAR . I. L. R. 29 Calc. 420

See SALE IN EXECUTION OF DECREE—ERRORS IN DESCRIPTION OF PROPERTY SOLD.

MISDIRECTION.

See APPEAL IN CRIMINAL CASES—PRACTICE AND PROCEDURE
4 C. W. N. 166; 576
I. L. R. 27 Calc. 172
I. L. R. 21 Calc. 955

See CHARGE TO JURY—

SUMMING UP IN GENERAL CASES;
I. L. R. 27 Bom. 644

MISDIRECTION;

SPECIAL CASE—STOLEN PROPERTY.
I. L. R. 26 Mad. 467

See CONFESSION—CONFESSIONS TO MAGISTRATE . I. L. R. 26 Mad. 38

See CRIMINAL PROCEDURE CODE, s. 223
8 C. W. N. 278

See JURY, TRIAL BY.

See KIDNAPPING . 13 C. W. N. 754

See PENAL CODE, ss. 114, 199, 466.
9 C. W. N. 69

See PRIVATE DEFENCE, RIGHT OF.
I. L. R. 35 Calc. 368

See PRIVY COUNCIL, PRACTICE OF—CRIMINAL CASES . I. L. R. 15 All. 310
I. L. R. 23 Bom. 528

MISDIRECTION—*concld.*

See REVISION—CRIMINAL CASES—VERDICT OF JURY, AND MISDIRECTION.

See VERDICT OF JURY—POWER TO INTERFERE WITH VERDICTS.
23 W. R. Cr 21
I. L. R. 9 All. 420
I. L. R. 14 Mad. 36
I. L. R. 23 Calc. 252

———— to Jury—

See CHARGE . I. L. R. 36 Calc. 281

See JURY . . 13 C. W. N. 197

———— *Confession—Evidence Act (I of 1872), ss. 27 and 30—Confession of an accused person, which is not the immediate cause of the discovery of stolen property in the house of another accused cannot, under s. 30 of the Evidence Act, be considered as against such other accused—Statement made by a witness to a Police Inspector or to an investigating Magistrate, who is not the Committing Magistrate, though in the presence of the accused, is not admissible as evidence.* Under ss 27 and 30 of the Evidence Act, a confession made by one accused can be taken into consideration against another accused, when such confession is the immediate cause of the discovery of some fact relevant as against such other accused; and a direction to the [illegible]

(1908) . . I. L. R. 31 Mad. 127

MISFEASANCE

See ENDOWMENT . I. L. R. 34 Calc. 587

See NEGLIGENCE . I. L. R. 33 Bom. 393

MISJOINDER.

See ADMINISTRATION . 15 B. L. R. 296
I. L. R. 26 Calc. 891

See APPELLATE COURT—OTHER ERRORS AFFECTING OR NOT MERITS OF CASE
6 Bom. A. C. 177
7 Bom. A. C. 19
23 W. R. 408
13 W. R. 176
I. L. R. 10 Calc. 1061
I. L. R. 15 All. 380
I. L. R. 24 Calc. 540
I. L. R. 17 Mad. 122

MISJOINDER—*contd.*

See CIVIL PROCEDURE CODE, 1882, ss. 26, 53 . . I. L. R. 28 Mad. 500

See CIVIL PROCEDURE CODE, 1882, ss 26, 31 . . I. L. R. 33 Calc. 367

See COSTS—SPECIAL CASES—MISJOINDER.

See CRIMINAL PROCEEDINGS
I. L. R. 28 Calc. 7; 10

See CRIMINAL PROCEDURE CODE, s 133.
9 C. W. N. 72

See HINDU LAW—JOINT FAMILY—POWERS OF ALIENATION BY MEMBERS—OTHER MEMBERS . I. L. R. 1 Calc. 226

See JOINDER OF CAUSES OF ACTION

See MISJOINDER OF CHARGES

See MULTIFARIOUSNESS.

See PARTIES

See SLANDER 15 B. L. R. 161; 166 note

See SPECIFIC RELIEF ACT, s. 27.
I. L. R. 1 All. 555

See WRONGFUL DISTRAINT.
I. L. R. 25 Calc 285

———— of charges—

See JOINDER OF CHARGES

See MISJOINDER OF CHARGES.

———— of persons in criminal trial—

See JOINT TRIAL. I. L. R. 33 Calc. 292

1. MISJOINDER OF CAUSES OF ACTION.

See AGRA TENANCY ACT, ss 193 AND 57.
I. L R. 29 All. 18

See CIVIL PROCEDURE CODE, 1882, s 44 (b).
I. L. R. 31 Bom. 105

See CIVIL PROCEDURE CODE, 1882, s 45
I. L. R. 29 All. 267

See CIVIL PROCEDURE CODE, 1882, s. 53.
I. L. R. 26 All. 218

See DEBTOR AND CREDITOR.
I. L. R. 26 Bom. 577

See HINDU LAW—ADOPTION.
I. L. R. 36 Calc. 780

See JOINDER OF CAUSES OF ACTION.

See LIBEL . I. L. R. 35 Calc. 728

———— *Cause of action—Civil Procedure Code (Act XIV of 1882), ss. 26, 31, 45 and 53—Persons jointly interested in a suit—Claims [illegible]—Plaint, amendment of.* A suit f[illegible] [illegible] by A (a[illegible] [illegible] ti[illegible] of the [illegible] half [illegible] [illegible] same cause implied in the words [illegible]

MISJOINDER—*contd.*

1. MISJOINDER OF CAUSES OF ACTION—*concld*

of action " in s 26 of the Civil Procedure Code, would be satisfied, if the facts, which constituted ... ntiffs, ... umad, ... amoni ... Calc ... JHA (1906) I. L. R. 33 Calc. 367
s.c. 10 C. W. N. 508

2 MISJOINDER OF PARTIES

See CIVIL PROCEDURE CODE, 1882 ss. 16, 19 . I. L. R. 30 All. 560

See CIVIL PROCEDURE CODE, 1882, s 28
I. L. R. 33 Bom. 293

See CIVIL PROCEDURE CODE, 1882, ss. 26, 31

See CIVIL PROCEDURE CODE, 1882, s 53
I. L. R. 26 All. 218

See CRIMINAL PROCEEDINGS.
I. L. R. 28 Calc. 104

See CRIMINAL PROCEDURE CODE, ss. 107, 235, 239.

See LIMITATION ACT (XV of 1877), s 14
I. L. R 35 Calc. 728

See LIBEL . I. L. R. 35 Calc. 728

See PARTIES . I. L. R. 33 Calc. 425

1. ——— **Misjoinder of parties**—*Suit for account from different dates against two persons* In a suit for an account against A and B as agents, the plaintiff asked for an account as against A from 1265 (1858) to 1283 (1876), and as against B from 1281 (1874) to 1283 (1876) *Held*, that there had been no misjoinder DEGAMBER MITTER *v* KALLYNATH ROY . . . I. L. R. 7 Calc. 654

S C DEGUMBER MOZUMDAR *v* KALLYNATH ROY
9 C. L. R. 265

2. ——— *Suit on bond not pledging lands* Plaintiff sued on a simple money bond for the recovery of a sum of money lent by him to R A, a female, whose estates were under the management of a Court of Wards, and he made co-defendants in the suit certain other parties whom he charged with endeavouring to have the estates of R A transferred to them. He also tendered in evidence another bond, by which R A, the principal defendant, purported to secure a further advance, ...

MISJOINDER—*contd.*

2 MISJOINDER OF PARTIES—*contd.*

3. ——— *Suit on bond hypothecating immoveable property—Joinder of debtor and purchaser of property* The holder of a bond hypothecating property who seeks to recover the debt due under the bond from his debtor, and to bring to sale the hypothecated property which is in the hands of a purchaser, is at liberty to implead the ...

6 N. W. 323

distinguishing MAKUND RAM *v* DEBI DAS
6 N. W. 324 note

4. ——— *Suit on bond.* The plaintiff alleged in his plaint that R had agreed in a bond to borrow from him R5,000 in order to institute a suit against D as to his share in certain joint ancestral property; that R consequently borrowed R3,000 from him, and that, while the suit was pending, R and D, in collusion with each other ...

R3,000, and he therefore brought this suit to recover R3,000 principal, and R3,000, an equivalent of that sum, under the terms of the bond; and that the cause of action arose on the day on which R and D agreed to refer their suit to their mother *Held* (PEARSON, J, dissenting), that the suit was bad for misjoinder of parties. BISHESHUR PERSHAD *v* RAM CHURUN . . 5 N. W. 25

5 ——— *Non-registration as tenants* Where a single suit for rent against the holders of several tenures is objected to on the ground of misjoinder, the mere fact of non-regis- ...

6. ——— *Suit against lessees and their sureties—Jurisdiction of Revenue Court* ...

... N. W. ...

7. ——— *Suit for share of partnership assets—Insolvent estate—Administration suit by creditors—Addition as plaintiff of receiver in administration suit* In a suit by the widow and executrix of a testator who at his death was a member of a mercantile firm, the plaintiff

MISJOINDER—*contd.*

2. MISJOINDER OF PARTIES—*contd.*

claimed to be entitled to 60 cents or shares in the

prior to the testator's death, but resisted her claim to any portion of the subsequent profits. The testator's estate had proved insolvent; and previously to the filing of this suit an administration suit had been filed by creditors. By a decree made in that suit on the 23rd January 1883 a receiver had been appointed, who was made a co-plaintiff with the executrix in the present suit. It was contended on behalf of the defendant that there was a misjoinder, the receiver being only entitled to sue for what might be due to the testator's estate up to the date of his death. *Held*, that there was no misjoinder. The receiver might have sued for everything that was due to the estate, but for greater safety the executrix was added as a plaintiff. BACHUBAI *v.* SHAMJI JADOWJI

I. L. R. 9 Bom. 536

8. ——— *Plaintiff's having separate interests.* In a suit by two plaintiffs for the value of personal property plundered, of which one plaintiff owned certain articles and the other was the owner of others, if the cause, time, place, and parties charged be the same in both instances, the fact that both plaintiffs have not a joint interest in the whole of the property plundered by the defendants is insufficient to put them out of Court. JUGOBUNDHOO DUTT *v.* MASEYK

W. R. 1864, 81

9. ——— *Procedure where one plaintiff is found to have no interest.* In a suit to recover property bought by one *S* and his mother *D* as guardian of his minor brother, where it was found that *D* alone was entitled to the properties as heir to its owner, her late father:—*Held*, that it was not necessary to dismiss the suit on account of its formal incorrectness, but the name of *S* should have been struck off the record, and the suit allowed to proceed as that of *D* alone. SREERAM HAZRAH *v.* GYARAM HATEE . 11 W. R. 507

10. ——— *Suit by mortgagee to recover possession of mortgaged property.* In a suit by a mortgagee for possession of the mortgaged property, on the allegation that some of the defendants under subsequent mortgages and purchases had opposed him in obtaining possession; and to have it declared that the said mortgages and purchases were inoperative:—*Held*, that the plaintiff had but one cause of action upon his mortgage deed, and was right in joining all the defendants in the suit. BAI KISHEN MAHAPATTUR *v.* BISTOO CHURN

22 W. R. 532

11. ——— *Suit to cancel mortgage and deed of sale.* A registering officer having refused to register a deed of sale of certain property executed by *S* in favour of *B*, *B* sued *S* and *K* claiming the completion of the sale with delivery of the sale-deed duly executed, and possession of the property by cancelment of a deed of mortgage of the same executed in *K*'s favour by *S*. *Held*, that the suit was bad for misjoinder. BEHARI LAL *v.* KUNDUN LAL . . . . 7 N. W. 103

12. ——— *Owners of separate holdings once joint.* A suit to recover possession as cultivators, brought by two plaintiffs whose holdings, although originally one, have for a long time been separated and held separately, will be dismissed for misjoinder. GIRWUR *v.* NYAZ ALI

2 N. W. 306

13. ——— *Separate interests in subject-matter of suit.* *R* owned one third of an estate, and *P*, *B*, and *S* owned another third jointly. In a suit in which *R*, *P*, *B*, and *S* joined in bringing against *N*, who was in possession under a deed of gift, they claimed possession and to have the deed of gift set aside. *Held*, by the Full Bench, that there was no misjoinder of plaintiffs in the suit. RAM SEWAK SINGH *v.* NAKCHED SINGH

I. L. R. 4 All. 261

14. ——— *Suit for confirmation of possession of land not in joint possession.* The plaintiffs alleged that certain of their lands had been wrongly recorded in some settlement papers as belonging to the defendants, but declared themselves to be still in possession of them, and

question, or any of them, had been recorded as jointly belonging to the defendants, nor was such the case. *Held*, that, under such circumstances, the plaintiffs had no such common cause of action in the matter of the suit against the defendants as would justify the course taken in suing them all together. GUNGA RAI *v.* SAKEENA BEGUM

5 N. W. 72

15. ——— *Suit for pre-emp*

claimed the right of pre-emption in all three shares, and indiscriminately impleaded all the several vendors and vendees, who had no community of interest in the subject matter of the suit. The Court, allowing the plea of misjoinder, which both the lower Courts had overruled, remanded the case to the Court of first instance, in order that the plaint might be returned to the plaintiff for amendment, and the suit tried and decided afresh after amendment. GOLAM *v.* WAJIDA BIBI

7 N. W. 159

MISJOINDER—*contd.*

2. MISJOINDER OF PARTIES—*contd.*

16. ——————— *Suit for redemption of mortgage—Civil Procedure Code, 1859, s. 8—Parties* K was in possession of mouzah

share, and impleaded not only *K*, but also the heirs of the mortgagors, and his vendee, the auction-purchaser, but no cause of action was declared against those parties, nor did they resist the suit The lower Courts dismissed the suit on the ground that separate causes of action, not between the same parties, had been included in one suit. The High Court reversed the decrees of the lower Courts so far as they dismissed the suit against the heirs of the mortgagors and the mortgagee, and remanded the suit for trial, as since the heirs of the mortgagor were interested in the account which must have been taken in the suit, it was necessary to make them parties in order that they might be bound by it SUKHAWAT ALI *v.* KESHO TEWARI

6 N. W 208

17. ——————— *Specific performance, suit for—Joinder of third person not party to the contract* In a suit for specific performance of a contract entered into by defendant No. 1, the plaintiff joined as a defendant a third person who

joined in a suit for specific performance, is only applicable where from the plaintiff's case it appears that the third party, not a party to the contract, has a distinct interest from that of the other parties to the contract, which interest is sought to be declared null and void MOKUND LALL *v.* CHOTAY LALL

I. L. R. 10 Calc. 1061

18 ——————— *Civil Procedure Code, s 26—Amendment of plaint—Specific Relief*

his own RAMANUJA *v.* DEVANYARA

I. L. R. 8 Mad. 361

19. ——————— *Plea of misjoinder, when sustainable—Suit against several persons claiming under different titles, effect of—Civil Procedure Code, ss 31 and 53* A, as auction-purchaser at a revenue sale brought

upon the Ameen's report, gave *A* the option to amend the plaint by withdrawing the suit against any particular sets of defendants *A* elected to go to trial on the suit as brought. *Held*, that, under the circumstances, it was necessary for the Court to adjudicate on the question of misjoinder. *Held*, also, that the plaintiff was not entitled to join in one suit all the persons, on the ground that they obstructed his possession, unless he was able to show that those persons acted in concert or under some common title *Held*, further, that, having regard to the provisions of ss 31 and 53 of the Civil Procedure Code, the proper order of the Court should have been to reject the plaint and not dismiss the suit on the ground of misjoinder. SUDHENDU MOHUN ROY *v.* DURGA DASI

I. L. R. 14 Calc. 435

20 ——————— *Civil Procedure Code, s 44, Rule (b).* An objection to the attachment and sale of certain immoveable property, raised by one who claimed to have purchased the same at a sale in execution of a prior decree, was dis-

property under attachment were sold; and the objector thereupon brought a regular suit for a declaration of his right as a purchaser of the whole property in execution of the prior decree To this suit he impleaded as defendants the decree-holder

were misjoinder of parties, the first Court, having proceeded to trial of the suit, and not having rejected the plaint or returned it for amendment, or amended it, should have disposed of it upon the merits, and found what *A*'s share in the amount paid by the plaintiff was, and whether assets to that amount had come to the hands of the defendants as her heirs. KISHNA RAM *v.* RAKMINI SEWAK SINGH

I. L. R. 9 All 221

21. ——————— *Form of suit.* The defendants' ancestors or predecessors in title were the cultivating tenants of the lands of a certain

MISJOINDER—*contd.*

2. MISJOINDER OF PARTIES—*contd.*

temple from a date not later than 1827, in which year they were so described in the paimaish accounts In 1830 they executed a muchalka to the Collector who then managed the temple, whereby they agreed among other things to pay certain dues. They were described in the muchalka as paracudis In 1857 the plaintiff's predecessors took over the management of the temple from, and executed a muchalka to, the Collector, whereby he agreed

THIAGARAJA *v* GIYANA SAMBANDHA PANDARA SANNADHI . . . . I. L. R. 11 Mad. 77

22. ——— *Joinder of plaint-* ... *the several* ... ersons were ... ict by evict- ... which the first plaintiff claimed to be entitled to the melvaram, and the other plaintiffs to the kudivaram.—*Held,* that a suit brought by the plaintiffs jointly was not bad for misjoinder. MUTHUVIJAYA RAGHUNADHA RAJU TEVAR *v* CHOCKALINGAM CHETTI

I L. R. 19 Mad. 335

23. ——— *Mad Reg V of 1804, s 8—Suit by ward of the Court of Wards—Civil Procedure Code, 1882, s. 464.* The holder of an impartible zamindari, governed by the law of primogeniture, having a son, executed a mining lease of part of the zamindari for a period of twenty years, by which no benefit was to accrue to the grantor unless mining operations were carried on with success, and the commencement of mining operations was left optional with the lessee On the death of the grantor, his minor son and successor, by the Collector of the district as his next friend (authorized in that behalf by the Court of Wards), sued the assignee of the lessee to have the lease set aside. The second plaintiff was the grantee from the Co[illegible] zamind[illegible] land [illegible] son, *JJ* [illegible] that the interests of the first and second plaintiffs not being inconsistent with each other, the suit was not bad for misjoinder. BERESFORD *v.* RAMASUBBA . . . . I. L. R. 13 Mad. 197

24. ——— *Civil Procedure Code (Act XIV of 1882), ss. 26, 31, 34—Persons jointly interested in a suit—Objection taken for first time on appeal* The plaintiffs were the widow and an alleged adopted son of one *I,* who was the [illegible]

I, and not to *R,* the judgment-debtor. This objection was disallowed. Thereupon the plaintiffs filed a regular suit to set aside the attachment. The Court of first instance decided in plaintiffs' favour. The defendants appealed The lower [illegible]

an amendment of the plaint. On appeal to the High Court:—*Held,* reversing the remand order, that the objection for misjoinder as co-plaintiffs not having been taken by the defendant in the C[illegible] n[illegible] ([illegible] *I*[illegible] adoption of plaintiff No. 1, their claims were in no way antagonistic. They were both jointly interested in disproving defendant's title. They could theref[illegible] of Civil Proc[illegible] *6 Mad. 239,* [illegible]

I. L. R 16 Bom [illegible]

25. ——— *Civil Procedure Code, 1882, s. 26—Joinder of plaintiffs—Persons jointly interested in a suit—Claims not antagonistic—Cause of action, meaning of—Parties.* The plaintiffs 1 to 4 were the daughter and daughter's sons of one *G.* They alleged that *G* died, leaving an infant son *X,* an infant daughter *H,* and a widow *C*; that the son died leaving *C* as heir, and that, [illegible] entitled to [illegible]

which was one for possession of the property [illegible] or of establishment of title either of plaintiff No. 1 or of plaintiffs Nos 2, 3 and 4. On the objection of the [illegible] Procedure [illegible] r of [illegible] of [illegible] not [illegible] as [illegible] of [illegible] ing [illegible] in [illegible] tion [illegible] e the [illegible] s, are infringement of right of the several [illegible] the same, though the facts constituting the rights upon which they base their claim to that relief, is the alternative may not be the same; and that, as the plaintiffs in the case complained of the same wrongful act of the defendant constituting the infringemnet of their right, that was their cause of action, and as they all claimed the same relief,

MISJOINDER—*contd.*

2. MISJOINDER OF PARTIES—*contd.*

namely, possession, and further as they did not advance any antagonistic claim, such a case came within s. 26 of the Code, and was not bad for misjoinder of plaintiffs *Lingammal v. Chinna Venkatammal, I. L. R 6 Mad 239, Nusserwanji Merwanji Panday v. Gordon, I. L. R. 6 Bom 266*, dissented from *Fakirapa v. Rudrapa, I. L. R. 16 Bom 119*, followed HARAMONI DASSEE *v.* HARI CHURN CHOWDHRY . I. L. R 22 Calc 833

26. ——————— *Practice—Procedure—Parties—Cause of action—Civil Procedure Code (Act XIV of 1882), ss 26, 28, 578—Misjoinder of causes of action—Assault by two persons on the same occasion on two other persons—Joint plaintiffs—Joint defendants* Plaintiffs 1 and 2 (father and son) were assaulted by defendants 1 and 2 at an interview in the house of the defendants Defendant 1 struck the first plaintiff, and the second defendant struck the second plaintiff The plaintiffs thereupon jointly filed this suit against both the defendants to recover damages for assault The defendants objected that the suit was bad for misjoinder of parties and causes of action. The lower Court disallowed the objection, and awarded the plaintiff's claim. On appeal by the defendants: *Held*, that the plaintiffs could not join in one suit for damages They had not the same cause of ac-

the Civil Procedure Code (XIV of 1882) That section only applies to mistakes and irregularities subsequently committed in a suit which has been instituted in such a way as to give the Court jurisdiction to try it. The suit must first be instituted in the manner allowed by law. But the law, as it stands at present, does not authorize a suit, which is really two separate suits in which separate plaintiffs are concerned, to be instituted, nor does it give the Court jurisdiction to entertain a suit thus instituted *Held*, also, that the defendants could be sued together under s 28 of the Civil Procedure Code (XIV of 1882), as they were acting in concert If two persons combine to attack a third person, the latter can join them as defendants in a suit for damages VARAJLAL BHAISHANKAR *v* RAMDAT HARIKRISHNA (1901) . I. L. R. 26 Bom 259

27. ——————— *Civil Procedure Code (Act XIV of 1882), s 26—Joinder of plaintiffs —Right claimed in the alternative* The widow

plaintiff to sue as adopted son was questioned. *Held*, that the suit was not bad for misjoinder of plaintiffs. *Fakirapa v. Rudrapa, I. L. R 16 Bom 119*, followed. *Lingammal v Chinna Venkatammal, I L. R. 6 Mad 239*, explained PINAPATI MRUTYUMJAYA *v.* PINAPATI JANAKAMMA (1903) I. L R. 26 Mad. 647

28. ——————— *No adverse in*

Ningangavda, together brought a suit against the defendants to recover possession of Ningangavda's property. The right alleged in plaintiff 1 was that she had been living with plaintiff 2 in the house of which possession had been given to the first defendant under a decree of the Mamlatdar. The plaint contained no averment asking for relief in favour of plaintiff 1 in the event of plaintiff 2's adoption being found not

plied only where the question is not as to the

application to a case where the facts suggest that the interference, such as it was, was intended to

29. ——————— *No misjoinder where one relief merely ancillary—Landlord and tenant—Rights and liabilities of joint lessors and*

MISJOINDER—*contd.*

2. MISJOINDER OF PARTIES—*concld.*

bad for misjoinder *Samnada Pillai* v. *Subba Reddiar, I. L. R. 1 Mad. 333,* distinguished. *Per* SIR S SUBRAHMANIA AYYAR, *Offg. C.J*—A tenant in common may have ejectment to the extent of his interest, on proper notice to quit; and the inclusion in such a suit of the other co-sharers as defendants is merely the inclusion of persons properly parties to the proceeding and not of litigants against whom a separate claim, having no connection with the ejectment, is made. *Per* SANKARAN NAIR, *J*—The distinction between the law in England and India as to the rights and liabilities of joint lessors and lessees discussed and explained, as also the rights of lessors, who are tenants-in-common. Case law, English and Indian, on the subject, considered. Where the relation is created by contract with several joint landlords, according to the English cases, such relation subsists only so long as all of them wish it to continue, while according to the Indian cases it subsists until all of them agree to put an end to it; and such a contract cannot, in the absence of special circumstances, be put an end to by any one of them, if they continue to hold as joint tenants. This principle, however, will not apply when the suit is for ejectment and partition and all the co-owners are made parties. The principle embodied in ss. 37 and 109 of the Transfer of Pro-

to payment of rent and surrender of possession, must, if such obligations be severable, and the lessee will not be prejudiced by such severance, be performed by the lessee between the lessor and such other, in such proportions as may be settled by all the parties concerned, including the lessee. If the matter has to be decided by suit, the lessor, lessee and such other person will be necessary parties. SIMHADRI APPA RAO *v.* PRATTIPATTI RAMAYYA (1905) . . . I L. R. 29 Mad. 29

3. MISJOINDER OF PARTIES AND CAUSES OF ACTION.

See APPEAL—ORDERS—ORDER REJECTING A PLAINT . 6 C. W. N. 585

See MULTIFARIOUSNESS. I. L. R. 29 Calc. 257

1 ———— *Misjoinder—Suit for libel by several persons jointly—Misjoinder of plaintiffs and causes of action—Plaint, amendment of—Election of plaintiff—Civil Procedure Code (Act XIV of 1882), ss 26 and 53.* Where six members of the Calcutta Police Force jointly sued the editor and proprietor of a newspaper for damages in respect of a libel alleged to contain reflections upon their conduct in a criminal case:—*Held*, that there was not one and the same cause of action appertaining to all the plaintiffs, though the injury was caused by one act of the defendant, but that each plaintiff had a separate cause of action in respect of

MISJOINDER—*contd.*

3. MISJOINDER OF PARTIES AND CAUSES OF ACTION—*contd.*

there was nothing in the Civil Procedure Code or Rules of the Court to necessitate a dismissal of the suit: that the plaintiffs might be put to their election which one of them should proceed with the suit:

I L R 26 Bom 259, and *Sandes* v. *Wildsmith, [1893] 1 Q B 771,* followed ALDRIDGE *v* BARROW (1907) . . . I. L. R. 34 Calc. 662

2. ———— *Civil Procedure Code, s. 31—Misjoinder of defendants and causes of action—Suit by transferee from heir of deceased Mahomedan against another heir and transferees from such other heir.* A plaintiff came into Court,

another of the heirs of the deceased, who was in possession of some of it, and by certain transferees of other portions from the said heir. Both the remaining heir and the transferees from him were made defendants *Held*, that there was no misjoinder of parties or causes of action in such a suit. *Indar Kuar* v. *Gur Prasad, I. L. R. 11 All. 33,* followed. MAZHAR ALI KHAN *v* SAJJAD HUSAIN KHAN (1902) . . I. L R. 24 All. 358

3. ———— *Misjoinder of parties and causes of action—"In respect of the same matter," meaning of—Practice.* The plaintiff

date of the agreement the godown was in the possession of Messrs. *N* and Co Defendants 1—6

plead that there was an oral agreement ... the godown till

MISJOINDER—*concld.*

3 MISJOINDER OF PARTIES AND CAUSES OF ACTION—*concld.*

all pleaded that the suit as framed was bad by reason of misjoinder of parties and of causes of action. *Held, disallowing the objection,* that the suit was properly constituted The most convenient way to try all the questions arising between the plaintiff and the defendants and the two sets of defendants *inter se* would be by one suit where all the three parties are before the Court as parties The subject-matter in respect of which the plaintiff seeks relief is the rent of his godown. It is the same matter as regards both sets of defendants, and both sets of defendants are interested in the adjudication of the questions involved in the suit The general principle governing the joinder of defendants would seem to be that there must be a cause of action in which all the defendants are more or less interested, although the relief against them may vary, but that separate causes of action against separate defendants quite unconnected and not involving any common question of law or fact cannot safely be joined in one action The object of s. 28 seems to be to avoid multiplicity of suits if it [illegible] the

[illegible] nway, Great [illegible] 450, [illegible] NAJI

(1907) . . . I. L. R. [illegible] Bom. 516

MISJOINDER OF CAUSES OF ACTION.

See MISJOINDER.

MISJOINDER OF CHARGES.

See CHARGES . . 13 C. W. N. 804

See CRIMINAL PROCEDURE CODE (V OF 1898), ss 225—237
I. L. R 33 Bom. 77

See CRIMINAL PROCEDURE CODE (ACT V OF 1898), ss 234, 235.
I. L R. 30 All 351
13 C. W N. 1089

See CRIMINAL PROCEDURE CODE 1898, ss 233, 239 . 13 C. W. N. 1113

See JOINDER OF CHARGES

See SANCTION FOR PROSECUTION.
I. L. R 36 Calc. 808

1. ———— *Distinct offences* [illegible]

MISJOINDER OF CHARGES—*concld.*

the special procedure provided for Presidency Magistrates; that no charge sheet was required to be drawn up; that there was no trial in the sense of an investigation of the facts; that the petitioner [illegible]

(1907) . . . I. L. R. 35 Calc. 161

2. ———— *Misjoinder of* [illegible]

[illegible]

CHOWDHURY *v* EMPEROR (1906)
11 C. W. N. 472

MISJOINDER OF PARTIES.

See MISJOINDER

MISPRISION OF TREASON.

See WAGING WAR AGAINST THE QUEEN.
7 B. L. R. 63

MISREPRESENTATION.

See ADMINISTRATION BOND
I L. R 33 Calc. 713

See CHARTER-PARTY.
I. L. R. 14 Bom 241
I. L R 15 Bom. 389

See CONTRACT—ALTERATION OF CONTRACTS—ALTERATION BY THE COURT (INEQUITABLE CONTRACTS)
I. L R. 17 Calc 291
13 B. L. R 34
I. L. R. 3 Bom 242
L R. 16 I. A. 233

See FRAUD—EFFECT OF FRAUD.
I. L. R. 8 Calc 118
I. L. R. 24 Calc. 533

See RIGHT OF SUIT—MISREPRESENTATION.
I. L R. 4 Bom 465
2 N. W. 13
I. L. R. 24 Bom. 166

———— as to area of land sold—

See VENDOR AND PURCHASER—FRAUD.
I. L. R. 18 All. 322

MISREPRESENTATION—*concld.*

——— by Court-auctioneer—

See SALE . I. L. R. 36 Calc. 323

——— by minor—

See MINOR—LIABILITY OF MINOR ON, AN RIGHT TO ENFORCE, CONTRACTS.
I. L. R. 24 Calc. 265
1 C. W. N. 453
I. L. R 25 Calc. 371; 616
2 C. W. N 18; 201; 330
I. L. R. 26 Calc. 381
I L. R 21 Bom. 198

MISTAKE.

See ADMINISTRATION 12 C. W. N. 481

See ADMINISTRATION BOND
I. L. R. 33 Calc. 713

See BENGAL TENANCY ACT, s 93
8 C. W. N. 225

See CHARTER-PARTY
I. L. R. 16 Bom. 561

See CIVIL PROCEDURE CODE, 1882
8 C. W. N 30; 174

See CIVIL PROCEDURE CODE, 1882, s 13, EXPLANATION II . I. L. R. 26 All. 61.

See CIVIL PROCEDURE CODE, 1882, s 27
I. L. R. 33 Calc. 657

See DECREE, LIS PENDENS.
I. L R. 31 Calc. 745; 822

See EXECUTION.
I. L R. 35 Calc. 1047

See HINDU LAW—PARTITION—RIGHT TO PARTITION—GENERALLY
I. L. R. 21 Bom. 333

See LIMITATION ACT (XIV OF 1859), s. 1 (12) . I. L. R. 26 All. 4

See POWER OF COURT.
12 C. W. N. 1027

See REGULATION III OF 1877 s. 33.
I L. R. 26 All. 354

See SETTLEMENT—CONSTRUCTION
I. L. R. 17 Bom. 407

See SPECIAL OR SECOND APPEAL—OTHER ERRORS OF LAW OR PROCEDURE—MISTAKES

See STAMP ACT (I OF 1879), s 26.
I. L. R. 31 Calc. 807

See TRANSFER OF PROPERTY ACT, ss 41, 59, 60, 65, 82, 83, 88 to 91, 96 to 100.
I. L. R. 26 All. 14, 25, 69, 72, 93, 185, 223, 291, 407, 464, 490
504, 559

See TRUST . I. L R. 18 Bom. 551

See WAZIB-UL-ARZ. I. L. R. 26 All. 337

——— condition imposed by—

See HINDU LAW—ADOPTION—SECOND, SIMULTANEOUS, AND CONDITIONAL ADOPTIONS . I. L. R 2 Bom. 377

MISTAKE—*contd.*

——— in filling up stamped paper—

See STAMP ACT, s. 51.
I. L. R. 18 Mad 122

——— in name of party to contract.

See CONTRACT—BOUGHT AND SOLD NOTES
I. L. R 20 Calc. 854

——— in statement of age—

See INSURANCE—LIFE INSURANCE
I. L. R. 20 Bom 99

——— land sold by—

See LIMITATION ACT, ART. 12
I. L. R 20 Mad. 118

——— money paid by—

See CIVIL PROCEDURE CODE, 1882, s 244—QUESTIONS IN EXECUTION OF DECREE
I. L. R. 1 All. 388

See CONTRACT ACT, s. 72

See JURISDICTION OF CIVIL COURT—RENT AND REVENUE SUITS.
I. L R. 25 All. 527

——— of calculation—

See CIVIL PROCEDURE CODE, 1882, s 244—QUESTIONS IN EXECUTION OF DECREE
5 C W. N. 627

——— of Court—

See MORTGAGE . 13 C. W. N. 300

——— of fact—

See CERTIFICATE OF ADMINISTRATION—CANCELMENT OR RECALL OF CERTIFICATE . I. L. R. 19 Bom. 821

See CONTRACT ACT, s. 23—ILLEGAL CONTRACTS—GENERALLY.
I. L. R. 3 Calc. 602
L. R. 5 I. A. 78

See PLAINT—AMENDMENT OF PLAINT.
I. L. R. 30 Calc. 699

See SPECIAL OR SECOND APPEAL—GROUNDS OF APPEAL—EVIDENCE, MODE OF DEALING WITH . I. L. R. 15 Bom 670

See WAIVER . 5 Mad. 437; 444

See WRONGFUL RESTRAINT.
I. L. R. 24 Calc. 885

——— of law—

See APPEAL TO PRIVY COUNCIL—PRACTICE AND PROCEDURE—MISCELLANEOUS CASES . L. R. 30 I. A. 20

See ESTOPPEL—ESTOPPEL BY CONDUCT
I. L. R. 19 Bom. 374

See LIMITATION ACT, 1877, s. 5.
I. L. R 11 Calc. 767
I. L. R. 13 Calc. 63
I. L. R. 13 Mad. 269
I. L. R. 12 All. 461

MISTAKE—*contd.*

—— of law—*concld*

See LIMITATION ACT, 1877, s 14
I. L. R. 10 All. 587
I. L. R. 12 Bom. 320
I. L. R. 19 All. 348
3 C. W. N. 233

—— of taxing officer—

See COURT FEES ACT 1870, s 5
I. L. R. 15 All. 117

—— pottah granted by—

See COLLECTOR I L. R. 12 Mad. 404

—— probate granted by—

See PROBATE—TO WHOM GRANTED.
6 C. W N. 787

—— rent paid by—

See LANDLORD AND TENANT—CONSTITUTION OF RELATION—ACKNOWLEDGMENT OF TENANCY BY PAYMENT OF RENT
I L. R. 26 Bom. 410

—— suit brought under—

See LIMITATION ACT, 1877, s 14 (1871).
(s. 15) . . I. L. R. 3 Calc. 817
I. L R. 9 Calc. 255
L. R. 9 I. A. 82

—— *Contract—Proposal with unqualified assent—Mistake in expression—Common mistake—Unilateral mistake—Contracting party not able to read—Contract differing from that*

common or unilateral. Mistake in expression im-

parties is to be gathered from the words they have used. Where the mistake is unilateral, it does not ordinarily affect the rights, which are the legitimate

MISTAKE—*concld.*

consequence of the words, though it may affect the remedy that will be awarded against the party in error. But a mistake known at the time to the

contract written differs from that presented to be

MITAKSHARA.

See HINDU LAW.
I. L R 33 Calc. 371; 507
I. L. R. 31 All 454; 507; 599

See HINDU LAW—MITAKSHARA.

—— Ch I, ss. 6, 7; Ch. II, s 9; Ch. VI, s 4—

See HINDU LAW.
I L. R 32 Calc. 158; 234

—— family—

See HINDU LAW—ALIENATION.
I L. R. 34 Calc. 184

—— son, liability of—

See HINDU LAW—JOINT FAMILY—DEBTS.
I. L. R. 34 Calc. 642
I. L. R. 33 Bom. 39

—— *Babuana grant—Attachment of Babuana property during the lifetime of the judgment-debtor—Civil Procedure Code*

grant of ancestral property by the owner of an impartible estate to enure for the benefit not only of a junior member of the family but of his direct male line, does not lose its ancestral character by the grant. It does not become self-acquired property in the hands of the direct male descendants of the grantee. *Maddun Gopal Thakoor* v. *Ram Buksh Pandey, 6 W. R. 71,* referred to An order for

referred to. RAM CHANDRA MARWARI v. MUDESHWAR SINGH (1906) . I. L. R. 33 Calc. 1158

MITAKSHARA FAMILY.

See CIVIL PROCEDURE CODE (ACT XIV OF 1882), s. 961 I. L. R. 35 Calc. 561

See DECREE . I. L. R. 31 Calc. 823

See HINDU LAW—MITAKSHARA.

See HINDU LAW—SUCCESSION. I. L. R. 31 Calc. 224

See HINDU LAW—SURVIVORSHIP. I. L. R. 33 Calc. 676

MITAKSHARA SCHOOL.

See HINDU LAW . . 8 C. W. N. 672

See HINDU LAW—MITAKSHARA.

MOFUSSIL CIVIL COURT.

See JURISDICTION I. L. R. 31 Calc. 667

MOFUSSIL COURTS.

——— suit to set aside decree of, on ground of fraud.

See HIGH COURT, JURISDICTION OF—CALCUTTA—CIVIL.

I. L. R. 30 Calc. 369

MOFUSSIL COURTS, POWER OF.

——— Mofussil Courts have no power to make orders *in personam* against persons not parties to a suit such as is possessed by the Original Side of the High Court. RAMNIDHY KOONDOO *v.* OJOODHYARAM KHAN

11 B. L. R. Ap. 37

s.c. RAMNIDHEE KOONDOO *v.* AJOODHYARAM KHAN . . . . . 20 W. R. 123

MOHUNT.

See HINDU LAW—ENDOWMENT.

See HINDU LAW—INHERITANCE—DIVESTING OF, EXCLUSION FROM, AND FORFEITURE OF, INHERITANCE—MARRIAGE.
I. L. R. 5 Bom. 682

See HINDU LAW—INHERITANCE—RELIGIOUS PERSONS, ETC.

I. L. R. 1 All. 539
5 W. R. Mis. 57
3 Agra 295
I. L. R. 9 All. 1
L. R. 13 I. A. 100
7 C. W. N. 145

See ONUS OF PROOF—CUSTOM.
I. L. R. 5 Bom. 682

See RELIGIOUS ENDOWMENTS ACT, s. 5.
8 C. W. N. 404

——— personal estate of—

See CERTIFICATE OF ADMINISTRATION—ISSUE OF, AND RIGHT TO, CERTIFICATE.
I. L. R. 4 Calc. 954

——— power of, to grant perpetual lease—

See HINDU LAW—ENDOWMENT.
I. L. R. 36 Calc. 1003

MOHURBHUNJ.

See TRIBUTARY MAHALS OF ORISSA.

MOKURARI INTEREST.

See BENGAL TENANCY ACT (VIII OF 1885), s. 74. . 12 C. W. N. 175

See DEBUTTER . I. L. R. 33 Calc. 511

See MERGER . I. L. R. 33 Calc. 1213
I. L. R. 36 Calc. 802

See MOKURARI LEASE.

MOKURARI ISTEMRARI TENURE.

See GRANT—CONSTRUCTION OF GRANTS.
I. L. R. 1 Calc. 391
I. L. R. 30 Calc. 20

See LEASE—CONSTRUCTION.

——— Effect on, of subsequent farming lease.—A mokurari holding cannot be extinguished by a subsequent farming lease. DUTEE ROY *v.* MUDDOOSOODUN PROSAD CHOWDHRY

W. R. 1864, Act X, 117

MOKURARI LEASE.

See DEBUTTER . I. L. R. 33 Calc. 511

See PATWARI TENURE.
I. L. R. 34 Calc. 753

See LEASE . . I. L. R. 36 Calc. 675

See MINERAL RIGHTS.
I. L. R. 34 Calc. 858

See MOKURARI INTEREST.

See SALE FOR ARREARS OF REVENUE—INCUMBRANCES—ACT XI OF 1859.
I. L. R. 30 Calc. 1071

——— *Mokurari lease—Rent.*—A perpetual mokurari lease implies that the tenancy is permanent, heritable and transferable and that the rent is fixed in perpetuity. MAHANAND SAHAI *v.* SAYEDUNNISSA (1907) . 12 C. W. N. 154

"MONEY."

See WILL . . I. L. R. 30 All. 455

MONEY-DECREE.

See ATTACHMENT—SUBJECTS OF ATTACHMENT—DECREES.
I. L. R. 27 Bom. 556
6 C. W. N. 5

See BENGAL TENANCY ACT, s. 188.
6 C. W. N. 134

See CIVIL PROCEDURE CODE, 1882, ss. 273, 282, 287 . . I. L. R. 33 Bom. 311

See EQUITY OF REDEMPTION.

See EXECUTION OF DECREE—EXECUTION AGAINST REPRESENTATIVES.
I. L. R. 30 Calc. 981

See MORTGAGE—SALE OF MORTGAGED PROPERTY—MONEY-DECREES ON MORTGAGES.

See REGISTRATION ACT (III OF 1877), s. 23 . . I. L. R. 29 Calc. 654

MONEY-DECREE—*concld.*

See TRANSFER OF PROPERTY ACT, s 99.
I. L. R. 30 Calc. 463

See SALE IN EXECUTION OF DECREE.
I. L. R. 35 Calc. 61
13 C. W. N. 270

MONEY HAD AND RECEIVED.

See CERTIFICATE OF ADMINISTRATION—RIGHT TO SUE OR EXECUTE DECREE WITHOUT CERTIFICATE.
I. L. R. 15 Bom. 580

See LIMITATION ACT, 1877, ARTS 62 AND 97.

See LIMITATION ACT, 1877, ART. 97.
I. L. R. 19 Calc. 123
L. R. 18 I. A. 158
I. L. R. 18 Mad. 173

See LIMITATION ACT, 1877, ART 120
I. L. R. 15 Mad. 382
I. L. R. 18 All. 430

See SMALL CAUSE COURT, MOFUSSIL—JURISDICTION—MONEY HAD AND RECEIVED.

1. ———— **Money paid under compulsion of law**—*Payment into Court by mortgagee of amount of decree to prevent sale of mortgaged property—Voluntary payment* The defendant sued one *J H P* in the Small Cause Court and obtained a decree, in execution of which he caused a steamer to be attached as being the property of *J H P* Thereupon the plaintiffs, alleging themselves to be in possession of the steamer as mortgagees from *J H P*, in order to obtain its release, paid the amount of the decree against *J H P* into Court, and the steamer was given up Subsequently an order was made by the Court, on the application of the plaintiffs, that the money should remain in Court pending the result of a suit to be brought by them for its recovery. They accordingly brought a suit against the defendant The Judge of the Small Cause Court found that *J H P* had no attachable interest in the steamer, and that the plaintiffs had paid the amount of the decree on compulsion *Held*, that the plaintiffs could maintain the suit, although the defendant had not actually received the amount of the decree MORAN *v* DEWAN ALI SIRANG . **8 B. L. R. 418**

2. ———— Money paid under compulsion of law cannot be recovered back as money had and received. JUGOOBUNDHOO GHOSE *v.* CHOWDHRY MUMTAZ HOSSEIN **W. R 1864, 205**

3. ———— **Voluntary payment**—*Pay-* [illegible]

4. ———— *Suit by sub-lessee against lessor for malikana which he was compelled to pay* Where a sub-lessee pays malikana which was not specified in the sub-lease as being a charge on the property, and as to which he was ignorant.—*Held* that he was equitably entitled to recover over from his lessor. TARSANAH *v.* KADHAREY LALL . . . . . . **5 N. W. 1**

5. ———— **Proceeds of joint immoveable property after satisfaction of decree by sale of tenure, suit for.** The plaintiff and the defendant were co-owners of a certain talukh. The zamindar brought a suit for arrears of rent of the talukh against the defendant, obtained a decree, and in execution of that decree sold the tenure The proceeds of the sale, after satisfying the zamindar's decree, were taken by the defendant, and the plaintiff instituted the present suit to recover an eight annas share thereof. *Held*, that the plaintiff was entitled to recover. RAM COOMAR SEN *v* RAM COMUL SEN
I. L. R. 10 Calc. 388

6. ———— **Money paid as price of goods, suit to recover**—*Consideration, failure of* Money paid as the price of goods to be delivered hereafter is money received for the use of the seller, and it is only upon failure of consideration that the money so paid becomes money received for the use of the buyer. ATUL KRISTO BOSE *v* LYON & Co . **I. L. R. 14 Calc. 457**

7. ———— ———— *Contract Act (IX of 1872), s 72—Right to recover money had and received to plaintiff's use, unaffected by s. 72.* Defendant had sought to exercise, as against plaintiff, the special powers conferred upon landholders by s 38 of the Rent Recovery Act In fact, the [illegible] by defendant to the use of the plaintiff S. 72 of the Contract Act in no way affects the principle of law that where a defendant has received money, which in justice and equity belongs to a plaintiff, under circumstances which render a receipt of it a receipt by the defendant to the use of the plaintiff, the plaintiff is entitled to recover *Jugdeo Narain Singh v Raja Singh, I L R 15 Calc 656*, approved NARAYANASAMI REDDI *v* OSURU REDDI (1901) . . . **I. L. R. 25 Mad. 548**

MONEY LENT.

See HINDU LAW—CONTRACT—MONEY LENT . . . **5 B. L. R. 396**
7 B. L. R. 489

See LIMITATION ACT, 1877, SCH. II, ART. 57 . . **I. L. R. 24 All. 251**

See LIMITATION ACT, ART. 60
I. L. R. 16 Calc. 25
I. L. R. 18 Mad. 390
I. L. R. 19 Bom. 352; 775

MITAKSHARA FAMILY.

See CIVIL PROCEDURE CODE (ACT XIV OF 1882), s. 961 I. L. R. 35 Calc. 561

See DECREE . I. L. R. 31 Calc. 822

See HINDU LAW—MITAKSHARA.

See HINDU LAW—SUCCESSION. I. L. R. 31 Calc. 224

See HINDU LAW—SURVIVORSHIP. I. L. R. 33 Calc. 676

MITAKSHARA SCHOOL.

See HINDU LAW 8 C. W. N. 672

See HINDU LAW—MITAKSHARA.

MOFUSSIL CIVIL COURT.

See JURISDICTION I. L. R. 31 Calc. 667

MOFUSSIL COURTS.

——— suit to set aside decree of, on ground of fraud.

See HIGH COURT, JURISDICTION OF—CALCUTTA—CIVIL I. L. R. 30 Calc. 369

MOFUSSIL COURTS, POWER OF.

——— Mofussil Courts have no power to make orders *in pœnam* against persons not parties to a suit such as is possessed by the Original Side of the High Court. RAMNIDHY KOONDOO v. OJOODHYARAM KHAN 11 B. L. R. Ap. 37

s. c. RAMNIDHEE KOONDOO v. AJOODHYARAM KHAN . . . . . . 20 W. R. 123

MOHUNT.

See HINDU LAW—ENDOWMENT.

See HINDU LAW—INHERITANCE—DIVESTING OF, EXCLUSION FROM, AND FORFEITURE OF, INHERITANCE—MARRIAGE I. L. R. 5 Bom. 682

See HINDU LAW—INHERITANCE—RELIGIOUS PERSONS, ETC.
I. L. R. 1 All. 539
5 W. R. Mis. 57
3 Agra 295
I. L. R. 9 All. 1
L. R. 13 I. A. 100
7 C. W. N. 145

See ONUS OF PROOF—CUSTOM. I. L. R. 5 Bom. 682

See RELIGIOUS ENDOWMENTS ACT, s 5. 8 C. W. N. 404

——— personal estate of—

See CERTIFICATE OF ADMINISTRATION—ISSUE OF, AND RIGHT TO, CERTIFICATE. I. L. R. 4 Calc. 954

——— power of, to grant perpetual lease—

See HINDU LAW—ENDOWMENT. I. L. R. 36 Calc. 1003

MOHURBHUNJ.

See TRIBUTARY MAHALS OF ORISSA.

MOKURARI INTEREST.

See BENGAL TENANCY ACT (VIII OF 1885), s 74. . 12 C. W. N. 175

See DEBUTTER . I. L. R. 33 Calc. 511

See MERGER . I. L. R. 33 Calc. 1212
I. L. R. 36 Calc. 802

See MOKURARI LEASE.

MOKURARI ISTEMRARI TENURE.

See GRANT—CONSTRUCTION OF GRANTS.
I. L. R. 1 Calc. 391
I. L. R. 30 Calc. 20

See LEASE—CONSTRUCTION.

——— Effect on, of subsequent farming lease —A mokurari holding cannot be extinguished by a subsequent farming lease. DHURM ROY v MUDDOOSOODUN PROSAD CHOWDHRY W. R. 1864, Act X, 117

MOKURARI LEASE.

See DEBUTTER. . I. L. R. 33 Calc. 511

See DIGWARI TENURE. I. L. R. 34 Calc. 753

See LEASE. . I. L. R. 36 Calc 675

See MINERAL RIGHTS. I. L. R. 34 Calc. 358

See MOKURARI INTEREST.

See SALE FOR ARREARS OF REVENUE—ACT XI OF 1859.—INCUMBRANCES. I. L. R. 30 Calc. 1071

——— *Mokurari lease—Rent.* —A perpetual mokurari lease implies that the tenancy is permanent, heritable and transferable and that the rent is fixed in perpetuity. MAHANAND SAHAI v. SAYEDONISSA (1907) . 12 C. W. N. 154

"MONEY."

See WILL . . I. L. R. 30 All. 455

MONEY-DECREE.

See ATTACHMENT—SUBJECTS OF ATTACHMENT—DECREES I. L. R. 27 Bom. 556
8 C. W. N. 5

See BENGAL TENANCY ACT, s. 188. 8 C. W. N. 191

See CIVIL PROCEDURE CODE, 1882, ss. 273, 282, 287 . . I. L. R. 33 Bom. 311

See EQUITY OF REDEMPTION.

See EXECUTION OF DECREE—EXECUTION AGAINST REPRESENTATIVES I. L. R. 30 Calc. 961

See MORTGAGE—SALE OF MORTGAGED PROPERTY—MONEY-DECREES ON MORTGAGES.

See REGISTRATION ACT (III OF 1877), s. 28 . . I. L. R. 29 Calc. 654

MONEY PAID FOR BENEFIT OF ANOTHER—*contd.*

ence between his, the plaintiff's, payments and receipts. DAKHINA MOHAN ROY *v.* SARODA MOHAN ROY . . . . . I. L. R 21 Calc. 142
L. R. 20 I A. 160

2. ———— Revenue due on account of Hindu widow's estate paid by lambardar

the lambardar was entitled was a decree against *S N* as *J*'s representative payable out of the assets, if any, which had come to *S N* from *J*. *Seth Chitor Mal* v. *Shib Lal*, *I. L. R 14 All. 273*, referred to. SHIAMANAND *v.* HAR LAL . I. L R. 18 All 471

MONEY PAID UNDER PROCESS OF DECREE

See COSTS—INTEREST ON COSTS
I. L R 4 Calc 229
20 W R 49

See MONEY HAD AND RECEIVED
W R. 1864, 205

1 ———— Reversal or supersession of decree —Money recovered under a decree or judgment cannot be recovered back in a fresh suit or action, whilst the decree or judgment under which it was recovered remains in force But this rule of law

process or by a new suit DOOPOA PERSHAD ROY CHOWDRY *v* TARA PERSHAD ROY CHOWDHRY. SHAMA PERSHAD ROY CHOWDHRY *v* HURRO PERSHAD ROY CHOWDHRY 3 W R P C 11
10 Moo I A 203

Interest cannot be recovered on it ASHRUFUNISSA BEGUM *v* KHANUM JANU 6 W R 285

2 ———— *Suit to recover money paid under decree—Act XXIII of 1861, s. 11.*—In a suit by the present defendant against the present plaintiff for enhancement of rent, the Court of first instance and the High Court made decrees for enhanced rent. The Privy Council, in

but in 1875 he brought this suit to recover the

MONEY PAID UNDER PROCESS OF DECREE—*contd.*

difference between the amount of enhanced rent recovered and the fixed rent which he was bound to pay. *Held* by MACPHERSON, MARKBY, and AINSLIE, JJ., following *Shama Pershad Roy Chowdhry* v. *Hurro Pershad Roy Choudhry*, *10 Moo. I. A. 203*, that the decrees for enhanced

I. L. R. 3 Calc. 30 : 1 C L. R. 5

3. ———— Supersession of decree—*Suit for money paid under conditional decree* *A* obtained against *B* a decree for arrears of rent at enhanced rates for the year 1871 Pending an

enhanced rates contingent in the event of the Appellate Court affirming the decree in the former suit *A* executed this last decree, and obtained payment of the rent at enhanced rates On the reversal of the decision in the former case by the Appellate Court, *B* applied for a refund of so much of the money paid to *A* as represented the rent calculated at enhanced rates. *Held*, that the por-

I. L. R 5 Calc. 589 : 5 C L R 519

4 ———— *Suit to recover compensation in respect of property sold under a decree—Decree not reversed or superseded* A

and fixed the money rent to be paid in future After that order had been made, the zamindar

partially satisfied out of the sale-proceeds Sub-

MONEY LENT—*concld.*

———— partner cannot sue firm for—

See PARTNERSHIP—SUITS RESPECTING PARTNERSHIPS.
I. L. R. 25 Bom. 606

———— suit for—

See RIGHT OF SUIT—MONEY LENT.
I. L. R. 23 Calc. 851

MONEY-ORDER.

See POSTAL MONEY-ORDER

MONEY PAID.

See CONTRIBUTION, SUIT FOR—PAYMENT OF JOINT DEBT BY ONE DEBTOR

See LIMITATION ACT, 1877, ART. 61.

See MONEY PAID FOR BENEFIT OF ANOTHER

———— by mistake—

See CONTRACT ACT, s. 72

———— by trespasser in possession—

See WRONGFUL POSSESSION
I. L. R. 4 Calc. 566

———— in excess satisfaction of decree—

See CIVIL PROCEDURE CODE, 1882, s 244—QUESTIONS IN EXECUTION OF DECREE
I. L. R. 1 All 388
6 Mad. 304
17 W. R. 14
15 W. R. 160
19 W. R. 413
4 C. L. R. 577
I. L R. 22 All. 79

———— in execution of decree, suit to recover—

See CIVIL PROCEDURE CODE, 1882, s. 244—QUESTIONS IN EXECUTION OF DECREE.

See CIVIL PROCEDURE CODE, 1882, ss. 257, 258.

———— to prevent sale—

See RIGHT TO SUIT—SALE FOR ARREARS OF REVENUE . I. L. R 13 All. 195

See SALE FOR ARREARS OF RENT—DEPOSIT TO STAY SALE.

See SALE FOR ARREARS OF REVENUE—DEPOSIT TO STAY SALE.

1. ———— Voluntary payment—*Compulsory payment of revenue—Previous request* L, having been compelled by a revenue officer to pay [illegible]

made, at the request, expressed or implied, of *D.* There being no such request on the part of *P* to support the action, it was held that *L* could not recover. GATTU LALL *v* LUCHMAN PARSHAD . 7 N. W. 155

MONEY PAID—*contd.*

2. ———— *Penal assessment of revenue paid under protest—Proof of illegal coercion.* In order to enable one having paid money under protest to recover money so paid, it is necessary for him to show that the payment was made under illegal coercion MUTHAYYA CHETTI *v.* SECRETARY OF STATE FOR INDIA
I. L. R. 22 Mad. 100

3. ———— *Payment to stay sale* Plaintiff's ancestor had purchased in execu- [illegible]

uncle of *R* and father of the two others), and a sale having been ordered after purchase by plaintiff's ancestor, the latter, whose objections did not avail, finally prevented the sale by paying in the amount [illegible]

[illegible]

4. ———— *Money paid to protect property afterwards shown to have been wrongly attached in execution of decree* Where the plaintiff was obliged to bring a suit and carry it [illegible]

save the property from [illegible] BANERJEE *v.* GOLAM ALI CHOWDHRY
10 W. R. 453

MONEY PAID FOR BENEFIT OF ANOTHER.

See MONEY PAID.

See VOLUNTARY PAYMENT.
I. L. R. 22 Calc 28

1. ———— Payment of revenue by the claimant of an estate while temporarily holding it under a decree in his favour, afterwards reversed—*Liability of owner for* [illegible] Where a claimant, [illegible]

cover this expenditure. [illegible] *Held*, that, on his revenue and cesses in such a case. [illegible] accounting for mesne profits, and all that he had received, or might have received, from the estate, he should recover from the defendants, in whose favour the decree was ultimately made, the differ-

MONEY PAID FOR BENEFIT OF ANOTHER—*contd.*

ence between ... receipts. ... Roy ...

2. ——— Revenue due on account of Hindu widow's estate paid by lambardar ...

SHIAMANAND *v.* HAR LAL . I. L. R 18 All. 471

MONEY PAID UNDER PROCESS OF DECREE.

See COSTS—INTEREST ON COSTS
I. L R. 4 Calc 229
20 W R 49

See MONEY HAD AND RECEIVED
W R. 1864, 205

1. ——— Reversal or supersession of decree.—Money recovered under a decree or judgment cannot be recovered back in a fresh suit or action, whilst the decree or judgment under which it was recovered remains in force But this rule of law rests upon the ground that the original decree or judgment must be taken to be subsisting and valid, until it has been reversed or superseded by some ulterior proceeding If it has been so reversed or superseded, the money recovered under it ought to be refunded, and is recoverable either by summary process or by a new suit DOORGA PERSHAD ROY CHOWDRY *v.* TARA PERSHAD ROY CHOWDHRY SHAMA PERSHAD ROY CHOWDHRY *v.* HURRO PERSHAD ROY CHOWDHRY . 3 W R. P C 11
10 Moo I A 203

Interest cannot be recovered on it ASHRUFUNISSA BEGUM *v.* KHANUM JANU 6 W. R 285

2 ——— *Suit to recover money paid under decree—Act XXIII of 1861,* ...

MONEY PAID UNDER PROCESS OF DECREE—*contd.*

difference between the amount of enhanced rent recovered and the fixed rent which he was bound to pay. *Held* ... AINSLIE, *JJ.*, ... *Choudhry v.* ... *Moo. I. A.* ...

6th Ed. 375, applied, and that the plaintiff was not entitled to recover. JOGESH CHUNDER DUTT *v.* KALI CHURN DUTT
I L. R. 3 Calc. 30 : 1 C. L. R. 5

3 ——— Supersession of decree—*Suit for money paid under conditional decree* *A* obtained against *B* a decree for arrears of rent at enhanced rates for the year 1871. Pending an ...

enhanced rates contingent in the event of the Appellate Court affirming the decree in the former suit *A* executed this last decree, and obtained payment of the rent at enhanced rates On the reversal of the decision in the former case by the Appellate Court, *B* applied for a refund of so much of the money paid to *A* as represented the rent calculated at enhanced rates *Held,* that the portion of the second decree, relating to enhanced rent, being merely conditional, was virtually superseded ...

I L R. 5 Calc 589 5 C L. R. 519

4 ——— *Suit to recover compensation in respect of property sold under a decree—Decree not reversed or superseded* A ...

and fixed the money rent to be paid in future. After that order had been made, the zamindar brought a suit for arrears of rent against the tenants ...

MONEY PAID UNDER PROCESS OF DECREE—*contd.*

unreversed and not superseded by any competent Court. *Marriot* v. *Hampton, 2 Smith's L. C. 10th Ed. 409; Shama Parshad Roy Chowdhry* v. *Hurro Parshad Roy Chowdhry, 10 Moo. I. A. 203; Jogesh Chunder Dutt* v. *Kali Churn Dutt, I. L. R. 3 Calc. 30*, and *Nilmoney Singh Deo* v. *Saroda Parshad Mookerjee, 18 W. R. 431*, referred to. KISHEN SAHAI *v.* BAKHTAWAR SINGH

I. L. R. 20 All. 237

5. ——— **Decree subsequently found to be barred**—*Suit to recover money paid to save estate from sale under decree afterwards held to be barred—Jurisdiction of Civil Court* Application having been made to a Deputy Collector to execute a decree for rent, the judgment-debtor, in order to save his tenure from sale, brought the money into Court, and it was taken out by the decree-holder. This was done while the question was being litigated in the Civil Courts whether the decree was not barred by limitation. The result was that the decree was declared barred. *Held,* that the judgment-debtor's only remedy was by a suit in the Civil Court to get back the money GHANNOO SINGH *v.* RAM GOBIND SINGH 13 W R. 231

6. ——— **Decree passed ultra vires and subsequently reversed**—*Suit for money paid under it.* The assignee of a decree having obtained execution of it in the Deputy Collector's Court under cover of a declaratory and mandatory decree of the Civil Court, which latter decree was set aside on appeal, a suit was brought against the assignee to recover the money which he had obtained by means of the execution proceedings *Held,* that the judgment-debtor or his representative (the plaintiff) had no title to recover the money unless he could show that he had been in some way de-

[illegible]

GOBIND SINGH *v.* GHEENOO SINGH 20 W. R. 406

7. ——— **Decree afterwards reversed**—*Suit to recover money paid under it.* Money realized in execution of a decree may be recovered by suit, if the decree is set aside as regards the party seeking to recover. If such party was not a party to the original decree and his name appeared there owing only to misrepresentation, he is not restricted to the Court executing the decree, but is at liberty to seek his remedy in a separate suit. SHEBO COOMAREE DABEE *v.* SHITARAM HAZRA

21 W. R. 346

8 ——— *Execution of decree—Payment of decree amount by one defendant—Reversal of decree on appeal by another defendant—Right to refund—Civil Procedure Code, s. 583.* In a suit for rent, together with interest thereon,

[illegible]

first instance, but the Court of first appeal passed

MONEY PAID UNDER PROCESS OF DECREE—*concld.*

a decree as prayed in the plaint; and in execution the principal amount of the rent claimed, which had been paid into Court by the first defendant with the request that it should be paid out to the person entitled to it, was paid over to the plaintiff The first defendant preferred a second appeal against the decree, so far as it awarded interest and costs · this second appeal was dismissed. The second defendant, however, preferred against the

[illegible]

claimed. KASSIM SAID *v.* LUIS

I. L. R. 17 Mad 82

9. ——— **Voluntary payment**—*Executor de son tort—Payment of debt due by deceased—Suit to recover amount paid from heir. K,* the widow of a deceased Hindu, sued to recover his estate from *V*, his brother, who had taken possession thereof as heir. Pending this suit, a decree was

[illegible]

in satisfaction of the decree. [illegible] entitled to recover. KANAKAMMA *v* VENKATARATNAM . . . . I L. R. 7 Mad. 586

10. ——— *Attachment of property of third person—Payment into Court of amount of decree by owner of property in order to release property—Application, in execution for refund of money so paid.* A certain box attached in execution of a decree against one Mathur, whose

[illegible]

ment on the property raised. [illegible] necessary

[illegible]

473

MONEY PAYABLE BY INSTALMENTS

See INSTALMENTS.

MONEY PAYABLE ON DEMAND

See HINDU LAW—CONTRACT—MONEY LENT . . . 5 B. L. R. 396; 7 B L. R. 489

See LIMITATION ACT, 1877, Sch. II, ART. 73.

MONEY, SUIT FOR.

See LIMITATION ACT, 1877, ART. 113
I. L. R. 18 All. 3

See RES JUDICATA—CAUSES OF ACTION.
I. L. R. 3 Calc. 23

See RES JUDICATA—MATTERS IN ISSUE.
I. L. R. 20 Mad. 418

See VALUATION OF SUIT—SUITS.
I. L. R. 12 Bom. 675
I. L. R. 18 Bom. 696

MONOPOLY.

See SALTPETRE . I. L. R. 36 Calc. 267

——— attempt to monopolise—

See CONTRACT ACT, s 27.
13 C. W. N. 388

MOOKTEAR.

See CRIMINAL PROCEDURE CODE (ACT V OF 1898), s. 4. . I. L. R. 30 All. 66

See LEGAL PRACTITIONERS.

See LEGAL PRACTITIONERS ACT.

See PLEADER.

See PLEADER—AUTHORITY OF, TO BIND CLIENT . . 7 C. W. N. 351

See PRINCIPAL AND AGENT—AUTHORITY OF AGENTS . . 14 W R. 36
20 W. R 119
13 B. L. R. 177
I. L. R. 7 Calc 245

——— and client—

See PRIVILEGED COMMUNICATION.
1 B. L. R. A Cr 8
I. L. R 25 Calc 736
2 C. W. N 484

——— appointment and dismissal of—

See DEVASTHAN COMMITTEE
I L R. 30 Bom 508

——— dismissal of—

See LEGAL PRACTITIONERS ACT, ss 14 AND 40 . I. L R 15 Calc 152
L R. 14 I. A. 154

——— functions of—

See LEGAL PRACTITIONERS ACT, s 32
I L R. 14 Calc 556

——— giving commission to—

See PLEADER—REMOVAL, SUSPENSION, AND DISMISSAL . 11 B L R. 312

——— power of, to present application for execution of decree.

See LIMITATION ACT, 1877, ART 179 (1871, ART. 167)—JOINT DECREES—JOINT DECREE-HOLDERS I L R 4 Calc 605

1. ——— Admission of mooktears—*Power of High Court.* The High Court would not interfere with Zillah Judges in the selection and admission of mooktears, under the 39th section of

MOOKTEAR—*contd.*

the Pleaders' Rules, 1866 *In the matter of the petition of* MAHOMED HOSSEIN 5 W. R. Mis. 49

2. ——— *Rule 39 of Rules of High Court.* The 39th of the Rules for mooktears, issued by the Court in 1866, only required that every person who had been practising as a mooktear in the Criminal Courts should be at liberty to satisfy the Judge that he was a person of good moral character and qualified by his knowledge of law and procedure before he could be entitled to admission

3. ——— *Grant of certificate—Limitation.* There was no limitation of time for the grant of a certificate by a Judge, under Rule 39 of the Rules made by the Court in 1866 for the admission of mooktears *In re* JOAKIM
6 W. R. Mis 120

4. ——— Application for leave to practise in Court in another district—*Omission to get certificate from first District Court —Ground for refusal of leave to practise.* Where a mooktear who had been practising in Backergunge

5. ——— Appearance of mooktear—*Right to appear—Criminal Procedure Code (Act X of 1872), s 278—Appeal in criminal case* An appellant in a criminal case has a right to appear and be heard by a mooktear EMPRESS *v* SHIVRAM GUNDO . . . . I. L. R. 6 Bom. 14

See In re SUBBA AIYALA I. L. R. 1 Mad. 304

6 ——— *Civil Procedure Code, 1882, s 37—Rule 1 of Rules of High Court, Calcutta—Court Fees Act (VII of 1870), Sch II, Art 10* A mooktear holding a mooktearnamah

7. ——— Acting as mooktear—*Act XX of 1865, s 13* The mere bringing a plaint to a vakil for his signature by a mooktear not duly

MOOKTEAR—*contd.*

8. ——— *Act XX of 1865, ss. 11 and 13—Practising without certificate.* The writing a petition for a party who presents it in Court is not acting as a mooktear within the meaning of s. 11, Act XX of 1865; and the writer is not liable to punishment under s. 13 for practising as a mooktear without a certificate. *In re* KALI CHARAN CHUND

9 B. L. R. Ap. 18 : 18 W. R. Cr. 27

9. ——— *Presenting application for execution—Pleading—"Act"—"Plead"—Practice on Original Side, High Court.* A mooktear having presented an application for execution under Act VIII of 1859, s. 207, the Munsif returned it upon the ground that it ought to have been presented through a pleader, and not through a mooktear. *Held* that upon the proper

put upon them for many years on the Original Side of the High Court, where attorneys are excluded from making any applications in Court; but advocates, who have only the right to plead, are allowed to make them *In the matter of* ISHUR KANT BHADOOREE . . . . 24 W. R. 233

10. ——— *Act XX of 1865 ss. 13 and 42—Practising as mooktear—Applying for copy of judgment. Quære* Whether an application by a person holding an am-mooktear-

have been made for and on behalf of the employer. *In re* BAMA CHURUN GHOSAL . 2 C. L. R. 553

11. ——— *Act XX of 1865, s. 13—Mooktear and private agent, distinction between. Per* WHITE AND MITTER, *JJ.*—The mere fact that a person looks after an appeal and gives instructions to pleaders in connection with such

and holds himself out as ready to perform what is usually considered mooktear's work, for reward, such person is no less acting as a mooktear on any particular occasion, because he may have abstained

12. ——— *Revenue Court—Reference to arbitration.—Held,* that a mooktear in a Revenue Court must be empowered by an instrument in writing to refer the matter in dispute to arbitration in the same way, as a pleader in a regular

MOOKTEAR—*contd.*

suit, Ch. VI of the Civil Procedure Code, 1859, being made applicable to suits under Act X of 1859 by s. 14 of Act XIV of 1863. RAM PERSHAD *v.* NAZEER HOSSEIN . . 1 Agra Rev. 63

SHUNKER *v.* HUR NARAIN . 1 Agra Rev. 49

13. ——— Suspension or dismissal of mooktear—*Power of High Court.* The High Court had power under s. 15 Act XX of 1865 to

duct" under s. 16 *In the matter of the petition of* GHOLAB KHAN . . . 7 B. L. R. 179
16 W. R. Cr. 15

14. ——— *Statutes, interpretation of—Legal Practitioners' Act (XVIII of 1879, as amended by Act XI of 1896), ss 12, 13, cl. (f), 14, 36—"Any other reasonable cause," meaning of—Ejusdem generis—Professional misconduct—Offence committed prior to admission as legal practitioner—Rules—Act XX of 1865, s. 15—Letters Patent, s. 10. Held,* by the Full Bench (GHOSE, J., dissenting), (i) that the words "any other reasonable cause," in s 13, cl. (f), of the Legal Practitioners' Act, are not confined to misconduct of which a practitioner is guilty in his professional capacity, but embrace all causes which may afford reasonable ground for his suspension or dismissal; and (ii) that a legal practitioner who,

Practitioners' Act, can be dealt with by the Court under that section. *In the matter of Purna Chunder Pal, I. L. R. 27 Calc. 1023,* approved, and *In the matter of Jogendra Narayan Bose, 5 C. W. N. 48,* overruled. LEMESURIER *v.* WAJID HOSSAIN (1902) . . I. L. R. 29 Calc. 890 : s.c. 6 C. W. N. 556

15. ——— Dismissal of mooktear—*Power of Magistrate to dismiss* A Magistrate has no power to give a mooktear "general dismissal" unless he is convicted of an offence involving moral turpitude or infamy. QUEEN *v.* SHAM CHAND CHOWDHRY . . . 1 W. R. Cr. 34

16. ——— Suspension of mooktear—*Power of Magistrate to suspend mooktear—Act XX of 1865.* A Magistrate has no power to suspend a mooktear under Act XX of 1865. ROOPO BEWAH *v.* KEKAROO . . . 21 W. R. Cr. 41

17. ——— *Act XX of 1865, s. 16—Suspension from practice.* Before making an order suspending a mooktear from practising, the requirements of s. 16, Act XX of 1865, should be complied with by the Magistrate *In the matter of the petition of* GHOLAB KHAN
6 B. L. R. Ap. 83 : 15 W. R. 171

In re BANCHANIDHI MAHANTY 17 W. R. Cr. 6

18. ——— Removal of mooktear—*Criminal charge—Evidence justifying dismissal.* Evidence which does not support a conviction on a

MOOKTEAR—*contd.*

criminal charge cannot justify a removal from a profession (the present case being that of a mooktear). *In the matter of* Nil Kant Biswas
9 W. R. Cr. 29

19. ———— Reinstatement of mooktear—*Conviction on criminal charge.* Case of a mooktear who was reinstated by the High Court to his practice after suspension by reason of his having been convicted in two cases, the circumstances of these cases not showing that the mooktear was guilty of any moral turpitude or that he was unfit to act in the Criminal Courts as a mooktear *In the matter of* Koylashnauth Chowdhry
16 W. R. Cr. 41

20. ———— Proper Court to punish mooktear—*Legal Practitioners Act (XVIII of 1879), ss 10, 32—Pleader—Illegal practice* A pleader or mooktear practising in contravention of the provisions of s. 10 of Act XVIII of 1879 is punishable under that Act only by the Court before which he has so practised *In the matter of the petition of* Ganga Dayal I. L. R. 4 All. 375

21. ———— *Legal Practitioners Act (XVIII of 1879 as amended by Act XI of 1896), ss 13, cl (f), 14—Professional misconduct—Misconduct prior to enrolment as legal practitioner—"Any other reasonable cause"—Ejusdem generis—Permanent defect of character—"Taking instructions" and "Misconduct"—Authority of subordinate Courts to proceed under s 14 of the Legal Practitioners Act—Departmental enquiry—Legal proof* One *P*, a Sub-Inspector of police, was committed for trial to the Court of Session on charges of bribery, forgery, and other offences, but was acquitted. He was, however, departmentally found guilty of misconduct and was dismissed from the Government service in 1891 In 1893, suppressing the fact of his dismissal, he obtained a certificate of good moral character from a pleader, and on the strength of that certificate gained admission [illegible]

the part of *P* being antecedent to his passing the mooktearship examination and enrolment [illegible]

applied to the pleader for a certificate, *P* was bound to relate to him the past history of his life *Per* [illegible]

intended to cover misconduct other than professional misconduct and to embrace all causes other than those previously enumerated in the section, which might reasonably be regarded as disqualifying a person for retaining the office of pleader or mooktear. *In the matter of Gholab Khan, 7B. L R. 179,* relied on. An offence committed prior to admission may be made the foundation of proceedings under s 13 of the Legal Practitioners Act, provided [illegible]

from the profession of mooktear had been made out against him. *In the matter of the petition of Amenooleen Ahmed, 6 W. R Mis 5,* referred to. *Held,* further, *per* Hill, J —That "taking instructions" and "misconduct" referred to in s. 14 of the Legal Practitioners Act relate to cls (*a*) and (*b*), respectively, of s. 13 of the Act, and it is only in such cases that a subordinate Court is authorized to pro- [illegible]

Krishna Rao, I. L. R 15 Calc. 152 *L R 14 I A 154,* referred to *In the matter of* Purna Chunder Pal . . I. L. R. 27 Calc. 1023
4 C. W. N. 389

22. ———— Permission to appear—*Criminal Procedure Code (Act V of 1898), s. 4 (r)—Power of Magistrate to withhold* Where a Magistrate refused permission to a mooktear to appear in two cases, and also passed a general order refusing permission to appear in any case before him, owing to the latter's alleged misconduct in Court on a particular day : *Held,* that such orders were without justification, and that, even in punish- [illegible]

Nath Chatterjee (1902) . 7 C. W. N. 524

Collector, he does not do so in his professional capacity; he does so in his private capacity, though, no doubt, the fact of his filling the position of a mooktear lends a guarantee to the undertaking which the man gives. The money which the mooktear receives from the person for whom he stands surety is not a fee for professional services. It is the duty of the officer who accepts a surety bond from a mooktear to see whether the [illegible]

MOOKTEAR—*concld.*

who had stood as surety for another person objected to pay when the same was declared forfeited, alleging that he had discharged his obligation, and, when a certificate was issued against him, he contended that the certificate was illegal; when, later, a distress warrant was issued, he was not to be found for some little time, and the warrant was returned unexecuted because no moveable property belonging to him was found. *Held*, that these acts of the mooktear did not amount to professional misconduct. *In the matter of* MANGOBIND MITTER (1902) **7 C. W. N. 28**

24. ——— Mooktears practising in Civil Courts—*Legal Practitioners Act (XVIII of 1879), s. 32—Rule made by the High Court—Special leave of Court, if to be taken in each case—Leave when to be given—Violation of rule, with implied permission of Court, if punishable under the Act.* Special leave must be obtained from the Court in each case by a mooktear, who is desirous of offering any legal argument or examining any witness before a Civil Court. Such leave should [illegible] should be strictly observed. Where, however, certain mooktears had been acting in violation [illegible] them RAJ MOHAN MUKHOPADHYA *v.* BASIR-UDDIN AHMED (1904) . **8 C. W. N. 401**

MOOKTEARNAMA.

——— admission in—

See LIMITATION—QUESTION OF LIMITATION . . **I. L. R. 29 Calc. 664**

——— non-production of—

See PARDANASHIN WOMEN—EXECUTION OF DOCUMENT BY **I. L. R. 9 Calc. 749**

——— Validity of mooktearnamah under seal.—A mooktearnamah under seal is as valid as a mooktearnamah under signature. A Judge is not bound or authorized to require proof of the genuineness of the seal. *In the matter of the petition of the* MAHARAJAH OF BURDWAN **7 W. R. 475**

MOOKTEARSHIP EXAMINATION.

See BOARD OF EXAMINERS. **I. L. R. 8 Calc. 479**

MORTGAGE.

MORTGAGE—*contd.*

See AGRA TENANCY ACT (II OF 1901), SS. 20, 21, AND 31 . **I. L. R. 9 All. 129**

See APPEAL . **I. L. R. 35 Calc. 538**

See ATTACHMENT—SUBJECTS OF ATTACHMENT—DEBTS. **I. L. R. 6 Bom. 305**

See BANKER AND CUSTOMER. **9 C. W. N. 745**

See BENAMI . **I. L. R. 30 All. 256**

See BENAMIDARS . **I. L. R. 30 All. 30**

See BENGAL TENANCY ACT, 1885, S. 87 **2 C. W. N. 699**

See BENGAL TENANCY ACT (VIII OF 1885), SS. 159, 161 to 167. **I. L. R. 33 Calc. 878**

See CERTIFICATE OF ADMINISTRATION—ACT VII OF 1889. **I. L. R. 28 Calc. 246**

See CIVIL PROCEDURE CODE, 1882, S. 13
I. L. R. 26 All. 61
10 C. W. N. 115
I. L. R. 31 All. 19

See CIVIL PROCEDURE CODE, 1882, S. 43, **I. L. R. 30 All. 225**

See CIVIL PROCEDURE CODE, 1882, S. 244—QUESTIONS IN EXECUTION OF DECREE . . **7 C. W. N. 54**

MORTGAGE—*contd.*

See MAHOMEDAN LAW—PRE-EMPTION.—RIGHT OF PRE-EMPTION—MORTGAGES.
B. L. R. Sup. Vol. 166
6 B. L. R. Ap. 114
11 W. R. 282
I. L. R. 24 All. 119

See MALABAR LAW—MORTGAGE.

See MERGER . I. L. R. 33 Calc. 1212

See MORTGAGEE.

See ONUS OF PROOF—MORTGAGE.

See PARDANASHIN WOMEN.
I. L. R. 28 Calc. 546

See PARTIES . I. L. R. 33 Calc. 410

See PARTIES—PARTIES TO SUITS—JOINT FAMILY.
I. L. R. 28 Calc. 517
I. L. R. 24 All. 459
I. L. R. 25 All. 162

See PARTITION . I. L. R. 35 Calc. 388

See POSSESSION . I. L. R. 33 Calc. 1015

See POSSESSION—SUITS FOR POSSESSION
7 C. W. N. 607

See POWER OF ATTORNEY
13 C. W. N. 1190

See PRINCIPAL AND AGENT
12 C W. N. 28

See PRIORITY.
I. L. R. 32 Bom. 466; 1190

See PROBATE—TO WHOM GRANTED.
6 C. W. N. 787

See PROBATE AND ADMINISTRATION ACT.
10 C. W. N. 38

See PUBLIC DEMANDS RECOVERY ACT (BEN. ACT VII OF 1880), SS. 2, ETC.
I. L. R. 29 Calc. 537

See RECEIVER . I. L. R. 33 Calc. 1175

See REGISTRATION ACT.
I. L. R. 32 Calc. 46

See REGISTRATION ACT (III OF 1877), s. 17 . . . I. L. R. 29 All. 50

See REGISTRATION ACT (III OF 1877)—
s. 28 . I. L. R. 29 Calc. 654
s. 50 . I. L. R. 28 Calc. 139
I. L. R. 25 Mad. 1
I. L. R. 26 Mad. 72
I. L. R. 25 All. 366

See RELINQUISHMENT OF, OR OMISSION TO SUE FOR, PORTION OF CLAIM.
I. L. R. 24 Mad. 96

See RES JUDICATA I. L. R. 33 Calc. 849

See RES JUDICATA—MATTERS IN ISSUE.
I. L. R. 26 Bom. 661

See SALE . I. L. R. 33 Calc. 283
9 C. W. N. 201; 989

See SALE FOR ARREARS OF RENT—INCUMBRANCES . 6 C. W. N. 834

MORTGAGE—*contd.*

See SALE FOR ARREARS OF RENT—*contd.*
SETTING ASIDE SALE—GENERAL CASES.
I. L. R. 29 Calc. 1

See SIGNATURE . I. L. R. 24 All. 319

See SMALL CAUSE COURT—PRESIDENCY TOWNS—JURISDICTION — IMMOVEABLE PROPERTY . I. L. R. 26 Bom. 82

See STAMP ACT, 1869, s. 3.
I. L. R. 2 Calc. 58

See STAMP ACT, 1879, s. 3, CL. 4 (b).
I. L. R. 9 All. 585

See STAMP ACT, 1879, s 3, CL. 13
I. L. R. 11 Mad. 39
I. L. R. 21 Mad. 358
L. R. 27 Calc. 587
4 C. W. N. 524

See STAMP ACT, 1879, SCH. I, ART. 44.

See STAMP ACT (II OF 1899), s 24.
I. L. R. 29 Bom. 203

See STAMP ACT (II OF 1899), SCH. I. ARTS. 32 AND 40. . I. L. R. 25 Bom. 376

See TITLE—MISCELLANEOUS CASES.
I. L. R. 25 Mad. 507

See TRANSFER OF PROPERTY ACT, 1882.
I. L. R. 28 Bom. 361

See TRANSFER OF PROPERTY ACT, 1882, SS. 72, 75, 85, 86, 91.
I. L. R. 28 Bom. 153; 181

See TRANSFER OF PROPERTY ACT (IV OF 1882)—
s. 2 . I. L. R. 11 Calc. 583
I. L. R. 12 Calc. 436; 505; 583
I. L. R. 14 Calc. 451; 599
I. L. R. 15 Calc. 357
I. L. R. 8 All. 264
I. L. R. 10 Mad. 129
s. 3—"NOTICE" . 7 C. W. N. 11
s. 6 (a) . I. L. R. 30 Mad. 255

See TRANSFER OF PROPERTY ACT (IV OF 1882), SS. 58 to 104
s. 59 . . . 9 C. W. N. 697
s. 60 . . I. L. R. 29 All. 263
s. 65 . . I. L. R. 26 Mad. 385
s. 73 . . . 9 C. W. N. 117
s. 74 . . I. L. R. 26 Mad. 537
s. 82 . I. L. R. 24 Mad. 85; 96
9 C. W. N. 583
I. L. R. 34 Calc. 13
I. L. R. 31 All. 166
s. 83 . . I. L. R. 24 All. 461
I. L. R. 25 All. 179
13 C. W. N. 1103
I. L. R. 31 All. 11
s. 85 . . 9 C. W. N. 577
s. 86 . . I. L. R. 29 All. 523
ss. 86, 88 . 13 C. W. N. 743

MORTGAGE—*contd.*

——— property sold subject to—*concld.*

See SALE IN EXECUTION OF DECREE—*concld.*

SETTING ASIDE SALE—GENERAL CASES . I. L. R. 25 Mad. 244

IRREGULARITY. I. L. R. 30 Calc. 142

——— property subject to—

See COURT FEES ACT, SCH. I, ART. 11. I. L. R. 1 Bom. 118
6 N. W. 214
8 B. L. R. Ap. 43

——— redemption of—

See HINDU LAW . I. L. R. 29 All. 215

See MORTGAGE—

CONSTRUCTION—USUFRUCTUARY MORTGAGE . L. R. 29 I. A. 148

SALE OF MORTGAGED PROPERTY—PURCHASERS . 5 C. W. N. 232

See REGISTRATION ACT (III OF 1877), S. 17, CLS. (*b*) AND (*h*). I. L. R. 30 Calc. 1016

——— sanction of Court—

See CIVIL PROCEDURE CODE, 1882, S. 257A I. L. R. 27 Bom. 96

——— simple—

See SALE IN EXECUTION OF DECREE—SETTING ASIDE SALE—GENERAL CASES. 5 C. W. N. 63

——— subrogation of—

See JURISDICTION I. L. R. 36 Calc. 193

——— suit for sale on—

See TRANSFER OF PROPERTY ACT, S. 99.

——— suit on—

See DEKKHAN AGRICULTURISTS' RELIEF ACT . . I. L. R. 31 Bom. 450

See LIMITATION ACT, 1877, SCH. II, ARTS 132, 147 I. L. R. 30 Mad. 426
L. R. 34 I. A. 186

——— suit to enforce—

See RECEIVER . . 7 C. W. N. 452

——— usufructuary mortgage—

See OCCUPANCY-HOLDING. 13 C. W. N. 833

See TRANSFER OF PROPERTY ACT, SS. 67, 68.

See TRANSFER OF PROPERTY ACT, S. 90. I. L. R. 16 All. 415
I. L. R. 17 All. 520
I. L. R. 26 Calc. 164
3 C. W. N. 290

See TRANSFER OF PROPERTY ACT, S. 135. I. L. R. 16 All. 315

MORTGAGE—*contd.*

1. FORM OF MORTGAGES.

1. ——— Bond containing hypothecation. A bond which hypothecates property for money advanced is a deed of *simple mortgage.* NAZINA BIBEE *v.* JUGGOMOHUN DUTT 14 W. R. 461

2. ——— Proof of actual pledge and ownership of property by pledger—*Decree on mortgage bond pledging land.* The contract of hypothecation defined. A creditor suing under such a contract must prove that there was an [illegible] of the

[illegible]

terest within a period to be fixed by the Court. CHETTI GAUNDAN *v.* SUNDARAM PILLAI 2 Mad. 51

3. ——— Immoveable property made security for loan without power of sale—*Remedy of creditor who has a right to realize charge* [illegible] *mortgage—Foreclosure.* Where [illegible] secu- [illegible] sale, [illegible] the [illegible] in [illegible] to [illegible] can [illegible] of [illegible] 519

RAMA . . . I. L. R. [illegible]

4. ——— Mortgage without change of possession—*Parol mortgages of chattels.* A mortgage may be supported if proved to have been made *bonâ fide,* although the property mortgaged may have been left in the possession of the mortgagor. Mortgages of chattels may be made by parol. SHYAM SOONDER *v.* CHEITA . 3 N. W. 71

5. ——— Advance to save property from sale—*Lien.* A person who advances money to another for the purpose of saving a mehal of the latter from sale for arrears of rent has no lien on the property for the money advanced. *Dell Jha v. Pearee Kaunt, 18 W. R. 404,* and *Enayet Hossein v. Muddun Moonee Shahoo, 14 B. L. R. 155 : 22 W. R. 411,* cited and held not to apply. HURRY MOHUN BAGCHI *v.* GIRIS CHUNDER BUNDOPADHYA. 1 C. L. R. 153

6. ——— Form of words of hypothecation—*Intention of parties.* Formal words of hypothecation are not necessary to make an hypothecation valid, if the intention of the parties is sufficiently expressed. MARTIN *v.* PURSRAM 2 Agra 124

7. ——— *Uncertain agreement. Semble:* That where certain persons, describing themselves as residents of J, give a bond for the payment of money, in which, as collateral security, they charge "their property" with such payment,

MORTGAGE—*contd*

1. FORM OF MORTGAGES—*contd.*

they do not thereby create a charge on their immoveable property situated in J. *Martin* v. *Pursram*, 2 *Agra* 124, distinguished. DEOJIT v. PITAMBER . . . I. L. R. 1 All. 275

8. ——— Charge on immoveable property—Ambiguity A, to whom the Government had made a grant of certain villages, executed an instrument in favour of his brother

specify the villages which had been granted to A did not constitute such an ambiguity in such instrument as to render the charge created thereby invalid. *Deojit* v. *Pitambar*, I. L. R. 1 All. 275, distinguished. *Rae Manik Chand* v. *Beharee Lal*, 2 N. W. 263, followed. KANAHIA LAL v. MUHAMMAD HUSAIN KHAN . . . I. L. R. 5 All. 11

9. ——— *Requisites of a mortgage—Contract—Construction.* In 1862 A, in consideration of a debt of R150, passed to B a writing called karz roka or (debt-note) It provided, *inter alia*, that B should hold and enjoy a certain piece of land belonging to A for twenty years; that at the end of that period the land should be restored to A free from all claims for payment of

tinued in possession of the land till 188-, when A, treating the transaction as a mortgage, brought ... *Held* on the construc-
tween
it the
least
R50 a
iterest

nor was there any agreement for the payment of R150 in any case. It is not the name given to a contract, but its contents or the relations constituted by it, that determined its nature ABDULBHAI v. KASHI . I. L. R. 11 Bom. 462

10. ——— *Document not creating charge.* A lent B R99, and B executed a document on the 24th July 1881, whereby he agreed to repay the amount with interest in the month of Baishakh 1289 F. S (April 1882), and

MORTGAGE—*contd.*

1. FORM OF MORTGAGES—*contd.*

gage. MADHO MISSER v. SIDH BINAIK UPADHYA *alias* BENA UPADHYA . I. L. R. 14 Calc. 687

interest fixed, by instituting a suit, from my moveable and immoveable property, my own 'milk,'" does not create a mortgage upon any property of the obligor. COLLECTOR OF ETAWAH v. BETI MAHARANI . . I. L. R. 14 All. 162

12 ——— **Agreement in petition creating a lien**—*Money-decree.* Where a suit was brought on a petition which the plaintiff contended created a mortgage-lien on certain property, the Court found the document was executed by the mortgagor with the consent of the mortgagee,

13. ——— **Clause in agreement giving right to sell property in default of payment**—*Suit for money-decree on mortgage* The plaintiff sued to recover a sum of money with

The defendant had

CHUCKERBUTTY . . 4 B. L. R. Ap. 48

14. ——— **Creation of charge on property**—*Construction of agreement.* An agree-

15. ——— **Construction of mortgage-deed.** The following terms in a deed—"that, for the security of the payment of this debt, the lands mentioned in this deed are pledged by me; and that, until the principal money and the interest

MORTGAGE—*contd.*

1. FORM OF MORTGAGES—*contd.*

recited in this deed are paid off, I will not on any account transfer the property pledged to any body by sale or hiba-bil-awar, or gift or mortgage in any other way "—were held to amount to a mortgage. LALA RAMDHARI LAL *v.* JANESSAR DAS 6 B. L. R. Ap. 14

16. ——— *Hypothecation, validity of, as against purchaser.* Where an instrument, whereby certain persons describing themselves therein as zamindars and shareholders of a certain named mouzah, declared that for the consideration therein expressed they mortgaged their "respective zamindari shares," and all other moveable and immoveable property owned and possessed by them, to secure the payment of the debt therein mentioned, *held* to be such an hypothecation as to create an interest in favour of the mortgagees which could not be defeated by a subsequent *bond fide* purchaser for value. RAE MANICK CHUND *v.* BEHAREE LALL . 2 N. W. 263

17. ——— *Words creating simple mortgage.* A suit was brought in 1884 upon a hypothecation-bond executed in April 1875, in which the obligors agreed to repay the amount borrowed with interest at R1-8 per cent per mensem in June of the same year. There was no provision as to payment of interest after due date. [illegible]

I. L. R. 8 All. 486

18. ——— *Usufructuary mortgage—Hypothecation—Suit for money charged on immoveable property.* *M* and *S* executed an instrument in favour of *K* and *G* in the following terms: "We, *M* and *S*, declare that we have mortgaged a house situated in Ghaziabad, owned and possessed by us, for R300, to *K* and G, for two [illegible] that eight annas has been fixed as the monthly interest, in addition to the rent of the house, which we shall pay from our own pocket; that we promise to pay the aforesaid sum to the mortgagees within two years, and redeem the mortgaged property; that if we fail to pay the mortgage-money within two years, the mortgagees shall be at liberty to recover the mortgage-money in any manner they please." *Held per* STUART, C.J., OLDFIELD, J., and STRAIGHT, J. (SPANKIE, J., dissenting), in a suit upon this instrument to recover the principal sum advanced by the sale of the house, that the instrument created a mortgage of the house as security for the payment of such principal sum. *Dulli v. Bahadur, 7 N. W. 55*, distinguished. PHULKUAR *v.* MURLI DHAR . I. L. R. 2 All. 527

19. ——— *Construction of agreement—Agreement to give possession of land till repayment of debt—Right to redeem.* By the terms of an agreement entered into by the plaintiff and defendants a pending suit was compromised, and payment of an ascertained balance found due by plaintiff was secured by the creditors (defendants) being placed in possession of plaintiff's land for [illegible] that the agreement was a mortgage, and, as such, redeemable on the usual terms. MASHOOK AMEEN SUZZADA *v.* MAREM REDDY . . 8 Mad. 31

20. ——— *Right to decree for sale of property—Suit for money charged on immoveable property.* The obligor of a bond for the payment of money gave the obligee a moiety of the profits of a certain mouzah up to the end of the current settlement and charged the other moiety of such profits with the payment of such money. It was also stipulated in such bond that the obligee should take the management of such mouzah, rendering accounts to the obligor, and that, if he, obligor, failed to pay such money when [illegible] to pay on a certain date, and he agreed that the balance due should be realized by the obligee from *a moiety of the profits* of the mouzah, according to the terms of the first bond, and that the mouzah [illegible] sale of the mouzah. GANGA [illegible] DIN . . . . I. L. R. 1 All. 611

21. ——— *Mortgage of crops that may be grown upon a certain plot of land, its nature and effect—Transfer of Property Act—Contract Act.* The mortgage of indigo crops that may be grown upon a certain plot of land is a valid transaction. The transaction is neither governed by the Transfer of Property Act nor by the Contract Act; but it is in the nature of an agreement to mortgage moveable property that may come into existence in future. MISRI LAL *v.* MOZHAR HOSSEIN . . . I. L. R. 13 Calc. 262

MORTGAGE—*contd.*

1. FORM OF MORTGAGES—*contd.*

22. ———— *Moveable property—Non-existent moveables—Contract to assign after-acquired chattels—Completion of assignment on property coming into existence—Transferee with*

avail against a transferee without notice *Joseph v. Lyons, L. R. 15 Q. B. D. 280*, and *Hallas v. Robinson, L. R. 15 Q. B. D. 288*, referred to. BANSIDHAR *v.* SANT LAL . I. L. R. 10 All. 133

23. ———— *Suit for money charged upon immoveable property—Instrument purporting in general terms to charge all the property of obligor—Maxim "certum est quod certum reddi potest"—Transfer of Property Act (IV of 1882), ss. 98, 100.* The obligor of a bond acknowledged therein that he had borrowed R153 from the obligee at the rate of R1-8 per cent. per mensem, and promised to pay the principal with

property, etc., belonging to me be found by the said banker, that all should be available to the said banker. If, without discharging the debt due to this banker, I should sell, mortgage, or dispose of the property to another banker, such transfer shall be void. For this reason, I have of my free will and consent executed this hypothecation-bond that it may be of use when

defendant. *Held*, that the bond showed that the intention of the parties was to create by it a charge upon all the property of the obligor for the payment to the plaintiff of the principal moneys borrowed, together with interest at the agreed rate. *Najibulla Mulla v. Nusir Mistri, I. L. R. 7 Calc. 196*, referred to. *Held*, also, that the words used in the bond as indicating the property which was intended to be subject to the charge were sufficiently specific and certain to include, and were intended to include, all the property of the obligor; that this being so the maxim "*certum est quod certum reddi potest*" applied; and that the bond created a charge upon the immoveable property of the obligor in respect of the principal and interest in question. RAMSID PANDE *v.* BALGOBIND . . I. L. R. 9 All. 158

24. ———— **Mortgage of moveable property without possession**—*Legal and equitable mortgages.* The Courts of this country being Courts both of law and equity, it is immaterial for the determination of claims to attached property whether a mortgage is a legal or equitable one.

when possession is left with the mortgagor, this is a circumstance of which the Court should take notice when determining whether the mortgage is *bond fide* or fraudulent. A mortgagee is not bound to take possession immediately default is made. DEANS *v.* RICHARDSON . 3 N. W. 54

25. ———— **Will**—*Devise of immoveable property subject to its being charged in a particular way—Suit to enforce mortgage not so made.* Certain immoveable property was devised by will upon condition that the devisee, who was also an executor of such will, should execute a mortgage of such property to the Official Trustee of

one of such co-executors to enforce the mortgage

26. ———— **Advance of part only of consideration**—*Intention of parties.* Where part only of the consideration has been advanced in respect of a mortgage transaction, it does not follow that the mortgagee who makes such ad-

27. ———— **Agreement not to alienate**—*Subsequent mortgage to pay off former one.* A stipulation not to alienate cannot operate to annul a *bond fide* conveyance to a third person by the mortgagor for the purpose of paying off the original mortgage-debt. DOOKHCHORE RAI *v.* HIDAYUTOOLLAH . Agra F. B. 7 Ed. 1874, 5

28. ———— *Condition against alienation.* *Held*, that, where a person stipulates generally not to alienate his property, he does

MORTGAGE—*contd.*

1 FORM OF MORTGAGES—*contd*

not thereby create a charge on any particular property belonging to him. BHUPAL v. JAG RAM I. L. R. 2 All. 449

29. ——— *Agreement not to alienate—Form of mortgage.* By an agreement reciting that *A* had executed a bond in favour of *B* for a certain sum of money, *A*, "in order to repay the bond-money in the terms in the bond contained," declared that, "until the repayment of the money covered by the bond, he would not, from the date of the agreement, convey the property mentioned therein to any one by deed of sale, or deed of conditional sale, or mokurari pottah, or deed of

nominal parties for evading payment of the money covered by the said lands" *Held* (MARKBY, *J.*, doubting), that the instrument operated as a mortgage to *A* of the lands comprised therein. No precise form is required to create a mortgage RAJ KUMAR RAMGOPAL NARAYAN SINGH v. RAM DUTT CHOWDRY 5 B. L. R. 264, 13 W. R. F. B. 82

30. ——— *Covenant not to alienate—Mortgage.* A bond contained a clause

SOOKH DEO . . 1 N. W. 111 Ed. 1873, 159

31. ——— *Stipulation not to alienate.* An ikbaldawah, containing a stipulation that the debtor shall not alienate certain property till the satisfaction of the decree, does not amount to hypothecation giving the decree-holder a lien on the property. The decree-holder may sue for damages on the breach of contract by the judgment-debtors, but has no right to the property against a purchaser CHOONEE LALL v. PUHULWAN SINGH . . . . . . 3 Agra 270

32. ——— *Agreement not to alienate—Construction of mortgage-deed—Gift to wife for dower* A mortgagor stipulated that he would not sell the property mortgaged during the subsistence of the mortgage term; but that, if he did sell, he would sell to the mortgagee at a fixed price He subsequently alienated a moiety of the property to his wife in lieu of dower; a suit was

33. ——— *Covenant not to alienate—Transfer to purchaser—Claim to pay by*

MORTGAGE—*contd.*

1. FORM OF MORTGAGES—*contd.*

instalments. A mortgage-bond provided that the

the mortgagor transferred the mortgaged property, the sale-deed providing that the unpaid balance of the mortgage-debt should be paid to the original mortgagees by instalments, and that any further sum should be paid by the mortgagor. The Court of first instance decreed possession to the purchaser, whose possession was resisted by the mortgagees, on payment of the unpaid balance of the mortgage-debt in full. On the appeal of the purchaser, who claimed to pay off the debt by instalments, the Court declined to interfere with the decree MAHOMED ZAKAOOLLAH v. BANEE PERSHAD 1 N. W. Ed. 1873, 135

34. ——— *Condition against alienation—Auction-purchaser at sale in execution of decree.* A transfer of mortgaged property made in contravention of a condition not to alienate is not absolutely void, but voidable in so far as it is in defeasance of the mortgagee's rights Where, in contravention of a condition not to alienate, the mortgagor had transferred his proprietary right in the mortgaged property to a third person for a term

CHUNNI v. THAKUR DAS

and *see* KHUB CHAND v. KALIAN DAS I. L. R. 1 All. 240

35. ——— *Right of assignees of bond containing covenant not to alienate property* ... in a bond to the effect that

quent charge upon the same prop... favour of another creditor of the obligor ... 3 N. W. 205 ...DUN LAL v WAZEER ALI

36 ——— *Purchaser at sale in execution of decree, right of—Condition against alienation.* J gave B a bond for the payment of ... certain immove... ayment, ... property until ... breach of this ... his right and

condition, he granted ... interests in such property for a term of twelve-and-a-half years *B*, having sued on such bond and obtained a decree charging such property with the satisfaction of the decree, sued *M* and *J* for the cancelment of the lease and a declaration that it would not be binding on the purchaser at a sale in the execution of the decree, alleging that the lease had been granted to defeat the execution of its decree The High Court refused, in view of its

MORTGAGE—*contd.*

1. FORM OF MORTGAGES—*contd.*

decision in *Chunni* v *Thakur Das, I. L. R. 1 All.* 126, to interfere with the decree of the lower Court giving *B* such a declaration. MUL CHAND *v.* BALGOBIND . . . . . I. L. R. 1 All. 610

37 ———— *Covenant not to alienate.* An agreement recited that *A* had executed a bond in favour of *B*, in which it was declared, " I [illegible]

[illegible]

did not operate as a mortgage by *A*. GUNOO SINGH *v.* LATAFUT HOSSAIN

I. L. R. 3 Calc. 336 : 1 C. L. R. 91

38. ———— *Covenant not to alienate or encumber.* The obligors of a bond for the payment of money covenanted as follows · " To [illegible]

[illegible]

bond gave the obligee a charge only on the property. SHEORATAN KUAR *v.* MAHIPAL KUAR

I. L. R. 7 All. 258

39. ———— *Agreement not to alienate—Mortgage-bond* In consideration of a [illegible]

[illegible]

under the Registration Act in the book numbered [illegible]

[illegible]

I. L. R. 7 Calc. 196
8 C. L. R. 454

See, also, DOSS MONEY DOSSEE *v.* JONMENJOY MULLICK I. L. R. 3 Calc. 363 : 1 C. L. R. 446

40. ———— Usufructuary mortgage—*Construction of deed of mortgage.* In ascertaining whether a deed, confessedly ambiguous, amounts to an usufructuary mortgage or to a lease in perpetuity, the Judge should look within the four corners of the instrument before him and ascertain from it what kind of transaction the parties had in view when they entered into it. In the case of an usufructuary mortgage, where no term is specified, the mortgagor is entitled to re-enter on the property when, on taking an account, he is able to show that the principal and interest have been satisfied. LALA DOUL NARAIN *v.* RUNJIT SINGH

1 C. L. R. 256

41. ———— *Advance on zur-i-peshgi lease* A lease was granted on a zur-i-peshgi advance for seven years at an annual jumma of [illegible]

[illegible]

BEERAJ SINGH . . . . 2 Hay 159

42 ———— *Advance of* [illegible]

[illegible]

JANKEE DOSS . . . . [illegible]

43. ———— *Advance by tenant to landlord on account of security for pay-* [illegible]

[illegible]

44 ———— *Zur-i-peshgi lease, with covenant not to alienate or evict lessee.* By a zur-i-peshgi lease granted upon the advance of R5,517, the lessee was to hold possession of certain villages for the term of five years, and to pay himself, out of the proceeds of the villages, interest on the [illegible]

[illegible]

had no claim against the villages for the principal money and that the sum of R1,000 was forfeited. NUNDLALL *v.* KULLIANARUTTEE

Marsh. 209 : 1 Hay 532

45. ———— *Usufructuary lease for loan—Construction of deed—Suit for possession under deed of lease or mortgage. A,* the lessee for a term of a zamindari, brought a suit against *B*, the lessor, to prevent *B* interfering with his possession which he had under the lease granted

MORTGAGE—*contd.*

1. FORM OF MORTGAGES—*contd.*

to him by *B* in consideration of certain pecuniary advances made by him to *B*. The relief sought was in effect an injunction to restrain *B* from collecting the revenue of the zamindari. The defence set up by *B* in his answer was in substance that the lease was an executory contract, and being without consideration could not been forced, and was, moreover, void for maintenance, by reason of a subsequent agreement for the advance of a sum of money to carry on a suit which had not been carried out. The Judge of the Civil Court adopted this view and held the lease void. The High Court of Madras on appeal treated the case as a suit for specific performance, and decreed execution of the lease. On appeal the Judicial Committee sustained the decree as to possession under the lease, but as it appeared from the evidence questionable whether the transaction in respect of the lease did not really operate only as a loan, and as a right to redeem might exist, the [illegible]

PITCHACOOTTY CHETTY . 10 Moo I. A. 386

46. ———————— *Party paying off debt, right to possession of.* A party who by paying off a mortgage becomes an usufructuary mortgagee in place of the original zur-i-peshgidar does not need to sue for the amount due, but is entitled to remain in possession until the whole debt has been discharged by the usufruct. FYEZOOLLAH *v.* KAZIM HOSSEIN . . . . 14 W. R. 29

47. ———————— *Right to proceed against land to realize debt.* A covenant to put the creditors into possession of certain property which they were to retain for a certain period, taking the profits in lieu of interest, is only an usufructuary mortgage and not a deed of hypothecation, and a suit to bring the property to sale for the realization of the amount due under the deed is not maintainable. DULLI *v.* BAHADUR . 7 N. W. 55

48 ———————— *Covenant not to lease—Lease of property mortgaged—Suit to set aside lease.* A mortgaged certain property to *B*, agreeing, amongst other things, not to grant in zur-i-peshgi or mortgage the property to any one so as to cause any difficulty in the realization of the money advanced under the mortgage-bond. *A* subsequently leased in zur-i-peshgi part of the property to *C*. *B* obtained a sale-decree against *A* on his mortgage, and at the sale himself became the purchaser of the property. He then brought a suit against *C* to set aside the zur-i-peshgi lease and to obtain khas possession. *Held*, that the covenant in the mortgage-bond merely created a personal liability between *A* and *B*, and that the sale under *B*'s mortgage decree did not put an end to the zur-i-peshgi lease or affect the interests of the zur-i-peshgidar; that *B*'s suit against *C* was wrong in form; and that his proper course was to sue to have his right declared to sell the property in satis- [illegible]

49. ———————— *Sale—Construction whether lands had been sold or mortgaged—Evidence—Documents explained by parol—Waste* [illegible] Waste lands [illegible]

in 1870, mortgaged the lands to his [illegible] advances taken for part payment of the purchase-money. In 1871 they arranged that the creditor [illegible] the entire balance and they jointly [illegible] of [illegible]

[illegible] money advanced by him in the [illegible] though, under other circumstances, and on the documents alone, the inference might have been that there had been a sale for some undisclosed consideration, yet, on the true construction of the [illegible] petition and the orders made thereon, the [illegible] and endorse- [illegible]

L. R. 21 I. A. [illegible]

50. ———————— Sale—*Conditions for repurchase.* The plaintiffs sued to redeem an alleged mortgage made in 1823 by their ancestor to the ancestor of the defendant. The alleged mortgage recited a previous *mortgage* under which the mortgagee *G* was in possession, and it stated that a sale had been contemplated, *but* the parties could not agree as to price, but that they had now settled it at R125 and the amount due on the mortgage at R200, and that the following arrangement was come to, *viz.*, that if within four years the mortgagor paid R125 with *interest*, he should get back the land; if not, that the land should be the absolute property of *G*. *Held*, that this was not a mortgage, but a sale. It was an agreement which put an end to the previously existing mortgage. A mere stipulation for repurchase does not make a transaction a mortgage. To make a mortgage there must be a debt

MORTGAGE—*contd*

I. FORM OF MORTGAGES—*contd.*

and here there was no debt, nor was the property here conveyed as security VASUDEO BHIKAJI JOSHI *v* BHAU LAKSHMAN RAVUT

I. L. R. 21 Bom. 528

51 ——— Mortgage or sale—*Test of whether instrument is a mortgage or a sale* In an instrument, dated the 30th June 1886, styled a sale-deed, it was recited that in consideration of R2,500 [illegible]

At the expiration of that time, the vendors were to pay the R2,500 and take back the property In 1893 the plaintiff (a son of the so-called vendor) brought this suit treating the above instrument as [illegible]

the instrument was a mortgage The test was whether after the execution of the deed there continued to be a debt from the so-called vendors to the vendee, or whether the pre-existing debt became extinguished on the execution of the deed BAPU *v*. BHAVANI . I L. R. 22 Bom. 245

52. ——— Mortgage by conditional sale—*Law of mortgage in Madras and Bombay* The contract of mortgage by conditional sale is a form of security known throughout India, and which by the ancient law of India which must be taken to prevail in every part of India where it has not been modified by actual legislation or established practice is enforceable according to its letter From the year 1858 the Courts of the Madras Presidency, and from the year 1864 the Courts of the Presidency of Bombay, have erroneously, and in contravention of the law of India as declared by the earlier decisions, adopted, with regard to this class of securities, doctrines which the English Courts of Equity have [illegible]

tarow Naicken, 7 B L. R 136 ; 13 Moo. I A 560. The essential characteristic of a mortgage by conditional sale is that on the breach of the condition of repayment the contract executes itself, and the [illegible]

applied first in payment of the Government revenue, next in payment of the salary of a manager, and afterwards in reduction of the debt, and it was further stipulated that instalments of a fixed amount should be paid up to a certain date by the mortgagor to the mortgagee, and that on that date a settlement of accounts should be made, and in the event of there being a balance against the mortgagor, and his not paying the same on a date

MORTGAGE—*contd.*

I. FORM OF MORTGAGES—*contd.*

[illegible]

might remain due, owing to the whole of the land, as valued, growing insufficient to satisfy such balance —*Held*, that this was not a contract of mortgage by conditional sale THUMBUSAWMY MOODELLY *v* HOOSAIN ROWTHEN I. L. R. 1 Mad 1

L R. 2 I. A. 241

53 ——— *Sale expiring before 1858* When the term of a conditional sale, whether made as a security for a loan or not, had expired before 1858, the rule laid down in *Thumbusawmy's Case, I. L R 1 Mad 1*, must be observed and effect given to the contract BAPIRAZU *v.* KAMARAZU . . . I. L R 3 Mad. 26

54 ——— *Continuing debt.* When one party to a transaction alleges it to be a mortgage and the other alleges it to be a sale, the question for consideration is whether or not there continued to be a debt from the former to the latter. The plaintiffs sued for possession of certain lands, alleging that they have been mortgaged to the defendant by their father under two documents. The defendant produced them and relied upon them as deeds of sale, which conveyed to him absolutely the lands mentioned in them. The form of the instruments was not conclusive, but it appeared *aliunde* by the conduct of the defendant himself that the deeds [illegible]

debts due to the defendant from the plaintiff's father The Subordinate Judge awarded the plaintiff's claim, but his decree was reversed, on appeal, by the Assistant Judge, who held that the [illegible]

I. L. R. 1 Bom. 72

55. ——— *Sale since 1858* [illegible]

ed by the contract must be allowed as [illegible] in *Thumbusawmy Moodelly* v. *Hossain Rowthen, I. L. R. 1 Mad. 1* *Per* INNES, J.—Contracts of mortgage and conditional sale must be construed in accordance with the intention of the parties, which can only be gathered from the terms of the instru- [illegible]

I. L. R. 4 Mad. 179

MORTGAGE—*contd.*

1. FORM OF MORTGAGES—*contd.*

See VENKATA SUBBAYA *v.* VENKAYYA. I. L. R. 15 Mad. 230

56. ———— *Deed, construction of—Bai-bil-wafa—Foreclosure in the Central Provinces* By a bond, dated 10th February 1857, a certain village was mortgaged by one *G* to the appellants and their father as security for a loan; the bond providing that, "if I fail to pay the money as stipulated, I and my heirs shall, without objec-

gage, but his payments of revenue being in arrear, the Board of Revenue granted a lease of the village for ten years to the appellants' father The mort-

asked for pos

on 17th July

right in the village, and an appeal from an order

57. ———— *Deed of sale convertible into a mortgage—Construction of deed.* Where a deed, which on the face of it was described as a mortgage, stated that the grantee was already in possession under a previous mortgage by the grantor and was under the second deed to re-

MORTGAGE—*contd.*

1. FORM OF MORTGAGES—*contd.*

right of purchase for the sum (principal and interest) due to him:—*Held*, that the deed was a sale liable to be converted into a mortgage, and not a mortgage liable to be converted into a sale. *Howard* v. *Harris, 1 Ver. 190; Ramji* v. *Chinto, 1 Bom. 199; Shankurbhai* v. *Kassibhai, 9 Bom 69*, referred to and distinguished. SUBHABHAT *v.* VASUDEVBHAT I. L. R. 2 Bom. 113

58. ———— *Deed of sale convertible into a mortgage—Construction of deed—Redemption, right of—Alienation of immoveable property.* Where the grantor executed to the grantee a document reciting a mortgage by the former to the latter of certain lands for R125, on which R200 were then due from the grantor to the grantee, and containing an agreement that the

period, the covenant for reconveyance should be-come null:—*Held*, that the transaction was a sale and not a mortgage, and that, consequently, the

security of the lands, nor anything in the document which pointed to a right on the part of the grantee to recover from the grantor the sum of R275, or any part of it, *before*, at, or after the period named for the repurchase The law as laid down in *Ramji* v. *Chinto, 1 Bom. 199*, viz., once a mortgage always a mortgage, is still in force in the Presidency of Bombay with regard to mortgages containing *clauses of* conditional sale, whether executed before or after 1858. The ancient law and usage of the country respecting gahan lahan mortgages, and generally the alienation of immoveable property, discussed. KAPUJI APAJI *v.* SEVAYABJI MARVADI I. L. R. 2 Bom. 231

59. ———— *Vendor and purchaser—Sale. Held*, that an agreement by the purchaser of certain immoveable property that it should, on payment by the vendor of a certain sum within a specified time, be restored to the vendor,

MORTGAGE—*contd.*

1. FORM OF MORTGAGES—*contd*

and that on failure of such payment it should become the absolute property of the purchaser, did not create the relation of mortgagor and mortgagee between the parties, and that, upon the vendor's failure to comply with the terms of the agreement, the property vested in the purchaser BHUP KUAR *v.* MUHAMMADI BEGAM

I. L. R. 6 All. 37

60 ———— *Sale of perpetual lease, with conditional agreement to sell back to vendor, not amounting to mortgage—Reservation of right to re-purchase—Right to redeem* A pur-

stances under which they were made, this transaction was not a contract of mortgage, but evidence of a sale and acquittance of a debt with power reserved to the vendor to re-purchase under certain conditions personal to him. SITUL PURSHAD *v.* LUCHMI PURSHAD

I. L. R. 10 Calc. 30: 13 C. L. R. 382
L. R. 10 I. A. 129

61. ———— *Vendor and purchaser—Conditional right of re-purchase—Redemption, suit for.* *A*, having previously hypothecated certain land to *B*, executed a conveyance of it to him in 1873 for a consideration which was now found to have been an inadequate price. On the same day, *B* executed to *A* a "counterpart document" by which he covenanted to reconvey the land and return the sale-deed if the sale amount be repaid to him in cash on 27th May 1875 The documents contained no provision as to interest, and reserved no power for the purchaser to recover his purchase-money. In 1888 *A*'s representative alleging that the transaction evidenced by the above documents was a mortgage, brought a suit to redeem it *Held*, that the transaction did not constitute a mortgage, and that the plaintiff was not entitled to redeem. AYYAVAYYAR *v.* RAHIMANSA

I. L. R. 14 Mad. 170

62. ———— *Sale, with right reserved of re-purchase within a period, distinguished from mortgage—Construction of documents of sale and of agreement for re-sale.* A document

MORTGAGE—*contd.*

1 FORM OF MORTGAGES—*contd*

ferred to and followed, the law of India and of England being the same on this point BHAGWAN SAHAI *v.* BHAGWAN DIN I. L.R 12 All 387
L. R. 17 I. A. 98

63 ———— Mortgage by conditional bill of sale—*Joint property held benami in name*

64. ———— *Change of name in Government records—Subsequent agreement to re-transfer land in Government records on payment of debt.* In 1877 the plaintiff, being indebted to the

owe a debt to us. On account of that debt you have transferred it to our name . . . . The field

And a stamp paper was purchased at the time of the transfer for the execution of this agreement, but no agreement was then passed. This agreement is, therefore this day passed to you when the lease is executed And you owe me (*a*) debt bearing interest I will pay out of my pocket the expenses

have no claim whatever to the said field. I shall not take the rupees after the 4th (chauth), nor shall I give (or transfer) the field to you . . . . . I shall lease the field to any one I like without keeping any claim of you as regards cultivation, manure and

MORTGAGE—*contd.*

1. FORM OF MORTGAGE—*contd.*

being . You have no claim or right whatever . . . . . ." The plaintiff brought this suit to redeem the land, alleging that it had been mortgaged to the defendant, and that the debt had been paid off. The defendant contended that the transaction in 1877 was not a mortgage, but a sale of the land to him, and that the document of July 1879 was an agreement to resell it to the plaintiff. *Held,* upon the evidence, that the transaction in 1877 was a mortgage to the defendant, and not a sale. PARIN [illegible] MOLAR *v.* [illegible] DEVI [illegible]

I. L. R. 21 Bom. 702

65. ———————— *Sale with a right of repurchase—Conditional sale effected by two contemporaneous deeds—Evidence dehors the documents showing what the transaction really was—Intention of parties.* The plaintiff and the defendants executed upon the same day two documents. The one purported to be a deed of absolute sale of a certain estate by the plaintiff to the defendants. The other was an agreement by which the defendants covenanted, upon payment of a certain sum by a specified date, to reconvey the property sold by the first-mentioned deed. *Held,* that evidence was admissible dehors the documents to show that the intention of the parties was not to effect an out-and-out sale with merely a right of re-purchase under certain conditions left in the vendor, but to constitute a mortgage by conditional sale or bai-bil-wafa. The mere fact of a deed of absolute sale being accompanied by another giving a right of re-purchase will not, for that reason alone, constitute the transaction one of mortgage, but the intention of the parties must be gathered from the terms of the deeds or from the surrounding circumstances or from both. *Alderson* v. *White,* 2 De G. & J. 105; *Lincoln* v. *Wright,* 4 De G. & J. 16; *Bhagwan Sahai* v. *Bhagwan Din,* L. R. 17 I. A. 98; I. L. R. 12 All. 387; *Ali Ahmad* v. *Rahmat-ullah,* I. L. R. 14 All. 195; *Ramasami Sastrigal* v. *Samiyappanayakan,* I. L. R. 4 Mad. 179; *Dagraji Apaji* v. *Senaram* [illegible], I. L. R. 2 Bom. 231; *Bhup Kuar* v. *Mahomedi Begam,* I. L. R. 6 All. 37; and *Venkappa Chetti* v. *Akku,* 7 Mad. 219, referred to. BALKISHAN DAS v. LEGGE . . . . I. L. R. 19 All. 434

Affirmed by the Privy Council.

I. L. R. 22 All. 149
L. R. 27 I. A. 58
4 C. W. N. 153

66. ———————— *Deed of conditional sale—Bai-bil-wafa, nature of—Transfer of Property Act (IV of 1882), s. 58—Pre-emption, suit for.* The transaction known to Mahomedan law as a bai-bil-wafa is a mortgage within the meaning of s. 58 of Act IV of 1882, and not a sale. The plaintiff in a suit for pre-emption had, prior to the sale of the property claimed, executed a deed in respect of his share in the village in virtue of which he claimed the right to pre-empt, the material portion of which deed was as follows: "Thirdly, if I, the vendor, or the heirs of me, the vendor, Ali Jan, alias Ali Ahmed, should pay off the entire considera-

tion money mentioned above on the [illegible] of Jeth Sudi, 1291 Fasli, to the said purchaser, he should without any objection or hesitation return the money, and, returning the property described above in the document to me, the vendor, revoke the sale." *Held,* that this deed was a bai-bil-wafa or mortgage by conditional sale, and that, as the conditional sale had not become absolute at the time when the right of pre-emption accrued, the conditional vendor or mortgagor had still a subsisting right of pre-emption. *Bhagwan Sahai* v. *Bhagwan Din,* I. L. R. 12 All. 387, distinguished. ALI AHMAD *v.* RAHMAT-ULLAH . I. L. R. 14 All. 195

67. ———————— [illegible]—*Co-sharer—Mortgage by a co-sharer.* Two co-sharers in a village, A and B, mortgaged their proprietary interest, with possession, to L. L made either an assignment or a sub-mortgage of his interest under the mortgage for a term of [illegible] years to E, with a foreclosure clause in case of non-payment. E afterwards transferred to [illegible] for an unexpired period of [illegible] years and [illegible] the interest in the property which he had acquired from L. One N L, a co-sharer in the village, thereupon brought a suit for pre-emption in respect of the transfer to [illegible], on the basis of the village wajib-ul-arz, which gave a right of pre-emption [illegible] mortgage when the share of a co-sharer should be sold or mortgaged. *Held,* that inasmuch as L could not be regarded as co-sharer, no right of pre-emption arose in favour of N L in respect of the transfer of the mortgagee's interest from [illegible]. The principle laid down in *Ebrahim* [illegible] *Ball, Weekly Notes All.* [illegible] and in *Ali Ahmad* v. *Rahmat-ullah,* I. L. R. 14 All. 195, followed. NAND LAL *v.* BASSI . I. L. R. 20 All. 29

68. ———————— Anomalous mortgage—*Transfer of Property Act (IV of 1882), s. 58,* [illegible] *(d) and* [illegible]*—Usufructuary mortgage* [illegible] *mortgage—Suit by mortgagees for recovery of* [illegible] *default of payment by mortgagors, for foreclosure and possession.* A mortgage-deed [illegible] put the mortgagees in possession of the mortgaged property and authorised them to retain possession until payment of the mortgage-money, the mortgagees being given credit of all profits recovered from the mortgaged property over and above the Government revenue, and (2) contained a personal covenant by the mortgagors to pay the mortgage-money, and an implied agreement that, in the event of non-payment, the property should be sold, the debt to be recovered from the mortgaged land and from the persons and from other property of the mortgagors. Some time after the date of the mortgage, the mortgagees let out the mortgaged property to the mortgagors for a certain term, and, before the expiration of the term, the mortgagees brought a suit for the recovery of the debt and in default of payment by the mortgagors, for foreclosure and possession. *Held,* that, owing to the proviso [illegible] the mortgage was usufructuary, within the meaning of [illegible] of s. 58 of the Transfer of Property Act (IV of 1882),

MORTGAGE—*contd.*

1. FORM OF MORTGAGES—*contd.*

be determined by the contract, as evidenced in the mortgage-deed, and, so far as such contract does not extend, by local usage. *Held*, further, that, though the plaintiffs were not entitled to regain possession, they having let out the property to the mort-

I. L. R. 21 Bom. 000

69. ——— *Anomalous mortgage—Transfer of Property Act (IV of 1882), ss. 58 (d), 98—Usufructuary mortgage* A deed of mortgage executed in 1879 for a consideration of R300 provided that the term of the mortgage should be four years certain; that certain interest should be payable; that the mortgagee should have possession; that the profits should be appropriated first in lieu of yearly interest and any balance ap-

must be regarded as a usufructuary mortgage not only during the four years, but after their expiration HIKMATULLA KHAN *v.* IMAM ALI

I. L. R. 12 All. 203

70. ——— *Anomalous mortgage—Right to possession—Transfer of Property Act (IV of 1882), s 98.* Two out of three co-parceners executed in favour of a creditor in respect of

MORTGAGE—*contd.*

1. FORM OF MORTGAGES—*contd*

deliver possession of the said immoveable property without raising any objection" The creditor obtained possession of only part of the land *Held*, that the instrument was an anomalous mortgage, and that the mortgagee was liable to ejectment after the expiry of the three years VISVALINGA PILLAI *v.* PALANIAPPA CHETTI

I. L. R. 21 Mad. 1

71. ——— Covenant to pay produce of land—*Dekkhan Agriculturists' Relief Act (XVII of 1879), s 22—"Specifically mortgaged"—Transfer of Property Act (IV of 1882), s 58* Bhiku, an agriculturist (father of defendants 3 to 5), borrowed in 1866 a sum of money from the plaintiff's mother, Yesubai, under a bond, whereby he mortgaged his house

obtained a decree directing the sale of the land. In execution of this decree, the land was sold on

mortgage" of the land, and that consequently the sale to the plaintiff was invalid under s 22 of the Dekkhan Agriculturists' Relief Act (XVII of 1879) *Held* that the land was specifically mortgaged for the repayment of the debt, and that the sale was valid and the plaintiff entitled to recover possession BALSHET *v* DHONDO RAMKRISHNA (1901) I. L R. 26 Bom. 33

72 ——— English mortgage—*Transfer of Property Act (IV of 1882), s. 58 (e)—Covenant for reconveyance not limited to time stipulated for repayment of mortgage-money* The three essentials of an English mortgage, as defined in s 58 (e) of the Transfer of Property Act, are (i) that the mortgagor should bind himself to repay the mortgage-money on a certain day, (ii) that the property mortgaged should be transferred absolutely to the mortgagee, (iii) that such absolute transfer should be made subject to a proviso that the mortgagee will reconvey the property to the mortgagor, upon payment by him of the mortgage-money on the day on which the mortgagor bound himself to repay the same. A deed of mortgage recited that the mortgagors

was as follows: "Upon repayment to the mortgagee of all sums due to him by the mortgagors, the mortgagee shall reconvey the said property to the mortgagors," etc. *Held* (by the Division

MORTGAGE—*contd.*

1. FORM OF MORTGAGES—*concld.*

Bench), that the transaction could not be regarded as an English mortgage, there being no words importing that the covenant to reconvey was dependent upon the repayment of the mortgage-money being made at the stipulated time and that it should not be enforced in default of repayment at that time. NARAYANA AYYAR *v* VENKATARAMANA AYYAR (1902) **I. L. R. 25 Mad. 220**

2. CONSTRUCTION.

1. ———— **Rights of mortgagee**—*Proviso in case of alienation of mortgaged property.* Certain words in a mortgage deed stipulating that in the event of the property mortgaged being sold in execution of a decree, or otherwise alienated, the mortgagee should recover from any other property in the possession of the mortgagor, whose person should also be liable for debt, were construed as merely intended to give some supposed further security to the mortgagee, but not to take away his right to issue notice of foreclosure and obtain possession by a suit, even though the mortgaged property were sold away. ACHUMBIT MISSER *v* LALLA NUND RAM
11 W. R. 544

2. ———————— *Construction of instrument of mortgage* An instrument, mortgaging villages for a sum payable within a certain period by instalments, and making distinct provision that, upon default in payment of an instalment the mortgagee by his servants was to take possession, and after paying the revenue and the expenses of collection to credit the balance towards payment of the instalment, also contained the following. "Should, on the expiration of the term of this instrument, any money remain due

belonging to me." *Held*, that such an instrument must be taken as a whole, and that the true construction to be put on it should be that which, being reasonable, would also give effect to all parts of it. *Held*, accordingly (on the contention that these words negatived the mortgagee's right to take possession upon default in payment of an instalment, leaving him only a right to proceed to sale), that, as this construction would not give due effect to the first part of the instrument, it must yield to a construction which not only would give such effect, but would also be the more reasonable one, *viz*, that the mortgagee should take possession upon such a default, and also might sell if the mortgagor objected to his applying the rents in reduction of the principal and interest due. DEPUTY COMMISSIONER OF RAE BARELI *v.* RAMPAL SINGH
I. L. R. 11 Calc. 237 : L. R. 12 I. A. 1

MORTGAGE—*contd.*

2. CONSTRUCTION—*contd.*

3. ———— **Arrangement for repayment by lease**—*Set-off of rent.* On the 1st of November 1866, *A* covenanted to pay to *B* R80,351 with interest on the 16th of May 1870, and pledged certain property for repayment thereof. At the time of the mortgage this property was held by *B*, the mortgagee, under a lease which expired on the 10th of September 1870. On the 5th of November 1866 *A* granted to *B* a lease of the property

and contained an agreement that out of the annual rent *B* should retain R16,500 on account of the debt and pay the remainder to *A*. In a suit to redeem and cancel the bond and lease — *Held*, that they did not form one mortgage transaction, but were separable and separate, and that *A* would only be entitled to set off the rent retained against the mortgage-debt and interest, and thenceforth to receive the full rental of R20,351 a year for the term of the lease yet unexpired. JOOMNA PERSHAD SOOKOOL *v.* JOYRAM LAL MAHTO
2 C. L. R. 26

4. ———— **Operative words in a mortgage-deed**—*General language* A mortgage-deed having specifically charged the property originally offered as security, extended the operation of the mortgage by general language to include all interests in the mehals, villages, and lands comprised in the sanad of a talukhdari estate. It was now questioned whether one of the villages comprised in the sanad was part of the mortgaged property. The operative words, uncontrolled by anything in any recital, declared all the above subject to the mortgage The deed was accordingly *held* to include the village in question, effect being given to the operative words in their ordinary meaning LAND MORTGAGE BANK OF INDIA *v.* ABUL KASIM KHAN
I. L. R. 26 Calc. 395

5. ———— **Previous mortgage**—*Sale under mortgage-decree—Effect of removal of encumbrances by mortgagor—Lis pendens* Where a person mortgages his interest in a property,—that interest being restricted or limited in some manner at the time of the mortgage,—the mortgagee's lien is not limited to the interest so restricted and does not cease on the restriction being removed. The removal of encumbrances from the estate of a mortgagor effected by himself will, as a general rule, enure to the benefit of the mortgagee by increasing the value of the latter's security. SHYAMA CHARAN BHUTTACHARJEE *v.* ANANDA CHANDRA DAS **3 C. W. N. 233**

6. ———————— *Mention in mortgage deed of another debt due to mortgagee distinct from sum advanced at date of mortgage—Clause in deed undertaking to pay off old debts when taking back the land—Old debt not a charge on land, but redemption conditional on payment of both debts.*

MORTGAGE—*contd.*

2. CONSTRUCTION—*contd.*

V mortgaged certain land to the defendant's father for a sum of R64 advanced by the latter at the date of the mortgage. The mortgage-deed stated that V owed the mortgagee another debt of R100, which was due on a separate bond and it contained a clause in the following

ment. Till then you are to continue to enjoy the land . . . . . ." The plaintiff, having obtained a decree against the mortgagor, attached the land in execution. The

the present suit to recover possession *Held*, that the charge on the land did not include the old debt of R100. There were no words in the mortgage-deed expressly making that debt a charge on the property. The provisions in the deed only made the equity of redemption conditional on the payment of both the debts *Quare* Whether, under the circumstances of the case, the purchaser at the execution sale would be bound by such condition YESHVANT SHENVI *v.* VITHOBA SHETI . I. L R. 12 Bom. 231

7. ———— Priority of mortgage—*Intention of preserving a prior security presumed—Mortgagee—Mortgagor* On the 29th November 1882 *H* mortgaged to the plaintiff his one-third share in a house and garden to secure R1,000 with interest at 12 per cent. On the 3rd January 1884 *H* mortgaged his one-third share in the some house to a third person to secure R1,000 with interest at 18 per cent On the 14th May 1884 *H* and his two brothers mortgaged to the plaintiff the entirety of the said house and garden to secure R3,400 with interest at 18 per cent

and take the loan of R3,400; out of this money we have also liquidated the said debt, therefore for interest of the said money we are paying at the rate of R1-8 per month" *Held*, that the

MORTGAGE—*contd.*

2. CONSTRUCTION—*contd.*

Gopaldas v *Puranmal Premsukhdas, I L. R. 10 Calc 1035*, followed in principle GOPAL CHANDER SREEMANY *v.* HEREMBO CHUNDER HOLDER

I. L. R. 16 Calc. 523

8 ———— Mortgage of a portion of bhag—*Particulars of property stated in deed*—

mortgaged to the plaintiff. The bhag comprised *inter alia*, four gabhans (building sites). But the clause, which set forth the particulars of the property mortgaged thereby, specified only two gabhans, one only of which belonged to the bhag and the other did not The deed then proceeded: "According to these particulars, lands, houses and gabhans, barnyards, wells, tanks, padars and pasture lands also, together with whatsoever may appertain to the bhag—all the properties appertaining to the whole bhag have been mortgaged and delivered into possession . . . . There is no other property appertaining to the said bhag of which mention is not made here. *Held*, that the particulars were 'the leading description,' and the supplementary description of them as constituting the entire bhag should be regarded as *falsa demonstratio*" *Held* also, that

I. L. R. 16 Bom. 263

9. ———— Post diem interest—*Meaning of the term "sudi"* The use of the term "*sudi*" (bearing interest) in a mortgage-deed held not to imply a covenant to pay *post diem* interest, there being a specific agreement to repay the mortgage-debt, principal and interest, in seven years. RIKHI RAM *v.* SHEO PARSHAN RAM

I. L. R. 18 All. 316

10. ———— Conditional sale—*Kararnamah.* The appellant became security for the payment by the respondent of the Government dues in respect of a mootah then about to be sold for those dues, and by the first karamamah entered into by the parties it was stipulated that, on default

by him. By a second karamamah entered into on the same day, the plan of a conditional sale provided by the first karamamah was reduced

MORTGAGE—*contd.*

2. CONSTRUCTION—*contd.*

to a mortgage, with a covenant between the parties that whenever the appellant should take possession of the mootah for the purpose of enabling him to discharge the amount for which he became security, he should restore the mootah to the respondent as soon as he was reimbursed all that he had advanced out of the rents and profits of the mootah *Held*, that the transaction was in the nature of a mortgage, and that there was no such inconsistency between the two instruments as to make the second invalid. KAKERLAPOODY JAGGANADHA RAZ *v* VUTSAVOY JAGGANADHA JAGAPUTTY RAZ
5 W. R. P. C 117 : 2 Moo. I. A. 1

11. ——— *Relief after time named in conveyance* Plaintiff executed to defendant a document of which the following is a translation · "The muddata kriyam executed on the 10th April 1835 by the Madhugula zamindar to the zamindar of Bobbili As I have conveyed to you as sale for R6,000 the Papuchetti Seri adjoining the land of kasbah Jaggnanthapuram in the zamindari of Madhugula, they are given you for absolute sale, so the said sale money has been received at the time of sale In the event of my paying you the principal R6,000 within six months from this date, you must give back the said land Papuchetti Seri to me In the event of our not being able to pay according to the said stipulation, you should hereditarily from son to grandson enjoy the produce of the said land yourself paying to Government the assessment fixed on a subdivision, reckoning this sale money to be a pure sale. This muddata kriyam has been executed with my consent" *Held*, that this document was a sale with a condition for repurchase. The decision of the late Sudder Court of Madras have carried the doctrine of relief after the time named in the conveyance so far as to say that wherever the security for money is an object of the transaction, no sale can become absolute. The High Court have followed the English rule and have held the question one of construction, admitting however, for the purpose of the construction, other documents and oral evidence. LAKSHMI CHELLIAN GARU *v*. KRISHNA BHUPATI DEVU MAHARAZ GARU . 7 Mad. 6

12. ——— *Construction of deed—Suit for possession.* The defendants borrowed money from the plaintiff without interest, but executed a deed stipulating that the sum borrowed was to be repaid on a given date, and that, if not paid then, the defendants should execute a patni lease of certain properties set forth in the deed, the sum borrowed being considered as a bonus for such lease; and that, if the borrowers did not execute such a lease, this deed should be counted as a patni pottah. The money not having been paid, and the lease not executed, the plaintiffs sued for possession *Held*, that they were entitled to possession on the footing of a patni from the date of suit, and that the transaction was not a conditional sale, but a contract to create a patni, for a certain consideration unless that sum was paid on a particular date JUSEEMOODDEEN BISWAS *v*. HUROSOONDUREE DOSSEE
19 W. R. 274

13. ——— *Mortgage—Re-*

property for a term of seven years, that is to say, extending over the years 1276, 1277, 1278, 1279, 1280, 1281, and 1282 Fasli. The sum payable as the interest of each of these years was fixed at R1,680. The mortgagee obtained payment of his interest for four years from 1276 to 1279 Fasli inclusive by bringing suits against the mortgagor. The interest for 1280, 1281, and 1282 Fasli as well as the principal sum remaining unpaid, the mortgagor sued for redemption of the mortgaged property on payment of the principal sum and the interest of the last year, 1282 Fasli, only, contending that the interest of the other years, 1280 and 1281 Fasli, was not secured on the mortgaged property, but was under the terms of the instrument of hypothe-
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mortgage was not redeemable on payment of the last year's interest only, but on payment of the interest of the other years as well. SURJU PRASAD *v*. MANSUR ALI KHAN
I. L. R. 5 All. 462

14. ——— *Covenants as to payment of interest—Default in payment of interest.*
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make default in pay- ... the month after it had become due, in that case the principal and interest should thereupon become claimable. With the latter requirement the mortgagor failed to comply, not paying the interest within the stated time. *Held*, that, on the true construction of the deed, this default having taken place, this suit would lie for both the principal and interest accrued due within the year. YEO HTEAN SEW *v*. ABU ZAFFER KORESHI
I. L. R. 27 Calc. 938
L. R. 27 I. A. 98
4 C. W. N. 532

15. ——— *Redemption—Condition precedent.* In a mortgage-deed executed by a Mahomedan to a Hindu in 1820, it was stipulated that the principal and interest were to be

MORTGAGE—*contd.*

2. CONSTRUCTION—*contd.*

repaid within five years, that an account was to be taken at the end of five years of the profits of the lands and any sum found due to the mortgagee, after deducting the profits of the lands from the debt, was to be paid to the mortgagee, and that the payment was to be endorsed on the bond and the lands resumed; and it was provided [illegible]

gaged *Held*, that, no account having been taken as provided, the mortgage was redeemable within sixty years MAVULALI AMIRUDIN SHARIF *v* GUNDU SOBHANADRI I L. R. 6 Mad. 339

16 ——— Usufructuary lease—*Conditions of huq-i-ijara to be reserved to mortgagor—Construction of mortgage-deed* The defendant advanced a sum of money to *R* and *T*, who granted him as security for repayment an ijara lease of a mouza (representing that they were entitled to 16 annas), in which lease a jumma was reserved, a portion whereof was to be applied to the discharge of interest to the defendant and a small sum to go to the mortgagors as *huq-i-ijara* After execution of the ijara, the defendant was dispossessed of 8 annas by a third party who claimed to be a sharer, and he had to sue for and obtain a partition of the remaining 8 annas which he retained, for what it was worth, as security The plaintiffs bought the mortgagors' share, and now sued for the *huq-i-ijara originally reserved* *Held*, that the mortgagors could not claim any benefit under the *ijara* lease until all the benefits which it pretended to secure to the defendant were realized by him ACHUMBIT SINGH *v* KESHO LALL 20 W. R. 128

17. ——— Usufructuary mortgage—*Condition for reconveyance of property* In a usufructuary mortgage it was stipulated that the property was to be reconveyed on repayment of the principal sum lent, but nothing was said as to interest *Held*, that the condition implied that the usufruct was intended to be received by the mortgagee in lieu of interest, and therefore the mere fact that the amount of the principal had been [illegible]

[illegible]

18. ——— *Simple usufructuary mortgage—Right to have the property sold—* [illegible]

pay the principal, and the land is security for the same, the intention of the parties is that the [illegible]

entitled to possession, in lieu of interest, and who does not take possession loses his right to interest and cannot ask that the property be sold for default in payment of interest, the property being security for the principal only MAHADAJI *v.* JOTI. I. L. R. 17 Bom. 425

19. ——— *Power of sale—Bom Reg V of 1827, s 15, cl 3.* Where a mortgage provided that the mortgagee was to take possession of the land and enjoy the profits in lieu of interest and the mortgagor was at liberty to recover possession in any year on payment of the principal amount:—*Held*, that the mortgage was a usufructuary mortgage, and under the circumstances of the case it was not the intention of the parties that the property should be sold, [illegible]

effected. SADASHIV ABAJI BHAT *v* VYANKATRAO RAMRAO SHINDE . I. L. R. 20 Bom. 296

20. ——— *Mortgage of a mixed character partly simple and partly usufructuary—Decree for sale—Transfer of Property Act (IV of 1882), s 58* In construing a mortgage deed, the terms of which are of a doubtful character, the intention of the parties, as deducible from their conduct at the time of execution and other contemporaneous documents executed between them, [illegible]

the covenants contained in them Where a deed is partly of the nature of a usufructuary mortgage and partly of the nature of a simple mortgage, the mortgagee is entitled to bring the mortgage partly to sale under the conditions set out in the deed. *Shunker Lall* v *Poorrun Mal, 2 Agra 150; Phul Kuar* v. *Murlidhar, I. L R 2 All 527; Jugul Kishore* v. *Ramsahai, All Weekly Notes (1886) 212; Umrao Begam* v. *Vali-ullah, All.Weekly Notes (1888) 171; Ramayya* v. *Guruva, I. L. R 14 Mad 232,* and *Sivakami Ammal* v. *Savundram Ayyan, I L. R. 17 Mad. 131,* referred to. JAFAR HUSEN *v* RANJIT SINGH . I. L. R. 21 All. 4

21. ——— *Power to cancel zur-i-peshgi lease.* The words in a zur-i-peshgi [illegible]

MORTGAGE—*contd.*

2. CONSTRUCTION—*contd.*

22. ——————— *Construction of*—

as it was not shown that the arrears due by tenants could not have been realized by due diligence, and the mortgagee had it in his power to realize the rents, the mortgagee was not entitled to recover such arrears. CHOTI LAL *v.* KALKA PARSHAD

7 N. W. 100

23. ——————— *Suit for excess of Government revenue paid under* By the terms of a deed of usufructuary mortgage the mortgagor ac- ... that ... ment ... rency of the mortgage tenure the mortgagees, averring that they had to pay a certain sum in excess of the amount of Government revenue entered in the deed of mortgage from 1279 to 1281 Fasli, *sued the mortgagor to recover such excess. Held,* that, inasmuch as no settlement of accounts was *contemplated or was necessary under the* provisions of the deed of mortgage, and such deed did not contain a provision reserving the adjustment of any sums paid by the mortgagees in excess of the amount of the Government demand at the time of the execution of such deed to the time when the mortgage tenure should be brought to an end, the suit was not premature and could be entertained NIKKA MAL *v.* SULADIAN SHIKOH GARDNER . . . . **I. L. R. 2 All. 193**

24. ——— **Mortgagor and mortgagee** —*Acts of mortgagor prior and subsequent to mortgage.* A mortgagor's acts prior to the date of the mortgage bind the mortgagee; but his subsequent acts do not bind the latter, unless they are done by the mortgagor as agent for the mortgagee KRISHNAJI LAKSHMAN RAJVADE *v.* SITARAM MURARRAV JAKHI . . . . **I. L. R. 5 Bom. 496**

25. ——————— *Suit for arrears of interest and sale—Suit before principal sum became due—Right of suit* A suit for arrears of interest accrued due on mortgage and for the sale of the property comprised therein was brought before

MORTGAGE—*contd.*

2. CONSTRUCTION—*contd.*

mortgaged premises to sale before the principal became due. KANNU *v.* NATESA

I. L. R. 14 Mad. 477

26. ——————— *"Asmani sultani," meaning of the words—Destruction of subject of mortgage—Cost of rebuilding by mortgagee.* A mortgage-deed stipulated that, in the event of the mortgaged house being destroyed "by asmani sultani" (*i.e.*, evils from the skies or the king), the mortgagor should rebuild it, and if he did not do so,

part of the village, and the mortgagor ... rebuild the house, the mortgagee rebuilt it. The mortgagor brought a suit for redemption. *Held,* that the repayment of the costs of rebuilding the house was a condition precedent to redemption. The destruction of the house was in the nature of a calamity from heaven within the meaning of the term asmani. SAKHARAMSHET *v.* AMTHA DEVJI GANDHI . . . **I. L. R. 14 Bom. 28**

27. ——————— *Intention of parties—Mortgagee to have possession for ten years and to receive profits in lieu of interest—Mortgagor to recover possession in the year he paid the money after the expiration of the period—Power of sale —Cl. 3, s. 15 of Bom. Reg. V. of 1827—Mortgagee's personal remedy against the mortgagor—Limitation.* Where a mortgage-bond contained a stipulation that the mortgagee should enter into possession of the mortgaged property and enjoy the rents and profits in lieu of interest for ten years, and that after the expiration of that period the mortgagor should enter into possession in the year in which he paid the debt. *Held,* that it was the intention of the parties that the mortgaged property should not be sold in satisfaction of the mortgage-debt, that the mortgagee was to remain in possession for ten years, and that, under cl. 3 of s. 15 of Bombay Regulation V of 1827, he had no power of sale. The mortgagee having brought his suit within three years from the expiration of the stipulated period of ten years:—*Held,* that the mortgagee's personal remedy against the mortgagor was not time-barred. IDRUS *v.* ABDUL RAHIMAN

I. L. R. 16 Bom. 303

28. ——————— *Hypothecation of "our zamindari property"—Ascertainment of mortgagors' zamindari interest at date of mortgage—Ambiguity in deed—Contract Act (IX of 1872), s. 29—Transfer of Property Act (IV of 1882), s. 58* A deed of simple mortgage described the mortgaged property as "our zamindari property" (zamindari ... specification or description ... the mortgage ... ascertained ... *Held,* that ... were sufficiently certain, or at any ...

MORTGAGE—*contd*

2 CONSTRUCTION—*contd.*

made certain, by the proof of the mortgagors being at the date of the mortgage-deed the owners of a specific zamindari interest, and that the mortgage was therefore not void for uncertainty. *Kanhia Lal* v *Muhammad Husain Khan, I L R 5 All 11, Bishen Dayal* v *Udit Narain, I. L. R 8 All 486, Ramsidh Pande* v. *Balgobind, I L R 9 All. 158, Rae Manik Chand* v *Behari Lall, 2 N. W. 253, Deoni* v *Pitamber, I L R 1 All 275, Tailby* v *Official Receiver, L R 13 Ap. Cas 523,* and *Tadman* v *D'Epineuil, L R 20 Ch D 758,* referred to SHADI LALL v THAKUR DAS

I. L R. 12 All. 175

29. ——————— *Kanam mortgage —Suit for sale of mortgaged property—Rights of kanamdar to sue for amount of kanam and for sale of mortgaged property in default of payment* A kanamdar having sued to recover the amount of his kanam and for sale of the mortgaged property in default of payment.—*Held*, that such a suit is unsustainable; that a kanam in the mortgage aspect of it is a usufructuary mortgage, and there is no authority to support the contention that it is a simple mortgage apart from an observation in *Ramunni* v *Brahma Dattan, I. L R 15 Mad 366, 379* SRIDEVI v VIRARAGHAVAN

I. L. R 22 Mad. 350

30. ——————— *Transfer of Property Act, ss 40, 58 (b), 69, 100—Charge—Lien—Transfer of interest in immoveable property—"Arh"—"Mustaghraq"—Power of sale in default—Bonâ fide purchaser for value without notice—Rights of purchaser at sale in execution of decree* In January 1883 a decree was obtained upon a bond executed in October 1875, whereby certain immoveable property was made security for a loan, the transaction being described not by the word "rehan" or mortgaged, but by the words "arh" and "mustaghraq" The instrument contained no express covenant for sale of the property in default

debt, the obligee might realize the amount from the obligor's person and other property. The decree directed the sale of the property as in the terms of an ordinary decree for the sale of mortgaged property. In 1885, before any steps had been taken in execution of the decree, the same property was sold in execution of a simple money-decree against the obligor, and the purchaser obtained possession It was found as a fact

"mustaghraq" used in the bond implied a power of sale in default and denoted a mortgage without

MORTGAGE—*contd.*

2. CONSTRUCTION—*contd*

possession, and the transaction, though entered into prior to the passing of the Transfer of Property Act (IV of 1882), must be regarded as amounting to a simple mortgage as defined in s 58 (*b*) of that Act, and not as merely creating a charge as defined in s 100, and that consequently the rights of the obligee must prevail over those of the subsequent *bonâ fide* purchaser for value without notice of the bond and the decree thereon *Held*, also, by MAHMOOD, J, that the title of the judgment-debtor at the time of the sale in 1885 in execution of the simple money decree was subject to the mortgage-decree of January 1883, and the purchaser at the sale could acquire no higher title than the judgment-debtor possessed, and was equally bound by the terms of the decree of January 1883 in respect of the property which he had purchased, and could not prevent the property being sold under that decree except by paying up the decretal money. *Unnopoorna Dassee* v. *Nafur Poddar, 21 W R. 148,* and *Enayet Hossein* v. *Girdhari Lall, 2 B L R P C. 75; 12 Moo I. A 366,* referred to *Per* MAHMOOD J —The power of sale mentioned in s 58 (*b*) of the Transfer of Property Act is not a power in the mortgagee to bring the mortgaged property to

nature of simple mortgage, hypothecation, charge and lien discussed *Aliba* v *Nanu, I. L. R. 9 Mad 218, Martin* v *Pursram, 2 Agra 124; Raj Coomer Ram Gopal Narain Singh* v. *Ram Dutt Choudhry, 13 W. R F. B 82; Moti Ram* v. *Vitai, I L. R 13 Bom 90; Bopal Panday* v. *Parsotam Das, I. L. R. 5 All 121; Shib Lal* v *Ganga Prasad, I L R 6 All. 551; Girdhar Ranchoddas* v *Hakamchand Revachand, 8 Bom 75; Sobhagchand Golabchand* v. *Bhaichand, I L R 6 Bom 193; Naran Purshotam* v. *Daolatram Virchand, I. L. R. 6 Bom 538;* and *Durga Prosad* v. *Shambhu Nath, I L R. 8 All. 86,* referred to KISHAN LAL v GANGA RAM . I. L. R. 13 All. 28

31. ——— Bond and rental agreement—*Bond and rental agreement executed on same date, and identical in many terms—Effect —One and the same transaction —Obligations to be gathered from both—"Damdupat" Rule—Inapplicability to cases governed by Transfer of Property Act* By an instrument described as a "possessory mortgage debt bond," which recited that the house described in it was put in the possession of the mortgagee, the mortgagors undertook to clear the mortgage debt by paying R65-10-0 before the 25th of each month, namely, R35 for principal and R30-10 0 for interest and authorised the mortgagee to let the house and credit the rent towards the aforesaid principal

MORTGAGE—*contd.*

2. CONSTRUCTION—*contd.*

and interest. The bond further provided that in case the rent derivable from the house should fall short of the amounts payable every month, the mortgagors would themselves pay them on the due dates, and that, in default, they would pay compound interest. In case the amounts payable should not be paid for five months, the mortgagees were to recover the debt from the mortgagors. On the same day the mortgagors by a separate agreement, rented the house from the mortgagees at a rental of R30-10-0 *per mensem*, payable by the 25th of each month with compound interest on the amount of rent; in default, at the same rate as that payable under the mortgage bond in case of interest being in default The lessees also agreed to vacate and deliver up the house to the lessors, or to those who obtained an order from the lessors, within thirty days of being required so to do. Default having been made, the mortgagees sued for the amount due, and, in default, for sale of the mortgaged property *Held*, that the two instruments were executed as parts of one and the same transaction, and that the intention was that the rights and obligations of the parties were to be gathered from the provisions of both. Taking the two together, it was clear that the transaction was one entirely of mortgage with an express covenant to pay the principal and interest in instalments, and conferring a power on the mortgagee to take possession of the property mortgaged and apply the usufruct in the discharge of the interest and principal. *Juggeewundas* v. *Ramdas, 2 Moo I. A. 487*, followed *Held*, also, that the clause in the rental agreement as to delivery of the house when required left no room for doubt that the arrangement was one not binding the mortgagee to enter into possession and liquidate his debt by the usufruct; and the express covenant to pay precluded the mortgage from being taken as a purely usufructuary mortgage as defined by the Transfer of Property Act *Held*, further, that the "Damdupat Rule" is inapplicable to cases of mortgage governed by the Transfer of Property Act *Ram Kanye* v. *Cally Churn, I. L. R. 21 Calc 841*, referred to. MADHAWA SIDHANTA ONAHINI NIDHI *v.* VENKATARAMANJULU NAIDU (1903)

I. L. R. 26 Mad 662

32. ———— **Ejectment**—*Mortgage for a fixed term—Mortgagor's right to eject—Mortgagee's right to damages for breach of contract. Held*, that the

in the deed of grant. NIDHA SAH *v.* MURLI DHAR (1902) . . . . **I. L. R. 25 All. 115**
s.c. L. R. 30 I. A. 54
7 C. W. N. 289

33. ———— **Lease**—*Construction of deed—Mortgage or lease—Land transferred for ten years—Profits to go in liquidation of debt—Suit for redemption brought before expiration of term—Transfer of Property Act (IV of 1882), ss. 58, cl. (d), and 98—Dekkhan Agriculturists' Relief Act (XVII of 1879), ss 3 (z) and 15A.* By a deed dated the 2nd November, 1893, it was provided that, in consideration of a debt of R240 due by the plaintiff (an agriculturist) to the defendant, the latter was to take possession of certain land for ten years and appropriated the income thereof in liquidation of the debt, and that after the expiry of the said period the right to the land was to cease The deed was headed "mortgage deed with possession regarding land" Before the expiration of the ten years, the plaintiff brought this suit for redemption and possession, alleging the transaction to be a mortgage. *Held*, ... was ... on of ... BIY

I. L. R. 26 Bom. 252

34. ———— **Right in village not held qua zamindar**—*Construction of deed—Mortgage qua zamindar—Right of mortgagor in village not held qua zamindar—Absence of express provision in deed charging such right—Not comprised in mortgage.* By a deed of mortgage, dated 22nd October, 1892, a zamindar mortgaged to plaintiff his entire zamindari, which ... al income,

interest possessed by the zamindar in this ... (which was an *inam* village of certain *Payals*) was to the annual payment by the *inamdars* of a fixed *kattubadi*, and the amount of this *kattubadi* was all that was included in the approximate annual income specified in the schedule At the date of the mortgage to plaintiff, the zamindar also possessed a mortgage right over this village, he being the assignee of a mortgage which had been executed by the *Payals* (the *inamdars*) in 1874 ... in 1889.

mortgage, not only the zamindar's ... but also *badi* in respect of the village of Sabuliya, but also the mortgage right possessed by the zamindar over that village. *Held*, that the zamindar's mortgage right over the village Sabuliya was not comprised

MORTGAGE—*contd.*

2. CONSTRUCTION—*contd.*

in the mortgage *Rooke* v *Lord Kensington, 25 L. J Ch. 795,* referred to BHIMARAJU CHETTI v. SRI KUNJA BEHARI GAJENDRA DEVU (1901) I. L. R. 25 Mad. 42

35. ———— Usufructuary mortgage—*Mortgagee put into possession—Contemporaneous lease of mortgaged property to mortgagee—Lease and mortgage not one but separate transactions* On September 18th, 1883, Chimman Lal, by a usufructuary mortgage of that date, in consideration of a loan of R1,350 put Bahadur Singh into possession of certain property He covenanted with the mortgagee to pay him interest at the rate of annas 14 per cent, which, after deducting the Government revenue (which the mortgagor undertook to pay, and did pay regularly), left the sum of R141-12 payable annually by the mortgagor to the mortgagee for interest It was further agreed that the mortgagee should pay himself the interest from the profits of the mortgaged property; and further that, if the amount of the profits in any year exceeded the sum payable as interest, the surplus should be applied by the mortgagee in reduction of the principal of the loan, and, on the other hand, that if the profits fell short of the sum payable for interest, the defendant-mortgagor would be liable for the balance, and would pay it along with the mortgage money. A further clause permitted the mortgagee, at any time he chose, to call in the mortgage money, and to recover it with interest and costs from the mortgagor and the mortgaged property. By an instrument of even date the mortgagor (who, under the abovementioned usufructuary mortgage, had put the mortgagee in possession) executed to the latter a *kabuliat* or rent

instalments, the rent, if not paid on fixed dates, to bear interest at the rate of 12 per cent per annum.

Kabuliat would lie only in a Revenue Court, and the plaintiff was not entitled to recover rent for more than three years from the date of his suit. *Altaf Ali Khan* v. *Lalta Prasad, I L. R. 19 All. 496,* distinguished. CHIMMAN LAL v BAHADUR SINGH (1901) . . I. L. R. 33 All. 338

36. ———— *Rents in lieu of interest—Mortgagee dispossessed of part of mortgaged property—Redemption without payment of interest—Transfer of Property Act, s 58 (d).* Where a mortgagor covenanted that "until delivery of possession of the aforesaid villages I shall pay interest at the rate of 2 *per cent.* on the abovementioned mortgage money," and

37. ———— Mortgage by persons other than the real owner—*Acquiescence of the real owner—Mortgagee's possession adverse to the real owner.* On the 24th October 1873 one Durgan, widow of Govindji, mortgaged with possession certain land to Godaji, the husband of her daughter Rau After Durgan's death in 1882, the plaintiffs, under a belief then prevalent, claimed as the nearest *waras bhaubands* of Govindji to

Rau sold her equity of r demption to one Savharam, who paid off Godaji's mortgage and recovered possession of the mortgaged property. The plaintiffs in September 1899 brought a suit

derived from them, Rau being aware of what was being done and having acquiesced in it. Though Godaji's possession in its inception was not by virtue of a right derived from the plaintiffs, still his possession was from the 22nd June 1882, under colour of a right derived from them and so adverse to Rau, and that to her knowledge. Although Godaji took possession

(1904) . . . I. L. R. 28 Bom. 87

38. ———— Construction—*Mortgage debt —Another debt on a previous khata made payable under the deed—Charge.* The property

MORTGAGE—*contd.*

2. CONSTRUCTION—*contd.*

in suit was mortgaged for R1,500. The mortgage-deed further recited an earlier debt of R5,000 due on a previous khata and provided that if the mortgagor did not repay this R5,000 within two years from the date of the deed, he was not at liberty to redeem the property, unless both the debts of R1,500 and R5,000 were paid. The deed was stamped as a mortgage for R6,500. On a construction of the deed: *Held*, that the property mentioned in the deed was mortgaged for the sum of R5,000 and interest payable thereunder and also for R1,500, with this difference that the mortgage as to the former sum took effect on the expiry of two years after the date of the deed. HARI *v.* VISHNU (1904) . I. L. R. 28 Bom. 349

39. ———— *Mortgage enforceable in its entirety—Transfer of Property Act (IV of 1882), ss. 58, 60, and 86—Contract Act (IX of 1872), s. 16—Sawaikhichadi—Interest on instalment default—Each case to be decided by its own circumstances.* A mortgage-deed, both the parties to which were money-lenders, purported to be security for R5,000 as principal and R1,250 *sawai*, repayable by 72 instalments. The *sawai* which equalled one-fourth of R5,000, was to take the place of interest. The sum of R5,000 was made up as follows: R4,812-8 were paid to the mortgagor in cash, R87-8 were retained by the mortgagee on account of the first instalment and R100 were retained on account of *khichadi* (bonus). The mortgagee having brought a suit to recover the mortgage-debt, namely, R7,995, and a question having arisen whether the mortgage was so unconscionable as to be unenforceable in its integrity: *Held*, that, under the circumstances of the case, the mortgage was enforceable in its integrity. *Per Curiam.*—The principles of justice, equity and good conscience do not of necessity disentitle a mortgagee from insisting on his security for a greater sum than what has been actually advanced: in each case the question must be asked whether there has or has not been a hard and unfair bargain on the borrower, but when that is not established against the mortgagee, then the right to redeem still remains, though it is redeeming not on payment of the sum advanced, but of the sum, which the parties agreed it was worth the mortgagor's while to pay in order to get a smaller advance, when he was in want of money. [illegible] compound interest, they do not award it in the absence of stipulation, but where there is a clear agreement for its payment, it is in the absence of disentitling circumstances allowed. HARI *v.* RAMJI (1904) . . . I. L. R. 28 Bom. 371

40. ———— Step in aid of execution—*Mortgage decree—Limitation Act (XV of 1877), s. 4, Sch. II, Art. 179—Limitation, plea of, by subsequent mortgagee—Step in aid of execution.* A subsequent mortgagee, who is a judgment-debtor in a decree for a prior mortgage, is competent to raise the question of limitation, when an application for execution is made, although he may be benefited by the execution-proceedings. Art. 179 of Sch. II of the Limitation Act applies to a mortgage decree. When a mortgage decree is obtained against the original mortgagor and a subsequent mortgagee, but the decree does not in any way apportion the mortgage-debt, it cannot be said that the decree comes within the scope of the first part of the second paragraph of Expl. I to Art. 179, merely because the subsequent mortgagee would be affected by it only to the extent of properties covered by his mortgage. An application for postponement of a sale was made because the decree-holders by reason of a change of their manager were not acquainted with all the facts and because several of the properties had been advertised for sale at the instance of a prior mortgagee and also because no intending purchasers were present. *Held*, that the application could not be considered as a step in aid of execution. An opposition by a decree-holder to an application by the judgment-debtor to sell the properties in a certain order is not a step in aid of execution. TROILOKYA NATH BOSE *v.* LALA JYOTI PRAKASH NANDI (1904) . . . 8 C. W. N. 221

41. ———— Intention to keep alive—*Mortgage—Priority—Prior mortgages, [illegible] of, by subsequent mortgagee—Transfer of Property Act (IV of 1882), s. [illegible]—[illegible]—Question of law. [illegible] facts found—Second appeal—[illegible]* [illegible] defendants obtained a mortgage over certain properties, which were subject to plaintiff's mortgage and several earlier mortgages, on the stipulation that these earlier mortgages should be paid off and the mortgage-deeds made over to the defendants. On the question whether it was the intention of the parties to keep alive the mortgages so paid off, in favour of the defendants, the lower Appellate Court found that the defendants were not, at the time of the execution of their mortgage, aware of the plaintiff's mortgage and therefore could not have intended to keep alive those mortgages as against plaintiff's mortgage: *Held* (reversing the judgment of the lower Appellate Court and remanding the case), that the conclusion of the lower Appellate Court as to intention could not be legitimately drawn from the fact found by that Court: and the error was one which, under the rule laid down in *Ram Gopal v. Shamskhaton, L. R. 19 I. A.* [illegible] the High Court could interfere with in second appeal. The intention to keep alive an earlier lien may be found in the circumstances attending the transaction or may be presumed from a consideration of the fact whether it is or is not for his benefit that the charge should be kept on. [illegible] *Gokaldas Gopaldas v. Puranmal Premsukhdas, L. R. 11 I. A. 126: s.c. I. L. R. 10 Calc. 1035* and [illegible]

MORTGAGE—*contd*

2 CONSTRUCTION—*contd.*

bundhu Shaw Chowdhry v *Jogemaya Dasi*, 6 *C. W N.* 209 *s c L R* 29 *I A* 9 *I L R* 29 *Calc* 154, followed S. 80 of Transfer of Property Act does not exclude the application of the principle laid down in these cases GIRDHAR DAS *v* RAM AUTAR SINGH (1904) . **8 C. W. N. 690**

42. ———————— *Mortgage—Priority—Suit by subsequent mortgagee—Prior mortgagee made a party as holder of a still later mortgage—Prior mortgage pleaded—Fresh suit on prior mortgage, if barred—Estoppel—Res judicata—Civil Procedure Code (Act XIV of 1882), s 13—Division of mortgage-debt by purchasers of mortgaged property—Execution of separate mortgage bonds—Different rate of interest—Intention to keep alive prior mortgage—Limitation if to run from date of payment fixed in prior or in subsequent bonds.* Plaintiff suing to enforce a mortgage, it is proved that in a previous suit brought by the predecessor of the defendants, second party, to enforce a later mortgage, over the same properties, the plaintiff, who had been made a party defendant as the holder of a still later mortgage, did not set up his prior mortgage and admitted that he was only a subsequent mortgagee *Held*, that the suit is barred by the rule of *res judicata*, though not by estoppel, the question as to whether the plaintiff or the defendants, second party, were the prior mortgagees in respect of the properties in suit having been decided in the previous suit Under Expl. II of s. 13 of the Civil Procedure Code, the plaintiff was bound to set up his prior mortgage in that suit When a mortgaged property was purchased by two persons who divided the mortgage-debt between themselves and executed two separate mortgage-bonds in favour of the mortgagee in place of the [illegible]

and transferred, and although the rate of interest in the new bonds was different from the rate in the old bond. *Held*, also, that limitation in suits [illegible]

8 C. W. N. 385

43. ———— **Jurisdiction**—*Mortgage-suit—Paramount title set up by defendant—Court's jurisdiction to try the issue—Jote—Transferability—Landlord and tenant* In a suit to enforce a mortgage, an assignee of the equity of redemption in the mortgaged property being made a party did not ask to redeem, but alleged that the mortgage was invalid as against him and set up a paramount title. The suit was tried and decided on that issue by the lower Appellate Court. On appeal to the High Court it was contended

MORTGAGE—*contd.*

2 CONSTRUCTION—*contd*

that the lower Appellate Court ought not to have tried that issue in a mortgage-suit *Held*, that the Court had jurisdiction to decide the issue. *Nil Kant Banerjee* v *Suresh Chandra Mullick*, *I L. R* 12 *Calc* 414, referred to HARE KRISHNA BHOWMIC *v* ROBERT WATSON & Co (1904) **8 C. W. N. 365**

44. — — — **Active confidence, relation of**—*Mortgagor and mortgagee—Evidence Act (I of 1872), s 111—Lending of money to carry on litigation—Burden of proof of good faith* J, a money-lender, entered into a series of transactions with a Hindu widow in order to assist her with funds to carry on a suit she had brought to establish her right to succeed to her husband's estate The widow, who was successful, subsequently transferred the estate to her grandsons. The latter executed several mortgage-bonds in *J's* favour, the consideration being expressed to be prior charges in *J's* favour and a fresh advance In a suit brought by *J* on [illegible]

relation of active confidence between *J* and his mortgagors, within the meaning of s. 111 of the [illegible]

8 C. W. N. 569
s.c. L R. 21 I. A. 46

45 ——— **Tender of mortgage-money**—*Mortgage—Transfer of Property Act (IV of 1882), ss 83, 84—Interest after date of tender.* Where it was found that a mortgagor had made a tender [illegible]

the mortgage-money unemployed and the question was whether the mortgagor was liable to interest [illegible]

46. ——— **Interest**—*Calculation, period of—Whether date on which money lent and date on which repaid should both be counted—Usage—Transfer of Property Act (IV of 1882), ss 83 and 84—Deposit by two instalments, if legal.* In the absence of any proof as to any local usage amongst the bankers of the particular locality a mortgagee is not entitled to interest for the day on which the money was advanced as also for the day on which the money was repaid. A deposit by two instalments is a good deposit under ss. 83 and 84 of the Transfer of Property Act. RAGHUB PRUSTI *v.* BHOBU SAHOO (1904) . **8 C. W. N 218**

MORTGAGE—*contd.*

2. CONSTRUCTION—*contd.*

47. ——— **Mortgage to secure future advances**—*Act XXXII of 1860, s. 14—Meaning of word "claimable."* The word "claimable" in s. 26 of Act I of 1879 means "claimable in a Court of Justice." A mortgage-bond, intended to secure future advances up to the sum of R10,000 at a time, was executed on a stamp-paper of R59, and under it altogether more than R10,000 was privately realised by the mortgagee on different occasions. *Held*, that there was nothing in s. 26 of the Stamp Act of 1879 to prevent the mortgagee from suing to recover the balance of the debt due on the mortgage. HARENDRA LAL ROY CHOWDHRY *v.* TARINI CHRAN CHAKRAVARTI (1904)

I. L. R. 31 Calc. 807

48. ——— **Accounts**—*Accounts between two mortgagees one of whom redeems the other—Decree on previous mortgage—Interest, rate of—Privy Council, practice of—Objection to suit not taken in Courts below.* The appellant sued as mortgagee of a certain property under a mortgage dated 5th September 1886. The respondent had, in a suit on an earlier mortgage of 1884, purchased in 1890 the rights of the mortgagor in the same property, and was also holder of a decree of 29th June 1891 in a suit on another mortgage of the same property dated 4th October 1882, which provided for compound interest in default of payment. To that suit the persons from whom the appellant derived title, were parties The decree of 29th June 1891 gave interest not in terms of the bond, but at a reduced rate, it being settled that the appellant should redeem. *Held*, reversing the decision of the High Court, that in the accounts between them the respondent was only entitled in respect of the mortgage of 4th October 1882 to interest at the reduced rate allowed by the decree of 29th June 1891, and not to compound interest in terms of the mortgage-bond. An objection that the claim on the 5th September 1886 might and should have been enforced in the suit in which the decree of 29th June 1891 was given and could not be made the [illegible]

49. ——— **Instalments**—*Waiver—Default of instalments, right to sue on—Part payment of instalment—Interest.* Where an instalment bond gives the creditor the right to sue for the whole money due under the bond, on default of payment of a single instalment, there is no waiver of that right by acceptance of part of an overdue instalment, or by receipt of interest. *Chuni Bash Shaha v. Kadum Mundul, I. L. R. 5 Calc 97,* and *Mon Mohan Roy v. Durga Charn Gooee, I. L. R. 15* [illegible] *Bom.* [illegible] *L. R. 27 Bom. 1; Mumford v. Peal, I. L. R. 2 All. 857; Keene v. Biscoe, L. R. 8 Ch. D. 201,* and *Nanjappa v. Nanjappa, I. L. R. 12 Mad. 161,* referred to MOHESH CHANDRA BANERJI *v.* PROSANNA LAL SINGH (1904) . . I. L. R. 31 Calc. 63

50. ——— **Lien on mortgaged property**—*Mortgage-debt, addition to—Civil Procedure Code (Act XIV of 1882), s. 310A.* A mortgagee, making payments to save the mortgaged property from being sold in execution of a rent decree, has an additional lien on the property for the sums so paid by him. *Upendra Chandra Mitter v. Tara Prosanna Mukerjee, I. L. R. 31 Calc. 794,* followed in principle. RAKHOHARI CHATTARAJ *v.* BIPRA DAS DEY (1904)

I. L. R. 31 Calc 975

51. ——— *Lien on mortgaged property—Mortgagee, joint purchase of mortgaged property by—Mortgagor, objection to sale by—Transfer of Property Act (IV of 1882), s. 101.* Where the mortgagee purchases the mortgaged property along with other properties and jointly with other persons in undivided shares, his lien upon the property is not extinguished, but is existing, it being for his benefit within the meaning of s 101 of the Transfer of Property Act. A mortgagor is precluded from raising the objection that the sale of the mortgaged property in execution of the decree in the mortgage suit is invalid by reason of the decree nisi in that suit not having been made absolute, if such objection is not raised at an early stage of the proceedings GUNINDRA PROSAD *v.* BAIJNATH SINGH (1904) . . I. L. R. 31 Calc. 870

52. ——— **Property comprised in** [illegible] *existence of—Onus of proof* [illegible] the mortgage was bad, and the [illegible] a mortgage had no efficacy in law. *Held*, that the onus was on the defendant to show with every clearness that no property in the Sealdah district had been comprised in the mortgage. JOGENI MOHAN CHATTERJEE *v.* BHOOT NATH GHOSAL (1904)

I. L. R. 31 Calc. 145

53. ——— **Attestation, absence of**—*Charge—Transfer of Property Act (IV of 1882), ss. 58, 59, 100.* Where a transaction evidenced

MORTGAGE—*contd.*

2. CONSTRUCTION—*contd*

by a document was a mortgage as defined by s. 58 of the Transfer of Property Act, but the document was not attested by two witnesses as required by s. 59 of the Act: *Held*, that it did not operate as a charge under s 100 of the Act. *Rani Kumari Bibi* v. *Sri Nath Roy, 1 C. W. N. 81*, and the observations of BANERJEE, J., in *Tafaluddi Prada* v *Mahar Ali Shaha, I. L. R. 26 Calc. 78*, approved PRAN NATH SARKAR v. JADU NATH SAHA (1905)

I. L. R. 32 Calc. 729
s c 9 C. W. N. 247

54. ———— Equitable set-off—*Redemption—Usufructuary mortgage—Accounts, mode of taking—Surplus receipts—Civil Procedure Code (Act XIV of 1882), s. 111.* The law of equitable set-off applies where the cross claims, though not arising out of the same transaction, are closely connected together Where, after making the payments stipulated in a deed of usufructuary mortgage, a surplus began to accumulate in the hands of the mortgagee, he would be entitled to set off against such accumulations a claim for rents subsequently accruing due to him from the mortgagor in respect of a holding owned by the latter and included in the mortgaged property, notwith- [illegible]

[illegible]

55. ———— Registered sub-mortgage —*Notice—Absence of knowledge of the sub mort-* [illegible]

[illegible]

56. ———— Arrangement between [illegible]

[illegible]

arrangement, if their rights against the co-mortgagors are likely to be prejudiced thereby, has [illegible]

[illegible]

Court, an arrangement by some of the members with a mortgagee of the joint family property, by which their shares were to be released on payment

MORTGAGE—*contd.*

2 CONSTRUCTION—*contd.*

[illegible]

VENKATACHELLA CHETTY *v.* SRINIVASA VARADA CHARIAR (1905) . I. L. R 28 Mad. 555

57. ———— Suit for damages by mortgagee against wrong-doer—*Mortgage of interest in tenancy in common by one of two co-tenants —Deterioration of mortgagors interest by act of other co-tenant—Maintainability—Limitation Act (XV of 1877), Art 49—Wrongfully removing specific property.* K, who was a tenant in common with the defendant, mortgaged her interest to the plaintiff The plaintiff instituted a suit against K for the recovery of the mortgage amount by sale of the mortgaged property. Pending the appeal in that suit, the defendant cut down all the trees on the land, and appropriated the same to himself On the sale of K's interest in the land, which took place after the removal of the trees, the plaintiff realised only a portion of the decretal amount. The mortgagee now instituted the present suit against the defendant for the damage suffered by him by reason of the defendant having appropriated K's share of the wood. The suit was filed within three years of the [illegible]

[illegible]

was not barred by limitation. It was not the act

[illegible]

Limitation began to run from the date when the defendant appropriated the wood to himself. AIYAPPA REDDI *v* KUPPUSAMI REDDI (1905)

I. L. R. 28 Mad. 208

58. ———— Prior and subsequent incumbrances—*Rights of puisne mortgagee paying off a prior mortgage.* On the 2nd of June 1863 Bikram mortgaged certain property by way of simple mortgage to Narain Singh On the 17th of June 1873 Rup Singh, one of the sons of Bikram, made a usufructuary mortgage of the property in favour of Tula Ram and Cheda Lal. In 1879 Narain Singh obtained a decree on his mortgage, to which, however, the second mortgagees were not parties and the property was brought to sale and was purchased by his heirs. The auction-purchasers, heirs of Narain Singh, thereupon sued the second mortgagees to recover possession of the shares purchased by them and obtained a decree upon the 21st of August 1889. Thereupon the heirs of the second mortgagees sued the heirs of Narain Singh, the first mortgagees, to redeem the mortgage of 1863, and

MORTGAGE—*contd.*

2. CONSTRUCTION—*contd.*

got a decree on the 9th of June 1890. Finally, Kirat and another, purchasers of the interests of Rup Singh, and some of his brothers in execution of a simple money decree, sued to recover possession of the property comprised in the mortgage of 1873 upon payment only of the amount due on that mortgage. *Held*, that the plaintiffs could not succeed without also paying off the amount due under the prior mortgage of 1863. KIRAT *v.* DEBI SINGH (1905) **I. L. R. 27 All. 308**

59. — **Hypothecation of moveable property.** Although no provision has been made either in the Transfer of Property Act or the Contract Act with regard to chattel mortgages or hypothecation of moveable property, it does not follow that such transactions are invalid *Deans* v. *Richardson, 3 N.-W. P 54*, *Kywetnee* v. *Kokoung, 5 W. R. 189*, *Shyam Soonder* v. *Cheita, 3 N.-W. P. 71*, *Kalka Prosad* v. *Chandan Singh, I. L. R. 10 All. 20*, referred

60. — —— **Superior and subordinate rights existing in the same person**—*General words in mortgage-deed, effect of—Transfer of Property Act (IV of 1882), s. 8—Estoppel—Evidence Act (I of 18 2), ss. 92, 115—Judgment nunc pro tunc* Defendant No 1 amongst other properties mortgaged a taluk, in which he had a superior zamindari right and in some villages of which he had a subordinate *sarbarakari* interest. The mortgage-deed did not in terms purport to pass the *sarbarakari* rights. But it is found that though the *sarbarakari* tenure was never allowed to be actually merged in the superior tenure, yet at the time the mortgage was created, it was not known that any *sarbarakari* interest existed in these villages, but both parties understood that the entire interest in the taluk without reservation of any *sarbarakari* rights passed under the mortgage. *Held* by PARGITER, J.—That it was not open to the mortgagor, on subsequently discovering that he had the *sarbarakari* rights in these villages, to say that he had not mortgaged

J.—That according to the rule of construction embodied in s 8 of the Transfer of Property Act, the general words used in the mortgage-deed

MAKUNDA DEB (1905) **9 C. W. N. 710**

MORTGAGE—*contd.*

2. CONSTRUCTION—*contd.*

61. ———— **Prior and puisne mortgagees**—*Suit by each without making other party—Successive purchase by puisne and prior mortgagees in execution—Suit by prior against puisne mortgagee for possession—Maintainability—Redemption—Lis pendens.* A first mortgagee who had no notice of a second mortgage, brought the mortgaged properties to sale in a suit to enforce his mortgage in which the second mortgagee was not made a party, and himself became the purchaser. The

MITRA, J. (agreeing with ...

brought by the first mortgagee against the second, ... the former prayed for possession on the ... erly framed ... ight not to ... unwari Jha ... v. Ramjee, ... Although the suit by the second mortgagee was instituted, whilst the proceedings in the first mortgagee's suit were still pending. *Quære, per* MITRA, J.—Whether the doctrine of *lis pendens* applied. HAR PERSHAD LAL *v.* DAL MARDAN SINGH (1905) **9 C. W. N. 728**

— ... religious—

63. ———— **Sale by first mortgagee**—*Effect—Right of puisne incumbrancees, who were parties—Sale-proceeds, lien on—Withdrawal of money by third mortgagee—Suit to enforce lien by second mortgagee—Limitation—Limitation Act (XV of 1877), Sch II, Art 132—Civil Procedure Code (Act XIV of 1882), ss 244, 295—Transfer of Property Act (IV of 1882), s 73.* When property is sold under a decree obtained by a first mortgagee in a suit in which the puisne incumbrancers were parties, it passes into the hands of the purchaser discharged from all incumbrances But the rights of the puisne incumbrancers are not extinguished or discharged by the sale, but transferred thereby to the surplus sale-proceeds. Where a second mortgagee, who had been made a party in a first mortgagee's suit, took no steps to enforce his lien on the surplus sale-proceeds, but subsequently a third mortgagee, who had notice of the second

MORTGAGE—*contd.*

2. CONSTRUCTION—*contd.*

Art. 120 *Jogeshur Bhagat* v *Ghanasham Das, 5 C W N. 356*, and *Kamul Kanta Sen* v *Abdul Barkat, I L R 27 Calc. 180*, referred to. BERHAM DEO PRASAD *v.* TARA CHAND (1905)

9 C. W. N. 989

64. ——— Simple mortgage—*Transfer of Property Act (IV of 1882), ss 58, 59, 100—Transfer of interest—Charge—Attestation—By one witness—Invalidity.* A bond for the repayment of a debt contained the statement, "as collateral security for payment of the said money, I do mortgage 23 bighas, etc, etc," but there was no statement in it showing that there was any actual transfer of any interest *Held* (MACLEAN, *C J, dubitante*) that the bond amounted to a simple mortgage as defined in s 58 of the Transfer of Property Act and not to a charge merely as contemplated by s 100 of that Act Such a document cannot operate as a valid mortgage, unless attested by at least two witnesses. NOBIN CHAND NASKAR *v* RAJ COOMAR SARKAR (1905)

9 C. W. N. 1001

65 ——— Order absolute for sale—*Foreclosure—Sale—Notice to mortgagor—Transfer of Property Act (IV of 1882), ss 87, 89* Where an order absolute has been made under s 87 or s 89 of the Transfer of Property Act without notice to

v. HARIHAR MATHO (1900)

I. L. R. 32 Calc. 253
s c. 9 C. W. N 81

66. ——— Lis pendens—*Decree on mort-*

doctrine of *lis pendens* does not defeat a purchase under a decree or order for sale when the *lis pen-*

party. *Bellamy* v. *Sabine, 41 De G. & J. 566*, *Wigram* v. *Buckley, [1894] 3 Ch. 483*, referred to. SHIVLAL BHAGVAN *v.* SHAMBHUPRASAD (1905)

I. L. R. 29 Bom. 435

67 ——— Payment by third person of money due under mortgage-bond—*Intention to keep mortgage alive—Priority—Mortgage-bond, document whether—Court-fee—Appeal* Where the money due under a mortgage-bond was paid by the money of a third person, the mere fact that the latter had paid off the mortgage money would not by itself entitled him to the benefit of the bond as security for the payment It must be shown that there was an agreement between the parties when the payment was made that the mortgage should be kept alive for him. The demand of a creditor, which is paid with the money of a third person and

cient to show whether or not it has been extinguished express declaration of intention will cause either the one result or the other and in the absence of such expression, the intention may be inferred either one way or the other · and the ordinary rule is that a man having a right to act in either of two ways, shall be assumed to have acted according to his interests An unsecured creditor of a mort-

that they raised a strong presumption that in the present case there was the intention to keep the mortgage alive when the payment was made by

of payment. *A* agreed to repay loans up to a certain sum, which might be paid to him by *B* and admitted that, if he failed to do so, B would be entitled to recover the debt by sale of a certain property of *A* and from his person and other

mentioned in the deed and the circumstance that

decree, a property was purchased for R2,500 by the mortgagee. *Held*, that for the purpose of Court-fee, R2,500 must be taken as the value of the property affected by the decree. JAGATDHAR NARAIN PRASAD *v* BROWN (1906)

I. L. R. 33 Calc. 1133
s c. 10 C. W. N. 1010

68. ——— Interest—*Construction of mortgage—Clause as to mortgagee accepting profits in lieu of interest qualified by subsequent clause not inconsistent with former one—Liability for compound*

MORTGAGE—*contd.*

2. CONSTRUCTION—*contd.*

. . . A . . . of . . . s a . . . rest . . . ible . . . "if . . . led . . . of interest, and during her possession the interest and profits shall be deemed equal." Cl 11 was to the effect that "if during the period of possession of the mortgagee the profits do not cover the amount of interest, we the mortgagors will make good the deficiency. . . . if we cannot make good the deficiency, we will pay it with interest at the rate mentioned above at the time of redemption" . . .

. . . by cl. 11, the latter clause was not to be rejected as being inconsistent with the former one. *Held*, also, that the mortgagors were liable to pay compound interest on the deficiency which they undertook to pay by cl. 11. JAWAHIR SINGH *v* SOMESHWAR DAT (1905) . I. L. R. 28 All. 225 s.c. L. R. 33 I. A. 42 10 C. W. N. 266

69. ———— Covenant for payment by instalments—*Effect of waiver of right to exact penalty for breach of covenant.* Where a mortgagee had not, on the mortgagor's failure to make regular payments, proceeded to cancel the arrangement for payment by instalments, but had accepted irregular payments, and then the mortgagor . . .

. . . *Rai*, *I. L. R.* 5 *All* 259, followed. SAKHAWAT HUSAIN *v.* GAJADHAR PRASAD (1906) I. L. R. 28 All. 622

70. ———— . . . *Transfer of P*. . . *Deposit of tit*. . . *sequent legal* . . . *(III of 1877)*, . . . *sub-mortgage requires registration.* *R* executed mortgages in favour of *D* some time before June 1893. On the 3rd June 1893, *D* deposited these mortgage-deeds with *G's* agent in Calcutta as . . .

MORTGAGE—*contd*

2. CONSTRUCTION—*contd.*

and until payment of the claim in full of Raja Gokul Dass (*G*) you will hold as agent for him the mortgage *Kistbandi*, dated 25th Falgoon 1292, executed in my favour by Babu Bhagabatty Charan Roy and others as enumerated below, which I have already made over to you as such agent as aforesaid as security for the due payment of the said debt, not to be parted with by you without mutual consent of myself and Raja Gokul Dass, or under an order of Court." *Held*, that the mortgage was concluded on the day when the deeds were deposited with *G's* agent in Calcutta and that under s 59 of the Transfer of Property Act a valid equitable sub-mortgage was created in favour of *G* on that day. *Keder Nath Dutt* v. *Sham Lall Khettry, 20 W. R. 150*, referred to. Upon a suit by the equitable sub-mortgagee (*G*) to enforce his mortgage against the original mortgagor *R* and subsequent mortgagee, the defence was that the alleged equitable mortgage, which was created by a letter, not being registered under s. 17 of the Registration Act had no validity at all and that it could not have priority over the subsequent legal mortgage. *Held*, that a deposit of title deeds of certain property under a verbal arrangement to secure payment . . . an oral agreement or decla- . . .

. . . was a valid equitable mortgage . . . of Property Act and it did . . . *R.* . . . dia . . . and equitable estates as is known in England, and if the claim of the subsequent legal mortgagee can be sustained it can only be sustained under s 48 of the Registration Act. *Webb* v. *Macpherson, I. L. R. 31 Calc. 57*, referred to. GOKUL DASS *v* EASTERN MORTGAGE AND AGENCY COMPANY (1905) I. L. R. 33 Calc. 410 s.c. 10 C. W. N. 276

71. ———— Construction—*Simple mortgage, personal liability under, exists, unless special contract to the contrary—Absence of specific prayer in plaint no ground for refusing appropriate relief—Delay no abandonment of right—Contract Act (IX of 1872), s. 74, expl., effect of.* In the case of simple mortgages, the personal liability of the mortgagor exists, unless there is a specific contract to the contrary. *Wahid-un-Nissa* v. *Gobardhan Das, I. L. R. 22 All. 453, 461*, referred to Where the plaint asks for a decree against the defendants as members of the family and 'for such other relief as the Court may think fit,' the Court ought to grant the plaintiff such appropriate relief as he is entitled to and such relief cannot be refused on the ground that there is no specific prayer for such relief. Though it is within the scope of the authority of the managing member of a Hindu family to execute a mortgage so as to bind the family assets, the plaintiff in a suit on such mortgage is not entitled to a personal decree against a defendant member of the family

MORTGAGE—*contd*

2 CONSTRUCTION—*contd*

Under the explanation to s 74 of the Indian Contract Act, it is for the Court to decide on the facts of the particular case whether a stipulation for increased interest from the date of default is or is not a stipulation by way of penalty It was not the intention of the Legislature to enact that such stipulations are always to be considered penal The explanation was simply intended to meet the decisions in which it was *held* that such stipulations are not penal and must be enforced ABBAKKE HEGGADTHI v. KINHIAMMA SHETTY (1906)
I. L. R. 29 Mad. 491

72. —————— *Construction of document—Usufructuary mortgage with personal covenant for payment of the mortgage money—Such personal covenant not conferring a right of sale* Where a

Ammal v. Gopala Savundram Ayyan, I. L. R 17 Mad. 131, dissented from. KASHI RAM v SARDAR SINGH (1905) . . I. L. R. 28 All. 157

73. —————— *Whether sale followed by agreement to reconvey amounts to mortgage—Contract creating personal right not transferable.* Three brothers sold certain properties by a duly executed sale-deed The vendee, more than two months after the sale, executed an agreement in favour of one of them in the following terms :— "You shall on 29th January 1901, without obtaining from others and by your own earnings, pay me the sum of R350 and obtain the right of purchase from me in respect of the land sold. If you do not pay the amount on that date

74. ———— Contemporaneous deeds—*Sale and agreement to reconvey—Transaction whether mortgage—Intention—Mortgage by conditional sale—*

MORTGAGE—*contd*

2 CONSTRUCTION—*contd.*

Transfer of Property Act (IV of 1882), s 58 (c) On the construction of two contemporaneous documents, one of which purported to be a deed of sale and the other provided that on the vendor repaying the purchase-money mentioned in the deed of sale with costs within a fixed period the vendee would return the land, and in case he did not do so, the vendor would deposit the money in Court, and take possession. *Held*, that the two documents

75. ———— Lien—*Mortgage, lien of party paying prior, extinguished when part of mortgaged property is purchased for such amount—Sale for revenue—Trusts Act II of 1882, s 90—Transfer of Property Act (IV of 1882), s 65—Purchaser of equity of redemption from mortgagor not bound to pay public charges and is not when he purchases the lands at a revenue sale a constructive trustee under s 90 of the Trusts Act* Where a person paying off a prior mortgage, purchases a portion of the mortgaged properties in consideration of the amount so paid by him, the lien acquired by such payment is extinguished and cannot be used by such purchaser as a shield against a subsequent mortgagee The

76 —————— *Mortgage—Charge.* Distinction between mortgage and charge discussed. GOBINDA CHANDRA PAUL v DWARKA NATH PAL (1908) . . . 12 C. W. N. 849
s c. I. L. R. 35 Calc. 867

77. ———— Executor, also residuary legatee—*Mortgage by—Legatee's right to impeach —Legacy charged on immoveable property—Priority*

MORTGAGE—*contd.*

2. CONSTRUCTION—*contd.*

the suit of a pecuniary legatee; for the nature of the claim of a legatee may be ascertained from the will, whereas if a reasonable time has elapsed since the death of the testator and then the executor deals with the residue as his own, the purchaser may, in the absence of notice to the contrary, assume that the debts have been paid or that there are other assets for payment of the debts, if any. *Graham* v. *Drummond*, *[1896] 1 Ch. 968*, distinguished. *In re Queale's Estate, 17 L. R. (Ir.) 361*, referred to. When the mortgage was executed years after the time fixed in the will for payment of the legacy and the legacy had remained unpaid, the lapse of time was a circumstance that might be taken into consideration in determining whether the executor acting with the consent of the legatee. *Held*, that in the circumstances of the present case the rights of the parties remained unaffected by the delay. BANK OF BOMBAY *v.* SULEMAN SOMJI (1908)

12 C. W. N. 993
s.c. L. R. 35 I. A. 139

78. ———— Suit for redemption—*Mortgage-deed—Construction—Accounts—Compound interest—Maintenance costs—Enhanced Government revenue—Arrears of rent, statute barred or otherwise—Previous suit for possession—Account filed therein—Estoppel—Res judicata—Recovery of costs thereof—Practice—Point not taken before either of the lower Courts, whether open before their Lordships.* On the construction of cl (4) of the mortgage-deed, which provided that "in case of default in payment by me (mortgagor) of instalments of interest at the time herein appointed, the mortgagee shall have, immediately on such default power either to recover the whole of his principal, interest and (*sud mazid munafa mazkura*) further interest on the said interest according to the rate herein fixed, ... ; or the said mort-

mortgagor was not liable for compound interest since the mortgagee entered into possession of the mortgaged premises Their Lordships upheld the concurrent finding of both the lower Courts that under the mortgage-deed in this case the mortgagee was entitled to get from the mortgagor ov r and above the usufruct of the mortgaged property the amount paid by him on account of maintenance and enhanced Government revenue. Under cl

month of Jeth, the whole of the mortgage money and the whole of the interest together with Government revenue, arrears of rent and *takavi* advances due from tenants, and other expenses incurred under the terms of this document, without raising any objection of law such as limitation, etc, I, the mortgagor, shall have power to redeem the

MORTGAGE—*contd.*

2. CONSTRUCTION—*contd.*

mortgaged property," their Lordships agreed with the lower Courts that the mortgagee was entitled against the mortgagor to arrears of rent due from tenants even when such arrears were statute barred as against the tenants. The mortgagee had previously brought a suit against the mortgagor alleging that at the date of the suit there was due to him a sum of R33,087-13-3¼ and praying for a decree for possession of the property or in the alternative for recovery of that sum with further interest. A Commissioner appointed to make up the accounts reported that R33,087-9-8¼ were *due to the mortgagee at the date* of the suit. The Court in giving judgment held that there was no necessity for passing an order as to the amount due under the mortgage beyond saying that the account was correct and then proceeded to give the mortgagee a decree for possession. The amount alleged to be due by the mortgagee and found due by the Commissioner was arrived at by calculating compound interest on unpaid instalments of interest. It was contended by the mortgagee in a subsequent suit brought against him by the mortgagor for redemption of the mortgaged property that the decree in the previous suit must be accepted as settling the amount due to the mortgagee at the date of that suit *Held*, by their Lordships, who adopted the conclusion of the lower Appellate Court, that nothing had ... estoppel

the costs of the previous suit in the absence of provision in that behalf in the mortgage-deed NASEEM *v.* ABBAS ALI KHAN (1907)

12 C. W. N. 345

79. ———— *Construction of deed—Mortgage for a term of years—Profits to go in liquidation of debt—Redemption suit before the expiry of the period fixed* By a deed bearing date the 4th July 1903, it was provided that in consi... advanced to the plaintiff (an ... ession ... r 199 ... of the ... spect

debt. The deed was ... of Valatdan." Before the expiration of the period the plaintiff brought a suit for redemption of the mortgage and for possession of the lands, alleging that the transaction evidenced by the deed was a mortgage. *Held*, that the transaction was a mortgage. *Tukaram* v. *Ramchand*, *I. L. R. 26 Bom. 252*, followed. MAHMAD *v.* BAGAS AMANJI (1908)

I. L. R. 32 Bom. 569

80 ———— Consideration—*Transfer of Property Act (IV of 1882), s. 53. Partial failure of consideration, effect of.* Where in a mortgage-bond two considerations are stated, one of which is valuable and is separable from the other, effect

MORTGAGE—*contd*

2 CONSTRUCTION—*contd.*

may be given to the instrument to the extent of the amount of the consideration that is valuable, and to that extent the transaction cannot be regarded as fraudulent RAJANI KUMAR DASS v GAUR KISHORE SHAHA (1908)
I. L. R. 35 Calc. 1051
s c. 12 C. W. N. 761

81. ——— Pre-emption—*Mortgage—Property purchased by vendees subject to an unregistered mortgage—Pre-emptors bound to take the property subject to the mortgage.* Property, the subject of a suit for pre-emption, was purchased by the vendee subject to an unregistered mortgage for R99 *Held*, that the pre-emptor must take the property subject to this unregistered mortgage irrespective of the question whether he had notice of it or not TEJPAL v. GIRDHARI LAL (1908)
I. L. R. 30 All. 130

82. ——— Mortgage by a Hindu widow without legal necessity—*Destruction of property by fire—Mortgagees rebuilding the property—Suit by reversioner at widow's death to recover possession of property—Mortgagee not entitled to claim repairs or to remove the construction before delivering possession.* A Hindu widow inherited a shop from her son and mortgaged it without any legal necessity recognized as such by Hindu law The property having been destroyed by floods, the mortgagees rebuilt it with their own money. At the widow's death, the reversioner sued to recover possession of the property free from all incumbrances *Held*, that the mortgagees spent the money while holding the property under a mortgage not binding on the reversioner, and what they did must be presumed in law to have been done unauthorizedly so far as that reversioner was concerned *Held*, further, that the building having been treated by the mortgagees as property mortgaged to them by the widow without legal necessity, there was no equity arising in their favour as against the reversioner, who was entitled to recover it in the condition in which it was when the widow died. *Vinayakrao v. Vidyashankar, 9 Bom. L. R 404, Premji Jivan Bhate v Haji Cassum Juma Ahmed, I. L. R. 20 Bom. 298,* and *Narayan v. Bhol'agir, 6 Bom H. C. (A. C. J.) 80,* distinguished. VRIJBHUKANDAS v DAYARAM (1907) . I. L. R. 32 Bom. 32

83 ——— Future interest—*Construction of decree on mortgage—Decree under ss. 86 and 88, Transfer of Property Act (IV of 1882)—" Future interest "—Power to give interest after date fixed for* [illegible]

mensem from the date of suit, on or before the 18th March 1907," and for sale on default of payment, and the decree was made absolute on 25th June 1898: *Held*, on the construction of the decree, that on such default the plaintiffs were entitled in execution to " future interest at 7 annas per cent. per mensem," after the date fixed for redemption and up to the date of realization of the entire amount. *Maharajah of Bharatpur v. Kanno Dei, I L R 23 All 18, L R. 28 I A. 35,* and *Sunder Koer v. Rai Sham Krishen, I. L R. 34 Calc 150, L R 34 I. A. 9,* followed GOKULDAS v. GHASIRAM (1907) . I. L. R. 35 Calc. 221
s.c. 12 C. W. N. 369

84. ——— Personal decree—*Interest—Power of Court to set aside ex parte decree—Transfer of Property Act (IV of 1882), s. 90—Succession Certificate Act (VII of 1889), s 4.* A decree under s 90 of the Transfer of Property Act having been made *ex parte Held*, that there is inherent jurisdiction of the Court to set it aside *Bibi Tasliman v. Harihar, I L. R. 32 Calc. 253,* followed *Held*, further, that if the decree be a personal decree [illegible]

the Court cannot pass any decree under s 90, in favour of the representative of the mortgagee [illegible]

BHUSHAN DASS (1908) . I. L. R. 35 Calc 767

3. POSSESSION UNDER MORTGAGE.

1. ——— Rights of mortgagee in possession. A mortgagee taking possession under the terms of the mortgage is entitled to have the property in the same condition as it was in when it was mortgaged GOBIND CHUNDER BANARJEE v WISE . . . 12 W. R. 19

2. ——— Covenant for possession by mortgagee *Omission to give possession—Right to sue for mortgage-money.* A deed of mort- [illegible]

3. ——— Obstruction in getting possession—*Usufructuary mortgage—Right of mortgagee to sue for mortgage-money—Transfer of Property Act (IV of 1882), s 68 (b) and (c)* A usufructuary mortgagee, to whom possession of the mortgaged property had been delivered, sued the mortgagor for the mortgage-money on the ground that the mortgagor had sold a part of the mortgaged property, and the purchaser had deprived him of

MORTGAGE—*contd.*

3. POSSESSION UNDER MORTGAGE—*contd.*

possession of such part. One of the conditions inserted in the deed of mortgage was that, if "on the part of the mortgagor, or other persons, any kind of dispute or any interference or obstruction took ... rtgagee ... should ... *Held*, that such condition contemplated the case of the mortgagor, in the first instance, in breach of the conditions of the mortgage, failing to deliver possession to the mortgagee or to secure his possession from any obstruction or disturbance by other persons, but not the case of the mortgagee being deprived of possession after it had been once obtained and secured, and therefore the mortgagee was not entitled by virtue of such condition to sue for the mortgage-money. *Held* further, that the mortgagee's case being that he had been deprived of possession of a part of the mortgaged property, he would be entitled to sue for the mortgage-money only if he had been deprived thereof by or in consequence of the wrongful act or default of the mortgagor, and not if he had been deprived thereof by or in consequence of the wrongful act or default of other persons; that the sale by the mortgagor was not a wrongful act, there being no condition against alienation, and the sale by a mortgagor of his equity of redemption not being rendered wrongful or unlawful by any rule of law, ... rongful ... under ... o have ... ful act or default of the mortgagor;" and that therefore the mortgagee had no cause of action. JHABBU RAM *v.* GIRDHARI SINGH . I. L. R. 6 All. 298

4. ——— Dispossession of mortgagee —*Usufructuary mortgage—Construction of deed—Suit for money lent on dispossession* The plaintiff sued to recover money due on a mortgage-bond alleged to have been executed by the defendant's late husband *S*, and by his brother *J*, who, however, was relieved by the plaintiff from the debt. The conditions of the bond were that the plaintiff's father should possess the mortgaged property in consideration of interest only accruing upon the principal sum lent, and that the mortgagor should take back the property, whenever he should pay the principal sum to the mortgagee The present suit was brought by reason of the plaintiff having been dispossessed of the property by the share-holder brothers *A* and *J*. *Held*, that the money ...

to have been borrowed by the defendant's husband on behalf of the family with the tacit consent of the other members, the plaintiff could recover from the present defendant only her share of the debt. GYARAM CHUCKERBUTTY *v.* BURODA DABEE . . . . . 20 W. R. 484

5. ——— *Mortgagee dis-* ...

constituted the only security for the mortgage-loan. —*Held*, that he was entitled to recover from the mortgago ... was in ... been depr ... SOOKOOL . . . . . 20 W. R. ...

6. ——— Mortgage by conditional sale—*Mortgagee in possession but afterwards dispossessed—Suit for foreclosure and recovery of possession—Nature of possession—* ...

possession of the property by a suit brought within time, although his claim for foreclosure may be barred by limitation The possession recovered is, however, possession as mortgagee subject to the mortgagor's right of redemption. AMAN ALI *v.* AZZAR ALI MIA . . I. L. R. 27 C lc. 185

7. ——— Right of mortgagee in possession to proceeds of sale—*Sale for arrears of revenue.* A mortgagee in possession is not entitled to recover any share of the sale-proceeds of the mortgaged property sold for arrears of Government revenue, except to the extent that he shows that the usufruct of the property, while he held the mortgage, has not satisfied his debt HURDEO NARAIN SINGH *v.* FUZLA HOSSEIN 1 W. R. 270

8. ——— Mortgagee in possession under an agreement to pay rent to mortgagor—*Usufructuary mortgage—Accidental destruction of mortgaged premises by fire—Right of mortgagor to rent.* The plaintiff borrowed R1,400 from the defendant, and mortgaged to the latter for eight years a piece of ground with a warehouse ... There was an agreement be- ... warehouse ... that out of ... opriate R14 ... he principal ... mortgagor ... e mortgage ... l thereupon ... mortgagor. ... ether with ... of opinion ... on the ... mption ... to pay ... Held by ... ich had ... affect ... nt due

MORTGAGE—*contd.*

3. POSSESSION UNDER MORTGAGE—*contd*

to him on the mortgage. There was no alteration in the liability, but merely in the source and mode of discharge The premises having ceased to exist, nothing arising from the income could be credited towards the mortgage, and there was no residue available to pay plaintiff *Held* by MUTTUSAMI AYYAR, J, that defendant's right of possession rested on the usufructuary mortgage and not on tenancy, and his right to recover his debt with interest thereon could not be extinguished or modified by the destruction of the warehouse As to the surplus payment, the existence of the warehouse, which produced the income of R16-12-0 a month, was the basis of the contract to make it; and the basis having failed, the obligation resting thereon must likewise fail VENKATESHWARA *v.* KESAVA SHETT . I. L. R. 2 Mad. 187

9 ———— Deprivation of security by wrongful act of mortgagor—*Right to return*

waiting for the expiry of the stipulated period RADHA CHURN SHAHA *v.* PARBUTTEE CHURN DUTT 25 W. R. 52

10. ———— Mortgagee deprived by diluvion of subject of mortgage—*Usufructuary mortgage.* Where a mortgagee is deprived by diluvion of the possession of land over which he holds an usufructuary lease before he has repaid himself the amount advanced, he has a right, unless the terms of the lease are very special, to call upon the lessor for the unpaid balance of the loan. SHEO GOLAM SINGH *v* ROY DINKER DYAL 21 W. R. 226

11. ———— Mortgage in possession, liability of, to protect the mortgaged property from claims under a paramount title —*Bom Reg. V of 1827, s 15—Limitation for a suit to recover debt personally from the mortgagor where mortgage-deed contains no personal undertaking of repayment* By a registered mortgage-deed, dated the 11th May 1876, the defendant mort-

for arrears of assessment due from the defendant for

MORTGAGE—*contd*

3 POSSESSION UNDER MORTGAGE—*contd*

on the part of the plaintiff to pay the arrears of assessment disentitled him to recover the debt from the defendant personally. The plaintiff appealed

I. L. R. 11 Bom. 475

12 ———— Liability to mortgage lien of lands allotted under partition in lieu of share mortgaged—*Land allotted in severalty to co-sharers of mortgagor* A mortgage of an undivided share in land may be enforced against lands which under a batwara or revenue partition have been allotted in lieu of such share whether such lands be in the possession of the mortgagor or of one who has purchased his right, title, and interest Lands allotted in severalty by the batwara to the co-sharers of the mortgagor are not subject to the mortgage. The case of *Sidhee Nuzur Ali Khan* v. *Ojoohdyaram Khan, 10 Moo I. A 540,* approved. BYJNATH LALL *v* RAMOODEEN CHOWDRY . . L R. 1 I. A. 106: 21 W. R. 233

13 ———— Transfer of mortgaged property by mortgagee in exchange for similar property—*Right of mortgagor to property acquired by exchange.* In 1865 *N* was in possession of six shops in a market-place at Etawah He was in possession of two as mortgagee, and of the remaining four as proprietor. The Municipal

14. ———— Sale to mortgagee of portion of mortgaged property—*Re-sale to mortgagor—Decree—Equitable right to whole of property mortgaged.* *A* mortgaged a 14-anna share in

MORTGAGE—*contd.*

3. POSSESSION UNDER MORTGAGE—*contd.*

a certain mouzah to *B*. *B* obtained a decree on his mortgage-bond. Subsequent to this decree *B* bought from *A* a 2-anna share in the mouzah, but at a later period resold the share to *A*. In execution of another decree which *B* had obtained against *A*, the 12-anna share in the mouzah belonging to *A* was put up for sale and purchased by *B*. *B* next applied for execution of the decree he had obtained on the mortgage-bond, seeking to sell the 2-anna share which remained in the mouzah as part of the property mortgaged to him. *Held* that, so long as *A* had only a 12-anna share of the property in his possession, *B's* security was of necessity reduced to that amount, but on *A's* again becoming the owner of the whole 14 annas, *B* had an equitable right to demand that the 14th annas should be held subject to his mortgage. DEOLIE CHAND *v.* NIRBAN SINGH
I. L. R 5 Calc. 252 · 4 C. L. R. 150

15 ———— **Mortgage of property of which mortgagor is not, but afterwards becomes, owner.** If a person mortgages property of which he has no present ownership, and subsequently becomes the owner of the mortgaged property the lien created by the mortgage attaches to such ownership, and subsequent purchasers from the mortgagor take subject to the equities which affected the property in the hands of the mortgagor. MAHOMED ASSUDOOLLAH KHAN *v.* KARAMUTOOLLAH . 4 N. W. 11

16. ———— **Mortgage of moiety of property in reversion**—*Mortgagor subsequently inheriting moiety—Rights of mortgagee in execution of his decree* *A*, having mortgaged an 8-anna share of certain property which he had inherited from his father, subsequently succeeded to the remaining 8-anna share in the same property. It appeared that in respect of the property mortgaged *A* was entitled only to a reversion on the death of his mother. *Held*, that the holder of a mortgage-decree on the mortgage was not at liberty to proceed against the other 8-anna share. NISTARINI DEBI *v.* BROJO NATH MOOKHOPADHYA . . . 10 C. L. R. 229

17. ———— **Successive mortgagees**—*Right of possession of mortgaged lands as between first and second mortgagee—Suit on mortgage by first mortgagee, second mortgagee not being joined—Decree for sale, and subsequent purchase of the lands by first mortgagee—Possession by first mortgagee—Suit by second mortgagee against first mortgagee, decree for sale, and purchase by second mortgagee—Delivery of possession to second mortgagee—Right of first mortgagee to recover possession.* A mort-

[illegible]

mortgagee was not made a party to the suit. The

MORTGAGE—*contd.*

3. POSSESSION, UNDER MORTGAGE—*contd*

[illegible]

mortgagee, whose successors in title were in due course put into possession of it. *R* now petitioned the Court for an order setting aside the delivery of possession to the successors of the second mortgagee. *Held*, that *R* was entitled to possession MUHAMMAD USAN ROWTHAN *v.* ABDULLA (1900)
I. L R. 24 Mad. 171

18 ———— *Suit by first mortgagee on mortgage—Failure to join subsequent mortgagee—Decree—Sale in execution of decree—Purchase by first mortgagee of mortgagor's undivided interest in mortgaged property—Subsequent suit for partition and possession—Right of second mortgagee to redeem* In 1886, two defendants mortgaged certain property to plaintiff In 1891, the

[illegible]

his mortgage document [illegible]
but he omitted to make the present third defendant
[illegible] at the
1891.
share
was
d by
t for
ant's
was
[illegible] plaintiff
entitled to redeem plaintiff. *Held*, [illegible]
was not entitled to obtain possession without paying off the third defendant (second mortgagee), and it was immaterial whether plaintiff's failure to join the second mortgagee as a party to the previous suit was wilful or due to ignorance of the fact that a second *mortgage* existed. RANGASAMY NAIKEN *v.* KOMARAMMAL (1902)
I. L R. 2 Mad. 484

19. ———— **Usufructuary mortgage**—
[illegible] *mortgage of zamindari and sir—Loss*
[illegible] rtgage to take
[illegible] mortgagor—
[illegible] x-proprietary
mortgagor [illegible]
rights to the zamindar—Act XII of 1881 (N.-W. P. Rent Act), s. 31. A *zamindar*, having mortgaged by way of usufructuary mortgage his *zamindari*, together with his *sir* land, lost his *zamindari* rights and became an ex-proprietary *tenant* of the *sir*. *Held*, that the usufructuary mortgage did not become ineffectual but took effect as a mortgage of the ex-proprietary rights. *Moody* v *Mathews*, 7 *Ves.* 174; *Hughes* v. *Howard*, 25 *B.* 575; *Trumper* v. *Trumper*, *L. R.* 8 *Ch* 870; *Khiali Ram* v. *Nathu Lal*, *I. L. R.* 15 *All.* 219, and *Sukru* v. *Tafazzul Hussain Khan*, *I. L. R.* 16 *All.* 398, referred to. *Held*, also, that in such a case as above, the mortgagor, ex-proprietary tenant, could not, to the prejudice of the mortgagee, surrender to the *zamindar* his ex-proprietary interest.

MORTGAGE—*contd*

3. POSSESSION UNDER MORTGAGE—*contd.*

Badri Prasad v *Sheo Dhian, I. L R 18 All. 354,* referred to SHAM DAS *v.* BATUL BIBI (1902)
I. L. R. 24 All. 538

20. ———— *Suit for redemption on ground that mortgage-money has been paid off by usufruct—Accounts—Whether mortgagee liable for gross rental, as shown in jamabandi, or only for such sums as he actually receives.* In a

accounts of receipts and payments ; and, also, *held*

I. L. R. 25 All. 287
s c 7 C. W. N. 514

21. ———— *Transfer of Property Act (IV of 1882), s. 72—Mortgagee in possession expending money to defend his title against mortgagor.* A mortgagee in possession is, under s. 72 of the Transfer of Property Act (IV of 1882), entitled to add to his mortgage-debt, in the absence

the trial or in his written statement is not sufficient to deprive him of his right, seeing that those details can be gone into after the redemption decree providing for an account has been passed DATTA RAM *v* VINAYAK (1904)
I. L R. 28 Bom. 181

22 ———— Successive mortgages—*Sale—Rival purchasers—Possession, right to—Subsequent sale under prior mortgage—Right of purchaser—Form of suit—Lis pendens* Where the first mortgagee, not having notice of a second mortgage, sued the mortgagor alone and obtained a decree on his mortgage and the assignee of the decree, having in execution purchased the property, which had been previously purchased and taken possession of by the second mortgagees in execution of their subsequently obtained decree (to which the first mortgagee was not a party), on the second mortgage, sued the latter more than

MORTGAGE—*contd.*

3 POSSESSION UNDER MORTGAGE—*contd.*

Jha v *Ramjee Thakur, 7 C W N. 11,* followed. *Nanack Chand* v. *Taluckdye Koer, I. L. R. 5 Calc 265 ; Durgopal Lal* v *Bolakee, I. L R. 5 Calc. 269,* distinguished *Held, per* RAMPINI, J (*contra*), that the plaintiff was not entitled to possession, the right to possession depending on the priority of purchase and not on the priority of mortgage ; and as the suit was not one on his mortgage lien and as his right to bring a suit to enforce such lien was barred by limitation, the plaintiff was not entitled to ask to be redeemed *Per* MITRA, J —

23 ———— Adverse possession—*Mortgagee—Possession adverse to mortgagor not adverse to mortgagee, until ownership vests in him.* Possession of mortgaged property by a person claiming under a purchaser of the property at a sale in execution of a decree against the mortgagor for rent due in respect thereof cannot be

DAY (1906) . . I. L. R. 33 Calc. 1015
s c. 10 C. W. N. 904

24 ———— Mortgage by conditional sale—*Bengal Regulation XVII of 1806—Mortgagee taking possession, according to stipulation, on mortgagor's death, but without foreclosure—Whether a trespasser—Suit for ejectment by heirs of mortgagor—Mortgagee's claim to be redeemed —Mahomedan marriage—Ghair kuf wife, right of, to inherit—Custom—Proof—Wajib-ul-arz.* A mortgage-deed, dated 11th May 1871, provided that

foreclosure proceedings, entered into possession. *Held,* that this was a mortgage by way of conditional sale within the provisions of the Bengal Regulation XVII of 1806, and that under that Regulation the mortgagee had no right to enter into possession without instituting foreclosure proceedings. The heirs of the mortgagor were therefore entitled to sue him in ejectment as a mere trespasser. HUB ALI *v.* WAZIRUNNISSA (1906) . . . . I. L. R. 28 All. 496
s.c. 10 C. W. N. 778
L. R. 33 I. A. 107

MORTGAGE—*contd.*

3. POSSESSION UNDER MORTGAGE—*concld.*

25 ——— Transfer of Property Act (IV of 1882), s. 50—*Mortgage with possession—Lease to mortgagor—Death of the mortgagee and his surviving undivided brother—Sister entitled as heir—Possession and management by mortgagee's widow—Payment of the rent by the tenant in good faith to mortgagee's widow—Suit by sister for recovery of rent—Assignment by lessor not necessary.* On the 14th December 1895 Lingappa mortgaged with possession certain property to Subraya who on the same day let out the property to Lingappa for twelve years. Subsequently Subraya having died his interest as mortgagee survived to his undivided brother Ramkrishna. Ramkrishna died in the year 1901 and thereafter possession and management of the property was taken by Subraya's widow Gowri. She got her name placed on the khata as owner of the property and recovered rent from the tenant for the years 1902 and 1903. The person entitled to the property was Kaveriamma as the sister and heir of Subraya and Ramkrishna, and she brought a suit against the tenant for the recovery of rent of the said years on the ground that Gowri had no authority to receive rent and give discharge for the same. *Held*, that the defendant was not chargeable with rent sued for S 50 of the Transfer of Property Act (IV of 1882) was applicable inasmuch as the defendant in making the payment to Gowri acted in good faith and had no notice of the plaintiff's interest in the property The language of the section is general and no assignment by the lessor during the tenancy was necessary KAVERIAMMA *v.* LINGAPPA (1908) . I. L. R. 33 Bom. 96

4 POWER OF SALE.

1. ——— Sale of mortgaged land in mofussil—*Deed in English form.* A sale, without the intervention of a Court of justice of mortgaged lands situate in the mofussil of Bombay,

power of sale explained PITAMBER NARAYANDAS *v* VANMALI SHAMJI . . I. L. R. 2 Bom. 1

2. ——— *Redemption, suit for—Injunction.* When property mortgaged is situated in the mofussil, but the parties to the

gagee can exercise a power of sale contained in the mortgage-deed, and cannot be restrained from exercising such power, merely because the mortgagor has filed a suit for redemption The mortgagor can only stay the sale *pendente lite* by paying the amount due into Court or by giving *primâ facie* evidence that the power of sale is being exercised in a fraudulent or improper manner, contrary to the terms of the mortgage. JAGJIVAN NANABHAI *v.* SHRIDHAR BALKRISHNA NAGARKAR

I. L. R. 2 Bom. 252

3. ——— Sale to mortgagee under power of sale—*Effect of such purchase by mortgagee—Title acquired by him* A mortgagee purchasing the mortgaged property with the consent of the mortgagor, under the power of sale contained in the mortgage-deed, acquires an unimpeachable title derived from the power of sale, which is altogether distinct from and overrides his title as a mere in-

been previously a mere incumbrancer. PURMANANDDAS JIWANDAS *v.* JAMNABAI I. L. R. 10 Bom. 49

4. ——— Private sale without intervention of Court. *Semble (Per* MELVILL, *J.):* That a private sale effected by a mortgagee in the mofussil without the intervention of a Court in pursuance of a power of sale given to him under his instrument of mortgage is invalid. KESHAVRAM KRISHNA JOSHI *v.* BHAVANJI BIN BABAJI

8 Bom. A. C 142

5. ——— Exercise of power of sale —*Mortgagee with lease which he has the option of terminating on sale—Notice to mortgagee.* Where a mortgage-deed gave to the mortgagee an option, in the event of a sale of the interests of the mortgagors, to throw up a lease which he held from them for the mortgaged jote and claim immediate payment from the surplus sale-proceeds —*Held*, that before the mortgagors could withdraw the surplus proceeds from the Court, it would be necessary for them to give notice to the mortgagee of their intention to do so. BHOOBUN JOY ACHARJEA *v.* ANUND LALL CHOWDHRY

22 W. R. 47

6. ——— Usufructuary mortgage—*Transfer of Property Act, s 67 (a)—Remedy of mortgagee.* A usufructuary mortgagee is not entitled, in the absence of a contract to that effect, to sue for sale of the mortgaged property *Semble*. The construction placed on s. 67 (a) of the Transfer of Property Act, 1882, in *Venkatasami v Subramanya, I. L. R. 11 Mad. 88*, that a usufructuary mortgagee can sue either for foreclosure or for sale, but not for one or other in the alternative, is wrong. CHATHU *v.* KUNJAN

I. L. R. 12 Mad. 109

7. ——— Surplus sale-proceeds—*Surplus proceeds of sale in hands of mortgagee—Interest charged against mortgagee on such surplus from date of sale.* A mortgagee, who under his power of sale has, sold the mortgaged property, must refund to the mortgagor any surplus moneys remaining in his (mortgagee's) hands with interest at six per cent., *i.e.*, the Court

MORTGAGE—*contd.*

4 POWER OF SALE—*contd.*

rate, from the date of the completion of the sale. ABDUL RAHMAN *v.* NOOR MAHOMED
I. L. R. 16 Bom. 141

8. ——— **Mode of recovering mortgage money**—*Form of mortgage—Bom Reg V of 1827—Transfer of Property Act (IV of 1882), s. 67* Where a mortgage provides that possession of the mortgaged property, if taken by the mortgagee, is only to be taken for securing due payment of the interest, the mortgagee paying the balance (if any) of the profits to the mortgagor, the mortgage is not a usufructuary mortgage, but a simple mortgage, and is governed by the general law applicable to mortgages of this nature In such a case although there is no covenant to pay the principal other than that implied in the statement that the principal has been received, and that the property has been mortgaged for the stipulated term of years, and although there is no express provision that it is to be recovered from the mortgaged property, Regulation V of 1827 gives the mortgagee the right to bring the property to sale, and s 67 of the Transfer of Property Act (IV of 1882) confers upon him the same privilege YASHVANT NARAYAN KAMAT *v* VITHAL DIVAKAR PARULEKAR . . . I L. R. 21 Bom. 267

9 ——— **Notice of sale**—*Transfer of Property Act, s 69 (1)—Invalid condition as to notice of sale* In a deed of mortgage of property, situate within the town of Madras, it was provided that a power of sale might be exercised after fifteen days' notice. The property was sold *Held*, that (s 69 of the Transfer of Property Act, 1882, requiring three months' notice before such a

10 ——— *Notice of sale —Subsequent mortgage of same property—Notice of sale to subsequent mortgagors—Notice of sale to subsequent mortgagees—Delay in selling—Rescission of notice of sale—Suit by second mortgagee to prevent sale—Offer to redeem joint mortgage—Right of mortgagee—Injunction to restrain sale.* Cer

then proceed further in the matter. Three days after this notice, *viz*, on the 3rd September 1891, the mortgagors mortgaged the property to the plaintiffs for R10,000 On the 18th November 1892 the plaintiffs by letter offered to transfer their mortgage to the defendants or to join with them in selling the property. In the event of their being unwilling to accept either of these proposals, the plaintiffs requested the defendants to render an account of the sum due to them in order that they (the plaintiffs) might, if so advised, redeem the defendants' mortgage On the 3rd December 1892 the plaintiffs by letter enquired whether the defendants were willing to re-convey

27th of that month without giving notice of sale to the plaintiffs, and on that day the plaintiffs filed

tiffs who, as subsequent mortgagees, were assigns of the equity of redemption; secondly, that the

hand, and the Court would not interfere with a

mortgagee from selling the mortgaged property. MUNCHERJI FURDOONJI *v.* NOOR MAHOMEDBHOY JAIRAJBHOY PIRBHOY . I. L. R. 17 Bom. 711

11. ——— **Mortgagee's right to sell and recover money before the expiration**

MORTGAGE—*contd.*

3 POSSESSION UNDER MORTGAGE—*concld.*

25. ———— **Transfer of Property Act (IV of 1882), s. 50**—*Mortgage with possession—Lease to mortgagor—Death of the mortgagee and his surviving undivided brother—Sister entitled as heir—Possession and management by mortgagee's widow—Payment of the rent by the tenant in good faith to mortgagee's widow—Suit by sister for recovery of rent—Assignment by lessor not necessary.* On the 14th December 1895 Lingappa mortgaged with possession certain property to Subraya who on the same day let out the property to Lingappa for twelve years Subsequently Subraya having died his interest as mortgagee survived to his undivided brother Ramkrishna. Ramkrishna died in the year 1901 and thereafter possession and management of the property was taken by Subraya's widow Gowri. She got her name placed on the khata as owner of the property and recovered rent from the tenant for the years 1902 and 1903. The person entitled to the property was Kaveriamma as the sister and heir of Subraya and Ramkrishna and she brought a ...

Property Act (IV of 1882) was applicable inasmuch as the defendant in making the payment to Gowri acted in good faith and had no notice of the plaintiff's interest in the property. The language of the section is general and no assignment by the lessor during the tenancy was necessary. KAVERIAMMA *v.* LINGAPPA (1908) . I. L. R. 33 Bom. 96

4 POWER OF SALE.

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power of sale explained. PITAMBER NARAYANDAS *v* VANMALI SHAMJI . . I. L. R. 2 Bom. 1

2. ———————— *Redemption, suit for—Injunction.* When property mortgaged is situated in the mofussil, but the parties to the mortgage are resident in Bombay, and the instru...

gagee can exercise a power of sale contained in the mortgage-deed, and cannot be restrained from exercising such power, merely because the mortgagor has filed a suit for redemption. The mortgagor can only stay the sale *pendente lite* by paying the amount due into Court or by giving *primâ facie* evidence that the power of sale is being exercised in a fraudulent or improper manner, contrary to the terms of the mortgage. JAGJIVAN NANABHAI *v.* SHRIDHAR BALKRISHNA NAGARKAR I. L. R. 2 Bom. 252

MORTGAGE—*contd.*

4. POWER OF SALE—*contd.*

3. ———— **Sale to mortgagee under power of sale**—*Effect of such purchase by mortgagee—Title acquired by him.* A mortgagee purchasing the mortgaged property with the consent of the mortgagor, under the power of sale contained in the mortgage-deed, acquires an unimpeachable title derived from the power of sale, which is altogether distinct from and overrides his title as a mere incumbrancer: the effect of such purchase being to vest the ownership of, and the beneficial title to, the property for the first time in himself, who had been previously a mere incumbrancer PURMANANDDAS JIWANDAS *v.* JAMNABAI I. L. R. 10 Bom. 49

4. ———— **Private sale without intervention of Court.** *Semble* (*Per* MELVILL, *J.*) That a private sale effected by a mortgagee in the mofussil without the intervention of a Court in pursuance of a power of sale given to him under his instrument of mortgage is invalid KESHAVRAM KRISHNA JOSHI *v.* BHAVANJI BIN BABAJI 8 Bom. A. C 142

5. ———— **Exercise of power of sale**—*Mortgagee with lease which he has the option of terminating on sale—Notice to mortgagee.* Where a mortgage-deed gave to the mortgagee an option, in the event of a sale of the interests of the mortgagors, to throw up a lease which he held from them for the mortgaged jote and claim immediate payment from the surplus sale-proceeds.—*Held*, that before the mortgagors could withdraw the surplus proceeds from the Court, it would be necessary for them to give notice to the mortgagee of their intention to do so. BHOOBUN JOY ACHARJEA *v.* ANUND LALL CHOWDHRY 22 W. R. 47

6. ———— **Usufructuary mortgage**—*Transfer of Property Act, s. 67 (a)—Remedy of mortgagee.* A usufructuary mortgagee is not entitled, in the absence of a contract to that effect, to sue for sale of the mortgaged property. *Semble: The construction placed on s. 67 (a) of the* Transfer of Property Act, 1882, in *Venkatasami v Subramanya, I. L R 11 Mad. 88, that a usufructuary* mortgagee can sue either for foreclosure or for sale, but not for one or other in the alternative, is wrong. CHATHU *v* KUNJAN I. L. R. 12 Mad 109

7. ———— **Surplus sale-proceeds**—*Surplus proceeds of sale in hands of mortgagee—Interest charged against mortgagee on such surplus from date of sale.* A mortgagee, who under his power of sale has, sold the mortgaged property, must refund to the mortgagor any surplus moneys remaining in his (mortgagee's) hands with interest at six per cent., *i.e.*, the Court

MORTGAGE—*contd.*

4. POWER OF SALE—*contd.*

rate, from the date of the completion of the sale. ABDUL RAHMAN *v.* NOOR MAHOMED

I. L. R. 16 Bom. 141

8. ——— **Mode of recovering mortgage money**—*Form of mortgage—Bom. Reg. V of 1827—Transfer of Property Act (IV of 1882), s. 67.* Where a mortgage provides that possession of the mortgaged property, if taken by the mortgagee, is only to be taken for securing due payment of the interest, the mortgagee paying the balance (if any) of the profits to the mortgagor, the mortgage is not a usufructuary mortgage, but a simple mortgage, and is governed by the general law applicable to mortgages of this nature. In such a case although there is no covenant to pay the principal other than that implied in the statement that the principal has been received, and that the property has been mortgaged for the stipulated term of years, and although there is no express [illegible]

[illegible]

LEKAR [illegible] I. L. R. 21 Bom. 267

9. ——— **Notice of sale**—*Transfer of Property Act, s. 69 (1)—Invalid condition as to notice of sale.* In a deed of mortgage of property, situate within the town of Madras, it [illegible]

[illegible]

10. ——— *Notice of sale—Subsequent mortgage of same property—Notice of sale to subsequent mortgagors—Notice of sale to subsequent mortgagee—Delay in selling—Rescission of notice of sale—Suit by second mortgagee to prevent sale—Offer to redeem joint mortgage—Right of mortgagee—Injunction to restrain sale.* Cer[illegible]

[illegible]

then proceed further in the matter. Three days after this notice, *viz.*, on the 3rd September 1891, the mortgagors mortgaged the property to the plaintiffs for R10,000. On the 18th November 1892 the plaintiffs by letter offered to transfer their mortgage to the defendants or [illegible]

[illegible]

vised, redeem the defendants' mortgage. On the 3rd December 1892 the plaintiffs by letter enquired whether the defendants were willing to reconvey the mortgaged property on payment of a certain [illegible]

[illegible]

fendants advertised the property for sale on the 27th of that month [illegible]

[illegible]

Held, (1) that notice to the [illegible]
sary. Proper notice had [illegible]
gagors on the 31st August [illegible]
the plaintiffs had acquired [illegible]
of redemption. No fur[illegible]
be given to any person [illegible]
assign, in order to [illegible]
under that notice. [illegible]
in the state in which [illegible]
claim to alter rights [illegible]
has any authority to [illegible]
of sale of the 31st August [illegible]
scinded by the defendants [illegible]
give a fresh notice [illegible]
held on the 27th April [illegible]
long delay taking place [illegible]
the notice of sale and [illegible]
a fresh notice necessary [illegible]
it did not appear [illegible]
and willing to redeem [illegible]
The plaintiffs admitted [illegible]
hand, and the Court [illegible]
mortgagee's right [illegible]
plaintiffs being able [illegible]
the amount due [illegible]
a mortgage-deed [illegible]
of sale contained [illegible]
of the mortgagee [illegible]
and assigns in [illegible]
or provisions [illegible]
propriety or [illegible]
should be in [illegible]
Prichard v. Wilson [illegible]
Court would [illegible]
mortgagee [illegible]
MUNCHERJI [illegible]
JAIRAJBHOY [illegible] I. L. R. 22 Bom. [illegible]

11. ——— Mortgagee's right [illegible]
and recover money [illegible]

MORTGAGE—*contd.*

4. POWER OF SALE—*contd.*

of the period fixed—*Term of years fixed for mortgage—Mortgagor mortgaging property over a portion of which he has no right—Transfer of Property Act (IV of 1882), ss. 67, 68.* In 1889 the defendant mortgaged ten fields to the plaintiff, to secure a loan of R2,000. The deed provided that the mortgage-debt was to become payable at the expiration of fifteen years, and that in the meantime interest was to be paid yearly at the rate of 6¼ per cent. per annum. In 1896 the plaintiff discovered that six of the mortgaged fields were not the property of the defendant, who had therefore no right to mortgage them, and he thereupon demanded further security from the defendant, but was refused. Only two years' interest on the mortgage-debt had been paid by the defendant In 1898 the plaintiff filed this suit, praying for the sale of the four mortgaged fields which did belong to the defendant, and for a personal decree against him *Held*, that, as the defendant (the mortgagor) had failed to carry out the terms of the mortgage contract, the plaint ff (the mortgagee) was entitled to sell the mortgaged property although the mortgage term had not expired VENKATARAO KRISHNAPPA *v.* MAHABLESHWAR (1901) I L. R. 26 Bom 241

12. ——— **Mortgagees holding two mortgages over same property**—*Transfer of Property Act (IV of 1882), ss 85, 96, 97—Suit for sale, based on earlier mortgage alone—Maintainability.* In 1880 *B* executed a simple mortgage over certain lands in favour of *A* In 1886, *B* mortgaged the same lands to *A* with possession. *A* now brought a suit on the earlier mortgage for sale of the mortgaged property subject to the later mortgage. *Held*, that the suit could not be maintained *Sundar Singh* v. *Bholu, I L. R. 20 All. 322,* referred to. DORASAMI *v.* VENKATASESHAYYAR (1901) . . I. L. R. 25 Mad. 108

13 ——— *Transfer of Property Act (IV of 1882), ss. 67, 96, 97—Person holding two mortgages on the same property, the first usufructuary and the second simple, can bring the* [illegible]

money on the simple mortgage by bringing the property to sale free of the usufructuary mortgage. The decree in such a case should direct the property to be sold and the sale-proceeds to be applied first in discharge of the usufructuary mortgage, and the balance in discharging the second mortgage. The fact that no suit for sale could be brought on the usufructuary mortgage will be no bar to such mortgage being paid out of proceeds derived by the sale of the property on another mortgage. *Govinda Bhatta* v. *Narain Bhatta, I. L R. 29 Mad. 424,* followed in principle. *Bhagwan Doss* v. *Bhawani, I. L R. 26 All. 14,* not followed. Ss. 96 and 97 of the Transfer of Property Act do not in terms exclude usufructuary

MORTGAGE—*contd.*

4. POWER OF SALE—*contd*

mortgages and their provisions may be applied to such mortgages. RENGASAMI NADAN *v.* SUBBAROYA IYEN (1907) . I. L. R. 30 Mad. 408

14. ——— **Appeal**—*Civil Procedure Code (Act XIV of 1882), ss 244 and 335—Sale—Auction*- [illegible] *—Mort*- [illegible] obtain- [illegible] re of a [illegible] btained [illegible] d share [illegible] 1894 *B* [illegible] for sale on his mortgage, but [illegible]

[illegible] got delivery of possession on the 14th November 1898 *R* got a decree for sale on the 18th Decem- [illegible]

the Court passed an order in his favour [illegible] *B* to the *District Judge*, who having allowed *B* to withdrew his application so far as it referr d to and asked for interference of the Court under s 244 of the Code dismissed the appeal on the ground that no appeal lay. *Held*, that the case came under s. 244 of the Civil Procedure Code and an appeal lay to the Court below. In order to decide under which section of the Code the case came, the Court should look into the true nature of the application with reference to the relief sought and the parties [illegible] to oust [illegible] ement [illegible] ode of [illegible] defeat Civil Procedure and not another [illegible] the just rights of the other party, when in fact the matter ought to be dealt with under the other sec- [illegible] Sanyal v. *Kali Das Sanyal,* [illegible] 66, and *Mad*- [illegible] *rani, I. L. R* [illegible] hat, inasmuch [illegible] age in favour [illegible] e former and [illegible] e valid, sub- the proceedings based [illegible] ject to the rights of the latter as puisne mortgagee, who was not bound by the decree and the sale under it, and had the right to reopen the proceedings and redeem the first mortgage. *Umesh Chandra Sircar* v. *Zahur Fatima, I. L. R. 18 Calc. 164 : L R 17 I. A. 201,* referred to. A first mortgagee in possession under a prior sale may always shield himself [illegible], though his [illegible]. The puisne [illegible] party to the [illegible] ght of redemp- [illegible] subject to the [illegible] -purchaser on [illegible] ompel the first

MORTGAGE—*contd*

4 POWER OF SALE—*contd.*

mortgagee to part with possession without redeeming the first mortgage *Cheit Narain Singh* v *Gunga Pershad*, 25 *W. R* 216, *Disai Lallubhai* v. *Mundas Kuberdas*, I. L. R. 20 *Bom* 390, *Bunwari Jha* v. *Ramjee Thakur*, 7 *C W N* 11, followed. *Debendra Narain Roy* v *Ramsaran Banerjee*, *I L R* 30 *Calc* 599, referred to *Held*, further, that, inasmuch as the right to possession depends upon the purchase of the outstanding equity of redemption and is ordinarily determined by the priority of the respective sales at the instance of the different mortgagees, *B*, the purchaser at the prior sale, was entitled to retain possession as against *R*, the purchaser at the subsequent sale *Dirgopal Lal* v *Bolakee*, *I. L. R.* 5 *Calc* 269, *Jugal Kissore* v. *Kartic Chunder Chattopadhya*, *I. L R* 21 *Calc* 116; and *Nanack Chand* v *Teluckdye Koer*, *I L R* 5 *Calc* 265, referred to RAM NARAIN SAHOO *v* BANDI PERSHAD (1904)

I. L. R. 31 Calc. 737

15 ———— Form of decree in use before the passing of the Transfer of Property Act—*Suit for recovery of mortgage-debt—Attachment of non-mortgaged property—Effect of such attachment.* In a suit for recovery of a mortgage-debt a decree was passed, before the coming into force of the Transfer of Property Act, 1882, in favour of the plaintiff, declaring the amount due to him and that he had a lien on the property of the mortgagee for the amount so found to be due In execution of that decree the judgment-creditor attached certain property of the judgment-debtor other than the mortgaged property This property was in due course sold, and subsequently certain mortgagees, who had taken a mortgage thereof, pending the [illegible] *Held*, [illegible] decree [illegible] power [illegible] thereof [illegible] *Luchmi Dai Koori* v. *Asman Singh*, *I. L. R.* 2 *Calc* 213, followed. RAM BARAN SINGH *v.* GOBIND SINGH (1905) . . . I. L. R 26 All. 295

16 ———————— *Transfer of Property Act (IV of 1882), Ch IV—Mortgage—Mortgage* [illegible]

mortgagee rights in immoveable property is entitled to a decree for sale of the mortgagee rights of his mortgagor *Per* STANLEY, *C J.*—In a properly constituted suit a puisne mort- [illegible]

MORTGAGE—*contd.*

4. POWER OF SALE—*concld.*

Lal, I. L R. 18 *All.* 113, discussed and distinguished. *Raghunath Prasad* v. *Jurawan Rai*, *I L R.* 8 *All* 105; *Sirbadh Rai* v *Raghunath Prasad*, *I. L. R* 7 *All* 568, 574, *Jones* v. *Skinner*, 5 *L. J Ch.* 90, *Taylor* v. *Russell*, [1892] *A. C.* 255, *In re Sargent*, 17 *Eq.* 279; *Rose* v. *Page*, 2 *Simons* 471, 29 *R. R.* 112, *Slade* v. *Rigg*, 3 *Hare* 35, 64 *R R* 204, *In re Hodson* and *Howe's Contract*, *L. R.* 35 *Ch D* 668, *Vencatachella Kandian* v. *Panjanadien*, *I L. R* 4 *Mad.* 213, *Kanti Ram* v. *Kut-ub-ud-din Mohomed*, *I L. R.* 22 *Calc* 33; *Beni Madhub Mahapatra* v. *Sourendra Mohan Tagore*, *I. L. R* 23 *Calc.* 795, *Debendra Narain Roy* v *Ramtaran Banerjee*, *I. L R* 30 *Calc* 599; *Jaggeswar Dutt* v *Bhuban Mohan Mitra*, *I. L. R.* 33 *Calc* 425, *Muthu Vijia Raghunatha Ramchandra* [illegible]

I. L. R. 28 All. 503

5 SALE OF MORTGAGED PROPERTY.

(*a*) RIGHTS OF MORTGAGEES.

1. ———— Right of mortgagee—*Remedy on non-satisfaction of claim after sale* The right accruing to a lender of money under a [illegible]

LALLA MITTERJEET SINGH *v* SCOTT

17 W. R. 62

2 ———— Sale of whole property for portion of debt—*Sale of mortgaged property for instalment of bond—Right to, or lien on, surplus* [illegible]

CHOWDHRY *v.* BRINDABUN CHUNDER DOSS

16 W. R. 246

3. ———— Right to elect property to be sold—*Sale of portion of property pledged.* Where a plaintiff's bond gives him a separate lien on [illegible]

4. ———— Right to surplus sale-proceeds—*Election to proceed against mortgaged*

MORTGAGE—*contd.*

5. SALE OF MORTGAGED PROPERTY—*contd.*

(*a*) RIGHTS OF MORTGAGEES—*contd*

shown that the mortgaged land had not produced enough to satisfy his claim. KALEE DAS GHOSE *v.* LAL MOHUN GHOSE . 16 W. R. 306

See FUTEH ALI *alias* NANNA MEAH *v* GREGORY 6 W. R. Mis. 13

5. ———— Rights of successive mortgagees—*Prior sale under second mortgage—Right of purchaser.* A property was mortgaged in succession to two different persons Under the latter of the two deeds, a money-decree was obtained and the property sold Subsequently the earlier mortgagee obtained a money-decree, and caused the mortgagor's rights and interests to be again sold. *Held,* that the purchaser at the second sale purchased, not the estate, but the mortgagor's (extinct) right, title, and interest, and could not sue for possession of the property itself DURPO NARAIN MAHATAH *v.* NULEETA SOONDUREE DOSSI 11 W. R. 332

6. ———— Right of prior lien—*Sale of hypothecated property for money-decree—Lien of subsequent mortgagee with order directing sale—Right of purchaser* Where property hypothecated for a debt is sold in execution of a money-decree passed under the bond hypothecating it, without any additional order in the decree for enforcing the lien on the property, and the holder of a subsequent similar bond, who has obtained an order on his decree directing the sale of the property seeks to enforce his lien upon the property so pur-

the decree-holder to satisfy whose due the property was sold when this purchaser purchased SHEO PROSUN SINGH *v.* BROJOO SAHOO . 7 W. R. 232

7 ———— *Right of holder of money-decree against subsequent mortgagee after foreclosure* *A* executed in favour of *B* a simple mortgage of certain property. He afterwards executed in favour of *C* a mortgage by bi-bil-wafa, or conditional sale, of the same property. *C* obtained a decree for foreclosure, and got possession thereunder *B* then obtained a money-decree against *A* and in execution seized and sold and became the purchaser of the said property and was put into possession of it On *C* suing *B* to recover possession, *B* claimed to be entitled to hold the property

MORTGAGE—*contd*

5. SALE OF MORTGAGED PROPERTY—*contd.*

(*a*) RIGHTS OF MORTGAGEES—*contd.*

by reason of the prior lien which he had under the

2 B L. R. Ap. 6

KUSSEEMOONISSA BEEBEE *v.* HURANNISSA BIBI 10 W. R. 468

8. ———— *Right of holder of money-decree against subsequent mortgagee after foreclosure.* *A* executed a bond in favour of *B*, hypothecating certain immoveable property. *B* re-

S. C. KUSEEMOONISSA BIBEE *v.* HUROONNISSA BIBEE . . . . . 15 W. R. 195

9. ———— *Suit for money*

the whole of your money Should the whole of your money be not thereby realized, in that case you will get it by sale of whatever other property I may have

inadmissible The plaint ... decree PHEAR, *J.*, refused to admit the plaint. UMASUNDARI DASI *v.* UMACHARAN SADKHAN 6 B. L. R. Ap 117

10. ———— *Attachment—Notice—Fraud* The plaintiffs advanced a sum of

MORTGAGE—*contd.*

5 SALE OF MORTGAGED PROPERTY—*contd*

(*a*) Rights of Mortgagees—*contd.*

sold Before the sale the plaintiffs gave notice of their lien, and in consequence the appellant purchased for a trifle The plaintiffs brought the present suit for a declaration of their prior lien, and for a re-sale of the premises in satisfaction of their

execution sale could only affect the appellant's title as purchaser Priority as between the appellant and the plaintiffs in respect of incumbrances already existing could not be affected by such notice. Bharat Lal Bhagat v Gopal Saran Lal Bhagat . **3 B. L. R. A. C. 1 : 11 W. R. 286**

11 ——— *Partnership — Attachment, right of proceeds of* A mortgage of

whilst the property remained on mortgage A mehta was accordingly appointed, who received the rents and profits of the village for a year or two, but afterwards permitted the mortgagors to receive them for four or five years The respondent, who was one of the partners, of the firm did not execute the mortgage, but was cognizant afterwards of the execution of it, and he sued his co-partners, and obtained a decree for his share of the assets of the firm. In execution of his decree, an attachment issued against the estate In a suit by the mortgagee for the removal of the attachment —*Held*, that the mortgage was valid up to the time of the notice of the respondent's claim (i e, when he proceeded to enforce that claim by attachment and when he

brancer. Jugjeewun Das Keeka Shah v. Ram Das Brijbookun Das
6 W. R. P. C. 10 : 2 Moo. I. A. 487

12. ——— *Lien on properties pledged by mortgage-bond and transferred by heirs for commuted allowance.* Where a Maho-

MORTGAGE—*contd*

5. SALE OF MORTGAGED PROPERTY—*contd.*

(*a*) Rights of Mortgagees—*contd.*

13 ——— *Suit to enforce mortgage-lien on property in the possession of a third party—Properties situate in different districts—Money-decree—Execution of decree—Code of Civil Procedure (Act VIII of 1859), s 12. A*, the mortgagee, under a bond, of properties situated in districts B and C, sued in the B Court on his

High Court under s 12, Act VIII of 1859, which was necessary to enable him to proceed against the property in the C district. Having attached and sold all properties comprised in his decree situate within the jurisdiction of the B Court, *A*, under a certificate issued by such Court, obtained an order from the C Court attaching lands included in his decree situate in that district. *D* intervened, on the ground that he had purchased the same property in execution of another decree of the C Court against the same judgment-debtor, and the property was released from attachment. *A* then sued *D* and the mortgagor to enforce his mortgage-lien against the property in the C district. *Held*, that the B Court had jurisdiction to give *A* a decree for the amount of the mortgage-money and interest, though it had not power to enforce the decree against the property in the C district; that the

to sue *D* to establish his lien for the mortgage-debt and interest Bolakee Lall v. Thakoor Pertam Singh . **I. L. R. 5 Calc. 928 : 6 C. L. R. 370**

14 ——— *Mortgaged property, conveyance of, to mortgagee—Attachment and sale of same property under another decree—Suit by mortgagee to recover money advanced on mortgage bond—Avoidance of conveyance—Lien.* In 1874 the plaintiff advanced money to *F* and *Z*

same property was under attachment under a decree obtained by another person, and the property was in execution of this decree, put up for sale, and purchased by one *G*. In a suit brought by the plaintiff on the mortgage-bond (to recover the money lent, and asking that the properties might be made liable

MORTGAGE—*contd.*

5. SALE OF MORTGAGED PROPERTY—*contd.*

(a) RIGHTS OF MORTGAGEES—*contd.*

GOPAL SAHOO *v.* GUNGA PERSHAD SAHOO
I. L. R. 8 Calc. 530

15. ——— *Money-decree—Sale under mortgage-decree—Prior sale under*

into possession. On the 1st of July 1868 the right, title, and interest of *A* in the talukh was sold in execution of the mortgage-decree and purchased by

that the plaintiff was not entitled to possession, but should have brought his suit to enforce the mortgage-lien against the defendant BIR CHUNDER MANIKYA *v.* MAHOMED AFSAROO
I. L. R. 10 Calc. 299

16. ——— *Right of purchaser of mortgaged property—Mortgagee purchasing right, title, and interest of debtor.* Plaintiff in 1862 purchased a house of first defendant, which was already hypothecated to second defendant. In 1863 second defendant sued first defendant in the Small Cause Court for the debt on account of which the hypothecation had been made, and got a judgment He then had the house attached and put up to auction, bought the right, title, and interest of the judgment-debtor in the

property at the date of the plaintiff's purchase, second defendant's purchase was not a purchase from the debtor in part satisfaction of his debt.

17. ——— *First and second mortgages—Sale of mortgaged property in execution of money-decree obtained by first mortgagee—Effect on second mortgagee's rights—Purchase by one*

MORTGAGE—*contd.*

5 SALE OF MORTGAGED PROPERTY—*contd.*

(a) RIGHTS OF MORTGAGEES—*contd.*

or several joint mortgagees of mortgaged property—Extinguishment of mortgage-debt—Suit for sale of mortgaged property. In January 1886 *B* obtained a simple money-decree only in a suit for enforcement of lien created by a bond executed by the wife of *Z*, and at a sale in execution of such decree a 10 biswas share hypothecated in the bond was

1872, the heirs of their surety *S*, a purchaser ... those heirs of the property mortgaged in the security-bond, and *D*, in which they claimed to recover the money due on the bond by sale of the property mortgaged therein and also by the sale

incumbrance thereon as ... with him in buying it; that consequently, when *B* sold the 10 biswas to *D* in 1888, they were free of all incumbrance under the joint bond, and that he passed to her a clean title which she could assert as a complete answer to the present suit in regard to the 64 biswas. BHUP SINGH *v.* ZAINULABDIN
I. L. R. 9 All. 205

18 ——— *Right of second mortgagee—Right of sale or redemption—Mortgage suit—Parties.* Where a mortgaged property is sold in execution of a mortgage decree at the instance of the first mortgagee, and the second mortgagee, who was no party to the previous suit, brings a suit to enforce his mortgage, making the purchaser a party —*Held*, that, the property having being sold at the instance of the first mortgagee, the only right *which the second mortgagee had was the* right to redeem, and the plaintiff, *without redeeming* the first mortgage, could not bring the property to sale in satisfaction of hi subsequent charge DURGA CHURN MUKHOPADHYA *v.* CHANDRA NATH GUPTA
4 C. W. N. 541

MORTGAGE—contd

5. SALE OF MORTGAGED PROPERTY—contd

(a) Rights of Mortgagees—contd

19 ———— *Payment by mortgagee by conditional sale of prior mortgage—Decree obtained by intermediate simple mortgagee for sale—Mortgage by conditional sale foreclosed—Intermediate simple mortgagee not entitled to sell without paying first mortgage* B made two mortgages, dated, respectively, the 10th October 1871 and 10th October 1872, of his zamindari property in favour of P On 27th January 1874 B mortgaged 117 bighas 7 biswas and 10 dhurs of sir and cultivatory land belonging to his zamindari for R700 to the defendant On 10th September 1877 B made a conditional sale of his zamindari property to the plaintiff for R4,500 to pay off the two charges created in favour of P On the 10th August 1878 B made another mortgage to the defendant for R300 of the same 117 bighas 7 biswas and 10 dhurs. On the 9th November 1881 defendant obtained a decree on his two bonds of the 27th January 1874 and 10th August 1878, and on his application for execution of the decree the property mortgaged to him was advertised for sale on the 20th November 1883 Meanwhile the plaintiff had taken the necessary proceedings to foreclose his conditional sale, and upon the 29th March 1883 the sale was foreclosed On the 19th November 1883 plaintiff instituted ...

[illegible]

incumbrances to that of the defendant, for the purpose of stopping him from bringing the property to sale in execution of his decree before first recouping the plaintiff the amount which the latter ...

[illegible]

20. ———— *Suit for sale of mortgaged property without redeeming prior mortgage—Form of decree—Transfer of Property Act (IV of 1882), s. 58—General Clauses Consolidation* ...

[illegible]

MORTGAGE—contd

5 SALE OF MORTGAGED PROPERTY—contd.

(a) Rights of Mortgagees—contd.

entitled to sell the mortgage property without redeeming the prior mortgage *Held*, that this decree was erroneous, and that the plaintiff was entitled to an order for sale of the mortgaged property subject to the lien of the prior incumbrancer. The words "immoveable property" in s. 58 of the ...

[illegible]

v *Panjana Dien, I L R 4 Mad 213*, *Khub Chand* v *Kalian Dass, I L. R 1 All. 240*; *Raghunath Prasad* v *Jurawan Bai, I L. R. 8 All 105*; *Gangadhara* v *Sivarama, I. L R. 8 Mad 246*, and *Umes Chunder Sircar* v *Zahur Fatima, I. L. R. 18 Calc 164 L R 17 I. A. 201*, referred to and approved as to the right of a second mortgagee to a sale subject to the lien of a prior mortgagee KANTI RAM v KUTUBUDDIN MAHOMED

I. L. R. 22 Calc. 33

See BENI MADHUB MOHAPATRA v SOURENDRA MOHAN TAGORE . . I. L. R. 23 Calc. 795

21. ———— *Civil Procedure Code, 1882, ss 354, 355, and 356—Insolvency—Receiver selling a mortgaged property of insolvent—Purchase at such sale.* By an order, dated the 8th July ...

[illegible]

fields, which was purchased by A's undivided son G. At the sale the plaintiff gave notice of his claim as mortgagee After paying off the debts of the scheduled creditors, the Receiver made over to A the residue of the purchase-money and the eight unsold fields. In 1891 the plaintiff sued A for possession of the mortgaged property and on appeal obtained a decree. While that suit was pending, G sold to the defendant the field which he had purchased. In execution of his decree, the plaintiff recovered possession of the ...

[illegible]

MORTGAGE—*contd.*

5. SALE OF MORTGAGED PROPERTY—*contd.*

(*a*) RIGHTS OF MORTGAGEES—*contd.*

vested in the Receiver under s. 361, he under s 356 was directed to convert it into money. *G* therefore at the sale only purchased the equity of redemption in the one field; and the defendant, who now stood in *G's* shoes with notice of the plaintiff's claim, although he might possibly be entitled to redeem the whole nine fields comprised in the mortgage, was bound to deliver possession to the plaintiff (the mortgagee) until that was done The mortgaged property could not be sold by the Receiver without the consent of the plaintiff (the mortgagee) or paying him off. S. 356 of the Civil Procedure Code (Act XIV of 1882) no doubt contemplates the payment of debts secured by mortgage out of the proceeds of the conversion of the insolvent's property in priority to the general creditors, but this must be taken in connection with s 354, and must be understood as referring to those cases in which the mortgaged premises have been sold after coming to an understanding with the mortgagee. SHRIDHAR NARAYAN *v.* KRISHNAJI VITHOJI . . . I. L. R. 12 Bom. 272

22. ——— *Right to sale of portion of mortgaged property—Death of sole mortgagee leaving several heirs—Sale of mortgagee's right by one of such heirs—Suit by purchaser for sale of mortgaged property—Act IV of 1882, s. 67.* Upon the death of a sole mortgagee of zamindari property, his estate was divided among his heirs, one of whom, a son, was entitled to fourteen out of thirty-two shares. The son executed a sale-deed

perty, the other parties interested not having been joined: that, moreover, he was not entitled to succeed, even in an amended action in claiming the sale of a portion of the property in respect of his own share, and that the suit was therefore not maintainable. *Bishan Dial* v. *Manni Ram, I. L. R. 1 All. 297*; *Bhora Roy* v. *Abilack Roy, 10 W. R 476*, and *Bedar Bakht Muhammad Ali* v *Khurram Bukht Yahya Ali Khan, 19 W. R. 315*, referred to. PARSOTAM SARAN *v* MULU . I. L. R. 9 All. 68

23. ——— *Redemption of prior mortgage by puisne mortgagee—Sale, at his suit, of mortgaged property, on what terms, and with payment of what incumbrances.* Upon a claim by a puisne mortgagee to redeem prior incumbrances, and in the alternative, for a decree ordering a sale of the property mortgaged, the sale was decreed, with application of the purchase-money to pay incumbrances in their due order; and with

MORTGAGE—*contd*

5. SALE OF MORTGAGED PROPERTY—*contd*

(*a*) RIGHTS OF MORTGAGEES—*contd.*

redemption by the plaintiff of a prior mortgagee, who was to have an option to redeem. UMES CHUNDER SIRCAR *v.* ZAHUR FATIMA

I. L. R. 18 Calc. 164
L. R. 17 I. A. 201

24. ——— *Mortgagee in possession not paying assessment during famine—Payment of arrears of assessment by person registered as occupant who obtains conveyance from mortgagor—Mortgagee lying by—Acquiescence—Estoppel—Foreclosure, suit for.* The plaintiffs, as mortgagees under a mortgage-deed executed to them by the ... during ... e assess- ...378 they ceased to cultivate it, and paid no assessment. ... the Mamlatdar, and took possession The plaintiffs took no steps to prevent his taking possession, or cultivating the land. In 1886 the plaintiffs brought this suit for foreclosure They alleged that they had been dispossessed by the second defendant in 1879, and they claimed mesne profits for the years 1883, 1884, and 1885 The Court of first instance directed the defendant to redeem the mortgage within six months, in default whereof it granted foreclosure to the plaintiffs. On appeal the District Judge reversed that decree, holding ... were estopped by their conduct ... fendant ... value. ... ing the ... aintiffs ... endant only acquired by his purchase ... gagor's interest in the land. Even if the mortgagor had been in actual possession, the registration of the ... the purchaser ...

25. ——— *Second mortgage of the same property to the same person—Sale in execution of decree on first mortgage—Purchase by mortgagee decree-holder.* A decree-holder holding two decrees of different Courts on separate bonds hypothecating the same property, in execution of

MORTGAGE—*contd.*

5 SALE OF MORTGAGED PROPERTY—*contd.*

(a) Rights of Mortgagees—*contd.*

the first decree purchased the property himself, The surplus of the sale proceeds was distributed by the Court among other persons who held money-decrees against the same judgment-debtor. *Held*, that the mortgagee decree-holder could not afterwards execute the second decree against property of the judgment-debtor not included in the hypothecation bond *Ahmad Wali v Bakar Hussain, All. Weekly Notes (1882) 61, Khwajah Bakhsh v. Imaman, All. Weekly Notes (1885) 210,* and *Babu Raiji v. Ramji Swarupji, I L R 11 Bom. 112,* referred to. Ballam Das *v.* Amar Raj

I. L. R. 12 All. 537

26 ———— *Holder of two mortgages on the same property suing separately on each* There is nothing in the Code of Civil Procedure or in the Transfer of Property Act to prevent

27. ———— *Effect of sale of portion of mortgaged property under a decree not on the mortgage—Right of mortgagee to have subsequent sale of mortgaged property taking into account the full value of the property previously brought to sale.* When a mortgagee holding a mortgage over two distinct properties brings one of them to sale in execution of a decree against the mortgagor, not being a decree on his mortgage, and purchases

his mortgage, he will have to bring into account the full value of the portion of the mortgaged property purchased by him under his former decree. *Sumera Kuer v. Bhagwant Singh, All Weekly Notes (1895) 1,* followed *Ahmad Wali v Bakar Husain, All Weekly Notes (1883), 61, Ballam Dass v Amar Raj, I L R. 12 All. 537,* referred to Chunna Lal *v.* Anandi Lal

I. L. R 19 All. 196

28. ———— *Mortgage by joint owner—Mortgagee becoming purchaser of part of mortgaged property—Right of redemption of part of mortgaged property—Apportionment of mortgage-debt—Right of mortgagee to keep security entire—Right of purchaser of mortgagee's interest to sue for partition—Joint possession.* When a

the mortgage security and then urge what title he may have acquired by the purchase The general rule is that a mortgagee has a right to insist that his security shall not be split up, but in the following cases there is no objection to do so and to

MORTGAGE—*contd.*

5. SALE OF MORTGAGED PROPERTY—*contd.*

(a) Rights of Mortgagees—*contd*

these lots were subsequently sold to defendants

ant No 9 In 1881 the plaintiffs (sons and brothers of the original mortgagors) sued to redeem all the lands comprised in the mortgage of 1872. The first Court as to the first four lots *held*, that defendants Nos 4 to 8 had been in adverse possession of the first four lots for more than twelve

remaining three lots, the Judge found that the mortgage debt had been paid, and that a sum of

29 ———— *Prior and subsequent mortgages—Price to be paid by a subsequent mortgagee redeeming after the mortgaged property*

MORTGAGE—*contd.*

5. SALE OF MORTGAGED PROPERTY—*contd.*

(*a*) RIGHTS OF MORTGAGEES—*contd.*

has been brought to sale and purchased by the prior mortgagee—Transfer of Property Act (IV of 1882), ss. 74, 75, and 85 A subsequent mortgagee is not entitled to redeem the prior mortgage by simply paying the price for which the prior mortgagee may have purchased the mortgaged property at an auction-sale held in execution of a decree obtained by him without joining the subsequent mortgagee as a party; but such subsequent mortgagee must, if he wishes to redeem, pay to the prior mortgagee the full amount due on his mortgage. *Gunga Pershad Sahu* v. *Land Mortgage Bank, I. L. R. 21 Calc. 366*, and *Dadoba Arjunji* v. *Damodar Raghunath, I. L. R. 16 Bom. 486*, referred to. *Baldeo Bharthi* v. *Hushiar Singh, All. Weekly Notes (1895) 46*, distinguished. DIP NARAYAN SINGH *v* HIRA SINGH . . . . . I. L. R. 19 All. 527

30. ———————— *Prior and subsequent incumbrancers, rights of, inter se—Transfer of Property Act (IV of 1882), s 85—Sale in execution of decree obtained by first mortgagee in a suit to which the second mortgagee was not a party—Rights of auction-purchaser and mortgagor as regards the second mortgagee* A prior mortgagee, *K*, obtained a decree in a suit upon his mortgage, to which suit a puisne mortgagee, *G*, was not made a party, and subsequently one *B* attached the decree, and, having put up the property for sale, purchased it himself. *G*, the puisne mortgagee, having brought a suit for redemption of *K's* mortgage and sale of the property, *K* sold his rights to *P*, who was thereupon added as a defendant. *G* obtained a decree for redemption and sale *Held*, per BANERJI, *J.*, that *P* was entitled to the whole amount which *G* had to pay for redemption of the prior mortgage, with the exception of the amount of the purchase-money paid by *B* at the auction-sale, which amount, and which amount only, would be due to *B* or his representatives. *Dip Narain Singh* v. *Hira Singh, I L. R 19 All. 527*, and *Baldeo Bharthi* v. *Hushiar Singh, All. Weekly Notes (1895) 45*, approved. *Held per* AIKMAN, *J.*, that the auction-purchaser, *B*

I L. R. 19 All. 527, dinered from, and Baldeo *Bharthi* v. *Hushiar Singh, All. Weekly Notes (1895) 45*, distinguished. WAHID-UN-NISSA *v.* GOBARDHAN DAS . . . . I. L. R. 22 All. 453

31. ———————— *Renewal of mortgage—Priority over subsequent-incumbrance—Transfer of Property Act (IV of 1882), s 10.* Where a mortgagee, subsequently to the execution of the mortgage-deed, takes another mortgage in renewal of the former deed, he has priority over incumbran es subsequent to the first deed. ALAGARAN CHETTI *v.* LAKSHMANAN CHETTI

I. L. R. 20 Mad. 274

32. ———————— *Sale by mortgagor of part of the mortgaged property—Effect of such sale on rights of the mortgagee.* The right of a

I. L. R. 5 Mad. 387; and *Panwari Das* v *Muhammad Mashiat, I. L R 9 All. 690*, referred to. BIHARI DAS *v* DALIP SINGH . I. L. R. 17 All. 434

33. ———————— *Transfer of Property Act (IV of 1882), s 88—Suit for sale on a mortgage—Purchase at auction sale by decree-holder—Further execution sought against other property comprised in the mortgage—Amount for which decree holder must give credit to mortgagor.* A mortgagee decree-holder, in a suit for sale under s. 88 of the Transfer of Property Act, 1882, brought part of the mortgaged property to sale, and with the leave of the Court, purchased it himself. The amount realized by the sale being insufficient to

roperty
decree-
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amount
Parshad
heo-
Calc.
R.
Ali

19 Calc. 4, referred to MUHAMMAD ALI KHAN *v.* THAKUR DHARAM SINGH

I. L. R. 18 All. 31

34. ———————— *Rights of prior and subsequent incumbrancers inter se—Rights of mortgagee purchasing equity of redemption—Right of sale of mortgaged property* *A* and *B* jointly mortgaged certain immoveable property to *X* by

rty to
ngust
ty to

to *Z.* On the 20th Septe to him, and the to *X* the property mortgaged to him, and the the proceeds of that sale *X's* three mortgages were paid off. On the 8th January 1887 *Y* sued *A*, *B*, and *X* for cancelment of the deed of sale of the 20th September 1886, and for sale of the property mortgaged to him under his deed of the 6th August 1885 *Y* did not make *Z* a party to this suit He did not ask for redemption of *X's* mortgages nor for foreclosure of *Z's* mortgage. Upon these facts it was *held* by EDGE, *C J.*, STRAIGHT, TYRRELL and KNOX, *JJ.* (MAHMOOD, *J.*, *dissentiente*), (1) That *X*, not having exhibited any intention of foregoing altogether his rights in respect

MORTGAGE—*contd.*

5. SALE OF MORTGAGED PROPERTY—*contd*

(*a*) RIGHTS OF MORTGAGEES—*contd.*

extent of the amount which was due under them on the 20th September 1886 *Gokaldas Gopaldas v. Rambaksh Sheochand, I. L R 10 Calc. 1035 L. R 11 I. A 126, Gaya Prasad v. Salik Prasad, I. L. R 3 All 682, Mul Chand Kuber v Lallu Trikam, I L. R 6 Bom 404, Shantapa v Balapa, I. L R 6 Bom. 561; Ramu Naikan v Subbaraya Mudali, 7 Mad. 229, Sirbadh Rai v Raghunath Prasad, I L R 7 All 568, Janki Prasad v. Sri Matra Mautangui Debia, I. L R 7 All 577,* and *Gangadhara v Sivarama, I L R 8 Mad. 246,*

Kalian Das, I L. R 1 All 240, Kasum-un-nissa Bibi v Nilratna Bose, I. L R. 8 Calc 79, Har

201, referred to, in addition to the cases cited above. *Raghunath Prasad v. Jurawan Rai, I. L R. 8 All 105,* distinguished *Vencata Chella Kandian v. Panianadien, I L R 4 Mad. 213, Gangadhara v. Sivarama, I. L. R 8 Mad 246,* and the judgments of MAHMOOD, *J*, in *Sirbadh Rai v Ragunath Prasad, I L R 7 All. 568,* and in *Janki Prasad v Sri Matra Mautangui Debia, I L. R. 7 All 577,* dissented from MAHMOOD, *J (contra).* Inasmuch as a mortgagee cannot bring the mortgaged property to sale without the intervention of a Court, a private purchase by the mortgagee of the rights remaining to the mortgagor in such property, though it may be valid as against the

such intermediate mortgage prevents the merger

35. ——————— *Prior and subsequent mortgagees—Rights of subsequent mortgagees where prior mortgage is usufructuary, and time has not arrived for redemption—Form of decree* *Held*, that, where there exists a prior usufructuary mortgage, a subsequent mortgagee of the same property cannot bring the mortgaged property to sale in virtue of his incumbrance until such time as the usufructuary mortgage becomes capable of redemption. *Mata Din Kasodhan v. Kazim Husain, I. L. R 13 All. 432,* explained and followed. AKHRA PANCHAITI *v.* SUBA LAL

I. L. R. 18 All. 83

36 ——————— *Transfer of Property Act (IV of 1882), s. 101—Extinguishment of mortgage—Merger—Third mortgagee paying off first mortgage—Priority of charges* Certain land was mortgaged in 1876 to *A*, and on the 10th February 1877 to *B*, and two days afterwards to *C*, the last-mentioned mortgage was effected to satisfy a decree obtained by *A* on his mortgage In February 1882 *C* obtained a decree on his mortgage : this decree was discharged by the sale of the land to *D*, who borrowed part of the purchase-money from the plaintiff, to whom he mortgaged it on the day of the sale *B* subsequently obtained against *D* and the mortgagor's representative a decree on his mortgage, which comprised a declaration that the sale of 1882 was subject to his lien and brought the property to sale and became the purchaser in execution The plaintiff now sued *B* and *D* on his mortgage. *Held*, that the plaintiff's mortgage was entitled to priority over the mortgage of 10th February 1877 to the extent to which the loan secured thereby had gone to discharge the mortgage of 1876. SEETHARAMA *v* VENKATAKRISHNAKA . . . I. L. R. 16 Mad. 94

37. ——————— *Covenant that mortgagee be entitled to enter—Entry, right of—Mortgage-deed in English form* *B* executed a

decree by consent The existence of right of *S* to a share in the properties was not known to the Bank, and she was not made a party to that suit. The

MORTGAGE—*contd.*

5. SALE OF MORTGAGED PROPERTY—*contd.*

(a) RIGHTS OF MORTGAGEES—*contd.*

to have brought the whole sixteen annas in the properties to sale. *R* then brought this suit for the recovery of possession of the six-annas share of the properties, purchased at the sale by the Bank themselves, and which was now in their possession. *Held,* that under the covenant in the mortgage-deed above referred to, the Bank were entitled to remain in possession as mortgagees until the proportion of the debt which might legitimately be imposed upon the six-annas share of the properties in their hands was paid. LUTCHMIPUT SINGH BAHADUR *v.* LAND MORTGAGE BANK OF INDIA I. L. R. 14 Calc. 464

38. ———— *Purchase of mortgaged property by mortgagee at judicial sale on leave obtained to bid.* Where mortgagees executed the r decree on the moitgage, and having obtained leave to bid at the judicial sale purchased the property —*Held,* that they could not be held to have purchased as trustees for the mortgagors, the leave granted to bid having put an end to the disability of the mortgagees to purchase for themselves, putting them in the same position as any independent purchasers MAHABIR PERSHAD SINGH *v.* MACNAGHTEN . . I. L. R. 16 Calc. 682 L. R. 16 I. A. 107

DAKSHINA MOHAN ROY *v* BASUMATI DEBI 4 C. W. N. 474

39. ———— *Civil Procedure Code, 1882, s. 294—Decree-holder, purchase by—Satisfaction pro tanto—Mortgagee not trustee for mortgagor in sale-proceeds—Leave to bid at sale in execution when granted—Permission of the Court to decree-holder to buy—Practice.* A [illegible]

A mortgagee in such a position therefore is at liberty to take out further execution for any balance of the amount decreed that may be left after deducting the price for which the mortgaged property was sold, and is not bound to credit the judgment-debtor with the real value of the property to be ascertained by the Court The permission to a mortgagee to bid should be very cautiously granted, and only when it is found after proceeding with a sale that no purchaser at an adequate price can be found, and even then only after some enquiry as to whether the sale proclamation has been duly published. SHEONATH DOSS *v* JANKI PROSAD SINGH . . I. L. R. 16 Calc. 132

40. ———— *Position of mortgagee who has purchased the mortgaged property after obtaining leave to bid.* A decree-holder (a mortgagee) who has, after obtaining leave to bid at a sale, purchased the mortgaged premises

MORTGAGE—*contd.*

5. SALE OF MORTGAGED PROPERTY—*contd.*

(a) RIGHTS OF MORTGAGEES—*contd.*

[illegible]

GUNGA PERSHAD *v.* JAWAHIR SINGH I. L. R. 19 Calc. 4

41. ———— Accession to mortgaged property—*Transfer of Property Act (IV of 1882), ss 70, 82—Priorities—Contribution—Distribution of sale-proceeds.* Where, after the execution of two simultaneous mortgages in respect of a house and certain lands appurtenant thereto, the mortgagor erected two other houses on the lands and subsequently executed various mortgages in [illegible]

[illegible] mortgagees in accord [illegible]

original security was given. *Held,* also, [illegible]

mortgagees, as [illegible] perty subject to the respective mortgages. KRISHNA GOPAL SADHANI *v.* MILLER (1902) I. L. R. 29 Calc 803

[illegible] *Mortgage of* [illegible]

[illegible] *mortgagee, where property purchased* [illegible] *mortgagee to due on mortgage—Subsequent suit by mortgagee to enforce liability of the other property to share of mortgage-debt—Liability of such property in the hands of the purchaser—Property still liable to mortgage-debt, although sold at instance of mortgagee —Transfer of Property Act (IV of 1882), ss. 99 and 101—Merger—Apportionment—Contribution* Certain fields and a house, being subject to a mortgage, were brought to sale in execution of a money-decree obtained by the mortgagee against the mortgagor, and were sold subject to the mortgage. At the date of the sale the mortgage-debt was R3,100 The mortgagee, having obtained leave to bid at the sale, purchased the fields for R340 and the first defendant purchased the house for R300. At the date of the above transaction the Transfer of Property Act (IV of 1882) was not in force in Bombay. Subsequently the mortgagee filed this suit to enforce his rights under the mortgage against the house, which he sought to make

MORTGAGE—contd

5. SALE OF MORTGAGED PROPERTY—contd

(a) Rights of Mortgagees—contd

liable for its proportionate share of the mortgage-debt. At the date of suit the mortgage-debt had increased to R4,000, and he claimed to recover R800 from the house. The purchaser of the house (defendant 1) pleaded that at the time of the sale the value of the fields purchased by the mortgagee was more than sufficient to satisfy the mortgage-debt, which was therefore wholly extinguished, and that the house was no longer liable. *Held* (Fulton, J., dissenting), that the house was liable in the hands of the first defendant to a proportionate share of the mortgage-debt, he having purchased it, subject thereto, and that the plaintiff (the mortgagee) was entitled to recover such share from him. *Held*, by Fulton J., that where a mortgagee, instead of enforcing his mortgage and bringing the property to sale free of incumbrances (where such course is open, as it was in the present case), brings to sale the equity of redemption in part of the mortgaged property, and buys it himself, an equity arises which entitles the mortgagor to require satisfaction first out of the property brought by the mortgagee. Otherwise the action of the mortgagee in causing the sale subject to the mortgage might almost necessarily secure to him an undue profit at the expense of the mortgagor. Fakiraya v. Gadigaya (1901)

I. L. R. 26 Bom. 88

43. ———— Keeping mortgage alive —*Civil Procedure Code (Act XIV of 1882), s. 276—Mortgage, fresh, after attachment—Priority.* When

126, followed. So, where a mortgagor in order to pay off a previous mortgage decree, executes a mortgage free from encumbrances in favour of a third party, and, after paying off the mortgage decree with the fresh loan, makes over the old mortgage-deed to the new mortgagee, the old mortgage is kept alive for the benefit of the new

s.c. 6 C W. N. 209
L. R. 29 I. A. 9

44. ———— Priority—*Transfer of Property Act (IV of 1882), s. 74—Rights of prior and puisne incumbrancers inter se* The puisne mort-

MORTGAGE—contd.

5 SALE OF MORTGAGED PROPERTY—contd

(a) Rights of Mortgagees—contd

of that decree, the property mortgaged to them on the 21st September, 1896 The prior mortgagees

decree, the property mortgaged to them on the 21st November, 1896, and obtained possession thereof on the 21st January, 1897 The puisne mortgagees

purchased, and (ii) that such possession was, as to the property included in their own mortgage, proprietary; but, as to the property not so included, possession as mortgagees only: they were not entitled to the rights of the prior mortgagees as purchasers of the equity of redemption Delhi and London Bank v. Bihari Das (1901)

I. L. R. 24 All. 185

45. ———————— *Priority according to date of possession by two purchasers of the*

I. L. R. 26. Mad. 48

46. ———— Right of sale by puisne mortgagee—*Suit by puisne mortgagee—Right of sale by puisne mortgagee—Decree on first mortgage*

MORTGAGE—*contd.*

5. SALE OF MORTGAGED PROPERTY—*contd.*

(*a*) Rights of Mortgagees—*contd.*

is entitled to a sale of the property secured by his mortgage, subject to the rights of the first mortgagee even after the property has been sold in execution of

Narain Roy *v.* Ramtaran Banerjee (1903) **I. L. R. 30 Calc. 599 s.c. 7 C. W. N. 766**

47. ——— Surplus sale proceeds—*Transfer of Property Act (IV of 1882), ss. 96, 97—Civil Procedure Code (Act XIV of 1882), s. 295, prov. (c)—Prior mortgage—Contract Act (IX of 1872), s 44—Contribution as between co-mortgagors—Interest to date of realisation, rate of* If a mortgagee

The Court is quite competent to allow in a mortgage decree interest at the stipulated rate up to the actual date of realisation *Rameswar Koer v. Mahomed Mehdi Hossein Khan, I. L. R. 26 Calc. 39*, and *Maharaja of Bhartpur v. Rani Kanno Dei, I. L R 23 All. 181*, followed. Ganga Ram Marwari *v.* Jaiballav Narain Singh (1903) **I. L. R. 30 Calc. 953**

48 ——— *Sale of mortgaged property under a decree for rent—Mortgagee's charge on surplus sale-proceeds—Transfer of Property Act (IV of 1882), s 73—Bengal Tenancy Act (VIII of 1885), ss. 159, 161, to 167.* When mortgaged property is sold under a decree in a rent suit, the mortgagee would have, under the provisions of s 73 of the Transfer of Property Act, a charge on the surplus sale-proceeds whether under the decree in the rent suit the property was put up for sale with power to the purchaser to avoid encumbrances or not. Ss 159 and 161 to 167 of the Bengal Tenancy Act cannot prejudice the right of a mortgagee in that respect. Gobinda Sahai *v.* Sibbutram (1906) **I. L. R. 33 Cac. 878**

49 ——— Limitation—*Mortgage, suit on—Acknowledgment—Limitation Act (XV of 1877), ss 19, 22—Adding assignee of equity of redemption after time—Release of a portion of mortgaged property from debt—Validity—Release in writing—Registration—Registration Act (III of 1877), s 17—Attestation, if evidence of assent—Form of relief* In a conveyance executed by a mortgagor in respect of a portion of the mortgaged properties in favour of a stranger there was a recital admitting

the mortgagor's liability on account of the mortgage debt: *Held*, that not being addressed to any person and not having been communicated to the creditors or any person on their behalf, it was not an acknowledgment within the meaning of s. 19 of the Limitation Act What is a sufficient acknowledgment within the meaning of that section considered. *Mylapore v. Yeo Kay, L. R. 14 I. A. 168 : s.c. I. L. R. 14 Calc. 801*, followed

was concerned was barred, but the plaintiff was entitled to succeed in respect of a proportionate part of his claim as against the remaining owners of the equity of redemption, who had been made parties within time. *Girish Chunder v. Dwarka Nath, I. L. R 24 Calc. 640*, and *Fakira Pashan v. Bibee Azimunnessa, I. L. R. 27 Calc. 540*, distinguished and doubted. *Oriental Bank v. Charriol, I. L. R. 12 Calc. 642*, referred to. *Gurusayya v. Dattatraya, I. L. R. 28 Bom. 11, 20*, approved. *Ram Sebuk v. Ram Lall, I. L. R. 6 Calc 815*, and *Ram Doyal v. Janmejoy, I. L. R. 14 Calc. 791*,

registered, where the interest sought to be extinguished by it is of the value of R100 or upwards. *Safdar Ali v. Luchman Das, I. L. R. 2 All. 554*, *Byrub v. Basawa v. Kalkapa, I. L R. 2 Bom 489*, *Byrub v. Kaise, 16 W. R 56*, *Nandalal v. Gurditta, 2 P. L. R. 615*, referred to A mortgagee, who has security upon two or more properties, which he knows belong to different persons, cannot release his lien upon one so as to increase the burden upon the others without the privity and consent of the persons affected. *Surjiram v. Barham Deo, 2 C. L. J. 202*, and *Surjiram v. Barham Deo, 1 C. L. J. 337*, followed. Imam Ali *v.* Baij Nath Ram Sahu (1906) . . **I. L. R. 33 Calc. 613 s.c. 10 C. W. N. 551**

50 ——— *Execution—Sale—Injunction—Limitation—Limitation Act (XV of 1877), Sch. II, Art 179, cl. (4)—Subsequent application for sale of the entire property—Whether in continuation of the previous application.* A obtained a mortgage decree against G and he applied on the 11th January 1901 for sale of the mortgaged property

MORTGAGE—*contd*

5. SALE OF MORTGAGED PROPERTY—*contd*

(*a*) RIGHTS OF MORTGAGEES—*contd.*

suit by the judgment-debtor's son, the decree-holder renewed his application for sale of the entire property on the 4th of July 1904 The judgment-debtor objected that, as regards the three-fourths of the share of the property, which was previously put up for sale, the application was barred by limitation *Held*, that the application of the 4th July 1904 must be treated as a continuation of the former one of 11th January 1901, therefore the execution was not barred by limitation *Raghunandan Pershad v. Bhugoo Lal, I L R 17 Calc* 268, distinguished. GURUDEO NARAYAN SINHA *v.* AMRIT NARAYAN SINHA (1905)

I. L. R. 33 Calc. 68

51. —— Purchase by decree-holders —*Decree—Sale—Simple money decree—Possession —Rights of parties.* The plaintiffs, respondents, obtained a decree for sale and an order absolute under a mortgage executed by one *R. H. H C.* a son of *R. H.*, on the sole ground that he had

decree was given possession of, the six-pie share *Held*, that, although the plaintiffs' purchase in respect of the property covered by *J. K.'s* decree must be treated as a nullity, their general rights as mortgagees were safeguarded by the terms of that decree, and s. 13 of the Code of Civil Procedure could not bar the plaintiffs' right to bring the present suit. *Held*, also, that the fact that the plaintiffs had purchased a portion of the mortgaged

52. ——— Mortgagee paying prior incumbrancer after sale, right of—*Transfer of Property Act (IV of 1882), s 89—Effect of order absolute for sale.* It is settled law that, in the absence of clear proof to the contrary, it is to be

the sale of the properties in the execution of a decree on the anterior mortgage, advances money on the

referred to and followed The provisions of s. 89 of the Transfer of Property Act have reference to the execution of a mortgage decree and ought not, in reason, to be so construed as to render the application of this principle impossible in cases where an order absolute for sale had been made on the ground that such order extinguished the security. *Dinobundhu Shaw Chowdhry v. Jogmaya Dasi, L. R. 29 I. A.* referred to and followed in principle. VANMIKALINGA MUDALI *v.* CHIDAMBARA CHETTY (1905) . . . . I. L. R. 29 Mad. 37

53. ——— Two mortgages on the same property executed by the same person—

the sum due on the later mortgage only, by sale of the property subject to the prior mortgage. KESHAVRAM *v.* RANCHHOD (1905)

I. L. R. 30 Bom. 156

54 ——— Rights of subsequent mortgagee—*Limitation Act (XV of 1877), Sch II, Arts 62, 120, 132—Suit—Charge—Charge on surplus proceeds of prior mortgagee's sale—Money had and received—Sale—Right to surplus sale proceeds.* Certain property was sold under a decree on the first mortgage, the second mortgagee, whose mortgage had then matured, being a party to the decree Subsequently the first mortgagee, who had a third mortgage on it, obtained a decree

enforce payment of money charged upon immoveable property within the meaning of Art 132 of

MORTGAGE—*contd.*

5. SALE OF MORTGAGED PROPERTY—*contd.*

(*a*) RIGHTS OF MORTGAGEES—*contd.*

decree, to follow the surplus sale-proceeds is an equitable right, equity regarding his right not as extinguished or discharged by the sale, but as transferred thereby to the surplus sale-proceeds, which would be treated as part of his mortgage security and his right to follow the money or the nature of the suit to enforce such right cannot be affected by the fact that the money had been withdrawn from the Court by a party having notice of the plaintiff's right. *Jogeshar Bhagut* v. *Ghanesham Dass, 5 C. W. N. 356*, *Kamala Kanta Sen* v. *Abdul Barkat, I. L. R. 27 Calc. 180*; *Padmanabh Bombshenvi* v *Khemu Komar Naik, I. L. R. 18 Bom. 684*; and *Raja Kishendatt Ram* v. *Raja Mumtaz Ali Khan, I. L R. 5 Calc. 193 L. R. 6 I. A. 145*, referred to. BERHAMDEO PERSHAD *v.* TARA CHAND (1905) . . I. L R. 33 Calc. 92

55. ———————— *Prior mortgage—Puisne mortgage—Suit by prior mortgagee for sale—Puisne mortgagee not made a party—Sale in execution—Rights of the puisne mortgagee.* Where a prior mortgagee sues his mortgagor for the sale of the mortgaged property without making the puisne mortgagee a party to the suit, the latter is in no way affected by the suit or its results. Thus

after as mortgagor to foreclose or suffer himself to be redeemed by him. PANDURANG *v.* SAKHARCHAND (1906) . . . I. L. R. 31 Bom. 112

amount due should be paid in instalments, and that the mortgaged property should be sold in default of payment The decree as originally drawn stated that on failure to pay any one instalment, the whole amount would become due and the mortgaged property would, in the meantime, remain hypothecated, but it did not direct a sale of the property. Thereafter, on the application of the decree-holder, the decree was amended by inserting the words—"On failure to pay the money covered by the instalments, the mortgaged property should be sold for realization of the amount." The decree-holder then applied for and obtained an order absolute for sale. On appeal, the said order was set aside on the ground that, having regard to the form of the decree as amended, no order under s. 89 of the Transfer of

the Court had full jurisdiction to carry out the intention of the parties, and the mortgaged property should be sold to satisfy the decretal amount and that such execution accorded with the *cursus curiæ*. *Pisani* v. *Attorney General for Gibraltar, L. R. 5 P. C. 516*, and *Sadasiva Pillai* v. *Ramalinga Pillai, L. R. 2 I. A. 219*, followed. ABIR PARAMANIK *v.* JAHAR MAHMUD MANDAL (1907) I. L. R. 34 Calc. 886

57. ———— Same property mortgaged twice to same mortgagees—*Suit for sale of the property—Part purchased by mortgagees under their decree on prior mortgage—Remainder liable for full amount of the subsequent mortgage* Sixteen villages were mortgaged by two mortgages of different dates to the same mortgagees. The mortgagees put their earlier mortgage into suit, ... to sale 10 out of the 16 ... *Held,* ... action ... g six

villages were liable to the full extent of the second mortgage and not merely for a proportionate part of the money thereby secured. *Zahir Singh* v. *Buri Singh, F. A. No. 63 of 1903, decided 20th April 1905*, and *Bohra Thakur Das* v. *The Collector of Aligarh, I. L. R. 28 All. 593*, referred to. RAGHUNATH PRASAD *v.* JAMNA PRASAD (1906) I. L. R. 29 All. 233

58. ———— Suit in formâ pauperis—*Court-fee—Property of defendant sold to realise court-fee—Property sold subject to a mortgage—Rights of mortgagee. Held,* that the sale subject to a mortgage of property belonging to the defendant in suit brought *in forma pauperis* for the purpose of realising the court-fee payable to Government by the plaintiff, does not preclude the mortgagee from bringing to sale the same property in execution of a decree for sale as his mortgage. *The Collector of Moradabad* v *Muhammad Daim Khān, I. L. R. 2 All. 196*, overruled. *Ganpat Putaya* v. *The Collector of Kanara, I. L. R. 1 Bom. 7*, distinguished. DOST MUHAMMAD KHAN *v.* MANI RAM (1907) . . . I. L. R. 29 All. 537

59. ———— Decree for sale—*Decree for ... mortgage of ...*

... tuary mortgage. RADHA KRISHNA ... HUSAWMI SHOLAGAN (1908) I. L. R. 31 Mad. 530

60. ———— *Mortgage decree—Order for sale—Costs—Costs if can be recovered from the mortgagor personally—Transfer of Property Act (IV of 1882), s. 90.* The costs awarded by a decree directing the sale of mortgaged property form part of the mortgage decree and the decree-holder must proceed to recover the costs by a sale

MORTGAGE—*contd.*

5. SALE OF MORTGAGED PROPERTY—*contd.*

(*b*) MONEY DECREES ON MORTGAGES—*contd*

lien cannot co-exist separately in the property hypothecated, and such an attachment must be treated when existing as an attachment for enforcing the lien. And if property subject to such lien is sold in execution of a decree while it is under attachment under the decree upon the mortgage-bond, the lien existing upon the property is transferred from the property to the purchase-money, and thereupon the property becomes thenceforth discharged from the lien. If after the rejection of a claim preferred by the mortgagee, or person claiming the lien, no regular suit is brought under s. 270 of Act VIII of 1859 to enforce the lien, that lien is lost, and the decree becomes thenceforth a

RAJ CHUNDER SHAHA *v.* HUR MOHUN ROY
22 W. R. 98

76. ———— *Rights of purchaser.* The purchaser of a simple money-decree passed on a bond hypothecating property does not merely by his purchase acquire a lien upon the property. GANPAT RAI *v* SARUPI
I. L. R. 1 All. 446

77. ———— *Sale of property for money-decree—Lien for prior hypothecation.* The fact that property is sold under a decree

78. ———— *Registration Act, 1866, s. 53—Loss of lien.* The taking a money-decree on a specially-registered mortgage-bond under s. 53, Act XX of 1866, does not extinguish the mortgagee's lien on the property mortgaged by the bond. There is no substantial difference between

HARANCHUNDER GHOSE *v.* DINOBUNDHOO BOSE
14 B. L. R. F. B. 408 : 23 W. R. 187

79. ———— *Sale of hypothecated property for money-decree—Rights of incumbrancers.* R N executed in 1864 a security-bond in favour of K L, in 1855 a second bond in favour of the defendant, in 1866 a third bond in favour of K L, and in 1867 a fourth bond in favour of the defendant; all the bonds being registered and including as security the property in dispute.

the property hypothecated, of which he became owner and *primâ facie* entitled to possession, having purchased at the instance of a first incumbrancer, and that defendant's lien could not protect him in possession. KAMESSUR PERSHAD *v.* DOWLUT RAM
19 W. R. 83

80. ———— *Sale in execution of decree on mortgage bond—Purchaser, right of.* Nothing passes to the auction-purchaser at a

created by the bond to defeat a second mortgage. AKHE RAM *v.* NAND KISHORE
I. L. R. 1 All. 236

81. ———— *Mortgagee's lien—Registration Act (XX of 1866), s 53.* A and B,

MORTGAGE—*contd.*

5. SALE OF MORTGAGED PROPERTY—*contd.*

(*b*) MONEY-DECREES ON MORTGAGES—*contd.*

68. ———— *Lien on mortgaged property—Advance to save property from* [illegible]

as a decree with express power to sell the mortgaged property. MOHUN BAGCHI *v.* GIRISH CHUNDER BUNDOPADHYA . . . . **1 C. L. R. 152**

MUNBASI KOER *v.* NOWRUTTUN KOER **8 C. L. R. 428**

69. ———— *Effect of, on lien.* The fact that a money decree has been obtained on a bond by which property has been mortgaged does not destroy the lien on that property. It is open to a plaintiff to establish his right on the bond as well as on the decree. HASOON ARRA BEGUM *v.* JAWADOONNISSA SATOODA KHANDAN **I. L. R. 4 Calc. 29**

70. ———— *Lien—Priority.* The plaintiff had lent money to a Court Ameen, [illegible]

ed by the defendant who had obtained a decree for [illegible]

prior to that of the defendant.—*Held*, that the plaintiff's mortgage gave him priority, and that he was not barred from bringing the present suit by his having already sued to recover the amount and obtained a mere money-decree. LALA TILAKDHARI LAL *v.* FURLONG . . **2 B. L. R. A. C. 230**

S C. LALLA TEELUCKDAREE LALL *v.* COURT OF WARDS . . . . **11 W. R. 149**

71 ———— *Lien on mortgaged property—Form of decree.* A mortgagee by way of simple mortgage cannot assert his lien on the property mortgaged, as against a subsequent mortgagee by way of conditional sale who had foreclosed, if the decree passed in favour of the former on his mortgage-bond does not provide for its satisfaction *from the sale of the mortgaged property.* RAM CHUNDER MISSER *v.* KALLY PROSONNO SINGH **2 Hay 625**

72. ———— *Sale in execution of decree on mortgage-bond—Lien on mortgaged property.* In a suit for possession of property which plaintiff's vendor (*K*) had purchased from one *A*, *R*, *K*, the defendant in possession, claimed to be entitled to retain possession as purchaser under a sale in execution of a decree against *A*, which had been obtained on bonds which pledged the property, although the mortgage was not declared in the decree. *Held*, that, if *R K* could prove that by the bonds in question this property was pledged as security for the debts covered by them, he would be entitled to remain in possession. RAM KANT ROY *v.* RAJ KISHORE DEB . . **24 W. R. 94**

73. ———— **Effect of taking money-decree on mortgage-bond**—*Execution of decree—Subsequent purchaser.* When a person to whom property is pledged for a debt obtains a simple money-decree against his debtor in respect of the debt, he cannot execute that decree against the property pledged where it is in the possession of a subsequent *bonâ fide* purchaser. GUPINATH SINGH *v.* SHEO SAHAI SINGH

B. L. R. Sup. Vol. 72 : 1 W. R. 315

Distinguished in BECKWITH *v.* UMESH CHUNDER ROY . . . . . . **3 W. R. 110**

Followed in BHUGWAN DOSS *v.* NUBEE BUKSH **7 W. R. 31**

GOUREE SINGH *v.* FUZL HOSSEIN **15 W. R. 313**

RADHA GOBIND SURMAH *v.* UMBER ALI **15 W. R. 27**

AKBUR ALI *alias* AGA MIRZA *v.* AMEEROONISSA **11 W. R. 225**

ACHUMBIT THAKOOR *v.* CHOONEE LALL CHOWDHRY . . . . . **10 W. R. 27**

FRENCH *v.* BARANASHEE BANERJEE **8 W. R. 29**

BINDABUN CHUNDER SHAHA *v.* JANEE BEEBEE **6 W. R. 312**

RAMNATH RAM *v.* DEEN DYAL RAM **W. R. 1864, 311**

74. ———— *Right of lien—Purchasers.* A mortgagee who obtains a simple money-decree upon a bond by which property is [illegible]

GOLUCK MONEE DEBIA *v.* RAM SOONDUR CHUCKERBUTTY . . . . . . **9 W. R. 62**

RADHA GOBIND SURMAH *v.* UMBER ALI **15 W. R. 7**

75. ———— *Effect of assignment of judgment-debt—Sale on property on which there is a lien—Civil Procedure Code, 1859, s. 270.* A simple decree for money upon a bond by which immoveable property is mortgaged carries with it a lien upon the property mortgaged, and that lien continues as an incident to the debt when it passes from a contract-debt into a judgment-debt, and it continues when such judgment-debt is subsequently assigned to a purchaser. An attachment under a money-decree on a mortgage-bond and a mortgage-

MORTGAGE—*contd*

5 SALE OF MORTGAGED PROPERTY—*contd.*

(b) MONEY-DECREES ON MORTGAGES—*contd*

lien cannot co-exist separately in the property hypothecated, and such an attachment must be treated when existing as an attachment for enforcing the lien. And if property subject to such lien is sold in execution of a decree while it is under attachment under the decree upon the mortgage-bond, the lien existing upon the property is transferred from the property to the purchase-money, and thereupon the property becomes thenceforth discharged from the lien. If after the rejection of a claim preferred by the mortgagee, or person claiming the lien, no regular suit is brought under s. 270 of Act VIII of 1859 to enforce the lien, that lien is lost, and the decree becomes thenceforth a mere money-decree discharged from any incidental lien. NADIR HOSSEIN *v* PEAROO THOVILDARINEE 14 B. L. R. 425 note 19 W. R. 255

RAJ CHUNDER SHAHA *v* HUR MOHUN ROY 22 W. R. 98

76. —— *Rights of purchaser.* The purchaser of a simple money-decree passed on a bond hypothecating property does not merely by his purchase acquire a lien upon the property. GANPAT RAI *v* SARUPI I. L. R. 1 All. 446

77. —— *Sale of property for money-decree—Lien for prior hypothecation* The fact that property is sold under a decree

can be for money only, and not for the enforcement of a lien. JUGGUN NATH *v.* KOMUL SINGH 3 N. W. 123

79. —— *Sale of hypothecated property for money-decree—Rights of incumbrancers.* *R N* executed in 1864 a security-bond in

MORTGAGE—*contd.*

5 SALE OF MORTGAGED PROPERTY—*contd.*

(b) MONEY-DECREES ON MORTGAGES—*contd.*

favour of *K L*, in 1855 a second bond in favour of the defendant, in 1866 a third bond in favour of *K L*, and in 1867 a fourth bond in favour of the defendant, all the bonds being registered and including as security the property in dispute Both bond holders took proceedings under Act XX of 1866, s 53, and obtained decrees. In 1868 *K L* arranged with *R N* to be paid by monthly instal-

Held, also, that what passed to the plaintiff was the property hypothecated, of which he became owner and *primâ facie* entitled to possession, having purchased at the instance of a first incumbrancer, and that defendant's lien could not protect him in possession. KAMESSUR PERSHAD *v.* DOWLUT RAM 19 W. R. 83

80. —— *Sale in execution of decree on mortgage-bond—Purchaser, right of* Nothing passes to the auction-purchaser at a sale in execution of a money-decree but the right, title, and interest of the judgment-debtor at the

created by the bond to defeat a second mortgage. AKHE RAM *v.* NAND KISHORE I. L. R. 1 All. 236

81. —— *Mortgagee's lien —Registration Act (XX of 1866), s 53.* *A* and *B*,

ceed against the property by reason of its having

MORTGAGE—*contd.*

5. SALE OF MORTGAGED PROPERTY—*contd.*

(*b*) MONEY-DECREES ON MORTGAGES—*contd.*

come into the hands of *C* and *D*, nor did *C* and *D* take subject to a greater burden than the mortgagor himself; and that, as *A* had allowed his decree against the mortgagor to be barred by limitation,

to proceed against it by suit merely because it was in the hands of third parties. *Emam Momtazooddeen Mahomed* v. *Raj Coomar Dass, 14 B. L. R. 408 : 23 W. R. 187*, and *Jonmenjoy Mullick* v. *Dossmoney Dossee, I. L. R. 7 Calc. 714 : 9 C. L. R. 353*, referred to. CALLY NATH BUNDOPADHYA v. KOONJO BEHARY SHAHA . I. L. R. 9 Calc. 651

82. ———— *Sale in execution of decree—Purchaser, right of—Condition against alienation* Where the holder of a simple mortgage-bond obtained only a money-decree on the bond, in execution of which the property hypothecated in the bond was brought to sale and was purchased by him, he could not resist a claim to foreclose a second mortgage of the property created prior to its attachment and sale in execution of his decree.

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dissented from *Held*, further, that the holder of

v. *Lainee ...* impugned

CHAND v. KALIAN DAS . I. L. R. 1 All. 240

83 ———— *Lease granted by obligor, avoidance of—Sale in execution of decree* An obligee under a bond giving him a charge upon land who sues for and obtains only a money-decree, under which he himself purchases

84. ———— *Usufructuary mortgage—Execution of decree on money-bond—Lien* A party who had obtained a farming lease

nearly the whole sum due. *Held*, that the decree substituted another means of recovery for the one previously given, and if he chose to recover the

MORTGAGE—*contd.*

5. SALE OF MORTGAGED PROPERTY—*contd.*

(*b*) MONEY-DECREES ON MORTGAGES—*contd*

KENARAM GHOSE . . . 14 W. R. 400

85. ———— *Money-decree, sale under—Purchaser of property subject to mort-*

86. ———— *Suit for posses-* ... *of decree on a*

the mortgaged lands, the existence of a ... granted in 1868 having been notified at the sale. *Held, that a suit by A against the mokuraridars for* ... of the mort- ... ubsequent ... of posses- ... *mar Dass,* ... *Bundhoo*

14 B. L. R. 408 ; ... *Shantra Mohapatter* v. *Bheenuck Sahoo, 12 W. R. 522* ; *Saraun Hossein* v. *Shahazadah Golam Mahomed, 9 W. R. 171* ; *Gopenath Singh* v. *Sheo Sahoy Singh, 1 W. R. 315*, discussed. KOSIL SINGH v. DULI CHUND. MITTERJEE SINGH v. DULI CHUND. 5 C. L. R. 243

87. ———— *Execution of decree on mortgage—Sale in execution of mortgage decree.* On the 9th June 1868, *A*, the mokuraridar of a certain mouzah, mortgaged 8 annas of the mokurari to *B*, and also gave him a dar-mokurari lease of the remaining 2 annas. On the 20th November 1870 *A* mortgaged the whole 10 annas to *C*, and on the 14th December 1875 sold a 1 anna share of the mokurari to the predecessor in title of the appellants. On the 11th June 1877 *B* obtained a decree on his mortgage which he assigned to the plaintiff, who in execution of the decree sold 6 annas of the mortgaged property and himself became the purchaser. On the 2nd August 1877 *C* obtained a decree upon his mortgage, and in execution thereof he sold the remaining 4 annas of the mokurari to the plaintiff. Two annas of the 10 annas share of the mokurari mortgaged to *C* being subject to the dar-mokurari lease to *B*, the plaintiff brought a suit for

MORTGAGE—*contd.*

5. SALE OF MORTGAGED PROPERTY—*contd.*

(b) MONEY-DECREES ON MORTGAGES—*contd.*

the rent of the remaining 8 annas, and in that suit the appellants, who were no parties to any of the

decision of the Court below, that the plaintiff was not entitled as against the appellants to the 1-anna share, the subject of the sale of the 4th December 1875, but that, if the lower Court on remand should

Joglekar, I. L. R. 4 Bom. 57, followed MADHU SINGH v. ACHRAJ SINGH . 9 C. L. R. 369

88. ———— *Money decree, effect of sale by mortgagee of mortgaged property under—Assignment—Purchaser at sale in execution of decree, right of—Lien.* A mortgaged property

already purchased it at an auction-sale in execution of a money-decree obtained against *A* by another creditor. The plaintiff, having, before the date of his decree, obtained a second assignment duly registered from *C*, sued upon it, and, obtaining a decree against the mortgaged property, put it up for sale, and became the purchaser in his own name.

purchaser. The particular nature of the right

Subbaraya Mudali, 7 Mad 229, followed *Khubchand v Kaliandas, I. L R 1 All. 240*, dissented from NARSIDAS JITRAM v JOGLEKAR
I. L. R. 4 Bom. 57

89. ———— *Money-decree—Difference between execution of money-decree on a mortgage and one not on mortgage—Right of purchaser.* Where a mortgagee is entitled to a personal decree against the mortgagor, or his heir, or representative, and takes a mere money-decree against him upon the mortgage, without any direction that the amount of the decree shall be recovered by sale or otherwise from the mortgaged property, the mortgagee has nevertheless the right to attach and sell that property under the money-decree, and such sale transfers to the purchaser the interest both of mortgagor and mortgagee in the same manner as if the sale had been made under an express direction

execution between a money-decree upon a mortgage

KSHMAN . . . I. L R. 5 Bom. 614

90. ———— *Mortgage-decree—Lien—Sale in execution—Purchaser.* Where a

not get any benefit from the fact that, previously to the sale, the mortgagee had a lien on the property *Emam Momtazooddeen Mahomed v. Raj Coomar Dass, 14 B. L. R. 408; Gopee Bundhoo Shaha*
R. 33
94;
240;
I. L.
RAMANATH DASS v. BOLORAM PHOOKUN
I. L. R. 7 Calc. 677; 9 C. L. R. 233

MORTGAGE—*contd.*

5. SALE OF MORTGAGED PROPERTY—*contd.*

(b) MONEY-DECREES ON MORTGAGES—*contd.*

91. ———————— *Mortgage-decree —Sale in execution—Mortgagee's lien* A mortgagee who elects to take a money-decree, and becomes himself the purchaser of the property mort-

tion of a prior money-decree. *Dossmoney Dossee* v. *Jonmenjoy Mullick, I. L. R. 3 Calc. 363,* overruled. JONMENJOY MULLICK *v.* DOSSMONEY DOSSEE
I. L. R. 7 Calc. 714 : 9 C. L. R. 353

92. ———————— *Subsequent suit by mortgagee to enforce his lien on the property mortgaged.* The plaintiff, a mortgagee of certain specific property, given as security for an advance, obtained a money-decree against the representatives of his debtor. A third person, having a claim against the same debtor, seized and attached the

pledged. RAJKISHORE SHAW *v.* BHADOO NOSHOO
I. L. R. 7 Calc. 78

93. ———————— *Purchase by mortgagee.* *K D*, a Hindu widow, by deed appointed *R S* to be her general mooktear, for the conduct of certain suits in her name which were pending in respect of the estate of her deceased husband. By this deed dated September 25th, 1858, she covenanted to repay him, within two months of

business, and advanced certain moneys on her account; and in October 1859 *K D* executed in his favour a second deed, by which she mortgaged to

perties belonging to the said estate." By a decree of the High Court of 28th July 1862 in one of the suits brought by *K D*, the estate of *R H* was declared to consist of a share of a certain talukh, of a share of a house in Calcutta, and of a certain sum of money; and *K D* was declared to be entitled to one

duct of *K D*'s business, and advanced more money on her account, in respect of which, on May 31st, 1865, he brought a suit against her; and on September 21st, 1865, obtained a decree in his favour. Under this decree, he attached the right, title, and

SIRKAR . . . . . 5 B. L. R. 450

94. ———————— *Lien of mortgagee on sale of right, title, and interest of mortgagor—Writ of fi. fa.—Purchase at Sheriff's sale at instance of mortgagee.* *N*, *M*, and *G* borrowed

23rd of March 1864,—in a suit against *M* and ... Sheriff sold to *A*, on the 7th July 1864, the right, title, and interest of *M* and *N* in the mortgaged

... notice ... *fa.* was ... execu- ... ntered ... it writ ... ld the

the Sheriff, on the ... right, title, and interest of *N*, *M*, and *G* in the mortgaged property, and *A* became the purchaser. ... paid to *B*, and

fi. fa. issued on the 23rd of March 1864, ... to the mortgage, must be taken to have operated against the share of *M* and *N* from the date when it was issued; that even if there was an agreement to mortgage, as alleged, then, although as against *N*, *M*, and *G* themselves, a Court of Equity would treat such agreement as equivalent to an actual mortgage, yet it would not do so as against a purchaser under the *fi. fa.* without notice; and that the sale of the 7th July 1864, therefore, passed the shares of *M* and *N* to *A* free of any rights or equities of *B*. Further, that the sale by the Sheriff at the 22nd February 1866, having been effected at the instance of *B* for the purpose of realizing the mortgage-debt, was operative, as between *B* and *A*, to pass to *A* the entire shares of *N*, *M*, and *G* in the property free of *B*'s mortgage-lien. *Held*, on appeal, that, no agreement to mortgage being established, the sale by the Sheriff to *A* in 1864 overrode

MORTGAGE—*contd*

5. SALE OF MORTGAGED PROPERTY—*contd*

(*b*) MONEY-DECREES ON MORTGAGES—*contd.*

the mortgagors, who had allowed *A* to hold unchallenged possession ever since, the entire equitable estate in the share of *G* must be taken to have passed to *A*. A mortgagee is not entitled by a means of a money-decree obtained on a collateral security, such as a bond or covenant, to obtain a sale of the equity of redemption separately. To allow him to do so would deprive the mortgagor of a

I. L. R. 1 Calc. 337

95. ———— *Priority of mortgage—Sale to enforce lien on land* On the 15th July 1864 two undivided brothers executed a mortgage of their joint property to the plaintiff for

mentioned suit, a sale of property was had, and it was bought by the defendant The plaintiff was thereupon dispossessed and referred to a regular suit, and the defendant was put into possession. This suit was then brought by the plaintiff, the first mortgagee and purchaser, to eject the defendant, the second mortgagee and purchaser, and, the lower Appellate Court making a decree in favour of the plaintiff, the defendant filed this second appeal *Held*, that, the plaintiff having bought

subject to the mortgage to the defendant, and as

I. L. R. 2 Mad. 108

MORTGAGE—*contd.*

5 SALE OF MORTGAGED PROPERTY—*contd.*

(*b*) MONEY-DECREES ON MORTGAGES—*concld*

96. ———— *Mortgage for secur* ... *for c* ... *decre* ... *gageu* ... *imm* ... *latte* ... *pay*
the lease and gave security in R3,000 by mortgage of landed *property*. In 1874 the plaintiff obtained decrees in the Revenue Court for arrears of rent, and the decrees were partially satisfied and then became barred by limitation. In 1884 the plaintiff brought a suit to recover the balance due by enforcement of the mortgaged security against the purchasers of the

distinct, and the right of action on the mortgage

as to enable the amount secured by mortgage to be recovered by suit in the Civil Court, so long as such suit was not barred by limitation *Emam Mumtazooddeen Mahomed* v. *Rajcoomer Dass*, *14 B. L. R. 408*, referred to. *Held*, also, that the amount which the plaintiff could recover by enforcement of the mortgage security was limited to R3,000. CHUNNI LAL *v.* BANASPAT SINGH

I. L. R. 9 All. 23

97. ———— *Sale in execution of a simple money decree of mortgaged property—Notification of mortgage—Purchaser not estopped from disputing the existence of the mortgage—Civil*

v. *Izzat un-nissa*, *I. L. R. 2 All. 9*, referred to. SHIB KUNWAR SINGH *v.* SHEO PRASAD SINGH (1906) . . . . I. L. R. 28 All. 416

(*c*) PURCHASERS.

98. ———— **Effect of sale of mortgaged property**—*Rights of purchaser* By a sale of mortgaged property in execution of a decree obtained by a mortgagee against the mortgagor upon the mortgage the interest both of the mortgagor and mortgagee passes to the purchaser. But

MORTGAGE—*contd.*

5. SALE OF MORTGAGED PROPERTY—*contd.*

(c) PURCHASERS—*contd.*

by a sale of mortgaged property in execution of a money-decree obtained by the mortgagee against the mortgagor, the interest of the defendant (mortgagor) alone passes to the purchaser. MAGANLAL *v.* SHAKRA GIRDHAR . . I. L. R. 22 Bom. 945

See KHEVRAJ JUSRUP *v.* LENGAYA
I. L. R. 5 Bom. 2

SHESHGIRI SHAMBAG *v.* SALVADAR VAT.
I. L. R. 5 Bom. 5

and SHAYMA CHURN BHUTTACHARJEE *v.* ANANDA CHANDRA DAS . . . 3 C. W. N. 323

99. ———————— *Discharge of encumbrance by intending purchaser—Bonâ fides.* *A*, having mortgaged land to *B*, agreed to sell it to *C* and then to *D*, in whose favour he executed a conveyance bearing a date prior to the contract with *C*. *C* sued *A* and *D* to have the conveyance set aside and his contract specifically performed, and a decree was passed in his favour. While the suit was pending, *D* paid off *B* and now sued *A* and *C* to recover the money paid by him. *Held*, that the plaintiff occupied the position of the mortgagee whom he had paid off, and that the sum constituted a charge on the land. SYAMALARAYUDU *v.* SUBBARAYUDU
I. L. R. 21 Mad. 143

100. ———————— *Title of purchaser—Transfer of Property Act (IV of 1882), s. 99—Money decree obtained by mortgagee.* Prior to passing of the Transfer of Property Act, a mortgagee obtained a money-decree against his mortgagor, and in execution sold the mortgaged property. The son of the mortgagee brought it at the sale. *Held*, that by his purchase at the execution-sale the son took an absolute title, and was not liable subsequently to be redeemed at the suit of the heirs of the mortgagor. *Martand* v. *Dhondo, I. L R 22 Bom 624*, distinguished *Semble:* A third person purchasing mortgaged property *bonâ fide* at a sale in execution of a money-decree obtained by the mortgagee against the mortgagor obtains a good title free from the mortgage lien, unless the sale is made subject to it. HUSEIN *v* SHANKARGIRI
I. L. R. 23 Bom. 119

101 ———————— *Mortgaged property sold subject to right to reedem—Purchase as agent.* When mortgaged property is sold at auction subject to a mortgagor's right to redeem the mortgagor's equities follow the property even when it turns out that the purchaser bought as agent, and not as principal. MUNSOOR ALI KHAN *v.* OJOODHYA RAM KHAN . . 8 W. R. 399

102. ———————— *Priority of d on sale after hypothecation.* Land subsequently sold is liable for a debt for which the land was previously hypothecated. SADAGOPA CHARIYAR *v.* RUTHNA MUDALI . . . 5 Mad. 457

103. ———————— *Lien—Right of purchaser—Purchase by mortgagee.* *A*, being indebted to *B*, bound himself by deed not to alienate his rights in certain property until his debt to *B* was satisfied; if he did alienate, provision was made for a decree to issue and to be executed. *A* subsequently gave a patni of the property to *C*. After

8 W. R. 291

SOONEY RAM MARWAREE *v.* BYJNATH KOOER
10 W. R. 88

See SOUJHAREE COOMAR *v.* RAMESHUR PANDA.
RAMESHUR PANDA *v.* SOUJHAREE COOMAR
4 W. R. 33

104. ———————— *Effect of subsequent mortgage—Merger.* A creditor holding a mortgage on the lands of his debtor does not necessarily surrender that mortgage, or lower its priority by taking a subsequent mortgage, including the same lands with other lands, for the same debt. Whether the earlier mortgage becomes merged and extinguished or not is a question of intention. GOLUKNATH MISSER *v.* LALLA PREM LAL
I. L. R. 3 Calc. 307

105. ———————— *Sale in execution of decree—Purchase subject to mortgage securities—Extinguishment of lien on purchase by mortgagee.* Defendant No. 1 (*G C*), on 9th August 1863, borrowed money from plaintiff upon a bond, hypothecating property by way of simple mortgage. On 27th August 1867, he executed a similar instrument in favour of defendant No. 2 (*G B*) on a further loan. On 13th May 1867,

first security was extinguished by the original debt was second security, covering the original debt

MORTGAGE—*contd.*

5. SALE OF MORTGAGED PROPERTY—*contd.*

(c) PURCHASERS—*contd*

interest, would depend upon the intention of the parties, which in this case, was shown by the original bond having remained in the possession of the creditor GOPEE BUNDHOO SHASTRA MOHAPATTUR *v.* KALEE PUDO BANERJEE

23 W. R. 338

106. ——— Extinction of charge—Intention of parties—Presumption. Whether a mortgage, paid off, has been kept alive or extinguished, depends upon the intention of the parties, the mere fact that it has been paid off not deciding the question whether or not it has been extinguished. Express declaration of intention will cause either the one result or the other and in the absence of such expression the intention may be inferred, either one way or the other. A lender of money upon a mortgage, which, however, having been made by a person not having authority to charge the greater part of the property included in it, was to that extent invalid, relied upon a charge effected in a prior paid-off mortgage to another mortgagee of the same property. The balance due for the prior mortgage debt had been paid out of the money advanced on the later, and the prior instrument had come into the possession of the present mortgagee. *Held*, that it must be presumed, in the absence of any expression of inten-

he did not become entitled to an additional security merely because that which he had taken had thus proved invalid in part. *Held*, therefore, that the prior mortgage had been extinguished. MOHESH LAL *v.* BAWAN DASS

I. L. R. 9 Calc. 961 : 13 C. L. R. 221
L. R. 10 I. A. 62

107. ——— *Two mortgages to same mortgagee—Merger of first mortgage—Intention—Decree on second mortgage—Other mortgagees not made parties to suit—Purchaser at auction sale—Priority—Suit by purchaser for possession—*

without possession to the defendant; on the 10th of June 1873 a second mortgage, purporting to give possession, was executed to *H*; on the 12th of June 1873 a second mortgage, also purporting to give possession, was passed to the defendant; on the 15th of November 1877 *H* obtained a decree against the mortgagors upon his mortgage of 10th June 1873, and sold the lands which were purchased by the plaintiff. The plaintiff sought to obtain possession, but was obstructed by the defendant. He thereupon brought this suit. The defendant contended that he had not been a party to the suit by *H*, and was entitled to possession, and offered to pay to the plaintiff the amount of his purchase-money, or to vacate the lands on satisfaction of his own mortgage-lien. *Held*, that the question whether *H's* mortgage of the 15th July 1870 was to be regarded as merged in his second mortgage of 10th June 1873 so as to deprive him of priority of title over the defendant, depended on the intention of the parties to the said mortgage, and there was nothing in the second mortgage-deed to show an intention to forego the benefit of the security created by the prior mortgage-deed of 15th July 1870 which was neither given up to the mortgagor nor cancelled at the time, but remained with *H* until handed over to the plaintiff with the other title-deeds. Under these circumstances, the decree passed on the 15th November 1877 conferred an absolute title on the plaintiff, who purchased at the auction sale free from all incumbrances created by the mortgagor subsequent to the mortgage of 15th July 1870. The defendant, however, not having been made a party to *H's* suit to enforce his security did not lose his right of redemption, which still remained to him. The plaintiff therefore purchased the property subject to the defendant's right of redemption. The High Court passed a decree

due on the mortgage of the 15th July 1870, if the same had remained unaffected by the mortgage of 10th June 1873, or in default, should remain for ever foreclosed. DULLABHDAS DEVCHAND *v.* LAKSHMANDAS SARUPCHAND . I. L. R. 10 Bom. 88

108. ——— *Merger of right of suit upon a mortgage in a subsequent decree thereon*

effect that an account having been taken of what was due on the mortgage, the mortgagor might at any time make a tender of such mortgage-money with interest up to date, and require that the land

SMAJI SHET . . . I. L. R. 10 Bom. 461

MORTGAGE—*contd.*

5. SALE OF MORTGAGED PROPERTY—*contd.*

(c) PURCHASERS—*contd.*

109. ——— *First mortgage paid off by third mortgagee in ignorance of second mortgage—Registration—Notice—Intention to keep alive first mortgage presumed.* S mortgaged land to P. G subsequently obtained a decree, by consent, against S creating a charge on the same and other land, and registered the decree. A, in ... s mortgage, but ... ok a mortgage ... 's decree. In a ... ce payment of ... not having had ... to stand as first incumbrancer in respect of the money paid to dis- ...

I. L. R. 6 Mad. 240

110. ——— *Condition against alienation—Lis pendens.* The proprietor of certain immoveable property mortgaged it in July 1875 to K and in September 1875 to L. In October 1878 he sold the property to K. In November 1878 L obtained a decree on his mortgage-bond for the sale of the property The suit in which L obtained this decree was pending when the property was sold to K. K sued L to have the property declared exempt from liability to sale in the execution of L's decree, on the ground that the mortgage to L was ...

stipulation in the contract between him and the mortgagor. LACHMIN NARAIN *v.* KOTESHAR NATH

I. L. R. 2 All. 826

111. ——— Rights of parties on sale——*Prior and puisne mortgagee—Purchase by prior mortgagee of equity of redemption at a Court-sale —Evidence of intention to keep mortgage alive.* Where a prior mortgagee purchased the equity of redemption at a Court-sale :—*Held*, following the Full Bench ruling in *Mulchand Kuber v. Lallu Trikam, I. L. R. 6 Bom. 404*, that in a contest between himself and a puisne mortgagee he was entitled to fall back upon his original mortgage and to retain possession until his mortgage was paid off. Generally, slight evidence will suffice to show that the prior mortgagee intended to retain the benefit of his mortgage. The fact that the mortgage-deed remains with the mortgagee who purchases, is evidence that he intends to retain the benefit of his mortgage. SHANTAPA *v.* BALAPA

I. L. R. 6 Bom. 561

112 ——— *Presumption as to person paying off a prior mortgage—Construction of stipulation in mortgage-deed* The ...

Where a mortgage-bond contained the following stipulation : "And I shall redeem the mortgage ...

ROY GOLOKE CHANDRA CHOWDHRI

4 C. W. N. 769

113. ——— *Presumption that person paying off a mortgage intends to keep the security alive.* In 1861 B granted a lease of his zamindari to A for 30 years, A undertaking to pay off all debts then due by B. B died in 1862, ...

January ... to ...

January ... ed a mortgage of the 22 villages to L, to secure re-payment of R1,30,000. Of this sum R1,00,000 was borrowed to pay M, and R30,000 was a prior debt due by A to L. Of the R1,00,000 paid to M, R27,000 was specially applied to discharge so much of the charge created by the mortgage of January 5th, 1875. On January 30th, 1875, A borrowed ... to her 10 of the 22 ...

and dismissed the suit. ... *Gokuldas Gopaldas* ... the principle of the decision in ... *L. R. 11 I. A. 126* ... *v. Puranmal Premsukhdas*, ... *I. L. R. 10 Calc. 1035*), that L was entitled to a first charge on the fund to the extent of R27,000 which had been applied to pay off the mortgage of January 5th, 1875. RUPABAI *v.* AUDIMULAM

I. L. R. 11 Mad. 345

114. ——— *Extinguishment of prior mortgage—Intention—Effect of payment of prior mortgage by subsequent incumbrancer.* The mortgagor's right, title, and interest in certain immoveables in the Dekkan subject to a first ...

MORTGAGE—*contd*

5 SALE OF MORTGAGED PROPERTY—*contd*

(c) PURCHASERS—*contd.*

second mortgage, were sold in execution of a decree to a purchaser who afterwards paid off the first

ject to a succession of mortgages, and the owner of an ulterior interest pays off an earlier mortgage, it is a matter of course, according to the English practice, to have it assigned to a trustee for his benefit, as against intermediate mortgagees, to whom he is not personally liable But in India a formal transfer for the purpose of a mortgage is never made, nor is an intention to keep it alive even formally expressed. It was ruled in the English Court of Chancery in *Toulmin v Steere, 3 Mer 210,* that the purchaser from an owner of an equity of redemption with actual or constructive notice of another intermediate incumbrance is precluded, in the absence of any contemporaneous expression of intention, from alleging that, as against such other incumbrance, the prior mortgage paid off out of the purchase-money is not extinguished That case was not identical with this where the prior mortgage was not paid off out of the purchase-money, but was paid off afterwards by the purchaser The above ruling, however, is not to be extended to

115. ———————— *Equity of redemption, purchase of—Payment—Prior mortgagees, payment to—Keeping securities alive—Attachment of mortgaged property* One *P* borrowed from one *L* a certain sum upon a mortgage of certain properties. He subsequently executed a second mortgage in

mortgage of the properties included in *L's* mortgage and other properties, and he promised to take a reconveyance of the properties and make over the

claim, he purchasing only the equity of redemption *D* contended that he purchased the property free

MORTGAGE—*contd*

5. SALE OF MORTGAGED PROPERTY—*contd.*

(c) PURCHASERS—*contd*

tention on the part of the subsequent mortgagee not to keep alive the prior securities for his benefit; and that it was quite clear from the circumstances of the present case that, at the time of advancing the

tion belonging to *P*; and that, according to the provisions of s. 276 of the Civil Procedure Code, the subsequent discharge by *P* of the prior mortgages could not enlarge the subject of the attachment, and therefore *D* purchased only the equity of redemption in the property. DINO BANDHU SHAW CHOWDHURY *v* NISTARINI DASI 3 C. W. N. 153

116. ———————— *Second mortgage of property by original mortgagor, and first mortgagee paid off—Possession taken by new mortgagee—Suit for possession by plaintiff as purchaser in execution—Right of purchaser to recover—Right of*

defendant and paid off *G's* mortgage *G* thereupon returned the mortgage-deed to *T* with a receipt for payment endorsed After payment of *G's* mortgage the defendant took possession of the property. In July 1888 *T* executed a further mortgage of the property to the defendant for R8,000 On the

possession The mortgage to the defendant was subsequent to the plaintiff's purchase of the equity of redemption. The defendant did not know of

MORTGAGE—*contd.*

5. SALE OF MORTGAGED PROPERTY—*contd.*

(c) PURCHASERS—*contd.*

which but for the defendant's payment to *G* would have been burdened with *G's* mortgage, and as the defendant, when he advanced the money to *T* to pay off that mortgage, did not know that *T* was no longer the owner of the equity of redemption, the plaintiff should give credit to the defendant for the sum paid by him; but as the defendant's mortgage comprised other properties besides the one in dispute, the plaintiff should recover possession on payment to the defendant of a proportionate part of *G's* mortgage-debt, having regard to the value of the property in dispute and that of the other mortgaged properties *Mahomed Shamsool Hoda* v *Shewakram, 14 B L. R 226 L. R. 2 I. A. 7,* followed. LOMBA GOMAJI *v.* VISHVANATH AMRIT TILVANKAR . **I. L. R. 18 Bom. 86**

See YADAO BABAJI SURYARAO *v.* AMBOO **I. L. R. 21 Bom. 567**

117. ———— *Sale under second of two mortgages—Payment under order of Court without jurisdiction by purchaser to first mortgagee—Extinguishment of mortgage lien.* Where the former of two mortgagees, to whom a certain person hypothecates his estates, accepts from the auction-purchaser, who buys a portion of the estates when they are sold on forecolsure of the second mortgage, a sum of money assessed by a Civil Court as the equivalent of the former mortgagee's prior charge on the estates, no successor of the former mortgagee can again proceed to sell up the estates, even though the Court which assessed the money-value of the charge on the estates may not have had the jurisdiction to do so: for in accepting the money the former mortgagee released the estate from all further liability under his bond JANKEE PERSHAD *v* AJOODHYA DOSS **25 W. R. 257**

118. ———— *Purchase by first mortgagee after second mortgage—Set-off of first mortgage against purchase-money—Priority.* If the first mortgagee purchases the property mortgaged [illegible]

[illegible] mortgage BISSEN DOSS SINGH *v.* SHEO PERSHAD SINGH . . . . . . **5 C. L. R. 29**

119. ———— *First and second mortgages—Assignment by mortgagee—Rights of assignees* In March 1865 the proprietors of a certain share in a certain village mortgaged the share to *R*, giving him possession of the share, and stipulating that the mortgagee should take the profits of the share in lieu of interest, and that the mortgage should be redeemed on payment of the principal [illegible]

[illegible] 1869 the proprietors of the [illegible] mortgaged it to *R* for a further loan. Under this mortgage, *R* was entitled to take the profits of the share in lieu of interest, and the mortgage was redeemable on payment both of the principal sum due thereunder and of that due under the mortgage of March 1865, without interest, or the mortgagors were entitled to redeem a certain portion of the [illegible]

the mortgage of April 1865, [illegible] of *R's* rights and interests under the mortgage of March 1865 in satisfaction of such decree. In May 1874 *R* assigned by sale to *N* his rights and interests under the mortgage of February 1869, retaining possesion of the share. In April 1877, *R's* rights and interests under the [illegible]

[illegible] against *N* to the possession of the share as mortgagee. SAHAI PANDEY *v.* SHAM NARAIN **I. L. R. 2 All. 142**

120. ———— *First and second mortgagees—Purchase of mortgaged property by mortgagee.* *G*, the mortgagee of certain property, having purchased a portion thereof, sued (i) the [illegible] another portion of such [illegible]

had purchased a third portion [illegible] for the enforcement [illegible] *G's* purchase [illegible]

MORTGAGE—*contd.*

5. SALE OF MORTGAGED PROPERTY—*contd.*

(c) PURCHASERS—*contd.*

121. —— *First and second mortgagees—Purchase of mortgaged property by first mortgagee.* The first mortgagee of certain property purchased it at an execution-sale. The second mortgagee of such property subsequently sued the mortgagor and the first mortgagee to enforce his mortgage by the sale of such property. *Held*, that the first mortgagee was entitled to resist such sale, by virtue of being the first mortgagee, until his mortgage-debt was satisfied; and the fact that he had purchased the property mortgaged to him did not extinguish his mortgage, which must be held to subsist for his benefit. *Gaya Prasad v. Salik Prasad, I. L. R. 3 All. 682*, followed. HAR PRASAD *v.* BHAGWAN DAS . I. L. R. 4 All. 196

122. —— *Condition against alienation—First and second mortgagees—Purchase by mortgagee of mortgaged property.* A transfer of mortgaged property in breach of a condition against alienation is valid except in so far as it encroaches upon the right of the mortgagee, and, with this reservation, such a condition does not bind the *property so as to prevent the acquisition of a valid title by the transferee. Chunni v. Thakur Das, I. L. R. 1 All. 126*, *Mal Chand v. Balgobind, I. L. R. 1 All. 610*, and *Lachmi Narain v. Koteshar Nath, I. L. R. 2 All. 526*, observed on. A mortgage is not extinguished by the purchase of the mortgaged property by the mortgagee, but subsists after the purchase, when it is the manifest intention of the mortgagee to keep the mortgage

to make the second mortgagee a party to the suit. If the second mortgagee is not made a party to the suit, he is not bound by the decree which the first

feated, unless he can show some fraud or collusion

usufructuary mortgage of certain immoveable property was made to *D*. In July 1875 a portion of such property was again mortgaged to *D*. The instrument of mortgage on this occasion contained a condition against alienation. In July 1877 the whole property was mortgaged to *N*. In October 1877 it was again mortgaged to *D*. *N* sued the mortgagor on his mortgage in July 1877, and on the

20th November 1880 the property was put up to sale in execution of *N*'s decree (*D*'s objection to sale having been previously disallowed) and purchased by *A*. *D*, who was still in possession under his mortgage of July 1874, then sued *A* for declaration of his proprietary right to the pro

alienation made in *D*'s favour had no preju

I. L. R. 4 All.

123. —— *First and se*

MORTGAGE—*contd.*

5. SALE OF MORTGAGED PROPERTY—*contd.*

(c) PURCHASERS—*contd.*

subsequent usufructuary mortgagee seeking to disturb such possession. Also *per* MAHMOOD, *J.*, that although the persons who had paid off the prior mortgage were entitled to claim its benefits, they could not be understood to have acquired rights greater than those which the prior mortgagee himself possessed; that as holders of the equity of redemption they could not resist the suit which aimed at enforcing a valid security, and, as persons entitled to the benefits of the prior mortgage, they were at best in the position of assignees of that mortgage; that the union of the two capacities could not confer upon them rights higher than those which the mortgage they had paid off created; that a puisne incumbrancer is not prevented by the mere fact of the existence of a prior mortgage from enforcing his security without paying off the prior mortgage so long as such enforcement does not clash with the right secured by the prior mortgage; and that therefore the purchaser of the equity of redemption held that right subject to the plaintiff's

Mad. 229, and *Mul Chand Kuber* v. *Lallu Trikam, I. L. R. 6 Bom. 404*, referred to. SIRBADH RAI *v.* RAGHUNATH PRASAD . I. L. R. 7 All 568

124. ——————— *First and second mortgages—Payment by purchaser of mortgaged property of first mortgage—Right of purchaser to benefits of first mortgage—Right of second mortgagee to bring to sale mortgaged property—Registered and unregistered instruments—Optional and compulsory registration—Act III of 1877, s. 50.* At a sale in execution of a decree, *J* purchased certain property which was at that time subject to two mortgages—the first under an unregistered deed in favour of *M* and dated in 1872, and the second under a registered deed in favour of *L* and dated in 1880 The registration of both deeds was optional, the former under Act VIII of 1871 and the latter under Act III of 1877 *J* subsequently satisfied the mortgage under the registered deed of 1880, which was delivered to him. *M* then brought a suit to recover the money due to him under the mortgage-deed of 1872 by sale of the mortgaged property. *Held*, by OLDFIELD, *J.*, that, applying the rule laid down by the Privy Council in *Gokaldas Gopaldas* v. *Puranmal Premsukhdas, I. L. R. 10 Calc. 1035*, *J*, having paid off the mortgage under the registered deed of 1880, should have the benefits of that mortgage, and was entitled to set up the

Dip Chand, I. L. R. 2 All. 851, referred to. *Per* MAHMOOD, *J.*, that the word "unregistered" in

gistered mortgage-deed of 1872. *Lachman Das* v. *Dip Chand, I. L. R. 2 All 851*, and *Sri Ram* v. *Bhagirath Lal, I. L. R. 4 All. 227*, distinguished. Also *per* MAHMOOD, *J.*, that the position of *J* by

ing paid off the registered mortgage of 1880 ... *badh Rai* v. *Raghunath Prasad, I. L. R. 7 All. 568*; and *Gokaldas Gopaldas* v. *Puranmal Premsukhdas, I. L. R. 10 Calc. 1035*, referred to. JANKI PRASAD *v.* MAUTANGUI DEBIA . . I. L. R. 7 All. 577

125. ——————— *First and second mortgages—Payment by purchaser of mortgaged property of first mortgage—Right of second mortgagee to bring to sale mortgaged property subject to first* ... No 111 which in

against *J* to bring to sale the whole of ... included in the mortgage of 1874. The Court of first instance decreed the claim in part exempting from the decree plot No 111, on the ground that the defendant, by reason of having purchased the equity of redemption in that plot and having paid off the mortgage of 1866, stood in the position of a first mortgagee of that plot, and his mortgage had ... the plaintiff's mortgage of 1874 The ... Court of

the words ... plaintiff as second mortgagee only ... *Per* OLDFIELD, *J.*, that the second mortgagee could not bring the land to sale so as to oust the first mortgagee, whose mortgage was usufructuary, and get rid of the first mortgage without satisfying it; but that he had a right to sell such interest as he possessed as second mortgagee. *Per* STRAIGHT, *J.*, that the plaintiff was entitled to bring to sale the

MORTGAGE—*contd.*

5. SALE OF MORTGAGED PROPERTY—*contd.*

(c) PURCHASERS—*contd.*

property charged to him under his mortgage of

ment, and his other rights under that instrument, so long as it enured. RAGHUNATH PRASAD *v.* JURAWAN RAI . I. L. R. 8 All. 105

126. ———— *Suit by mortgagee purchasing part of property—Sale by first mortgagee in execution of decree upon second mortgage held by him—Interest acquired by purchaser at such sale—Sale of portions of mortgaged property—Mortgagee not compelled to proceed first against unsold portions—Enforcement of mortgage against purchaser not having obtained possession.* At a sale in execution of a decree for enforcement of a hypothecation-bond, the decree holder, by permission of the executing Court, made bids, but the property was purchased by another. At that time the decree-holder held a prior registered incumbrance which he did not personally announce. In a suit brought by him

chaser of part of the mortgaged property who had never obtained possession. BANWARI DAS *v.* MUHAMMAD MASHIAT . I. L. R. 9 All. 690

127. ———— *Sale of equity of redemption—Suit by mortgagee for sale of mortgaged property—Purchaser not a party to suit—Sale of mortgaged property in execution of decree obtained by mortgagee—What passed—Right of purchaser of equity of redemption—Redemption.*

suit. The decree against D had been found to

groves to two of the defendants. The plaintiffs,

MORTGAGE—*contd.*

5. SALE OF MORTGAGED PROPERTY—*contd.*

(c) PURCHASERS—*contd.*

sale, still any puisne incumbrancer or purchaser from the mortgagor prior to the date of the mort-

This view is consistent with the principles of equity and recognized by the Transfer of Property Act. *Muhammad Sami-ud-din v. Man Singh, I L. R. 9 All. 125,* followed GAJADHAR *v.* MUL CHAND I. L. R. 10 All. 520

128. ———— *Sale in execution of decree of mortgaged land—Purchase of equity of redemption by decree-holder under s. 294 of the Code of Civil Procedure—Execution of decree in respect of balance—Nature of price paid by purchaser on the purchase of the equity of redemption*

entered into possession, but was unable to satisfy the debt. C died, and A sued C's daughter and legal representative for damages sustained by him from the non-payment of the purchase-money by C A obtained a decree, and, the

bought the right of redemption and recovered back possession of the land sold to C Subsequently he again applied for execution of the decree in respect of the balance by attachment of certain moveable property, and contended that he was bound to give the defendant credit only for the price which he actually paid at the Court-sale

that of an independent purchaser, and that the price, which an independent purchaser must be taken to pay when he buys property under mortgage for a cash payment made to the mortgagor on account of his equity of redemption, is the cash payment for the equity of redemption *plus* the debt, *i.e.*, the amount undertaken to be paid to the mortgagee, and that for these amounts A was bound to give credit. KRISHNASAMI AYYAR *v.* JANAKIAMMAL . . I. L. R. 18 Mad. 153

MORTGAGE—*contd.*

5. SALE OF MORTGAGED PROPERTY—*contd.*

(c) PURCHASERS—*contd.*

129. ——————— *Purchase of equity of redemption by subsequent mortgagee—Priority of mortgage—Merger of former mortgage in decree—Right of subsequent mortgagee to keep the prior incumbrance alive—Intention* Where there is a subsisting prior incumbrance, and a subsequent mortgagee advances money for the purpose of discharging it, but it is for his benefit still to keep it alive, his right to keep it alive is not affected by the fact that the prior incumbrance had at the time taken the form of a decree. *Adams* v. *Angell, L. R. 5 Ch. D 645,* followed. PURNAMAL CHUND *v.* VENKATA SUBBARAYULU I. L. R. 20 Mad. 486

130. ——————— *Sale in execution of mortgage-decree—Sale-certificate—Confirmation of sale—Sale for arrears of Government revenue—*

estate paying revenue to Government, caused the

Government revenue, was on the 26th September

against *P* and the judgment-debtor to obtain possession of the 5½-anna share so purchased by her —

gagee's rights were kept alive and remained in existence until the property vested in her by virtue

brances, including the mortgage lien of *D*, that s. 73 of the Transfer of Property Act does not in

property upon payment of principal, interest, and costs to *D*, *P*, having acquired the rights of the judgment-debtor by virtue of his purchase on the 26th September 1883, was equally entitled to redeem between that date and the 18th December 1883, but, not having availed himself of that right, the property became absolutely vested in *D* on the 18th December 1883, and that consequently *D* was

entitled to the relief claimed PREM CHAND PAL *v.* PURNIMA DASI . I. L. R 15 Calc. 546

131. ——————— *Mortgaged land subsequently sold by mortgagee in execution of a money-decree—Purchaser at such sale without notice of mortgage—Mortgagee estopped from subsequently enforcing his mortgage as against purchaser—Fraudulent concealment of lien—Registration not equivalent to notice in case of fraud—Civil Procedure Code (VIII of 1859), s. 213.* Where a judgment-creditor in execution of a money decree sells property as belonging to his judgment-

cover. *G R* (the mortgagee), when brought land to sale in execution of his decree, was bound by s 213 of the Civil Procedure Code (VIII of

the plaintiff's title. The

of a mortgage amounts to notice to all subsequent purchasers of the same property, does not apply to a case where there has been a fraudulent concealment by a judgment-creditor of the extent of his judgment-debtor's interest in the property brought by the judgment-creditor to sale. AGARCHAND GUMANCHAND *v.* RAKHMA HANMANT I. L. R. 12 Bom. 678

132. ——————— *Subsequent sale by mortgagor of a part of the property mortgaged—Suit on the mortgage—Satisfaction of the decree in such suit partly by a second mortgage—Suit on second mortgage and decree for sale—Title of the purchaser at sale in execution of such decree as against the private prior purchaser of the part—Merger.* On the 4th October 1864 *N* mortgaged, without possession, a house to *K*. On the 25th June 1868 *N* sold the eastern half of that house to the defendant, who forthwith entered into possession. *K* sued *N* upon the mortgage, and obtained

MORTGAGE—*contd.*

5. SALE OF MORTGAGED PROPERTY—*contd.*

(c) PURCHASERS—*contd*

a decree on the 28th November 1868. *N* made

mortgage of 1882 was passed. The mere circum-

133. ——————— *Purchase by a mortgagor at a judicial sale of interest under a second mortgage—Rights against the mortgagor of purchaser at a sale in execution of a consent decree upon the first mortgage.* The same property, with other, was mortgaged, first to one mortgagee and secondly to another. Decrees were obtained upon

gage, the plaintiff purchased, and now sued for possession. The High Court decided that the plaintiff was entitled to the first mortgage lien

amount of his purchase-money. The case depending upon its own circumstances, it would be contrary to equity to allow the mortgagor to set up any right to possession as required by his purchase; and that the plaintiff as against him was entitled to a decree for possession as purchaser. LUTF ALI KHAN *v.* FUTTEH BAHADUR . I. L. R. 17 Calc. 23 L. R. 16 I. A. 129

134. ——————— *Purchaser of mortgagor's interest—Redemption—Successive mortgages on family property—Assignment of equity of redemption* Two brothers constituted an undivided Hindu family The eldest mortgaged half of certain family lands to *P* and the other half to the

his mortgage and attached and brought to sale in execution and himself purchased the half share of his mortgagor, and having afterwards purchased the share of the elder brother and come to a settle-

account and offering to pay whatever might be due on the footing of the mortgage SUBBARAZU *v.* VENKATARATNAM . I. L. R 15 Mad. 234

135. ——————— *Interest acquired by purchaser—Previous sale in execution of a money-decree—Suit to recover possession by mortgagee purchaser—Right of previous purchaser to redeem* A purchaser at a sale in execution of a decree on a

purchasers under the money-decree, were not made parties In execution of the mortgage-decree, the property was purchased by *D A*, to whom symbolical possession was given. In a suit brought by *D A* against *D R* and others to recover actual possession —*Held* that *D R* and others were entitled to have an opportunity of redeeming the property from *D A*. *Held*, further, that, had *D R* and others

136. ——————— *Right of—Redemption and terms on which redemption is allowed—*

MORTGAGE—*contd.*

5. SALE OF MORTGAGED PROPERTY—*contd.*

(c) PURCHASERS—*contd.*

Person not parties to suit on mortgage. A mortgaged lands X, Y and Z to *B* for R5,000. Lands X and Y were sold and the proceeds applied towards the discharge of the mortgage. Land Z was sold to *C* for R990, which was not so applied. *C* transferred his rights to the present defendants, *B* brought a suit on the mortgage joining *A* and *C*, but not *C*'s transferees as defendants. *C* did not appear, and a decree was passed by consent for R1,050, and land Z was brought to sale and purchased for R270 by the plaintiff, who now sued the defendants separately for possession. *Held*, that the defendants, not having been joined in the previous suit, were entitled to redeem on payment of R1,150 and interest SIVATHI ODAYAN *v.* RAMASUBBAYYAR . I. L. R. 21 Mad. 64

137. ——————— *Mortgage of joint property—Subsequent mortgage of unascertained shares—Partition—Rights of purchasers in execution of decrees of the two mortgages—Form of decree.* Joint property belonging to an undivided Hindu family constituted of five branches was mortgaged to *A* in 1876, and the share of one branch was mortgaged to *B* in 1880 A partition took place [illegible]

not joining *A* as a defendant, and obtained a decree, in execution of which he brought his mortgagor's share to sale and purchased it and obtained posses- [illegible]

tion restraining *A* from taking possession of the property from him. The lower Courts decreed that the plaintiff might redeem the land on payment of one-fifth of the amount of the defendant's decree. The defendant appealed against this decree, the plaintiff taking no objections to it. *Held*, on second appeal, that the decree was wrong, and that a decree as asked for by the plaintiff should be substituted for it. Such decree, however, was not to affect the right of the plaintiff to sue for redemption; nor of the defendant to enforce his rights as prior mortgagee. *Venkatanarasammah* v. *Ramiah*, *I. L. R. 2 Mad 108*, *Nanack Chand* v. *Teluckdye*, *I. L. R. 5 Calc. 265*; and *Dirgopal Lal* v. *Bolakee*, *I. L. R. 5 Calc. 269*, referred to RAMANADHAN CHETTI *v.* ALKONDA PILLAI I. L. R. 18 Mad. 500

138. ——————— *Sale in execution of decree on prior unregistered mortgage—Right of purchaser—Claim of subsequent mortgagee in possession under registered mortgage—Rights of such subsequent mortgagee where he was not a party to the suit on prior mortgage—Right of redemption—Transfer of Property Act (IV of 1882), s. 75.*

In October 1887 the plaintiff purchased certain lands at a sale held in execution of a decree passed on an unregistered mortgage effected in 1862. The defendant was in possession as mortgagee under a subsequent registered mortgage of 1867. He was not a party to the suit and decree of 1827. The plaintiff sued for possession. The defendant claimed that the plaintiff could not recover possession [illegible]

ant's) mortgage, but that the defendant, not [illegible]

DAS KUBERDAS . . I. L. R. 20 Bom. 390

139. ——————— *Purchase by first mortgagee—Right of, as against a subsequent one* A prior mortgagee, having purchased, may still use his mortgage as a shield against the claims of subsequent mortgages. RAMU NAIKAN *v.* SUBBARAYA MUDALI . . . 7 Mad. 229

140. ——————— *Sale subject to mortgage—Prior mortgage redeemed—Liability of purchaser.* *S* mortgaged his land to *B* in 1875, then to *M* in 1879, and then sold it to *K* in order to pay off the mortgage to *B*. The purchase money was paid to *B*, but *K* took no steps to keep *B*'s mortgage outstanding *Held*, that *K* could not use *B*'s mortgage as a shield against *M*. KRISHNA REDDI *v.* MUTTU NARAYANA REDDI I. L. R. 7 Mad. 127

141. ——————— *Bona fide purchase of property subject to mortgage without notice* *A*, after mortgaging his property to *B*, conveyed it by sale as unincumbered to *C*, who took proceedings against the mortgagor, *A*, and obtained a decree for possession. *Meantime B* brought a suit upon his mortgage, and obtained a decree under which he sold the property to *D* *B* then sued *D* for possession. *Held*, that the Judge was right in finding that the defendant, being a *bona fide* purchaser for value without notice, was entitled to hold the property as against the plaintiff. MAHOMED ASHRUF *v.* KUREEMOODEEN . 24 W. R. 469

142. ——————— *Purchase of equity of redemption by first mortgagee—Prior's—Notice—Merger.* On the 20th of August 1871 *M*, the owner of a house in Gujarat, mortgaged it to the defendant's father with possession. On the 2nd of December 1871 he made a san mortgage of the same house to the plaintiff. On the 23rd of

MORTGAGE—*contd*

5 SALE OF MORTGAGED PROPERTY—*contd*

(c) PURCHASERS—*contd*

April 1872 *M* sold the equity of redemption to the defendant's father, who became the purchaser without cancelling his first mortgage The plaintiff subsequently sued *M* to enforce his san mortgage, and, obtaining a decree, placed an attachment on the house, which attachment, however, was removed on the application of the defendants' father The plaintiff now sued to establish his right to levy the amount due on his san-mortgage He claimed priority to the defendant on the authority of *Toulmin v Steere, 3 Mer 210*, where it was held that a purchaser of the equity of redemption could not set up a prior mortgage of his own against subsequent incumbrances of which he had notice. *Held*, that, the intention of the defendant's father when purchasing the equity of redemption having been to retain the benefit of all his rights, his son, the defendant, might properly require the redemption of his first mortgage as the condition of the plaintiff's enforcing the decree upon his mortgage against the property. A mortgagee purchasing the equity of redemption may indicate his intention to keep his charge upon the property alive otherwise than by express words. *Per* WEST, *J*—The successive charges created by the owner of an estate may be *regarded as fractions of the ownership, which* embraces the aggregate of advantages that can be drawn from it. Each charge in its turn constitutes a deduction from the original aggregate, and the nominal ownership may itself then be reduced to a small fraction of what it once was Still, be it

143 ———— *Revival of lien —Priority of lien among mortgagees* Where an estate had been mortgaged in 1863, and a second mortgage to the same person in 1867 had resulted in a re-adjustment of the old debt, under which the old mortgage had determined, but the original relations between mortgagor and mortgagee had been renewed, and where a fresh lien had been created on the same property by a new mortgage in 1864 to a third person, who also entered upon possession of

residue *Held*, also, that, having failed to call for restricted proof of the fairness of the first mortgagee's claims in the Court below, the second mortgagee could not urge in appeal that fair consideration had not been received. *Held*, also, that the second mortgagee, having enjoyed possession of the estate under the zur-i-peshgi lease, was not entitled to interest on the amount decreed. WOSEEUN *v* BYJNATH SINGH 25 W. R. 171

144. ———— Possession under mortgage—*Priority of mortgagee with possession* As a general rule, by Hindu law, a mortgagee in possession is entitled to have his claim satisfied in preference to the claim of the holder of a mortgage of prior date unaccompanied by possession HARI RAMCHANDRA *v* MAHADAJI VISHNU

8 Bom A. C. 50

There are cases, however, which the Courts treat as exceptions to that general rule Thus, where a prior mortgagee sued to recover possession of cer-

145 ———— *Registration of mortgage deed* A mortgage deed is, when registered, valid without possession BALAJI NARAYAN KOLATKAR *v* RAMCHANDRA GANESH KELKAR

11 Bom. 37

146. ———— *Law in Guzerat —Rights of prior and puisne mortgagees—Purchaser of equity of redemption with notice of incumbrances* The rule of Hindu law that a mortgage

secures the same object which the Hindu law in-

11 Bom. 41

MORTGAGE—*contd.*

5. SALE OF MORTGAGED PROPERTY—*contd.*

(c) PURCHASERS—*contd.*

147. ——— *Subsequent purchase.* The mortgagee without possession of certain

The deed of sale was duly registered. The plaintiff thereupon claimed to hold the premises free from

iff, having notice of it, should not be allowed to hold the premises free from the mortgage. GOPAL YADAVRAV KESKAR *v.* KRISHNAPPA BIN MAHADAPPA 7 Bom. A. C. 60

See CHINTAMAN BHASKAR *v.* SHIVRAM HARI 9 Bom. 304

148 ——— *Purchase by mortgagee—Priority.* *Held* that a mortgagee in possession, who also became purchaser of the pro-

quent purchaser of the same property whose deed of sale was both stamped and registered. HIRACHAND BABAJI *v.* BHASKAR ABABHAT SHENDE 2 Bom. 198

149. ——— *Possession of title-deeds—Priority—Rights of second mortgagees.* —The mere possession of the title-deeds by a second mortgagee, though a purchaser for value without notice, will not give him priority. There must be some act or default of the first mortgagee to have this effect. SOMASUNDARA TAMBIRAN *v.* SAKKARAI PATTAN . . . . . . 4 Mad. 369

150. ——— *Decree for possession—Sale in execution of money-decree—Priority—Estoppel.* Plaintiff claimed under a mortgage, dated the 27th November 1871, for R50, which was neither registered nor accompanied with possession. Defendant claimed under a mortgage, dated the 17th March 1873, for R150, which was both registered and accompanied with possession.

plaintiff brought a suit on his mortgage (to which suit defendant was not a party), and obtained a

MORTGAGE—*contd.*

5. SALE OF MORTGAGED PROPERTY

(c) PURCHASERS—*contd.*

decree (the date of which did not appear in evidence) for possession of the mortgaged against the mortgagor. In endeavouring to that decree, plaintiff was obstructed by defendant on the 15th January 1875. *Held*, that, if it was passed subsequent to the Court's sale of the mortgaged property to defendant on the 17th September 1874, the decree for possession was neither the title to, nor the possession of, the mortgaged property was then vested in the mortgagor. *Held*, further, that, as defendant had no notice

mortgage, it was incumbent on plaintiffs as such money judgment-creditor, to inform defendant when bidding for the right, title, and interest of the judgment-debtor in the mortgaged property, that

151. ——— *Mortgage without title—Priority of mortgagee's right.* P and his partners mortgaged certain immoveable property to plaintiff on the 11th October 1869. They had then no title to the property, but they subsequently acquired one by purchase on the

lower Courts rejected his claim, and his partners had no right to the property when they mortgaged it to plaintiff. *Held* by the High Court on second appeal, reversing the decrees of the lower Court, that the defendant, as purchaser under a money-decree, could not defeat the plaintiff's right as mortgagee to sell the property in satisfaction of his debt. PRANJIVAN GOVARDHANDAS *v.* BAJU . . . . I. L. R. 4 Bom. 34

152. ——— *Mortgage of property already sold in execution—Subsequent mortgagee with notice of previous sale—*

MORTGAGE—*contd.*

5. SALE OF MORTGAGED PROPERTY—*contd.*

(c) PURCHASERS—*contd.*

ment—Rejection of application under s. 269 of Act VIII of 1859—Suit within one year. On the 17th October 1866, *K* (defendant No. 1), one of the three sons of *B*, mortgaged certain immoveable property to one *N* with possession. On the 19th December 1866, *A* (plaintiff No. 1) obtained a money-decree against *K* and the estate of his deceased father. In execution of that decree, the property was sold by the Court and purchased by *A* himself, who obtained a certificate of sale, dated the 30th January 1868. He subsequently sold and conveyed the property to *D* and *C* (plaintiffs Nos. 2 and 3). On applying to the Court for possession, the plaintiffs were resisted by *N*. The Court rejected the plaintiffs' application on the 11th July 1868. On the 31st May 1871, *K* and his two brothers mortgaged the property to *M* (defendant No. 2), who took the mortgage with full notice of the Court-sale to the plaintiff *A*. *K* and his brothers paid off the mortgage of *N* out of the money borrowed by them from *M* (defendant No. 2) on the mortgage of the property. *N* returned his mortgage deed to *K* and his brothers, who made it over to *M*. In 1878 the plaintiffs brought a suit against *K* and *M* for possession of the property. The Subordinate Judge held the plaintiffs entitled to recover it, on payment of the amount due to *M* on his mortgage, being of opinion that *M* was in the same position as *N*. On

brothers to *M*, dated the 31st May 1871, was a mortgage of property which did not then belong to them,—their estate and interest in it having passed to the plaintiff *A* at the Court-sale. *Held*, also, that the order of the 11th July 1868, rejecting the plaintiff's application for possession under s. 269 of the Civil Procedure Code (Act VIII of 1859), did not affect the right to bring a redemption suit against *N*. *Held* further, that there was nothing to show

decree in favour of the plaintiffs. APAJI BHIVRAV *v.* KAVJI . . . I. L. R. 6 Bom. 64

153. ——— *Right to redeem —Parties—Registration Act, XX of 1866, s. 50—Priority—Notice of prior unregistered mortgage.*

MORTGAGE—*contd.*

5. SALE OF MORTGAGED PROPERTY—*contd.*

(c) PURCHASERS—*contd.*

of sale. On the 21st September 1874, *P* assigned

obtain possession of the land. Both the lower Courts dismissed the plaintiff's claim. On a special

present suit, as the assignee of the rights and equities of *P*, was entitled to redeem the mortgage of *H* in case it was proved that *P* had notice of that mortgage. SHIVRAM *v.* GENU . I. L. R. 6 Bom. 515

See NARAN PURSHOTAM *v.* DALATRAM VIRCHAND I. L. R. 6 Bom. 538

154. ——— *Registration—Notice—Sale of mortgaged property in execution of a money-decree without express notice of mortgage—Right of mortgagee to enforce mortgage against the property in hands of purchaser.* Civil Procedure

under the mortgage, and the auction purchaser was bound by it. DHONDO BALKRISHNA KANITKAR *v.* RAOJI . . . I. L. R. 20 Bom. 290

155. ——— *Mortgage, purchase of the equity of redemption—Suit for confirmation of possession and declaration of title, whether maintainable by such purchaser—Parties—Purchaser from a mortgagor, whether bound by a decree passed in his absence.* Defendant No. 4, after having mortgaged a certain property to defendants Nos. 1 and 2, sold the same to the plaintiffs; subsequently defendants Nos. 1 and 2, although

MORTGAGE—*contd.*

5. SALE OF MORTGAGED PROPERTY—*contd.*

(c) PURCHASERS—*contd.*

them, but at the same time the plaintiffs did not acquire by the purchase any other right than to redeem the mortgage, and that the plaintiffs were not entitled to the decree prayed for by them. PROTAP CHANDRA MANDAL *v.* ISHAN CHANDRA CHOWDHRY **4 C. W. N. 266**

156. ——————— *Suit for recovery of possession by the purchaser of the equity of redemption who is not a party to the mortgage suit, whether maintainable.* Where the plaintiff purchased a mortgaged property from the mortgagor, and subsequently the mortgagee brought a suit against the original mortgagor without making the purchaser a party, and in execution of the mortgage decree the mortgaged property was put up to sale and the auction purchaser rejected the plaintiff — *Held*, that the plaintiff was not bound by the mortgage-decree, and he was entitled to recover possession of the mortgaged property. GRISH CHUNDER MONDUL *v.* ISWAR CHUNDER RAI **4 C. W. N. 452**

157. ——————— *Purchaser of mortgaged property—Parties—Right of purchaser to possession—Right of redemption.*—Plaintiffs are the representatives of one *H* in whose favour defendants 1 to 4 and one *K*, ancestor of defendants 8 to 10, executed a mortgage bond on the 4th August 1882; defendant No. 16 is the mortgagee under a bond executed by the same persons on the 3rd June 1883; the money borrowed on this bond was partly employed in paying off a prior bond executed by the same persons in favour of *H* on the 11th November 1878. Defendants 17 and 18 are the assignees under another bond executed by *K* on the 22nd September 1882. The 1st bond, 1878, was sued on and the decree obtained on the 31st October 1881. The decree on the plaintiff's bond was obtained on the 31st July 1883, the decree on defendant No. 16's bond was obtained on the 19th February 1891; the sale certificate obtained by the defendants 25, 33 and another person, *B*, who were the purchasers at the sale in execution of the decree on account of the 4th bond, was dated the 13th February 1891. Plaintiffs purchased the mortgaged properties at the sale held in execution of their decree on the 2nd June 1884, and the plaintiffs took symbolical possession on the 16th October 1884; defendant No. 16 purchased the property in execution of her decree on the 29th February 1892. Plaintiffs now brought the present suit for

subject to the incumbrances existing in favour of the defendants, and they are entitled to possession subject to the defendants' rights of redemption. The plaintiffs did not lose their right to possession, although they were parties to the suits brought upon the bonds of September 1882 and June 1883, inasmuch as they were sued as subsequent, instead of prior, mortgagees, and that they were called on to redeem which they were not bound to do. DHAPI *v.* BASHAM DEO PARSHAD **4 C. W. N. 297**

158. ——————— **Purchaser of property mortgaged from grantee of mortgagor**—*Decree and sale by mortgagee—Auction-purchaser—Priority of latter over purchaser from grantee of mortgagor.* In the year 1869 *A* mortgaged her share in a zamindari to *B*. In 1870 she granted a patni lease of the property to *C*, who transferred it to *D*. Subsequently, *A* made a gift of the property to *E*, and in 1872 *E* sold the land so given to *F*, who thus became the owner of the patni and zamin-

a decree for the sale of the mortgaged property ... at the sale the property was purchased by *G* (the son of *D*) ... for rent against *G* and

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MONEY DABIA

159. ——————— **Purchaser, assignee of**—*Ejectment by assignee of purchaser at sale in execution of decree against puisne mortgagee—Rights of parties.* Where immoveable property mortgaged has been sold by a Court in execution of a decree obtained by the mortgagee to enforce his lien against the mortgagor, a puisne mortgagee who has not been made a party to the suit is not bound by the decree or sale, and is entitled to redeem the first mortgage. The assignee of the purchaser of land sold in execution of a mortgage-decree obtained by a mortgagee ... alone is not

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Shringarpure v. Pethe, ... dissented from. VENKATA *v.* KANNAM **I. L. R. 5 Mad. 184**

MORTGAGE—*contd.*

5. SALE OF MORTGAGED PROPERTY—*contd.*

(c) PURCHASERS—*contd.*

160. ———— **Suit by purchaser for possession**—*Priority—Equity of redemption—Registration—Notice—Parties to suit brought by a first mortgagee—Practice—Amendment of plaint* A, the

Courts found as a fact that the defendant had ob-

that suit. On the 10th March 1870 the land was sold in execution of that decree, and purchased by the plaintiff for R99-12, with notice of the defend-

the 7th July 1870 the plaintiff, as purchaser at the abovementioned sale, was put into possession, but on the 24th August 1870 the defendant obtained a decree in ejectment against *N* (the mother of *A*) as her tenant. In execution of that decree, the defendant recovered possession of the land, dispossessing the plaintiff though he had not been a party to the ejectment suit The plaintiff thereupon brought the present suit to recover the land under s. 230 of Act VIII of 1859 His claim was rejected by the Subordinate Judge, but allowed by the joint Judge in appeal On special appeal to the High Court —*Held*, that the claim of *S* against the land was prior to that of the defendant, inas-

the defendant to the extent of her (defendant's) mortgage, and she (defendant) would have been entitled to redeem the land by payment of the amount which might have been found due to *S* in her suit. The defendant being in possession of the land at the time of the institution of the suit of *S*, and her (defendant's) mortgage being registered, *S* must be regarded as having had notice of the defendant's claim, and was bound to make defendant a party to that suit in order to give a good title to a purchaser under such decree as might be made in that suit. *S*, by her omission to do so, did not

MORTGAGE—*contd.*

5. SALE OF MORTGAGED PROPERTY—*contd*

(c) PURCHASERS—*contd.*

was not a party to the suit of *S*, and therefore not bound by the decree in it The plaintiff accordingly was fully aware of the infirmity of the title which he was acquiring No doubt, the decree in the suit of *S* bound the mortgagor *A*, who was a party to it, so far as his right to redeem was concerned The plaintiff therefore had a good title to the interest of *A*, and was entitled to redeem the land from the defendant's mortgage The utmost relief which the Court could afford to the plaintiff under the above circumstances was to permit him to amend his plaint by praying a redemption of the land from the defendant's mortgage, and to treat his suit, which was in the nature of an ejectment suit, as one for

and *Shringarpure* v *Pethe*, *I. L R 2 Bom* 663, referred to and followed RADHABAI *v.* SHAMRAV VINAYAK . . . **I. L. R. 8 Bom. 168**

161 ———————— *Execution—Sale of equity of redemption—Purchaser at execution-sale—Sale in execution of decree on mortgage prior in date—Priority—Possession—Notice—Certificate of sale* On the 18th January 1877 the father of the plaintiffs purchased the interest of *M* in two houses at a sale in execution of a money-decree against *M*. The purchaser, however, never obtained possession, and he did not obtain the certificate of sale until the 31st July 1878 Subsequently to the sale of the 18th January 1877, two suits were filed against *M* on mortgages executed prior to that date and decrees in both were obtained against *M*. In execution of these decrees, both the houses were sold and the respective purchasers were represented by two of the defendants The purchasers got possession and both obtained sale-certificates, one prior to the sale to the father of the plaintiffs, *viz.*, on 5th February 1878, and the other subsequently, *viz.*, 1st November 1878 The plaintiffs now sued to recover the houses *Held*, that the plaintiffs were not entitled to recover as against the defendants. The plaintiffs, not having either got possession or obtained a certificate of sale at the date of the sale in execution of the decrees on the mortgages, had only an inchoate title The purchasers in execution had

persons interested on inquiry as to their rights; but while they chose to keep their rights wholly in the

MORTGAGE—*contd.*

5. SALE OF MORTGAGED PROPERTY—*contd.*

(c) PURCHASERS—*contd.*

dark, they invited others to act as if those rights were not in existence, and they could not look to the Courts to extend and complete such rights in a way which would render the defendants victims, not of their own negligence, but of the negligence of those who would gain by it. NANCHANDRA v. HEMATA

I. L. R. 9 Bom. 16

162. ———————— *Sun-mortgage—Mortgage with possession—Sale in execution of decree obtained by first mortgagee—Purchase by first mortgagee at such sale—Suit by purchaser against second mortgagee for possession—Rights of second mortgagee—Redemption.* In 1870 *B* executed a sun-mortgage of certain land to the plaintiff, and four years afterwards mortgaged the same land with possession to the defendant. In 1875 the plaintiff brought a suit against *B* alone upon the mortgage, obtained a decree, and he himself purchased the property at the Court-sale held in execution of that decree. In attempting to take possession he was obstructed by the defendant, who was in possession of the property as mortgagee. The plaintiff now sued the defendant for possession. Both the lower Courts held that the plaintiff should satisfy the defendant's subsequent mortgage before he could recover possession. On an appeal by the plaintiff to the High Court:—*Held*, reversing the lower Court's decree, that the plaintiff's claim should be allowed. The plaintiff having brought to sale, in execution of his decree, the estate as it stood at the date of his mortgage free from all subsequent incumbrances, the fact that he himself was the purchaser could not affect the estate which passed by that sale. As the defendant had not been a party to the plaintiff's suit against *B*, he was entitled to redeem the property if he wished. MOHAN MANOR v. TOGU UKA

I. L. R. 10 Bom. 224

163. ———————— *Suit by mortgagee for possession of mortgaged property—Pre-emption—Purchaser for value without notice.* Under a registered deed of mortgage, dated in May 1869, the mortgagee had a right to immediate possession; but by arrangement between the parties the mortgagors remained in possession, the right of the mortgagee to obtain possession as against them being, however, kept alive. In October 1869 the mortgagors sold the property, and thereupon one *B* brought a suit to enforce the right of pre-emption in respect of the sale and obtained a decree, and got the property and sold it in 1871 to *D*. In 1883 the mortgagee brought a suit against *D* to obtain possession under his mortgage. *Held* that, although it would be material to show that the defendant had in any way by fraud been kept out of knowledge of the mortgage, his not having notice of it would not otherwise affect his liability inasmuch as the prin-

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British India. *Held*, also, that under these circumstances, there was no equitable ground why the plaintiff's right under the mortgage, which had priority, should be defeated by the defendant's purchase. DURGA PRASAD v. SHAMBHU NATH

I. L. R. 8 All. 86

164. ———————— Auction-purchasers—*Transfer of Property Act (IV of 1882), ss. 11 (f), 85—Decree for money—Mortgage by conditional sale—Suit on mortgage—Confession of judgment followed by decree for possession—Holder of the money decree not a party—Sale in execution of money decree—Rights of auction-purchaser.* A judgment-debtor under a decree for money mortgaged certain property by a deed of conditional sale. The property mortgaged was attached as the property of the judgment-debtor, and an order for sale was passed. Prior to the sale, however, the mortgagees having put their mortgage into suit, the judgment-debtor confessed judgment, admitted the mortgage-debt, stated that he had not means to pay it, and asked that a decree for possession of the property might be passed in favour of the mortgagees; and a decree was so passed. To this suit the mortgagees, who were found to have had notice of the interest of the attaching judgment-creditor, never made him a party. Subsequently to the passing of the decree in the mortgagees' suit, the judgment-creditor under the money decree caused the property to be sold. The auction-purchaser was resisted in obtaining possession, by the mortgagees, and thereupon sued them for possession. *Held*, that the auction-purchaser was entitled to a decree for possession on redeeming the mortgage. *Surut Dassi Koer v. Sheo Purshad Singh*, I. L. R. 5 Calc. 148, *Ponnappa Pillai v. Pappuvayyangar*, I. L. R. 4 Mad. 1, 64, and *Anand Chandra Pal v. Panchilal Sarma*, 5 B. L. R. 691, referred to by BANERJI, J. GHULAM HUSAIN v. DINA NATH (1901)

I. L. R. 23 All. 467

165. ———————— Mortgage—Prior and subsequent incumbrancers—Suit by prior incumbrancer not making subsequent incumbrancer a party—Suit for redemption and sale by puisne mortgagee—Rights of purchaser at auction-sale under the decree in the first suit, and of the assignee of the original mortgagee. One *K*, holding a first mortgage on certain property, brought a suit for sale on his mortgage, and obtained a decree. *B*, a creditor of *K*, attached the decree, and, having put up the mortgaged property for sale, purchased it himself. After this, *G*, a puisne mortgagee of the same property, who had not been made a party to *K*'s suit, brought a suit to redeem *K*'s mortgage and sell the property. *K* transferred his rights as mortgagee to *P*, who was thereupon made a defendant. *G* obtained a decree for redemption and sale. *Held* that *P* was entitled to the whole amount which *G* had to pay for redemption of the prior mortgage, with the exception of the amount of the purchase money paid by *B* at the auction-sale, which amount

MORTGAGE—*contd.*

5. SALE OF MORTGAGED PROPERTY—*contd.*

(c) PURCHASERS—*contd.*

and that only, would be due to *B* or his representative. *Dip Narain Singh* v. *Hira Singh*, *I. L. R. 19 All.* 527, approved WAHID-UN-NISSA v. GOBARDHAN DAS (1903) **I. L. R. 25 All. 388**

166. ———— Contribution—*Co-mortgagors—Decree on mortgage—Private sale of mortgaged property by one judgment-debtor with leave of Court—Civil Procedure Code (Act XIV of 1882), s 305—Satisfaction of decree by one judgment-debtor—Contribution—Suit by purchaser at private sale to eject one of the judgment-debtors in possession of part of mortgaged property—Lien on such part for contribution passes to purchaser—Transfer of Property*

of the mortgage-debt, the mortgaged property was ordered to be sold They failed to pay the

of 1882) for a postponement of the sale, in order to enable him to raise the amount of the decree by a private sale of the property The application was granted, and he sold the whole of the mortgaged property to Gurshantappa (father of the plaintiffs) for R1,534, which was duly paid to the decree-holder. Satisfaction of the decree was entered, and the Court confirmed the sale Basappa (the second judgment-debtor) was in possession of a *portion of the property, and he refused to give up* possession alleging that he had separated from Yamnappa and that the land in his possession had fallen to his share on separation, and contending that the sale by Yamnappa to Gurshantappa was

second appeal: *Held* that the sale by Yamnappa, although made with the leave of the Court under s. 305 of the Civil Procedure Code, did not affect the interest of Basappa The authority given to Yamnappa under that section related only to his interest, but could not affect the interest of the other judgment-debtor (Basappa), who had not joined him in applying for leave to sell under that section. The appellants (plaintiffs), therefore,

off the whole mortgage-debt with Gurshantappa's purchase-money, and had *satisfied the decree.* He

MORTGAGE—*contd.*

5 SALE OF MORTGAGED PROPERTY—*contd.*

(c) PURCHASERS—*contd.*

therefore became entitled to a rateable contr[illegible]

share of the amount of the mortgage decree. DANAPPA v. YAMNAPPA (1902) **I. L. R. 26 Bom. 379**

167. ———— Payment in adjustment of decree—*Civil Procedure Code (Act XIV of 1882), s*

Court—Limitation Act (XV of 1877), Sch. II, Art 173A—Application for adjustment of decree to be recorded The mortgagee of certain property brought a suit on his mortgage, and obtained a decree for sale. Petitioner then negotiated with the mortgagor for the purchase of the lands The

under s. 57 of the Transfer of Property Act, asking to be allowed to pay the amount into Court, and praying for a declaration that the property was freed from incumbrance The mortgagee contended that the application fell under s 258 of the Code of Civil Procedure, in which case it would be barred under Art 173A of Sch. II to the Limitation Act: *Held*, that s 57 of the Transfer of Property Act did

on payment of the money into Court, to the declaration sought MALLIKARJUNA SASTRI v. NARASIMHA RAO (1901) . . **I. L. R. 24 Mad. 412**

168. ———— Redemption—*Mortgages, prior and subsequent—Right of purchaser at a prior mortgage sale to redeem the rights of a purchaser at a subsequent mortgage sale.* Where the plaintiff pur-

fendant purchased: *Held*, that the plaintiff purchased the mortgagee's rights and the equity of *redemption in the remainder of the property which*

MORTGAGE—*contd.*

5. SALE OF MORTGAGED PROPERTY—*contd.*

(c) PURCHASERS—*contd.*

was not covered by the defendant's decree; and that the defendant was entitled to redeem by paying off the proportionate amount of the plaintiff's mortgages due on the property purchased by him; and that, if the defendant failed to pay as aforesaid, the plaintiff would be entitled to pay off the defendant by paying into Court the amount paid by the defendant for the property. SHEO PERSHAD SINGH v. TILUK SINGH (1900) . . 5 C. W. N. 232

169. ——— *Mortgage—Prior and subsequent mortgagee—Sale by first mortgagee and purchase by himself—Purchaser from first mortgagee—Redemption of purchaser by subsequent mortgagee—Amount payable.* A first mortgagee, who had no notice of a subsequent mortgage, obtained a decree for a mortgage debt (amounting to about R350) in a suit in which the subsequent mortgagee was not made a party, brought the property to sale and purchased it himself for R25 and subsequently sold it to the plaintiff for R99. The subsequent mortgagee also obtained a decree on his mortgage and purchased the property at a sale held under that decree. In a suit brought by the plaintiff against the subsequent mortgagee, in which the prior mortgagee was not made a party:—*Held,* that without prejudice to the rights of the first mortgagee and as between the plaintiff and the defendant, the latter could be allowed to redeem the former only upon payment of what was now due on the first mortgage and not merely what the first mortgagee or the plaintiff himself had paid for the property. *Collins v. Riggs, 14 Wallis (Irish) 491, Nilkant Bannerjee v. Suresh Chandra Mullick, I. L. R. 12 Calc. 414,* and *Sivathi Odayan v. Rama Subbayar, I. L. R. 21 Mad. 61,* relied on. GIRISH CHANDRA NANDI v. KEDAR NATH KUNDU (1906) I. L. R. 33 Calc. 590 s.c. 10 C. W. N. 592

170. ——— *Prior and puisne mortgagee—Purchase by each at sale on his mortgage—Rights inter se—Suit for possession by prior mortgagee—Maintainability—Right of puisne mortgagee and purchasers not made parties in mortgage suit to redeem—Partial redemption—Redemption, price of—Mode of calculation—Interest, rate of—Payment made by subsequent mortgagee to save property from rent sale, if to be taken into account—Contract Act (IX of 1872), s. 69—Bengal Tenancy Act (VIII of 1885), s. 171.* A first mortgagee obtained a decree for sale of the mortgaged properties and purchased the same in execution, but when he proceeded to take possession was successfully resisted (i) by a second mortgagee, who had meanwhile sued on his mortgage, obtained a decree and purchased some of the properties in execution, and (ii) by certain other persons who had purchased some of the other properties from the mortgagor. None of these had been made parties in the first mortgagee's suit, the latter not having had notice of their interest in the mortgaged properties:—*Held,* that it was not obligatory on the first mortgagee to institute a fresh suit for sale on his mortgage against these persons and a suit for recovery of possession of the properties on the basis of his purchase was maintainable. *Har Persad Lal v. Dal Madan Singh, 9 C. W. N. 728 I. L. R. 32 Calc. 891,* followed. That if the defendants wanted to retain possession they must redeem the plaintiff, but as the plaintiff was both mortgagee and purchaser, the defendants were not bound to redeem the entire mortgage, but only to the extent of the properties purchased by them. *Surjiram Marwari v. Berhamdeo Pershad, 2 C. L. J. 202; Hari Kissen v. Velait Hossein, 7 C. W. N. 723 I. L. R. 30 Calc. 755,* relied on. That to redeem the plaintiff, it was not sufficient for the defendants to pay a proportionate share of the purchase-money paid by him. The amount payable must be calculated on the basis of the plaintiff's mortgage, but inasmuch as the plaintiff had already enforced that mortgage and the mortgage debt had been thereby converted into a judgment-debt he was entitled to the contract rate of interest, only up to the date of the decree in the [illegible] be [illegible] rish [illegible] R. [illegible] se i, [illegible] un- [illegible] not [illegible] edit [illegible] pay- [illegible] 171, [illegible] om [illegible] MITTER (1907)

171. ——— Suit for possession—*Mortgage-suit—Subsequent purchaser not made a party—Mortgagee's Sale—Purchase by mortgagee himself—Limitation right to sue for possession—Suit for sale—* Where a mortgagee *A* brought a suit on his mortgage without making one *D*, a subsequent transferee from mortgagor, a party although he had notice of the transfer and in execution of the decree obtained in the suit purchased the property himself: *Held,* that a suit by *A* for the recovery of possession of the property from *D* does not lie, and *A*'s only remedy is by a suit for sale. AGHORE NATH BANNERJEE v. DEB NARAIN GUIN (1906) 11 C. W. N. 314

172. ——— *Mortgage—Purchaser of equity of redemption not made party in mortgage suit—His right against purchaser at mortgage sale—Respective rights how adjusted—Suit for possession—Limitation—Transfer of Property Act (IV of 1882), ss. 60, 85—Res judicata.* Where a mortgagee in execution of a decree against the owners of the equity of redemption, except one, brings the mortgaged property to sale and purchases it, the

MORTGAGE—*contd.*

5. SALE OF MORTGAGED PROPERTY—*contd.*

(c) PURCHASERS—*concld*

owner of the equity of redemption, who was omitted from the mortgage suit, is not affected by the decree. The proper procedure for the purchaser in such a case to follow is to sue for recovery of possession subject to the right of the person excluded to redeem him. Where after such purchase the owner of the equity of redemption, who had been excluded, brought a suit for recovery of possession against the purchaser at the mortgage sale on the ground that he was not affected by the mortgage decree, and the suit was decreed. *Held*, that the owner of the equity of redemption cannot resist a suit by the purchaser at the mortgage sale for possession (subject to the right of the defendant to redeem) on the ground that the right of the parties ought to have been adjusted in the previous litigation, when in the previous litigation he had successfully pleaded that the purchaser at the mortgage sale must enforce his rights by a separate suit. JUGDRO SINGH *v.* HABIBULLA (1907) 12 C. W. N. 107

(d) MISCELLANEOUS

173. ——— Suit to recover from purchaser the amount due on prior encumbrances when they have been after the purchase, declared invalid—*Sale of mortgaged property—Purchasers—Sale subject to prior encumbrances—Purchase by decree-holder.* Certain villages were put up for sale in execution of a decree under s. 88 of the Transfer of Property Act (IV of 1882), and it was notified in the proclamation of sale that the property was to be sold subject to two prior mortgages of 27th May and 2nd December 1877. The

tatives of the auction purchaser to recover the amount due on the two mortgages of 1877, as "unpaid vendors' purchase money" *Held* (reversing the decision of the High Court), that the suit was not maintainable. On the sale of pro-

MORTGAGE—*contd.*

5. SALE OF MORTGAGED PROPERTY—*contd.*

(d) MISCELLANEOUS—*concld.*

anything that remains of that amount after the encumbrances are satisfied or disposed of, is without foundation. After the purchase is completed the vendor has no claim to participate in any benefit which the purchaser may derive from his purchase. *Tweddel* v *Tweddel*, *2 Br. C. C. 151*, *Butler* v. *Butler 5 Vesey 534*, and *Waring* v. *Ward*, *7 Vesey 332, 335*, referred to. IZZAT-UN-NISA BEGAM *v.* PARTAB SINGH (1909) I. L. R. 31 All. 583

174. ——— Suit for sale of property subject to a charge—*Transfer of Property Act (IV of 1882), s 88—Mortgage—Charge.* There is no objection to the sale, in execution of a decree for sale on a mortgage, "subject to the charge" of property which is liable to a charge for maintenance in favour of a particular person. *Mata Din Kasodhan* v. *Kazim Husain, I. L. R. 13 All. 432*, distinguished. LALMAN *v.* MOHAR SINGH (1906) I. L. R. 29 All. 205

passed the mortgagee agreed upon receipt of certain sums of money to give up his claim for

176. ——— Suit for contribution by mortgagor whose property has been sold—*Joint mortgage—Satisfaction of mortgage debt by sale of part only of the mortgaged property.* In a suit for contribution amongst co mortgagors, even if it is a condition precedent to the institution of such

Husain v *Ram Dai, I. L. R. 12 All 110*, and *Ibn Hasan* v. *Brijbhukan Saran, I. L. R. 26 All. 407*, referred to. MUHAMMAD YAHIYA *v.* RAZI-UD-DIN (1908) . . . . I. L. R. 31 All 65

6. MARSHALLING

1. ——— Mode of satisfaction of mortgage lien—*Sale by third party in execution.*

MORTGAGE—*contd.*

6. MARSHALLING—*contd.*

The plaintiff had a lien on three estates belonging to his debtor, and a third party, having obtained a decree for money due from the same debtor, recovered his money by the sale of one of the three estates mortgaged to the plaintiff. *Held*, that the sale did not release that estate from the mortgage, but that it forced the plaintiff to take measures in the first place to recover the amount due to him from the remaining estates included in his mortgage-deed; and that, if a balance remained after he had realized all he could from these two remaining estates, he could then return to the third estate to recover the balance. NOWA KOOWAR *v.* ABDOOL RUHEEM . . . W. R. 1864, 374

2. ———— *Charge on several properties.* In a suit to establish a claim against three properties mortgaged to the plaintiff, but . . . f the de- . . . one only . . . sked that . . . rst to the two other properties for the satisfaction of his de- . . .

or improperly controlling his remedies. *Quære* Should the doctrine of marshalling of securities be introduced into this country? KHETOOSEE CHEROORIA *v.* BANEE MADHUB DOSS . 12 W. R. 114

3. ———— *Charge on several properties.* Per SETON-KARR, J.—Case remanded for the lower Court to find whether, when property hypothecated for a bond has passed to a *bonâ fide* purchaser, the same can be declared liable to satisfy such part of a money-decree on the bond as cannot be satisfied from any other source. *Per* NORMAN, J.—If *A* has a mortgage on two different estates for the same debt, and *B* has a mortgage on one only of the estates for another debt due from the same party, *B* has a right in equity to throw *A* in the first instance for satisfaction upon the security which he, *B*, cannot touch, where it will not prejudice *A*'s right or improperly control his remedies. A purchaser of one of the estates has the same equity as a mortgagee. BISHONATH MOOKERJEE *v.* KISTO MOHUN MOOKERJEE . 7 W. R. 483

4. ———— *Priority—Marshalling of securities—Purchaser for value.* Where the owner of certain property mortgages it to *A*, and afterwards sells a portion of the mortgaged property to *B*, it is not incumbent on *A* in suing to . . . nst that . . . sold by . . . DEWAN . . . alc. 258

5 ———— *Money-decrees—Doctrine of marshalling—Mortgage-decree—Surplus sale-proceeds* The doctrine of marshalling does not apply as between a mortgagee and attaching creditors of the mortgagor who hold mere money-decrees. A mortgagee brought a suit against the . . .

moneys must, as between the mortgagee and at- . . .

CHOWDHRY I. L. R. 6 Calc. 142 : 7 C. L. R. 396

. . . ment of debt— . . .

7. ———— *Purchaser of por- of mortgaged property without notice—Suit for sale of whole property in satisfaction of mortgage—Marshalling—Apportionment.* The equities which apply to a puisne incumbrancer in the marshalling of securities apply also to a *bonâ fide* purchaser for value, without notice, of a portion of property the whole of which was subject to a prior incumbrance. *Tulsi Ram* v. *Munnoo Lal, 1 W. R. 1864, 353*; *Nowa Koowar* v. *Abdool Ruheem, W. R. 1864, 374*; *Bishonath Mookerjee* v. *Kisto Mohun Mookerjee, 7 W. R. 483*; and *Khetoosee Cheroorra* v. *Banee Madhub Doss, 12 W. R. 114*, referred to. The mortgagees of two properties, one of which had, subsequently to the mortgage, been purchased for value *bonâ fide*, by one who had no notice of the incumbrance, brought a suit to enforce their lien against both the properties originally owned by the mortgagor, impleading as defendants both the mortgagor and the purchaser. *Held*, that, while there was no doubt, that, if the purchaser was compelled to pay more than the share of the mortgage debt apportioned on the property purchased by him, he would be entitled to contribution, yet, in a suit so framed and having regard to the array of parties, such an apportionment could not be made at the stage of second appeal. RODH MAL *v.* RAM HARAKH I. L. R. 7 All. 711

8 ———— *Right of creditor to realize entire debt from one parcel of land mortgaged.* *T*, in execution of a money-decree, brought to sale and purchased certain land of *S* in 1875,

MORTGAGE—*contd.*

6 MARSHALLING—*contd*

and remained in possession till 1879. In 1874 V obtained a decree against S, whereby the lands

to recover the lands unless T paid the whole of V's decree-debt TIMMAPPA v LAKHSMAMMA

I. L. R. 5 Mad 385

9. ——— *Right to proceed against several properties—Suit on mortgage-bond —Purchase of one property by mortgagee at inadequate price where it was supposed to be subject to mortgage lien.* In a suit to recover principal and

fair value. It was found that, at the sale in ques-

to him, and took advantage of the lowness of the

24 W. R. [illegible]

10. ——— *Charge on various properties—Mortgagee as purchaser of equity of redemption in part of mortgaged property* Property which is the subject of a mortgage when sold in satisfaction must be sold as a whole and not piecemeal at the pleasure of the mortgagee, especially when he has become owner of the equity of redemption in part The proper course is to make an inquiry into the relative values of the properties included in the mortgage and to burden each with a proportionate share of the debt. It must not be assumed that the Government assessment represents the true value of estates KISHEN PERTAB SAHEE BAHADOOR v. LALLA NUND COOMAR SINGH PARRAY . . . . . 25 W. R. 388

11. ——— ——— *Charges on mort-*

different mortgages made and to have an 8-annas share in the land put up for sale, unless the respondent was willing to pay off his mortgaged-debt.

MORTGAGE—*contd.*

6. MARSHALLING—*contd.*

Rule of apportionment and form of decree set out. GUNGA NARAIN SEN v. HURRIS CHUNDER CHANGDARS . . . . . . 6 C. L. R. 336

12. ——— *Apportionment prejudicing third parties—Transfer of Property Act (IV of 1882), s. 81.* The principle of marshalling cannot be exercised to the prejudice of third parties. *Burnes v. Racster, 1 Y. & C. C C 401,* and *Bugden v Bignold, 2 Y & C. C. C. 377,* followed. S 81 of the Transfer of Property Act is applicable only where the second mortgagee has no notice of the prior mortgage The principle of apportionment laid down in *Gunga Narain Sen v. Hurrish Chunder Changdars, 6 C. L. R 333,* referred to SATISH CHUNDER MUKERJI v GOPAL CHUNDER CHUCKERBUTTY . 2 C. W. N. 397

13. ——— *Charges on several properties* It appearing that the mortgagee deliberately abstained from executing his decree against eleven properties which still remained in the

14. ——— ——— *Charges on separate mortgaged properties* One of two mouzahs

entire debt upon that village. *Held,* that he was

cited GOSSYEN LUCHMEE NARAIN POORI v. BICRAM SINGH . . . 4 C. L. R. 294

YAKOOB ALI CHOWDHRY v RAM DOOLAL

13 C. L. R. 272

15. ——— By a mortgage-

vance a portion of the property already mortgaged. Subsequently the three brothers effected a partition among themselves of all the undivided property and the property jointly mortgaged by S and V fell,

MORTGAGE—*contd.*

6. MARSHALLING—*contd.*

along with other property, to the share of V and the third brother N. In 1881 the plaintiff B sued S on the second of the above mortgages, *viz.*, that of the 28th July 1878. He obtained a decree, and at the sale held in execution of that decree himself purchased the property comprised in that mortgage. In the meantime, on the 27th January 1882 and on the 6th December 1883, V and N respectively mortgaged with possession to the defendant M portions of the land comprised in the first mortgage of the 24th January 1878. In 1883 the plaintiff filed

in dispute, should be prevented from obstructing him in selling the property. S and V did not appear. The third defendant M alone appeared and contended (*inter alia*) that the plaintiff, having purchased part of the lands comprised in the mortgage now sued upon in execution of the decree obtained by him upon his second mortgage, could not now

against one of the owners of the equity of redemption for the whole debt. *Ram Dhun Dhur*, v. *Mohesh Chunder Chowdhry, I. L. R. 9 Calc. 406*, approved. MORO RAGHUNATH *v.* BALAJI TRIMBAK

I. L. R. 13 Bom. 45

16. ——— *Transfer of Property Act, 1882, s. 81—Marshalling—Creditors of coparcenary and separate creditors.* Suit by the adopted son of the obligee (deceased) of a hypotheca-

Defendant No. 1 afterwards hypothecated part of his share for a private debt to defendant No. 3, who having sued on his hypothecation and brought the land to sale in execution became the purchaser. The District Munsif passed a decree for the plaintiff against which defendants Nos. 2 and 3 preferred separate appeals. The District Judge on appeal passed a decree directing that the plaintiff should

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tors of the same person having demands against the property of that person, no case for marshalling arose, and consequently that the direction of the District Judge was wrong. GOPALA *v.* SAMINATHAYYAN . . I. L. R. 12 Mad. 255

17. ——— *Transfer of Property Act (IV of 1882), s 78—Priority of mortgages—Gross negligence—Registration.* A mort-

R400 from him, subsequently informed him that the first mortgage was paid off, delivered the certificate to him, and executed to him a mortgage of the same

I. L. R.

18. ——— *Transfer of Property Act (IV of 1882), s 78—Priority of mortgages—Gross negligence—Registration.* On the 20th of February 1888 defendant No. 1 executed a mortgage in favour of the plaintiff company

had been delivered to the plaintiff company

further charge in her favour

at No. 1 to

prior mort

described

from

company had

the title

the mort

priority

gages of defendant No. 4 had

over the mortgage to the plaintiff company. MADRAS HINDU UNION BANK *v.* VENKATRANGIAH

I. L. R. 12 Mad. 424

19. ——— *Transfer of Property Act (IV of 1882), ss. 3, 78, 101—Priority of mortgages—Gross negligence—Extinguishment of charges—Registration Act (III of 1877), s. 17

MORTGAGE—*contd.*

6. MARSHALLING—*contd.*

(*d*). *18—Notice by registration—Merger.* In a suit for the declaration of the priorities of mortgages and for foreclosure, it appeared that the mortgaged premises had been purchased by the mortgagor from the second defendant and others in 1878, under a conveyance containing a covenant that they were free from incumbrances, and the mortgagor then received *inter alia*, a Collector's certificate which was recited in another title-deed also handed over to her. The premises were mortgaged to defendant No. 2, who was an experienced sowcar in 1879, and to the plaintiff company in 1883, and again in 1884, and were conveyed absolutely by the mortgagor to defendant No 2 in 1886 The mortgagor executed a rent agreement to the plaintiff company on the occasion of each of the mortgages of 1883 and 1884. The above mortgages were registered, but the plaintiff company and defendant No 2 had no notice at the respective dates of their mortgages and conveyance of any previous incumbrance The plaintiff company received the title-deeds of the estate from the mortgagor (but not the Collector's certificate) on the execution of the mortgage of 1883; the second defendant alleged that he had held them under a prior incumbrance which was consolidated in the mortgage of 1879, and that before the execution of that mortgage the mortgagor had obtained them from him for the purpose of obtaining a Collector's certificate, and had told him that the

registration of the mortgage to defendant No 2 did not affect the plaintiff company with constructive notice of its existence, and that accordingly the subsequent mortgages to the plaintiff company were entitled to priority *Held*, on appeal, COLLINS, *C.J.*, and HANDLEY, *J*, (i) that the plaintiff company were not affected with constructive notice of the mortgage of the second defendant by reason of its registration or of their failure to search the registry or to inquire after the Collector's certi-

I. L. R. 15 Mad. 268

Affirming the decision in MADRAS BUILDING COMPANY *v.* ROWLANDSON I. L. R. 13 Mad. 383

MORTGAGE—*contd.*

6. MARSHALLING—*contd*

20. ———— *Notice of prior*

the second mortgagee. The English doctrine of marshalling of securities applies to mortgages in the mofussil CHUNILAL VITHALDAS *v.* FULCHAND

I. L. R 18 Bom 160

21 ———— *Transfer of Property Act (IV of 1882), s 81—Notice of mortgage—*

Madras Building Company, I. L. R. 15 Mad 268, approved. *Lakshman Das Sarupchand v Dasrat, I. L. R. 6 Bom. 168,* dissented from It is a notice at or before the time of mortgage which under the terms of s. 81 alone negatives the right conferred by that section. A purchaser at an execution sale under the second mortgage, whether he

SHAD *v* GOBIND LALL CHOWDHRY

I. L. R. 23 Calc 790

22 ———— *Mortgage—Subsequent mortgage to another person of part of the mortgaged property—Notice to puisne incumbrancer—Transfer of Property Act (IV of 1882).* Defendants Nos 1 and 2 mortgaged three properties, *viz*,

MORTGAGE—*contd.*

6. MARSHALLING—*concld.*

due proportion of the mortgage-debt due to himself. On his purchase the debt to that extent ceased to exist and the debt due to him on his mortgage was reduced by that amount. The proportion of the

RAMDAS *v.* JAMNADAS SHANKARLAL

I. L. R. 22 Bom. 304

23 ——— *Transfer of Property Act (IV of 1882), s. 82—Purchase by mortgagee at auction of portion of the mortgaged property—Effect of such purchase in reducing the mortgage-*

mortgage debt which was chargeable on the property purchased by him, that is to say, a portion of the debt which bears the same ratio to the

midas Ramdas v. *Jamnadas Shankar Lal, I. L. R. 22 Bom. 304,* followed. *Nand Kishore* v. *Hariraj Singh, I. L. R. 20 All. 23;* and *Sumera Kuar* v. *Bhagwant Singh, All. Weekly Notes (1895) 1;* and *Chunna Lal* v. *Anandi Lal, I. L. R 19 All. 196,* considered. *Mahabir Prasad Singh* v. *Macnaghten I. L. R. 16 Calc. 682; Azmat Ali Khan* v. *Jawahir Singh, 13 Moo I. A. 404;* and *Mahtab Singh* v. *Misri Lal, 2 Agra 88;* referred to. BISHESHUR DIAL *v.* RAM SARUP . I. L. R. 22 All. 284

7. TACKING.

1. ——— **Principle of tacking**—*Purchase of equity of redemption—English law.* In 1840 *A* mortgaged certain lands to *B*, which he had granted in patni at a rent of R145. Subsequently in September 1844 *A* granted a fresh patni at a reduced rent of R90; and on the 9th October 1844 *A* mortgaged the same lands to *C*. In 1856 *C* obtained a decree for the redemption of the mortgage to *B* and he paid off the debt to *B*: but it did

the mort-

foot as a

A subsequently to the date of that mortgage, ... prior to that of the mortgage to himself; and in 1862 he obtained a final decree for foreclosure against *A*. In a suit by *C* to set aside the lease of September 1844:—*Held*, that it was valid and binding upon

MORTGAGE—*contd.*

7. TACKING—*contd.*

him. *Semble:* The English principle of tacking does not apply to mortgages of land in the mofussil GAUR NARAYAN MAZUMDAR *v.* BRAJA NATH KUNDU CHOWDHRY

5 B. L. R. 463 : 14 W. R. 491

2. ——— ***English law of tacking.*** The English law of tacking is not recognized in the Courts of this country. UDAYA CHANDRA RANA *v.* BHAJAHARI JANA . 2 B L R. Ap. 45

ODOY CHURN RANA *v.* BROJOHURY JANA

11 W. R. 130

3. ——— *Redemption.* The owner of a house in 1861, in consideration of R190, mortgaged it to the defendant, and put him into possession. The mortgage-deed needed no registration, and was not registered. The mortgagor next mortgaged the house in 1873 to the plaintiff for R300 by a deed duly registered. He again in 1874 *borrowed on the same security a further sum of* R500 from the defendant, and executed in his favour a deed of mortgage which was duly registered. The ... 1876 sued the mortgagor for possession

the mortgaged *property until* payment of the amount due on his mortgage. The defendant

to render up possession. ... doctrine of tacking was of so special and technical

intermediate mortgage, *or* else to ... gaged property until his own first mortgage was redeemed by the plaintiff; but that the defendant could not claim to retain possession, as against the plaintiff, until his second mortgage, as well as his first, was paid off, since plaintiff's mortgage was prior in date to, and therefore was to be preferred before the *second mortgage* of the defendants. NARAYAN VENKOBA *v.* PANDURANG KAMAT

I. L. R. 7 Bom 628

4. ——— **Redemption.** The mortgagor of an estate gave the mortgagee four *successive* bonds for the payment of money, in each of which it was stipulated that, if the amount were not paid on the due date, *it* should take priority of the amount due under the mortgage, and redemption of the mortgage should not be claimed until it had been satisfied. The representative in title of the mortgagor subsequently sued *the mortgagee* for possession of such estate on payment merely of the mortgage-money. *Held*, that, although such bonds did not in so many words create charges on such

MORTGAGE—*contd*

7 TACKING—*concld*

estate, yet inasmuch as it appeared from their terms that it was the intention of the parties that the equity of redemption of such estate should be postponed until the amount of such bonds had been paid, the representative in title of the mortgagor was not entitled to possession of such estate on payment merely of the mortgage-money ALLU KHAN v ROSHAN KHAN I L R 4 All. 85

5 ——— **Charge**—*Redemption—Further charge.* The mortgagor of an estate gave to the mortgagee, subsequently to the date of the mortgage, two successive money-bonds, in each of which it was stipulated, if the amount were not paid on the due date, it should take priority of the amount due under the mortgage, and that redemption of the mortgage should not be claimed until the bond had been satisfied The assignee of the equity of redemption sued for possession of the estate on payment merely of the mortgage-money *Held* that the two subsequent bonds did not create a further charge on the mortgaged premises, although they would prevent the original mortgagor from redeeming without paying their amounts HARI MAHADAJI SAVARKAR v BALAMBHAT RAGHUNATH KHARE I L R. 9 Bom 233

6. —— *Subsequent agreement—Covenant to pay an additional sum—Charge—Compromise* In a suit on a mortgage, dated 1878 it appeared that the premises had been mortgaged in 1874, but the mortgagor had been left in possession under a lease; and that a suit brought [illegible]

mortgage was subject to the mortgage of 1874 only and not to the arrangement comprised in the compromise *Quære* Whether the compromise would, if registered, have charged the land with R3,080, or whether its effect was merely to make the equity of redemption conditional on payment of that amount in such a manner as not to affect the rights of the subsequent mortgagee. UNNI v NAGAMMAL I. L. R 18 Mad. 368

8 REDEMPTION

See CIVIL PROCEDURE CODE, 1882, s 257A . I. L. R. 31 Bom. 552

(a) RIGHT OF REDEMPTION.

1. ——— **Essential characteristic of mortgage**—*Agreement waiving right to redeem* [illegible]

AVERULL . . . . . . Mad. 505

MORTGAGE—*contd*.

8 REDEMPTION—*contd*.

(a) RIGHT OF REDEMPTION—*contd*.

2. ——— *Usufructuary mortgage—Alteration of original transaction.* When the original transaction is an usufructuary mortgage, the mortgagee is entitled to nothing beyond the repayment of his principal and interest from the usufruct of the property. The Court will not allow additional advantages to be obtained through the necessity of the debtor, by the conversion of a mortgage into a transaction of a different nature Once a mortgage always a mortgage, is a principle not to be departed from Consequently an estate mortgaged is always redeemable. KASHINATH v BHEEKAREE LOLL. TEWAREE LOLL v LASHMINAUTH . W. R. [illegible]

ASAFAL SINGH v NUNKOO SINGH . [illegible]

3. ——— **Right to get back land on deposit in usufructuary mortgage**—*Reg 1 of 1798—Demand of land* [illegible] mortgagor under a zur-i peshgi is entitled [illegible] s. 2, Regulation I of 1798, to demand [illegible] land immediately after making his deposit [illegible] mistake or otherwise he demands more [illegible] comprised in the mortgage, that [illegible] which can justify the mortgagee in [illegible] sion of land which is in fact comprised [illegible] HUN LAL v ALI AFZUL . [illegible]

4 ——— **Objection** [illegible] *Purchaser who has not paid* [illegible] suit brought to redeem the purchaser [illegible] mortgagee cannot avail himself [illegible] the full amount of purchase-money [illegible] paid The mortgagee has [illegible] satisfied that the person claiming [illegible] a stranger, but one to whom [illegible] tion has been transferred [illegible] HEERA SINGH v RAGHO [illegible] SINGH v RAGHO NATH [illegible]

5. ——— **Deposit** [illegible] **redeem**—*Beng Reg. I of* [illegible] *of 1806, s 7.* Where [illegible] a person alleged to be [illegible] perty after notice of [illegible] restriction being placed [illegible] alleged mortgagee, but [illegible] a notice in these words [illegible] gage to be false and fraudulent [illegible] kobala and to get back [illegible] institute a regular suit [illegible] tions I of 1798 and XVII [illegible] to such a case. [illegible] deem. ABDOOL [illegible] B. L. R. [illegible]

6. ——— **M**[illegible] **sale**—*Sale of land* [illegible] *Right to redeem—* [illegible] *and XVII of 1806,* [illegible] was accompanied by [illegible] the parties for [illegible]

MORTGAGE—*contd*

8. REDEMPTION—*contd.*

(*a*) RIGHT OF REDEMPTION—*contd.*

land on payment by him of money to the vendee on a future date fixed. The deeds were followed by transfer of possession to the vendee, and his receipt of the profits. The vendor did not exercise his right of repurchase, but, after many years, gave notice of his intention to redeem, and brought this suit to enforce his right of redemption as upon a mortgage by conditional sale. It was held that oral evidence for the purpose of ascertaining the intention of the parties to the deeds was not admissible, being excluded by s. 92 of the Evidence Act, and the case had to be decided on a consideration of the documents themselves with only such extrinsic evidence of circumstances as might be required to show the relation of the written language to existing facts. *Held*, (i) that there were contained in the deeds indications that the parties intended to effect a mortgage by conditional sale.

...demption was rendered applicable to a mortgage of this class by the effect of the Regulation XVII of 1806. The Transfer of Property Act, 1882, s. 58, defines a mortgage of this character, stating the

deposit; (*b*) the inclusion in the present security of a sum due on an account, open to be increased, other than the price fixed for the repurchase, and other matters. *Bhagwan Sahai* v. *Bhagwan Din, I. L. R. 12 All. 387 L. R. 17 I. A. 98*, distinguished. BALKISHEN DAS *v.* LEGGE

I. L. R. 22 All. 149
L. R. 27 I. A. 58
4 C. W. N. 153

Affirming decision of the High Court in
I. L. R. 19 All. 430

7. ———— *Beng Reg XVII of 1806, ss 7, 8.* In the part of India where Bengal Regulation XVII of 1806 is in force, the right to redeem a mortgage by conditional sale depends entirely upon it, whatever may be the true construction of the terms of the condition in regard to payment of interest. Within a year after notifi-

MORTGAGE—*contd*

8. REDEMPTION—*contd*

(*a*) RIGHT OF REDEMPTION—*contd*

was, by the terms of the condition, treated as a separate debt. *Held*, that, as the mortgagor had not deposited the interest due on the sum lent, required,

I. L. R. 9 All. 20
L. R. 13 I. A. 113

8. ———— *Mortgage by conditional sale before Transfer of Property Act* Suit, in 1889, to redeem a mortgage of 1880, which

gagee. *Held*, that the plaintiff was ... deem. *Ramasami Sastrigal* v. *Samiyappanayakan, I. L. R. 4 Mad. 179*, explained and followed. VENKATASUBBAYYA *v.* VENKAYGA

I. L. R. 15 Mad. 230

8(*a*). ———— Mortgage becoming sale if not redeemed in certain time—*Madras law of mortgage—Beng. Reg. XVII of 1806.* In a suit instituted in 1853 to redeem a mortgage containing

13 Moo. I. A. 560

9. ———— Right to redeem by deposit of principal—*Possession of mortgagee.* On a question of a right of a mortgagor to redeem by deposit of the principal sum due only, the length of possession by the mortgagee is immaterial. ABDULLA KHAN *v.* UPENDRA CHANDRA

6 B. L. R. Ap. 53

s.c. ABDOOL KHAN *v.* UPENDRA CHUNDER BHUTTACHARJEE
14 W. R. 278

10. ———— Time for redemption—*Stipulation for payment by instalments.* A mort-... of a moiety

usufruct of the ... seven years ... enjoyed after the expiry of the seven years ... but no further term was created. *Held*, that the mortgagor was entitled to redeem at any time after the expiry of the seven years' term. MARANA AMMANNA *v.* PENDYALA PERUBOTULU

I. L. R. 3 Mad. 230

11. ———— *Decree for redemption—Execution barred by limitation—Second*

MORTGAGE—*contd*

8 REDEMPTION—*contd*

(a) RIGHT OF REDEMPTION—*contd*

suit to redeem In a suit for redemption of a mortgage a decree was passed by consent to the effect that the land was redeemable upon payment of a certain sum on a certain date, but there was no direction in the decree that in default of payment the mortgage be foreclosed This decree was not executed After three years the right, title, and interest of the mortgagors in the land was purchased in execution of a decree by the plaintiff, who thereupon sued the mortgagees to redeem the land *Held*, that the plaintiff was entitled to redeem PERIANDI *v* ANGAPPA . I. L. R. 7 Mad. 423

12 ———— **Omission to execute decree for redemption in time**—*Effect of fresh suit for redemption.* Where a decree for redemption is obtained, but is not executed within the prescribed period for execution, the mortgagee does not, by omission of the mortgagor to execute the decree, cease to be the mortgagee, but the mortgagor or his representative may still maintain a fresh suit for redemption. CHAITA *v* PURUN SOOKH

2 Agra 256

13. ———— **Suit for redemption**—*Conditional decree—Failure of mortgagor to pay in accordance with decree—Subsequent suit for redemption—Transfer of Property Act (IV of 1882) s 93* In a suit for redemption of a usufructuary mortgage, a decree for redemption was passed conditional upon the plaintiff paying the defendants within a time specified a sum which was found still due to the latter, and the decree provided that, if such sum were not paid within the time specified, the suit should stand dismissed. The plaintiff failed to pay, and the suit accordingly stood dismissed Subsequently he again sued for redemption, alleging that the mortgage-debt had now been satisfied from the usufruct *Held*, having regard to the distinction between simple and usufructuary mortgages, that the decree in the former suit only decided that, in order to redeem and get possession of the property, the mortgagor must pay the sum then found to be due by him to the mortgagee, and did not operate as *res judicata* so as to bar a second suit for redemption, when, after further enjoyment of the profits by the mortgagee, the mortgagor could say that the debt had now become satisfied from the usufruct Having regard to s 93 of the Transfer of Property Act (IV of 1882) in a suit brought by a usufructuary mortgagor for possession on the ground that the mortgage-debt has been satisfied from the usufruct, and in which the plaintiff is ordered to pay something because the debt has not been satisfied as alleged, the decree

256, and *Anrudh Singh v. Sheo Prasad, I. L. R. 4 All 481,* referred to MUHAMMAD SAMIUDDIN KHAN *v.* MANU LAL . I. L. R. 11 All 386

14. ———— *Omission to set aside decree and sale of mortgaged property under it—Refusal of redemption* Redemption of a

15. ———— **Redemption of mortgaged land subsequently assessed with revenue.** A mortgagor of lakhiraj land subsequently assessed with Government revenue is not entitled to redeem, except on payment of the amount paid by the mortgagee to Government for revenue, with interest in addition to the money due under the mortgage. But in a suit for redemption, in which the mortgagor deposited before suit the amount of the principal sum borrowed by him, he is entitled to a decree on payment into Court of the further sum paid for Government revenue JOYPROKASH ROY *v.* OORJHAN JHA . . . . . 3 W. R. 174

16. ———— **Attaching creditors, right of, to redeem**—*Civil Procedure Code (Act X of 1877), ss 276, 282, 295* An attaching creditor has not, as such, any right to redeem a mortgage subsisting prior to his attachment. SOOBHUL CHUNDER PAULE *v.* NITYE CHURN BYSACK

I. L. R. 6 Calc. 663 : 7 C L R. 201

17. ———— **Patnidar, right of, to redeem.** Terms upon which a patnidar was let in to redeem stated KASIMUNNISSA BIBEE *v* NILRATNA BOSE . . I. L. R. 8 Calc. 79
9 C L R. 173 : 10 C. L. R 113

18 ———— **Heir of mortgagor, right of, to redeem**—*Right of purchaser—Limitation.*

tained possession. After two years the mortgagor died, leaving a will, in which he described his property, but did not mention the mortgaged factories. The conveyance to the purchaser was produced, in which the mortgagor was made a party, but which was dated and executed after the mortgagor's death. It purported to be, not an exercise of the power of sale, but a transfer of the legal estate by the mortgagees at the request of the mortgagor : it

MORTGAGE—*contd.*

8 REDEMPTION—*contd.*

(a) RIGHT OF REDEMPTION—*contd*

was executed by the mortgagees and purchaser *Held*, first, that the mortgagor's heir was not entitled to redeem (see also *Sreemulmoney Bebee v. Goberdhone Bermono, 2 Ind. Jur. N. S. 319*); also that, on dismissal of the redemption suit, no terms or conditions could be imposed on the defendant, who in this case held under the original contract of sale to which the mortgagor assented *Held*, secondly, that even had the contract included (as argued for appellant) an undertaking to indemnify from liabilities, the payments sought to be reimbursed were beyond six years, and no fraud was proved; therefore as to these the suit was barred. DOUCETT v. WISE . . **2 Ind. Jur. N. S. 280**

19. ———————— *Conditional sale—Surety, assignment to, from mortgagee—Right of redemption* On a mortgage of land with a proviso that in default of repayment of the money advanced the mortgage should be turned into a sale, a third party joined as surety, undertaking to repay the amount advanced if the mortgagor made default in payment at the stipulated time Default was made and the surety paid the money, and took an assignment of the land from the mortgagee. *Held*, that the heir of the mortgagor was entitled to redeem, and that as against him the surety could not claim to hold the lands as purchaser GORAKI KANAJI v. NATHU BIN APPAJI . **1 Bom. 135**

20 ———— **Assignee of mortgagor, right of, to redeem**—*Razinamah—Gatkuli tenure—Extinguishment of equity of redemption.* A mortgage-deed of gatkuli land contained a clause by which the mortgagor agreed, at the expiration of the period for which the mortgage was

the mortgagee. *Held*, that the equity of redemption of the mortgagor was thereby extinguished RANEE VALAD AVAJI MALI v RAMA BAI KOM MAHADU MALI . . . . . **6 Bom. A. C. 265**

21 ———— **Puisne mortgagee, right of, to redeem**—*Prior mortgagee.* A puisne mortgagee is entitled to redeem from the prior mortgagee who obtains a foreclosure decree in a suit to which the puisne mortgagee is not made a party or from the purchaser in the foreclosure suit; and it is immaterial whether the puisne mortgage is or is not registered, or whether the prior mortgagee at the date of the suit had or had not notice of the puisne mortgage. The plaintiff charging the defendants with collusion sued to eject them, but the Court found he was only a puisne mortgagee, and one of the

MORTGAGE—*contd*

8 REDEMPTION—*contd*

(a) RIGHT OF REDEMPTION—*contd*

22. ———————— *Redemption of first mortgage by further mortgage Held* that a mortgage contract received as a security for a repayment of loan does not incapacitate the mortgagor

See MAHOMED ZAKAOOLLA v. BANEE PERSHAD **1 N. W. Ed. 1873, 135**

SHEOPAL v. DEEN DYAL . . **5 N. W. 145**

23. ———— **Purchaser of equity of redemption, right of, to redeem**—*Usufructuary mortgage followed by sale—Revival of mortgage by cancelment of sale—Attachment in execution of decree.* Z mortgaged in 1850 certain immoveable property, being joint ancestral property, for a term of five years, giving the mortgagee possession of the

executing the decree,
Z and his sons were sold in the execution ... In 1878 K sued as the
decree, K purchasing them. for the re-
purchaser of the equity of redemption. *Held*, that K
demption of the mortgage of 1859 *Held*, also,
was entitled to redeem the property.
that, the mortgagee not having contested in a
suit the order dismissing his objection to the sale
of the property in execution of K's decree, he
could not deny that K had purchased the rights
and interests remaining in the property to Z and
his sons. *Held*, also, that the mortgagee had no lien
on the property in respect of his purchase money.

MORTGAGE—*contd.*

8 REDEMPTION—*contd*

(a) RIGHT OF REDEMPTION—*contd*

Held, also, that it being stipulated in the deed of mortgage that the mortgagee should pay the mortgagor a certain sum annually as "malikana," and the mortgagee not having paid such allowance since the date of the sale, the plaintiff was entitled to a deduction from the mortgage money of the sum to which such allowance amounted BASANT RAI *v* KANAUJI LAL

I. L. R. 2 All. 455

24. ———— Purchaser of property, right of, to redeem—*Suit for ejectment where there is an equitable lien on the property* In 1848 *B L* obtained a decree against *R C* and *R L*, and in 1863, at a sale in execution of that decree, the plaintiffs' ancestor purchased the property now in dispute and took possession In 1861 one *K R* sued

ledge of the mortgage. *K R* in 1868, in execution, sold the right, title, and interest of her judgment-debtors in the property to the defendants who paid R5,000 as consideration-money and obtained possession. In a suit to eject the defendants on the ground that the latter obtained no title to the property by their purchase —*Held*, that, so far as the defendants' money had gone to pay off the charge which *K R* had on the land to that extent, they were entitled to stand in her shoes as an incumbrancer, and that the suit, as far as regards the land covered

25 ———— Right to redeem sub-tenures purchased by mortgagee—*Acquisitions by mortgagor and mortgagee Semble* Under the English law, which, in so far as it rests on principles of equity and good conscience, may properly be applied in India, it is recognized as a general rule that most acquisitions by a mortgagor enure for the benefit of the mortgagee; and conversely, that

affirmed that every purchase by a mortgagee, of a sub-tenure existing at the date of the mortgage, must be taken to have been made for the benefit of the mortgagor so as to enhance the value of the

MORTGAGE—*cont'd*

8 REDEMPTION—*contd*

(a) RIGHT OF REDEMPTION—*contd*

tenure has been granted, the mortgagee in possession might buy the patni with his own funds and keep it alive for his own benefit An Oudh talukhdar granted an usufructuary mortgage of a por-

tion arose, whether upon repaying the sum expended by the mortgagee in the purchase of the birts in addition to the amount due on the face of the mortgage-deed the plaintiff was entitled to the possession of the estate as then enjoyed by the mortgagee: or, whether the latter was entitled to retain

ment of the original mortgage-debt and on reimbursing the defendant the sum expended in purchasing the birts, was entitled to re-enter on the estate

the latt

26 ———— Right where mortgagee has purchased equity of redemption—*Act VI of 1855, construction of—Sale of legal and equitable rights of judgment-debtors* Cl 1, s 1, Act VI of 1855, shows that the statute was designed for the benefit of creditors, and that it authorized sale of both the legal and equitable rights of judgment-debtors Under this clause, therefore, an equity of

same equities in respect of, the mortgagor *E*,

Act VI of 1855 *Held*, in a suit by the mortgagor against the mortgagee for redemption of the mortgage, that the latter was entitled under that Act

1 Ind. Jur. O. S 128 ; 1 Hyde 289

27 ———— Redemption where mortgagee has partitioned property—*Interference*

MORTGAGE—*contd.*

8. REDEMPTION—*contd*

(*a*) RIGHT OF REDEMPTION—*contd.*

with right to redeem. A mortgagor's right to redeem

15 W. R. 353

28. ———— Alienation by mortgagee

29. ———— Right of purchaser to redeem—*Effect of sale by mortgagor.* Where a

30. ———— Clause for conditional sale—*Effect of, on right of redemption* A clause of conditional sale contained in a mortgage-deed does not prevent the redemption of the mortgage. KANAYALAL *v.* PYARABAI . I. L. R 7 Bom. 139

31 ———— Settlement with mortgagee—*Effect of, on right of redemption.* The mere settlement of a resumed maafee estate with the mortgagee does not destroy the mortgagor's right

the mort-

MOONNISSA

Agra 224

32 ———— Bar of right of redemption—*Foreclosure—Accounts.* In a suit for redemption of a mortgage the Zillah Court declared the mortgagors (appellants) entitled to redemption, the mortgagees in possession (respondents) having fully paid themselves by receipt of rents and profits.

that the Court was wrong in treating the proceedings as an effectual bar to the appellant's right of redemption; and that the question of foreclosure ought therefore to be further fully tried upon an

MORTGAGE—*contd.*

8. REDEMPTION—*contd.*

(*a*) RIGHT OF REDEMPTION—*contd*

issue to be regularly settled. MOHUN LALL SOOKUL *v.* GOLUCK CHUNDER DUTT

1 W. R. P. C. 19 : 10 Moo. I. A. 1

33. ———— Condition preventing effect of right of redemption—*Onerous condition in mortgage-deed—Condition that after redemption the mortgagee should continue in possession as perpetual tenant not enforceable.* A condition in a mortgage, that if the mortgagor redeems the property the mortgage right should be extinguished, but that the property should for ever remain in the possession of the mortgagee on his paying a fixed rent, is a condition which cannot be enforced in a Court of Equity. MAHOMED MUSE *v.* JIJIBHAI BHAGVAN . . I. L. R. 9 Bom. 524

34. ———— Decree for redemption within six months—*Transfer of Property Act (IV of 1882), proviso to s. 93—Mortgage—Expiration of six months without payment—Application after expiration of six months to extend the time for redemption.* In redemption suits the original decree (passed under s. 92 of the Transfer of Property Act), is only in the nature of a decree nisi, and the order passed under s. 93 is in the nature of a decree absolute. Under the proviso to s. 93 of that Act, an application to extend the time for redemption fixed by the original decree may be made at any time before the decree absolute is made. NANDRAM *v.* BABAJI

I. L. R. 22 Bom. 771

35. ———— Mortgage with proviso that in case of non-redemption in a prescribed time it should become a sale—*Razinama by mortgagor declaring sale to mortgagee—Transfer of possession to mortgagee—Execution of equity of redemption—Subsequent sale by mortgagor of equity of redemption.* In 1848 *B* and *R* mortgaged a piece of land to *V*. It was to be redeemed in eight years, or else to become the absolute property of the mortgagee. It was not redeemed; and in 1859 *B*, in whose name the land was entered in the Government records, executed a razinama in favour of *V*, and *V* passed a kabulat accepting the land. *B* and *R* then became *V*'s tenants, and were, as such, successfully sued by him for rent in 1863. In 1872 *V* sold the land to *N*, who again sold it to the defendant. The plaintiff, as purchaser from the original mortgagors (*B* and *R*) of their alleged equity of redemption, filed the present suit to redeem the property. *Held*, that, as the razinama given by *V* contained no reservation, and as it was accompanied by a transfer of possession, it had the effect of a conveyance of all the mortgagor's rights to the mortgagee. It operated to extinguish the equity of redemption, notwithstanding any misconception or ignorance on *V*'s part of his rights as mortgagor. Under the Indian Contract Act (IX of 1872, s. 21), error of law does not vitiate a contract; much less will it annul a conveyance after the lapse of many years unless there has been some fraud or

MORTGAGE—*contd.*

8 REDEMPTION—*contd.*

(a) RIGHT OF REDEMPTION—*contd.*

misrepresentation and an absence or negligence VISHNU SAKHARAM PHATAK v. KASHINATH BAPU SHANKAR . . . I. L. R. 11 Bom. 174

36. ———— Redemption of mortgage before order absolute—*Foreclosure decree—Order absolute—Transfer of Property Act (IV of 1882), s. 87.* In a foreclosure action the mortgagor can redeem at any time until the order absolute is made under s. 87 of the Transfer of Property Act, 1882. PORESH NATH MOJUMDAR v. RAMJODU MOJUMDAR . . . I. L. R. 16 Calc. 246

SOMESH v. RAMKRISHNA CHOWDHRY I. L. R. 27 Calc. 705; 4 C. W. N. 699

NARAYANA REDDI v. PAPUYYA I. L. R. 22 Mad. 133

37. ———— Right to redeem at any time prior to the passing of the order absolute under s. 87—*Transfer of Property Act (IV of 1882), s. 87.* A mortgagor who has obtained a decree for redemption of his mortgage can pay in the redemption money and obtain redemption at any time until an order absolute under s. 87 is made against him. *Poresh Nath Mojumdar v. Ramjodu Mojumdar, I. L. R. 16 Calc. 246,* and *Raham Ilahi Khan v. Ghasita, I. L. R. 20 All. 375,* referred to. NIHALI v. MITTAR SEN I. L. R. 20 All. 446

38. ———— Unregistered agreement by mortgagor to sell to mortgagee—*Subsequent assignment of equity of redemption to third person for value, but with notice of agreement.* In a suit for redemption filed by an assignee for value

[illegible]

THELTHAN . . . I. L. R. 12 Mad. 505

39. ———— Time fixed for redemption—*Transfer of Property Act, ss. 92, 93—Application to execute the decree.* In a suit to redeem a . . . a redemption decree was passed which pro-

[illegible]

at a later date. *Held,* that the application did not fall under the proviso of s. 93 of the Transfer of Property Act, and that the decree-holder was not then entitled to have the decree executed. *Poresh Nath Mojumdar v. Ramjodu Mojumdar, I. L. R. 16 Calc. 246,* dissented from. Ss. 92 and 93 of the Act ought to be read together, and the proviso of the latter section has no application where the mortgagee does not apply for foreclosure or where the original decree does not contain the last clause mentioned in s. 92. ELAYADATH v. KRISHNA I. L. R. 13 Mad. 267

40. ———— Limitation—*Date of accrual of cause of action—Mortgage—Transfer of Property Act (IV of 1882), ss. 86 and 87. Held,*

[illegible]

Prasad, I. L. R. 14 All. 405, and *Poresh Nath Mojumdar v. Ramjodu Mojumdar, I. L. R. 16 Calc. 246,* referred to. ANWAR-UL HAQ v. JWALA PRASAD . . . I. L. R. 20 All. 358

See BATUL BEGAM v. MANSUR ALI KHAN I. L. R. 20 All. 315

and RAHAM ILAHI KHAN v. GHASITA I. L. R. 20 All. 375

41. ———— Adverse possession—*Possession obtained by mortgagee from Mamlatdar—Non-payment of assessment by mortgagor—Payment by mortgagee—Bombay Land Revenue Code (Bom. Act V of 1879), ss. 56, 57, 153.* In a suit for redemption of land mortgaged to the defendant in

[illegible]

deem. It did not appear that the land had been declared to be forfeited by the Collector under

[illegible]

MORTGAGE—*contd.*

8. REDEMPTION—*contd*

(*a*) RIGHT OF REDEMPTION—*contd.*

42. ———— Undertaking not to alienate the equity of redemption—*Right of assignee of mortgagor—Assignment of the equity of redemption—Repayment of mortgage-debt.* Where a mortgagor undertook that he would not alienate the equity of redemption, and that the mortgagee should not be obliged to receive the money from any one but the original mortgagor :—*Held*, that, as the undertaking absolutely forbade alienation, and thus deprived the mortgagor of a right which was an essential incident of the estate he had in the property by virtue of his equity of redemption, it could not be given effect to. When a mortgage-debt is contracted in a particular currency, it should be repaid in that currency TRIMBAK JIVAJI DESHAMUKHA *v.* SAKHARAM GOPAL

I L R. 16 Bom 599

43 ———— Prior and puisne incumbrances—*Puisne incumbrancer not made a party to suit upon prior incumbrance.* If a prior incumbrancer, having notice of a puisne incumbrancer, does not, when he puts his mortgage into suit, join the puisne incumbrancer as a party, that puisne incumbrancer's right to redeem will not thereby be affected. *Mohan Manor v Togu Uka, I. L R. 10 Bom 224, Muhammad Sami-uddin v. Man Singh. I. L. R 9 All 125*, and *Gajadhur v. Mul Chand, I. L. R. 10 All. 520*, referred to NAMDAR CHAUDHRI *v.* KARAM RAJI . . I. L. R 13 All. 315

44. ———— Right to redeem first mortgage independently of later mortgage—*Mortgage to a firm—Subsequent mortgage to one member of the firm for personal loan, with stipulation for payment of new debt before prior mortgage-debt.* On the 13th July 1877 a firm, of which defendants Nos 1 to 4 were members, lent money to *N* on mortgage of certain property. Subsequently defendant No 2 personally made a further loan to *N*, who executed two san-mortgage-deeds to him of the same property containing stipulations that these bonds should be paid before the mortgage of July 1877. *N* died, and his widow and heirs assigned the equity of redemption of the mortgage of July 1877 to the plaintiff, who sued the defendants to redeem. The defendants contended that the plaintiff was bound to pay off the two later bonds as well as the original mortgage-debt. *Held*, that the later loan by defendant No. 2 being a personal loan by him, the firm, as such, had no equity to insist on its being paid before the mortgage was redeemed, whatever right defendant No. 2 in his personal capacity might have. But in this suit, which was one to redeem the mortgage, he was a party as member of the firm, and not in his individual capacity, and he could not therefore resist the plaintiff's right to redeem on any ground based of the promise of the two bonds executed to himself. CHHOTALAL GOVINDRAM *v.* MATHUR KEVALRAM

I. L. R. 16 Bom. 591

MORTGAGE—*contd.*

8 REDEMPTION—*contd*

(*a*) RIGHT OF REDEMPTION—*contd*

45. ———— Right to redeem made conditional on payment by mortgagor of another debt as well as mortgage-debt—*Effect of that other debt becoming barred by limitation—Right to redeem mortgage still subject to condition* A mortgage-bond contained a clause [illegible]

[illegible] the same time as the mortgage in respect of money due under a decree, and that, "unless the whole was paid off, neither the mortgagor nor any one else should have a claim" The mortgagee subsequently obtained a decree on the instalment bond and made several attempts to execute it, but failed, [illegible] rejected as time bar- [illegible]

as long as such sum remained unpaid, although [illegible] there might be no longer a [illegible]

v. BAPUJI SHRIDHAR . I. L R. 16 Bom. [illegible]

46. ———— *Decree for redemption* omitting to state consequence of non-payment [illegible] within time speci[illegible]

[illegible]

plaintiff for payment beyond the [illegible] provided for by s. 92 of Act IV of 1882 *Jai Kishen v. Bhola Nath, I. L. R. 11 All* 529, referred to [illegible] *Bandhu Bhagat v. Muhammad Taqi, I L R* [illegible] *All. 350*, dissented from. WAJIR *v.* DHUMAN KHAN

I. L. R. 16 All 65

47. ———— Two mortgages between the same parties over the same property—Right to redeem one without the other—*Transfer of Property Act (IV of 1882)*—*Tacking—Transfer of Property Act* [illegible] *ss 61 and 62—Stat. 44 & 45 Vict. c. 41, s.* [illegible] A mortgagee held two mortgages over the same property from the same mortgagor, the one being a usufructuary mortgage in respect of interest only and the other being a simple mortgage. The mortgagor sued to redeem the usufructuary mortgage. The mortgagee objected that the mortgagor was bound to redeem both mortgages. *Held*, that the mortgagor had the right to redeem one mortgage without redeeming the other, and that, in the absence of special contract to redeem both mortgages simultaneously, he could not be compelled to redeem

MORTGAGE—*contd*

8 REDEMPTION—*contd*

(a) Right of Redemption—*contd*

them both. *Vithal Mahadev v Daud walad Muhammad Husen, 6 Bom A C 905*, dissented from *Shuttleworth v Laycock, 1 Vern 245*, and *Jennings v Jordan, L R 6 Ap Cas 698*, referred to TAJJO BIBI v. BHAGWAN PRASAD

I. L R 16 All. 295

48 ——— **Right of mortgagor making default in payment of mortgage-money at time fixed by decree for redemption**—*Transfer of Property Act (IV of 1882), ss 87, 89, 92 and 93* A mortgagor who has made default in payment of the mortgage-money within the time limited by the decree in a suit for redemption is not entitled to apply for execution of the decree after the time limited. VALLABHA VALIYA RAJA v VEDA PURATTI I L. R. 19 Mad 40

49. ——— **Decree for foreclosure**—*Transfer of Property Act (IV of 1882), s 87—Mortgagor s application for extension of time* In a suit on a mortgage a decree for foreclosure was passed, a period of three months being fixed for the discharge of the mortgage debt The mortgagor having made default, the decree-holder applied for and was placed in possession of the property The mortgagor, to whom no notice had been given of the decree-holder's application, then applied for and obtained an extension of time for payment, and he made the payment and recovered possession. *Held*, that the order was right since no order absolute for foreclosure had been made after notice to the mortgagor NARAYANA REDDI v PAPAYYA

I. L. R 22 Mad. 133

50 ——— **Mortgage with possession**—*Sale for arrears of revenue caused by default of mortgagee—Subsequent suit by mortgagor for redemption where mortgagee has become the purchaser* Where mortgaged property was sold at a Government sale for arrears of revenue —*Held*, that, if the sale took place owing to the mortgagee's default, it would not affect the mortgagor's right to redeem. The general rule, that a Government sale for arrears of revenue gives a title against all the world, is subject to the exception that, if it is caused by the default of a mortgagee, it does not take away the mortgagor's right to redeem the mortgage to recover the land KALAPPA v SHIVAYA

I. L. R 20 Bom 492

51 ——— **Rights of redemption and foreclosure**—*Power expressly given to the mortgagee to call in his money before the expiry of the term, effect of, on right to redeem—Limitation put on right to redeem—Agreement restraining the right of redemption* The right of redemption and the right of foreclosure are always co-extensive, and from the postponement of the former the Court will infer an intention to postpone the latter in the absence of express provision on the point where there is such express provision, giving the mortgagee power to foreclosure at any time, any stipulation

MORTGAGE—*contd*

8 REDEMPTION—*contd*

(a) Right of Redemption—*contd*

[illegible]

gagor cannot, by any contract entered into with the mortgagee at the time of the mortgage, give up his right of redemption or fetter it in any manner by confining it to a particular time or a particular description of persons ABDUL HAK v. GULAM JILANI

I. L. R. 20 Bom. 677

[illegible]

53 ——— **Suit by legitimate son of illegitimate member of the family to redeem a mortgage made by a previous legitimate owner.** The right of an illegitimate son in a Hindu family to receive maintenance from the family property is a purely personal right, and

[illegible]

mortgage made by a previous rightful and legitimate owner of the estate. BALWANT SINGH v ROSHAN SINGH I. L. R. 18 All 253

On appeal to the Privy Council—ROSHAN SINGH v BALWANT SINGH . I. L R. 22 All 191
4 C. W. N. 353

where, however, this point was not decided.

54 ——— **Decree giving a defendant, second mortgagee, a right to redeem a prior mortgage within a fixed period**—*Effect of appeal—Limitation.* When a decree gives a right of redemption within a certain specified period with a certain specified result to follow, if redemption is not made within such period, the mere fact of an appeal being preferred against it will not suspend the operation of such decree, and, unless the Appellate Court extends the period limited by the original decree [illegible]

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55. ——— **Execution of decree for redemption**—*Transfer of Property Act (IV of 1882), ss. 87, 89, and 92—Extension of time limited for payment of decretal amount.* In the case of a decree for redemption or for foreclosure under the Transfer of Property Act, 1882, both of which decrees stand in this respect upon the same footing, no extension

MORTGAGE—*contd.*

8 REDEMPTION—*contd.*

(*a*) RIGHT OF REDEMPTION—*contd.*

of the time limited by the decree for payment of the decretal amount can be made except for good cause shown, whether the order under s 87, in a suit for foreclosure, or the order under s. 93, in a suit for redemption, has been applied for or not. *Poresh Nath Mojumdar v. Ramjodu Mojumdar, I. L. R. 16 Calc. 246,* dissented from. *Kanara Kurup v. Govinda Kurup, I. L. R. 16 Mad. 214,* distinguished. RAM LAL *v.* TULSA KUAR

I. L. R. 19 All. 180

See RAJARAM SINGHJI *v.* CHUNNI LAL

I. L. R. 19 All. 205

HARJAS RAI *v.* RAMESHOR I. L. R. 20 All. 354

But *see* KEDAR NATH RAUT *v.* KALI CHURN RAUT

I L. R. 25 Calc. 703

56. ——— Stipulation postponing the right to redeem beyond the time when the mortgagee can require payment of the mortgage-debt. A stipulation postponing the mortgagor's right to redeem beyond the time when the mortgagee can call in his money is inoperative. *Abdul Hak v. Gulam Zilani, I L R. 20 Bom 677,* followed SARI *v.* MOTIRAM MAHADU

I. L. R. 22 Bom. 375

But *see* KRISHNAJI *v.* MAHESHVAR LAKSHMAN GONDHALEKAR . . I. L. R. 20 Bom. 346

57. ——— Fetter on the equity of redemption—*Agreement by mortgagor to sell the mortgage premises to the mortgagee* A stipulation in a mortgage, that if the mortgage-money is not paid on the due date the mortgagor will sell the property to the mortgagee at a price to be fixed by umpires, is unenforceable as constituting a fetter on the equity of redemption. KANARAM *v.* KUTTOOLY

I. L. R. 21 Mad. 110

58. ——— Covenant fettering right of redemption—*Covenant for pre-emption of mortgaged property in favour of mortgagee—Collateral advantage—Transfer of Property Act (IV of 1882), s 60.* A provision in a mortgage which has the effect of preventing redemption of the mortgaged property on payment of principal, interest, and

good covenant and enforceable by the mortgage. *Biggs v. Hoddinott, [1898] 2 Ch. 307; Santley v Wilde, [1899] 2 Ch. 474,* and *Orby v. Trigg, 9 Mad. 2,* referred to. BIMAL JATI *v.* BIRANJA KUAR . . . I. L. R 22 All. 238

59. ——— Right of mortgagor to redeem land so taken in exchange—*Mortgagee taking other land in exchange for mortgaged land—*

him. The Forest Department, being desirous of acquiring the mortgaged land, entered into ne-

entitled to redeem Survey No. 100 ... gagee, *G,* had lost the mortgagor's equity of redemption in the mortgaged land by fraud, and the land (Survey No. 105) which he obtained in exchange was therefore subject to the mortgage. He held the equity of redemption in this land as trustee for the mortgagor. BABAJI *v.* MAGNIRAM

I. L. R. 21 Bom. 396

60. ——— Second suit for redemption—*Transfer of Property Act (IV of 1882), ss. 92 and 93—Decretal money not paid within the time limited—Civil Procedure Code, 1882, s. 13—Res judicata—Right of suit. Held,* that a mortgagor, whether under a simple or a usufructuary mortgage who has obtained a decree for redemption and allows such decree to lapse by reason of his not paying in the decretal amount within the time limited for payment by the decree, cannot subsequently bring a second suit for redemption of the mortgage in respect of which such infructuous decree was obtained. *Golam Hossein v. Alla Rukhee Beebee, 3 N. W. 62,* and *Malop v. Sagaji, I. L. R. 13 Bom. 567,* followed. *Hari ... Chiplunkar v. Shapurji Hormasji Shet, I. L. R. 10 Bom. 461,* referred to. *Muhammad Samiuddin Khan v. Mannu Lal, I. L. R. 11 All. 356; Sami Achari v. Somasundram Achari, I. L. R. 6 Mad. 119; Periandi v. Angappa, I. L. R. 7 Mad. 423;* and *Ramunni v. Brahma Dattan, I. L. R. 15 Mad 366,* dissented from. HAY *v.* RAJI ...

I. L. R. 19 All. 203

61. ——— Right of member of family to redeem—*Mortgage by manager of undivided family—Sale of mortgaged property under money decree obtained by mortgagee in respect of other debt—Purchase without leave of Court by mortgagee at Court-sale—Transfer of Property Act (IV of 1882)*

MORTGAGE—*contd.*

8 REDEMPTION—*contd.*

(a) RIGHT OF REDEMPTION—*contd.*

s. 99—Civil Procedure Code (Act XIV of 1882), s. 294. S, his son S D and his grandson the plaintiff D (son of a predeceased son) were undivided. In 1875 S mortgaged the property in dispute to H with possession. After S's death in 1877, S D managed the whole estate. In 1878, during D's absence from his native village, H sued S D as the heir and representative of S in respect of other debts and, obtaining a money-decree against him, attached the mortgaged property in execution of the decree. After the attachment, H, without notifying or disclosing his mortgage lien, caused several of the properties to be sold and, without obtaining

[illegible]

Courts found that the money-decree which H obtained and the execution-proceedings thereon bound the estate. It was contended that the execution-sale had not been objected to under s. 294 of the Civil Procedure Code and were therefore valid, and that the plaintiff consequently could not redeem. *Held*, that the plaintiff might redeem, although he had not taken proceedings under s. 294. The fact that the mortgagee H had sold the property in execution of a money-decree did not free him from the liability to be redeemed as mortgagee. The sale was rendered nugatory, not by the provisions of s. 294 (though permission to bid granted under that section might have validated the purchase), but by the impossibility of a mortgagee by such sales and purchases freeing himself from the liability to be redeemed. MARTAND BALKRISHNA BHAT *v.* DHONDO DAMODAR KULKARNI . I. L. R. 22 Bom. 624

See MAYAN PATHUTI *v.* PAKURAN
I. L. R. 22 Mad. 347

62. ——— **Money decree obtained by mortgagee**—*Execution—Sale of mortgaged property in execution—Purchaser at such sale—Title of such purchaser—Transfer of Property Act (IV*

[illegible]

the execution-sale the son took an absolute title, and was not liable subsequently to be redeemed at the suit of the heirs of the mortgagor. *Martand Balkrishna Bhat v. Dhondo Damodar Kulkarni, I. L. R. 22 Bom. 624*, distinguished. *Semble*: A third person purchasing mortgaged property *bonâ fide* at a sale in execution of a money decree obtained by the mortgagee against the mortgagor obtains a good title free from the mortgage-lien, unless the sale is made subject to it. HUSEIN *v.* SHANKARGIRI GURU SHAMBHUGIRI
I. L. R. 23 Bom. 119

63. ——— **Impossibility of mortgagee freeing himself by such purchase from liability to be redeemed**—*Transfer of Property Act (IV of 1882), s. 99—Purchase by mortgagee holding decree for sale of portion of mortgaged property, subject to mortgage—Trusts Act (II of 1882), s. 88.* A mortgagee having obtained a decree against his mortgagor for the sale of the mortgaged property, a portion of the latter was subsequently sold, subject to the said decree, in execution of a money-decree obtained by a third party against the mortgagor. The mortgagee purchased the portion so sold, whereupon the mortgagor presented a petition under s. 258 of the Code of Civil Procedure, claiming that the mortgagee was bound to discharge his mortgage debt and should be called upon to certify satisfaction of his decree. *Held*, that petitioner was not entitled to the relief prayed for, but only to proceed upon

[illegible]

the mortgagee and the third party in execution of whose decree the purchase of the equity of redemption had been made, and that such a purchase contravened the principle underlying s. 99 of the Transfer of Property Act and expressed in s. 88 of the Indian Trusts Act. ERUSAPPA MUDALIAR *v.* COMMERCIAL AND LAND MORTGAGE BANK
I. L. R. 23 Mad. 377

64. ——— **Right of son not party to suit to redeem his share**—*Mortgage of annuity—Sale of attached property at instance of mortgagee*

[illegible]

withdrawal from a suit for partition then pending. In 1878 plaintiff's father and others then enjoying the annuity executed a bond for money due by them, mortgaging their rights under the said annuity. Instalments due under the bond having

[illegible]

1893 an application was made for the issue of a pro-

MORTGAGE—*contd.*

8 REDEMPTION—*contd*

(*a*) RIGHT OF REDEMPTION—*contd.*

clamation of sale, and a sale ensued and a certificate was given to the purchaser, who was the decree-holder Plaintiff having instituted this suit to set aside the said sale or to have it declared that it did not affect his right under the said annuity, *Held*, (i) that, if there was in fact a decree for sale, plaintiff, as son of the judgment-debtor, born after the date of the decree, though before the sale, could not question the sale, nor would any right of redemption be left to the plaintiff; (ii) that inasmuch as the decree was, on its true construction, not a decree for sale, the case was one of attached property being sold at the instance of the mortgagee in execution of a money-decreee, and so within the prohibition of s. 99 of the Transfer of Property Act. The conditions under which a sale of mortgaged property is permissible under that section are not satisfied unless there is a decree for sale: and in the absence of such decree, the sale is prohibited; (iii) that although a sale in contravention of the section is not absolutely void for all purposes, it is at least void against all persons who were not parties to the suit in which the decree for money was obtained; (iv) that the rights of a Hindu debtor's son may be concluded by a proper mortgage decree and sale thereunder, or, if there is no mortage, by a decree for money and sale of the attached property, but [illegible]

65 ———— Right of redemption—*Involuntary alienation—Execution proceedings—Revenue Sale Law (Act XI of 1859), ss 13, 54—Sale for arrears of Government revenue—Mortgage—Sale in execution of mortgage-decree.* A decree was obtained for the sale of a mortgaged property, being a share of an estate, on the 31st August 1889. In execution of that decree, the property was purchased by the plaintiffs on the 11th December 1891, and the sale was confirmed on the 5th March 1892 Meanwhile, pending the execution proceed- [illegible]

instituted by the plaintiffs for the possession of the property purchased by them, the defendants having questioned the validity of the mortgage-decree and contended that they were not bound by it, not being parties thereto, and having in the alternative claimed the right to redeem the mortgaged property —*Held*, that the defendants, having purchased a share of an estate at a revenue sale, held under the provisions of ss 13 and 54 of the Sale Law, acquired it subject to the mortgage which they were bound in law to discharge before the sale in execution of the mortgage-decree had actually taken

MORTGAGE—*contd*

8. REDEMPTION—*contd*

(*a*) RIGHT OF REDEMPTION—*contd*

place, or before at any rate that sale had been confir[illegible] failed [illegible] contra[illegible] guishe[illegible] GOBIND SHAW . . I. L R. 26 Calc. 966
4 C. W.N. 317

66. ———— Alternative claim—*Transfer of Property Act (IV of 1882), s 60—Redemption suit—Claim in the alternative—Effect on suit where there has been no previous tender or payment of mortgage amount.* A mortgagor who institutes a suit for the redemption of his mortgaged property is entitled to put an alternative claim before the Court. He may aver that the mortgage money has been [illegible] of the [illegible] the [illegible] ther [illegible] sum S. 60 of the Transfer of Prop[illegible] no bar to a suit for redemption where the mortgage money has not been paid or tendered BUTCHANNA *v.* VARAHALU (1901) . I. L R 24 Mad. 408

67. ———— Clog on equity of redemption—*Subsequent money bonds—Provision as to the* [illegible] *—Clogging the* [illegible] year 1869 [illegible] his lands, [illegible] deceased father, under two mortgage-deeds, and in the year 1882 the plaintiff passed two money bonds to the defendants' deceased father, which contained a [illegible] that the amount due on the mort- [illegible] *Mahadaji* v. [illegible] doubted. RAJMAL MOTIRAM *v.* SHIVAJI ANANDRAV (1902) . . . I. L. R. 27 Bom. 154

68. ———— Agreement of sale of the mortgaged property subsequently to mortgage. It is open to a mortgagor and mortgagee to enter into a contract, subsequently to the mortgage, for the sale of the mortgaged property to the mortgagee. But it must not be part and parcel of the original loan or mortgage bargain. [illegible] *Rampi v. Chinto, 1 Bom. H. C. R. 19*, followed and applied. KANHAYALAL BHIKARAM *v.* NARBHE LAXMANSHET VANI (1903) I. L. R. 27 Bom 297

69 ———— Failure to pay sum ordered by decree for redemption—*Decree for redemption—Failure of mortgagor to pay the sum ordered by the decree—Rights of mortgagee on such failure—Transfer of Property Act (IV of 1882), ss 92 and*

MORTGAGE—contd

8 REDEMPTION—contd

(a) Right of Redemption—contd

69 In a suit by a mortgagor for redemption of a mortgage dated 17th March, 1891, a decree was passed in 1897, allowing him to redeem on payment of the mortgage-debt within a year from the date of the decree, but the decree did not contain any provision for foreclosure or sale in default of payment on the due date The plaintiff having made default, the defendant applied to the Court for an order absolute for foreclosure or sale under s 93 of the Transfer of Property Act (IV of 1882) His application was rejected on the ground that, as the decree did not contain any clause for foreclosure or sale, s. 93 of the Act was not applicable *Held*, in second appeal, that the defendant (mortgagee) was entitled to the remedy given by s 93, although the decree was not drawn up as prescribed by s 92 The omission of the Court to draw up the proper decree under s. 92 did not deprive the mortgagee of the relief provided by s 93 MURLIDHAR v. PARSHARAM (1900) **I L. R. 25 Bom. 101**

70 ———— **Limitation**—*Equity of redemption—Limitation—Adverse possession while period of redemption running—Limitation Act (XV of 1877), s 28* An equity of redemption, in common with other equitable estates in land, is capable of being extinguished by the operation of the Statute of Limitation The interest in the property remaining in a mortgagor after the mortgage has been effected, commonly called the equity of redemption, may, in the case of an usufructuary mortgage, be extinguished by adverse possession on the part of a stranger while the mortgagee continues in possession and the period of redemption is still running The word "possession," in s 28 of the Limitation Act, embraces both actual possession and "possession in law," and the title to immoveable property may be affected by s 28 of the Limitation Act, although the physical possession of the property is not in question An equity of redemption may with propriety be said to fall into possession or to be in the possession of the person legally entitled to it, although he may not be in the actual possession of the land. Continued possession of the mortgagee is not *per se* sufficient to keep alive the title of the mortgagor, but his title to redeem, and consequently to the ownership of the mortgaged property, is capable, notwithstanding such possession, of being extinguished by adverse possession for the required period *Held*, upon the facts of the case, that the equity of redemption claimed by the plaintiff was extinguished by adverse possession, inasmuch as a stranger received rent from the mortgagee in possession, and the stranger's possession was on his own behalf and as owner, and was quite inconsistent with the plaintiff's title LALLA KANHOO LAL v MANKI BIBI (1902) . . . **6 C. W. N. 601**

71 ———— **Mesne profits**—*Mortgage-debt tendered and deposited in Court—Possession of mortgaged property obtained by mortgagee—Mesne profits—Claim to mesne profits by mortgagor, after tender of mortgage-debt and deposit in Court—Transfer of Property Act (IV of 1882), ss. 83, 84* In 1890 the plaintiff mortgaged certain land to the first defendant, without possession, for R700 The mortgage-deed provided that the plaintiff (mortgagor) [illegible]

[illegible] (the present [illegible]

[illegible] of the Transfer of Property Act (IV of 1882), tendered and deposited in Court the R700, and subsequently demanded possession of the land The second defendant re- [illegible]

[illegible] (3rd April 1898), and ordered redemption on payment by the plaintiff of the R700 less the amount of such mesne profits On second appeal, *held* (reversing the decree of the lower Appellate Court and [illegible]

72. ———— **Onus of proof**—*Suit for redemption—Burden of proof on plaintiff—Evidence—Proof*

MORTGAGE—*contd.*

S. REDEMPTION—*contd.*

(a) RIGHT OF REDEMPTION—*contd.*

of specific mortgage. The plaintiff sued for redemption and to recover possession of certain lands, alleging that they had been mortgaged to the ancestors of the defendants about forty-five years before suit. The defendants, who were in possession, denied the mortgage. The Subordinate Judge found the mortgage proved, and passed a decree for redemption. [illegible] that he had failed to do so. On second appeal: *Held* (remanding the appeal), that the real question was whether the defendants were mortgagees of the *property in question. The plaintiff did not tie* himself down to a specific mortgage made at a particular time. He was entitled to succeed if he proved that the land was held by the defendants as mortgagees. BALA *v.* SHIVA (1902)

I. L. R. 27 Bom. 271

73. ———— Pre-emption—*Transfer of Property Act (IV of 1882), ss. 54, 60—Mortgage with right of pre-emption in favour of mortgagee—Assignment of equity of redemption—Non-exercise of pre-emptive right for over twenty years—Suit for redemption—Validity of defence based on pre-emptive right—Specific Relief Act (I of 1877), s. 27—Limitation.* In 1872, *A* mortgaged certain land, with possession to *S*, to secure an advance of R100. The instrument of mortgage contained a covenant conferring upon the mortgagee a right of pre-emption in the following terms:—" If we assign our right over these properties to anyone, the land delivered possession of to you for appropriating the interest shall be assigned to you alone, and it shall not be assigned to anybody else. When we assign the land, we shall receive 50 *fanams* more from you, and then we shall assign the land for these two amounts together." In 1873, *A* sold his equity of redemption to *V*, and before 1893 *V*'s interest was sold in execution of a decree against him, and bought by plaintiff. In 1897, plaintiff instituted this suit for redemption against the representative of *S*, the mortgagee, who pleaded in defence the right of pre-emption created in his favour by the mortgage deed, and contended that in consequence thereof the assignment to *V* and the subsequent purchase of *V*'s interest by plaintiff were invalid. The defendant did not, however, bring the price fixed into Court. *Held*, that plaintiff was entitled to redeem. *Per* SHEPHERD, *J.*—Under the covenant, and by reason of s. 54 of the Transfer of Property Act defendant had no interest in the property. His right could be no other than a right to specific performance available, under s. 27 of the Specific Relief Act, against a transferee who had taken with notice of the covenant. But notice of a contract, such as is required to satisfy the section, must be notice of an existing obligation. Plaintiff was not a transferee who took with notice of the contract now sought to be enforced the time for the performance of which had long passed without anything being done, and the natural inference being that the right arising under it had been waived or otherwise discharged. Assuming that there was notice of the contract, and that it was otherwise a valid contract, defendant could not be allowed to use it as an answer to plaintiff's suit, inasmuch as no suit could now be brought to enforce the contract. *Per* BHASHYAM AYYANGAR, *J.*—The rule that a mortgagee may stipulate for the collateral advantage of pre-emption, if such advantage does not directly or indirectly " clog the equity of redemption," is based upon the principle [illegible] But, by the terms of the stipulation under consideration, the mortgagee was entitled to exercise his option by paying, not the market price of the day or the price offered by a stranger, but the price [illegible] In consider- [illegible] to a price by the instrument of [illegible] ever the occasion for exercising the right of pre-emption may arise, is oppressive and unconscionable. Where a right of pre-emption springs from contract, it rests only upon a covenant which does not run with the land, and stands no higher than a contract of sale of immoveable property, and does not of itself create an interest in, or charge on, the immoveable property which is subject to the right of pre-emption. Until the contract is carried out by specific performance, either by act of parties or decree of Court, the pre-emptor acquires no title to or interest in such property, which alone can extinguish the mortgagor's right of redemption, though he may have a right to call for a conveyance of the property. The equity of redemption in an usufructuary mortgage is an " intangible thing " within the meaning of s. 54 of the Transfer of Property Act, and its transfer by sale can be made only by registered instrument, even though its value may be less than R100. The equity of redemption in a simple mortgage may be transferred [illegible] moveable property, and its sale can be effected, if its value be less than R100, without a registered instrument, by mere delivery of the property. The right of a simple mortgagee in the property mortgaged is an intangible thing within the meaning of s. 54 of the Transfer of Property Act, and a transfer [illegible] by sale of hypothecation executed to secure a debt

MORTGAGE—contd

8 REDEMPTION—contd

(a) RIGHT OF REDEMPTION—contd

under R100 can be made only by a registered instrument. *Subramaniam v Perumal Reddi, I L R 18 Mad 451*, referred to Inasmuch as the cause of action for specific performance had accrued in 1873, when the right of pre-emption had been infringed by the assignment of the equity of redemption, the right to enforce the right of pre emption was barred. The fact that *S* had been in possession of the property as mortgagee could not save him from the operation of the law of limitation on his right to sue for specific performance of the contract of pre-emption. *Krishna Menon v Kesavan, I L R 20 Mad. 305*, referred to *Quære* Whether such a covenant for pre-emption transgresses the rule against perpetuities RAMASAMI PATTAR v CHINNAN ASARI (1901) . I. L. R. 24 Mad. 449

74. ———— Purchase of part of mortgaged property by a third party—*Transfer of Property Act (IV of 1882), s 91—Purchase of part of the mortgaged property by a third party—Suit by mortgagees to recover from such purchaser a rateable proportion of the mortgage debt* The plaintiffs, who were mortgagees of shares in four

tained a decree for sale of one-half of the mortgaged property on the 29th of June, 1893 In 1892 one Madan Lal in execution of a simple money-decree against one of the mortgagors, attached the mortgaged shares in two of the villages, the subject of the mortgage, and in 1894 caused half of those

to them, or rather of such portion thereof as was thought to be commensurate with the value of the shares purchased by Madan Lal, and failing payment for sale of those shares. *Held*, that the suit was not objectionable in point of form. The plaintiffs (whatever might have been Madan Lal's right, in a suit brought by him to redeem the whole property comprised in their mortgage, or if he had been impleaded in the mortgagees' original suit for sale) were not bound in this suit to give Madan Lal, or his representatives, an opportunity to redeem the whole property The plaintiffs, on the other hand, were not entitled, to the detriment of Madan Lal or his representatives, to set up the plea that their

own two parcels upon paying that portion of the mortgage debt which might be found to be proportionate to the value of their parcels *Dip Narain Singh v Hira Singh, I. L. R 19 All 527*, and *Delhi and London Bank v Bhilari Das, I. L. R. 24 All 187*, referred to DINA NATH v LACHMI NARAIN (1903) . . I. L. R. 25 All. 446

75. ———— Res judicata—*Transfer of Property Act (IV of 1882), s 92—Decree for redemption—Omission to execute—Maintainability of subsequent suit on same mortgage—Civil Procedure Code (Act XIV of 1882), ss 13, 244* Where a suit for redemption has been instituted, and a decree for redemption has been passed therein, but not executed, a subsequent suit is not maintainable for the redemption of the same mortgage VEDAPURATTI v VALLABHA VALIYA RAJA (1902) . . I. L. R. 25 Mad. 300

mean any person having an interest in or charge

(1900) . . . . . . C. W. N. 83

77. ———— Rights of incumbrancers inter se—*Transfer of Property Act (IV of 1882), s 85—Sales in execution of decrees separately obtained—Rights of auction purchasers* Umrao Singh in 1879

MORTGAGE—*contd.*

8 REDEMPTION—*contd*

(*a*) RIGHT OF REDEMPTION—*contd.*

Munna Singh mortgaged to one Shambhu Nath, a larger share in the same village, including the

gaged property was put up to sale, and purchased by Kudrat-ullah for R3,000. Both the mortgages

L. R. 13 I. A. 106; Mukhoda Dassi v. Gopal Chunder Datta, I. L. R. 26 Calc. 734; Mohan Manor v. Togu Uka, I L. R. 10 Bom. 224; and *Desai Lallubhai Jethabhai v. Mundas Kuberdas, I. L. R. 20 Bom. 390,* referred to. KUDRAT-ULLAH *v.* KUBRA BEGAM (1900) I. L. R. 23 All. 25

78. ——— **Sub-mortgagee**—*Mortgage originally of mortgagee's rights—Subsequent acquisition by mortgagor of his mortgagor's equity of redemption—Acquisition of equity of redemption held to enure for the benefit of the sub-mortgagee.* Where a mortgagee mortgages his mortgagee rights, and afterwards acquires from his mortgagor the equity of

way as if the proprietary interest had been mortgaged to him from the first. *Kishendat Ram v. Mumtaz Ali Khan, I. L. R. 5 Calc. 198,* and *Shyama Churn Bhuttacharjee v. Ananda Chandra Das, 3 C. W. N. 323,* referred to. AJUDHIA PRASAD *v.* MAN SINGH (1902)

I. L. R. 25 All. 46

79. ——— **Suit for foreclosure—Loss of right to redeem**—*Transfer of Property Act (IV of 1882), ss. 67, 75, 85, 101—Mortgage—Foreclosure—Parties—Suit for foreclosure by prior mortgagee without making holder of subsequent registered mortgage a party* A prior mortgagee (by conditional sale) brought a suit for foreclosure and obtained a decree without making party to the suit a second mortgagee (by usufructuary mortgage) whose mortgage was registered. The second mortgagee, having unsuccessfully objected when the prior mortgagee proceeded to take possession through the Court, sued for and obtained a declaration that he was not bound by the foreclosure decree *The* prior mortgagee thereupon sued the second mortgagee, praying *that the latter, if he failed to redeem* the prior mortgage, might be debarred of his right to redeem, and that in that case possession should be given to the plaintiff. *Held,* that the contention of the second mortgagee, that all that the prior mortgagee was entitled *to was to obtain* possession on redeeming the second mortgage, could not be sustained, and that the *prior mortgagee* was entitled to the decree prayed for. *Venkata v. Kannam, I. L. R. 5 Mad. 184; Krishnan v. Chadayan Kutti Hari, I. L. R. 17 Mad. 17; Radhabai v. Shamrav Vinayak, I. L. R. 8 Bom 168; Desai Lallubhai Jethabhai v. Mundas Kuberdas, I. L. R. 20 Bom. 390,* and *Mohan Manor v. Togu Uka, I. L. R. 10 Bom. 224,* referred to BALDEO SINGH *v.* JAGGU RAM (1900)

I. L. R. 23 All. 1

80. ——— **Time for redemption**—*Transfer of Property Act (IV of 1882), ss 86 and 87—Redemption possible at any time until an order absolute under s. 87 has been made.* A mortgagor who has obtained a decree for redemption may pay in the decretal amount, and *obtain* redemption, at any time up to the making of an *order absolute*

an order under s 87, the mortgagee ... into possession of the mortgaged property. *Nihala v. Mitter Sen, I L. R. 20 All 446,* and *Soma v. Ram Krishna Chowdhry, I. L. R. 27 Calc. 705,* followed. SAHIB RAM *v.* MURADAN (1903)

I. L. R. 25 All. 231

81. ——— *Transfer of Property Act (IV of 1882), ss 75, 85, 86, 91—Prior mortgagee—Subsequent mortgagee—Right to redeem inter se—Foreclosure decree.* In 1889 *C* and his brothers mortgaged certain lands with possession to *H*. Subsequently, on the 26th May 1897, *C* alone mortgaged the same to *U*. Shortly after this *C* and his brothers brought a redemption suit against *H*, and *U* was not a party to it. In that suit the usual redemption decree was passed; but as *C* and his brothers failed to redeem within the time allowed, the order for foreclosure was made absolute in favour of *H*. *U* then brought a suit against *C* to recover his mortgage debt by sale of the mortgaged property. To this suit *H* was joined as the person in possession. The lower Court allowed *U* to redeem the property from *H*.

MORTGAGE—*contd.*

8 REDEMPTION—*contd.*

(*a*) Right of Redemption—*contd.*

defendant 2, on payment of the due to him (defendant 2) under the foreclosure decree *Held*, reversing the decree, that B, the prior mortgagee, had a right to redeem superior to that of U, the subsequent mortgagee. Hassanbhi *v.* Umaji (1904)
I. L. R. 28 Bom. 153

82. ——— *Transfer of Property Act (IV of 1882), s. 93—Failure to pay money*

(IV of 1882) upon good cause shown, enlarge the time for payment upon such terms as it thinks fit. The plaintiff within three years of the date of the decree produced in Court the decretal amount and prayed for possession of the mortgaged property. *Held*, that such an application could be treated as one for enlargement of time under s. 93 of the Transfer of Property Act. Iswar Lingo *v.* Gopal Jivaji (1904) . I. L. R. 28 Bom. 102

83. ——— *Redemption suit —Mortgage by persons other than the real owner—Acquiescence of the real owner—Mortgagee's possession adverse to the real owner.* On the 24th October, 1873, one Durgan, widow of Govindji,

property, to the exclusion of Govindji's daughter, Rau, and disputed the validity of Durgan's mortgage. Godaji thereupon, on the 22nd June 1882, accepted a mortgage from the plaintiffs Rau was aware of the transaction and acquiesced in it. In July 1889, Rau sold her equity of redemption to one Savlaram, who paid off Godaji's mortgage and recovered possession of the mortgaged property. The plaintiffs, in September 1899, brought a suit against Godaji and Savlaram, defendants 1 and 2, to redeem the mortgage of the 22nd June 1882. *Held*, that the plaintiffs were entitled to redeem, Rau's claim to the equity of redemption

Godaji took possession under a mistake common to all as to Rau's rights, still that circumstance did not make his possession any the less adverse. Purshottam *v.* Sagaji (1904)
I. L. R. 28 Bom. 87

MORTGAGE—*contd*

8 REDEMPTION—*contd.*

(*a*) Right of Redemption—*contd*

84. ——— *Sale of mortgaged property—Execution of decree—Transfer of Property Act (IV of 1882), ss. 86, 88, 89—Right to redeem—Order absolute for sale*

of s. 89 of the Transfer of Property Act, *viz.*, "thereupon the defendant's right to redeem and the security shall both be extinguished," relate to the actual sale and distribution of the proceeds and not merely to the passing of the order absolute for sale A mortgagor judgment-debtor is entitled to stop the sale of the mortgaged property in execution of a mortgage-decree by payment of the debt before the sale actually takes place, although an order absolute for sale may have already been passed *Mallikarjunadu Setti* v. *Lingamurti Pantulu, I. L. R. 25 Mad. 244; Krishnaji* v *Mahadew Vinayak, I. L. R 26 Bom 101; Raja Ram Singhji* v. *Chuni Lal, I. L R. 19 All. 205*; and *Shyam Kishan* v. *Sundar Koir, I L. R. 31 Calc. 373*, followed. *Jogendra Nath Mukerjee* v. *Methana Abraham, 6 C. W. N. 769*, and *Popple* v. *Sylvester, L. R. 22 Ch. D. 98*, referred to. Bibijan Bibi *v* Sachi Bewah (1904)
I. L. R. 31 Calc. 863
s.c. 8 C. W. N. 684

85. ——— **Prior and subsequent incumbrances**—*Sale under decree on puisne mortgage notifying prior incumbrances—Purchase by decree-holder—Prior incumbrances declared invalid—*

MORTGAGE—*contd.*

8 REDEMPTION—*contd.*

(a) RIGHT OF REDEMPTION—*contd.*

redemption in which had been purchased. *Sumbhu Nath Panday* v. *Go'ab Singh, L. R. 14 I. A. 77; Pettachi Chettiar* v. *Sangili Veera Pandia Chinnathambiar, L. R. 14 I. A. 84,* and *Abdul Aziz Khan* v.

framed as a suit for the recovery of unpaid purchase money, no decree for the payment of the amounts due on the prior mortgages could be passed. A notification by a Court executing a decree for sale of immoveable property that the property about to be sold is encumbered does not guarantee that the incumbrances notified are valid incumbrances or that they are the only incumbrances on the property; nor in this case was there anything in the conduct of the auction-purchaser, which estopped her from denying the validity of the prior mortgages. The auction-purchaser was entitled to retain the benefit of the bargain, which she had secured. INAYAT SINGH *v* IZZAT-UN-NISSA BEGAM (1905) . . . . I. L. R. 27 All. 97

86. ——————— *Prior and subsequent mortgages—Redemption—Price to be paid by a subsequent mortgagee redeeming after the mortgaged property has been brought to sale and purchased by the prior mortgagee—Rights of purchaser from prior mortgagee—Mortgagee in possession—Interest.* A purchased mortgaged property from the first mort-

to obtain *khas* possession as against the second mortgagee, who had purchased the property under

between A and the second mortgagee the former

NANDI *v.* KEDAR NATH KUNDU (1906)

I. L. R. 33 Calc. 590

s.c. 10 C. W. N. 592

87. ——— Redemption money paid into Court, but part subsequently withdrawn in execution of plaintiff's decree for costs—*Execution of decree.* Where the full amount fixed by the Court in a decree for redemption of a mortgage was paid into Court within the time limited by the decree, it was *held* that the

88. ——— Adverse possession by mortgagee—*Mortgagor and mortgagee—Redemption, equity of—Effect—Purchase by mortgagee at*

for redemption, ... titled to redeem. The view that a mortgagee ... not acquire the equity of redemption directly or ... sale except by a ... misap- ... it prin- ... ining a ... ing the ... himself ... mort- ... n, and ... mort- ... of the ... as the ... in exe- ... d on

cution of decrees cannot ... grounds of any mere irregularities of procedure in obtaining the decrees or in the execution of them But a Court has no jurisdiction to sell the property of persons, who were not parties to the proceeding or properly represented on the record. As against such persons the decrees and sales purporting to be made would be a nullity and might be disregarded without any proceeding to set them aside. *Kishen Chunder Ghose* v. *Ashoorun, Marsh 5..,* followed. A suit, which purported to be brought against one "N, deceased, by his legal representative A, by his guardian, his uncle A ..." was decreed, the Judge accepting, without question and without applying his mind to the matter, the statement that A (who was a son of N, and a minor

MORTGAGE—*contd.*

8. REDEMPTION—*contd.*

(a) RIGHT OF REDEMPTION—*contd.*

was the legal representative of *N* and *A*. *N* was his guardian. *N*'s properties were sold in execution of this decree. *Held*, that the estate of *N* was not

distinguished. KHIARAJMAL *v.* DAIM (1904) I. L. R. 32 Calc. 296 s.c. 9 C. W. N. 201 L. R. 32 I. A. 23

89. ———— Clog on redemption—*Contract to pay off subsequent mortgages before redeeming prior mortgage—Validity—Contract to pay off an unsecured debt—Transfer of Property Act (IV of 1882), s. 61.* In a suit for redemption by a mortgagor the mortgagee set up by way of defence a contract entered into at the time of the execution of four bonds of later dates, to the effect that the mortgage in suit was not to be redeemed, without paying off the sums due under the subsequent bonds. One of these bonds was a simple bond, the others mortgage bonds secured on the same property. *Held*, that, so far as these mortgage bonds were concerned, the contract was enforceable and must be given effect to, but as regards the simple bond the contract was a clog on the equity of redemption and was not enforceable. DURGA PERSHAD *v.* DUKHI ROY (1905) . . . 9 C. W. N. 789

money and the profits of the lands mortgaged have been declared to be equal We shall obtain redemption of the mortgaged property from the

arrears due by us at the time of harvest and before

91. ———— Sub-mortgage—*Redemption—Sub-mortgagees impleaded—No specific prayer to redeem sub-mortgage.* The plaintiffs had purchased the equity of redemption of all the mortgaged property, part of which had been sub-mortgaged. *Held*, that, having made the sub mortgagees parties, they were entitled to redeem the whole mortgage, although they might not have specifically sought to redeem the sub-mortgage; that the proper course was to ascertain what sum was due to the sub-mortgagees and to direct payment of that amount to the sub-mortgagees out of the amount payable for redemption of the whole mortgage *Narayan Vitha v Ganoji, I. L. R. 15 Bom 692*, followed GOKUL DASS *v.* DEBI PRASAD (1906) . . . . I. L. R. 28 All 638

92. ———— Right of redemption—*Transfer of Property Act (IV of 1882), s 99—Mortgaged property purchased by mortgagee in execution of a money decree on the mortgage debt, not redeemable by the mortgagor.* A mortgagee sued the mortgagor for an instalment of the mortgage debt and obtained a simple money decree. In execution of such decree the mortgagee brought to sale and purchased the mortgaged property. In a suit by the mortgagor

R. 450, dissented from DHARANIKOTA VENKAYYA *v.* BUDHARAZU SURAYYA GARU (1907) I. L. R. 30 Mad. 362

93 ———— *Redemption, right of—Transfer of Property Act (IV of 1882), s. 99*

94. ———— Time for redemption—*Time granted by first Court—Unsuccessful appeal.* Where the defendant was allowed six months by the first Court to pay off a mortgage debt, and upon appeal by the defendant the appeal was dismissed —*Held*, that the six months' time allowed to the defendant should run from the

MORTGAGE—*contd.*

8. REDEMPTION—*contd*

(*a*) RIGHT OF REDEMPTION—*contd.*

date of the first Court's decree and not of the appellate decree. FAIJUDDI SARDAR *v.* ASIMUDDI BISWAS (1907) . . . 11 C. W. N. 679

95. ———— Perpetual lessee—*Redemption, suit for—Transfer of Property Act (IV of 1882), s. 91—Mortgage—Who may redeem.* In a

rental of R40 odd By the terms of the lease the lessee was not liable to be ejected, even for non-payment of rent, while, if the title of the lessors proved defective, the lessee was entitled to a refund of the premium *Held*, that the lessee was under the above circumstances entitled to redeem *Payn Malathil Appu* v. *Koramel Amina, I. L. R. 19 Mad. 151; Radha Pershad Misser* v. *Monohur*

NANDAN PRASAD *v.* AMBIKA SINGH (1907) I. L. R. 29 All. 679

96. ———— Puisne mortgagee—*Puisne mortgagee, right of, to sell subject to prior mortgage—Decree in suit by puisne mortgagee—Transfer of Property Act (IV of 1882), ss. 51, 75, 85, 96—Right of*

litigation to enforce rights arising out of the mortgage or mortgages in question in the suit. This is the obvious intention of s. 85 of the Transfer of Property Act. Under s 75 of the Transfer of Property Act the prior mortgagee has the right to require the second mortgagee to redeem him or to submit to a sale of whatever interest he has in the property. In a suit brought by the puisne mortgagee, to which the prior mortgagee, who has also become the owner of the equity of redemption is made a party, the decree must direct the redemption by the second mortgagee and then for sale, if the prior mortgagee, as owner of the equity of

port the view that the puisne mortgagee is not required to redeem the prior mortgagee, when the

MORTGAGE—*contd.*

8. REDEMPTION—*contd.*

(*a*) RIGHT OF REDEMPTION—*contd.*

latter is a party to the suit. Where the prior mortgagee sues for and obtains a decree for sale without making the second mortgagee a party and himself purchases the property in execution, a purchaser of the property from him cannot claim the value of improvements from the second mortgagee under s

GOMPERTZ (1908) . . I. L. R. 31 Mad. 2[illegible]

97. ———— Purchase of equity of redemption—*Equity of redemption purchased by a mortgagee from one of the mortgagors, effect of.* Where a mortgagor died leaving three sons, who became equally entitled to the equity of redemption, and one of the sons sold his one-third share in the equity of redemption to the plaintiff mortgagee: *Held*, that the plaintiff was entitled in a suit to realise his mortgage debt to give credit only for that which his vendor would have been liable to pay, namely, one-third of the mortgage debt. MUTTY LAL PAL *v.* NANDU LAL NUNDY (1908) . . . 12 C. W. N. 745

98. ———— Interpleader suit—*Practice—Suit to redeem mortgage against two parties claiming mortgage money—Appropriate relief* When a mortgagor was about to pay off the mortgage amount to an assignee of the mortgage the mortgagee disputed the assignment and also claimed to be paid the mortgage amount. The mortgagor ... both the mort- ... plaint con- ... ion, but it ... be required ... the mort- ... should be

gage amount and ... *of the loss of the original*

... in the ... out to ... much ... for ... under ... *G. F.* TIKA ... 593

v. KFRA (...)

99. ———— Usufructuary mortgage—*Suit for redemption—Subsequent suit to recover surplus profits—Limitation Act (XV of 1877), Sch. II, Art. 105—Transfer of Property Act (IV of 1882), s. 92.* In a suit for redemption of a usufructuary mortgage the mortgagor is bound to

MORTGAGE—*contd*

8 REDEMPTION—*contd.*

(a) RIGHT OF REDEMPTION—*contd*

claim for surplus profits, if any, payable by the mortgagee. S 43 of the Code of Civil Procedure is a bar to the recovery of such profits by means of a separate suit Art 105 of the second schedule to the Limitation Act, 1877, applies to a case where the mortgagor gets possession otherwise than by means of a suit for redemption *Vinayak Shivrao Dighe v Dattatraya Gopal, I. L. R 26 Bom 661*, *Rukhminibai v Venkatesh, I. L. R. 31 Bom 527*, *Satyabadi Behara v. Harabati, I. L R 34 Calc. 223*, *Kashi v Bajrang Prasad, I L R 30 All 36*, and *Balaji v Tamanganda, 6 Bom H C 97*, referred to. RAM DIN v BHUP SINGH (1908)

I. L. R 30 All. 225

100. ———— *Usufructuary mortgage—Ouster of mortgagees—Adverse possession.* One of the purchasers of the equity of redemption in a usufructuary mortgage ousted the mortgagees and took possession of the entire mortgaged property, which he retained for more than twelve years; but it was found that he had never denied the mortgagors' title, and that the mortgagors had no right to present possession *Held*, that there

101. ———— Shares subsequently mortgaged to several persons—*Prior mortgage of whole property—Rights of mortgagees, how to be adjusted—Right to redeem—Successive redemption suits by different mortgagees—Res judicata—Civil Procedure Code (Act XIV of 1882),*

whole property should be redeemed, Z's suit was dismissed and he subsequently instituted a suit to redeem the whole property and succeeded In a

102 ———— Further advances on old security—*Clog on the equity of redemption—Stipulation to the effect that the later advance will be paid at redemption of earlier mortgage.* Where in a suit for redemption the mortgagee set

MORTGAGE—*contd.*

8 REDEMPTION—*contd.*

(a) RIGHT OF REDEMPTION—*concld.*

up five other later bonds and claimed that before redemption of the original mortgage could be effected those bonds should also be redeemed: *Held*, that as the bonds created charges on the property and there was a special stipulation that they should be paid off before the mortgage was redeemed, the claim was a good one. *Held*, also, that such a

Rice, [1902] *A C 24*, referred to. RANJIT KHAN v. RAMDHAN SINGH (1909) . I. L. R. 31 All. 482

(b) REDEMPTION OF PORTION OF PROPERTY.

103. ———— Division of liability under mortgage. Where money is advanced on a mortgage-debt, the liability cannot be divided. MUJEEDOONISSA v. DILDAR HOSSEIN 4 W. R. 216

104. ———— Right to redeem share of property where part has been sold for arrears of revenue.

RAM BALUK SINGH v. RAM LOLL DOSS

21 W. R. 428

ing a proportionate amount of what is due to him, or otherwise HUREEHUR SINGH v. DABEE SAHOY

W. R. 1864, 260

106. ———— Redemption of separate share—*Right to retain possession till whole debt*

faction of the entire debt. RAZEEOODDEEN v. JHUBBOO SINGH . . . W R. 1864, 75

107. ———— *Redemption of whole estate by one of several mortgagors.* Mortgage-debts are indivisible except where there is a distinct notice on the face of the mortgage-deed of the

MORTGAGE—*contd.*

8. REDEMPTION—*contd.*

(*b*) REDEMPTION OF PORTION OF PROPERTY—*contd.*

separate shares of the mortgagors One co-mortgagor or his representative may redeem the entire estate, if joint and undivided, by payment of the whole of the mortgage-money. RAM KRISTO MANJHEE *v.* AMEEROONISSA BIBEE . 7 W. R 314

ALI REZA *v.* TARASOONDEREE . 2 W. R. 150

108. ———————— *Transfer of Property Act (IV of 1882), ss. 60, 82—Partial redemption—Contribution* *A* mortgaged two houses to *B* for R200 *C* purchased at a Court sale *A*'s interest in one of the houses, and sold it to the plaintiff. The plaintiff sued to redeem the house, and prayed that the mortgagee be ordered to convey it to her on payment of R100 *Held*, that the suit should be dismissed. KUPPUSAMI CHETTI *v.* PAPATHI AMMAL . . I. L. R. 21 Mad. 369

109. ———————— *Payment of proportionate part of debt.* Where moneys were advanced to several mortgagors, who owned the mortgaged land in certain defined shares, and the mortgagee, by purchasing the interest of some of the mortgagor in such land, broke up the joint security, the remaining mortgagors were held to be entitled to redeem on payment of a just proportion of the moneys advanced. KESREE *v.* SETH ROSHUN LAL 2 N W 4

110. ———————— *Payment of proportionate part of debt* The mortgagors in a joint mortgage transaction are jointly liable to the mortgagees for the whole of the mortgage-debt, and some out of the number cannot bring a suit to redeem their own shares of the mortgaged property by payment of a proportional amount of the mortgage-debt. SALIG RAM SINGH *v.* BARUN RAI 4 N. W. 92

111. ———————— *Suit to redeem land in possession of co-owner of equity of redemption.* Where a mortgagee in possession acquires a right to a share in the property mortgaged, he cannot be compelled to surrender the mortgaged property on payment of the debt, or any part of it on payment of a proportionate amount of the debt, until the mortgagor has, by a proper suit for partition, ascertained definitely the shares of the co-owners. MARAKAR AKATH KONDARAKAYIL MAMU *v.* PUNJAPATATH KUTTU . . I. L. R. 6 Mad. 61

112. ———————— *Mortgage to co-sharer—Right of one or more co-owners to redeem in absence of partition.* When several owners of an undivided share in immoveable property mortgage their share with possession to another undivided sharer, a smaller number than the whole body of co-mortgagors cannot sue to redeem the whole mortgage until there has been a partition of the property mortgaged among the several co-owners. *Marakar Akath Kondarakayil Mamu* v. *Punjapatath Kuttu, I. L. R. 6 Mad. 61,* followed. *Naro Hari Bhave* v. *Vithalbhat, I. L. R. 10 Bom. 648,* distinguished. THILLAI CHETTI *v.* RAMANATHA AYYAN . . . I. L. R. 20 Mad. 285

113. ———————— *One of several joint mortgagors before partition—Mortgagee who has acquired a share in the equity of redemption.* [illegible] of redemption [illegible] redemp- [illegible] mort- [illegible] himself [illegible] mption [illegible] *Kon-* [illegible] *L R. 6* [illegible] RAM-CHANDRA DINKAR JOSHI . I. L. R 15 Bom. 24

BHIKAJI DAJI *v.* LAKSHMAN BALA. I. L. R. 15 Bom. 27 note

114 ———————— *Mortgage by three sharers—Partition of equity of redemption—Redemption by two sharers—Excess payment—Suit for* [illegible] *Set off* Three un- [illegible] o the de- [illegible] partition- [illegible] ed their [illegible] respective shares of the mortgaged land. Besides paying the defendant two-thirds of the sum due on the mortgage, they paid him R189-13-4, being two-thirds of a sum of R284-12-0, which he alleged he had been obliged to pay as assessment in respect of the mortgaged lands. Subsequently the plaintiff had purchased the whole of the lands comprised in the mortgage, and he now sued to redeem the one-third share which remained in mortgage. The defendant claimed to charge the plaintiff with [illegible] one-third of the sum which he alleged [illegible] Judge [illegible] red re- [illegible] 0-10 0, [illegible] In [illegible] ndant [illegible] sment, [illegible] e sum [illegible] n part [illegible] On [illegible] g the [illegible] ff was [illegible] decree of the District Judge, [illegible] The three mortgagors had severed their interests. The plaintiff's right to redeem his one-third was perfectly distinct [illegible] mortgagors [illegible] not entitled to this deduction. [illegible] the redemption by the other two mortgagors, [illegible] account to which [illegible] ted. LAK- [illegible] KRISHNA [illegible] Bom. 186 [illegible] SHENVI .

115. ———————— *Purchase of equity of redemption of part of property by one of several mortgagees—Right of redemption of purchaser of another part.* Where one of several mortgagees has purchased the equity of redemption as to a part of the mortgaged property, the purchaser of another part is not thereby entitled to redeem,

MORTGAGE—*contd.*

8 REDEMPTION—*contd.*

(b) Redemption of Portion of Property—contd

unless he discharges the whole mortgage-debt SOBHA SAH *v.* INDERJEET . . 5 N. W. 148

116 ———— *Purchaser of estate jointly and separately mortgaged by co-sharers.* The purchaser of a share in an estate which had been jointly mortgaged by the several shareholders, and subsequently further charged by all by deeds to which one or more were parties, sued for the redemption of the whole estate by payment

117 ———— *Purchase by mortgagee of a share in mortgaged property—Redemption of mortgage.* Where all the proprietors of an estate joined in mortgaging it, and the mortgagee subsequently purchased the share in such estate of one of the mortgagors, thereby breaking the joint character of the mortgage, and one of the

I. L. R. 2 All. 365

118. ———— *Division of*

SHEO DAYAL . . . . I. L. R. 10 All. 570

119. ———— *Transfer of Property Act (IV of 1882), s 60—Suit to redeem entire mortgage by purchaser of equity of redemption of a portion—Indivisibility of mortgage.* The mortgagors of four items of property originally mortgaged for an entire sum sold the equity of redemption of one item to the plaintiff who now sued the mortgagee to redeem the whole of the four items. *Held,* that he was entitled so to do.

neither mortgagor nor mortgagee, nor persons acquiring a partial interest through either, can obtain relief under the mortgage except in consonance with that principle of indivisibility. HUTHASANAN NAMBUDRI *v.* PARAMESWARAN NAMBUDRI

I. L. R. 22 Mad. 209

120 ———— *Purchase by one of several mortgagees of a portion of the mortgaged property—Redemption by one of the mortgagors of his own share.* The fact that one of several mortgagees has acquired the equity of redemption of the share of one of the mortgagors in the mortgaged property does not give another of the mortgagors the right to redeem his share in the mortgaged property. *Sobha Shah* v. *Inderjeet, 5 N. W. 148,* distinguished. *Kuray Mal* v. *Puran Mal, I. L. R 2 All. 565,* and *Azimut Ali Khan* v. *Jawahir Singh, 13 Moo I. A. 404,* referred to. MAHTAB RAI *v.* SANT LAL . I. L. R. 5 All 276

121. ———— *Usufructuary mortgage—Satisfaction of mortgage-debt from usufruct—Suit for whole mortgaged property by some of several mortgagors.* In a suit by some of several co mortgagors to redeem the entire property mortgaged, on the ground that the mortgage-debt had been satisfied out of the usufruct:—*Held,* that the plaintiffs could only claim their own shares, and the Court of first instance should determine the extent of the shares after making the other co mortgagors parties FAKIR BAKHSH *v.* SADAT ALI

I. L R. 7 All. 576

122. ———— *Destruction of indivisible character of property* Where the equity of redemption of different plots of land in the possession of a usufructuary mortgagee under one entire contract has been sold to two different persons and the mortgagee has abandoned his possession of one plot, and taken a lease from the purchaser of that plot, and thereby destroyed the indivisibility of the original contract, the purchaser of the other plot is entitled to redeem his land on payment of a proportionate amount of the mortgage debt MARANA AMMANNA *v.* PENDYALA PERUBOTULU

I. L R. 3 Mad. 230

123. ———— Redemption of whole property by owner of portion—*Proportional contribution* The owner of a part of the equity of redemption can redeem the whole property mort-

mortgage with money borrowed from the defendant V, to whom B again mortgaged the two fields as

assent The plaintiff now sued the defendant V to eject him from No. 22 *Held,* that the defendant V had a lien on No 22, and that the plaintiff could not eject him without paying him the amount of

MORTGAGE—*contd.*

8. REDEMPTION—*contd.*

(*b*) REDEMPTION OF PORTION OF PROPERTY—*contd.*

such lien. When *R* purchased No. 22, he and *B* stood in equal positions towards the mortgagee, *J*. *J* might enforce his rights under the mortgage against both together, or against either of the two, leaving that one, if forced to pay the whole sum, to recover the proper rateable contribution from the other. On the other hand, *R* might redeem the whole and seek contribution from *B*, or *B* might redeem the whole and seek contribution from *R*. Whichever of the two redeemed, he would have a lien on the share of the other for the proportional contribution of that share to the sum expended in redemption *B* did, in fact, redeem the mortgage to *J*, and thereupon became entitled to a lien on *R*'s share of the property, *viz.*, field No 22 He then mortgaged his whole interest to the defendant *V*, including his lien on No. 22. *R*, who had not yet obtained possession of No. 22, was entitled to get it only on paying off the amount of the lien which had passed to the defendant *V*. VITHAL NILKANTH PINJALE *v.* VISHVASRAV BIN BAPUJIRAV

I. L. R. 8 Bom. 497

124. ——— *Purchaser of equity of redemption of part of an estate* The purchaser of the equity of redemption of part of an estate under mortgage is entitled to redeem the whole of the mortgaged estate if the mortgagee insists on his right to have it so redeemed. When the former elects to pay the entire mortgage-debt, he puts himself in the place of the mortgagee redeemed, and acquires a right to treat the original mortgagor as his mortgagor, and to hold that portion of the estate in which he would have no interest but for the payment as a security for any surplus payment he may have made. ASANSAB RAVUTHAN *v.* VAMANA RAU . . . . I. L. R. 2 Mad. 223

125. ——— *Assignee of portion of equity of redemption—Suit for redemption.* In a suit by a person to whom seven-eighths of the equity of redemption had been assigned for redemption, it was held that the plaintiff was entitled to [illegible]

I. L. R. 21 Mad. 15

126. ——— *Mortgage of property owned by co-sharers—Subsequent severance of interests—Suit by one co-sharer to redeem more than his share—Time of taking objection.* In 1805 a two annas share in certain property held by co-sharers was mortgaged to the defendant. The mortgage was effected by the mortgagor as manager of all the co-sharers in union. In 1848 one of the co-sharers redeemed his share of two pies in the mortgaged property, and a further share of two pies therein was redeemed by a second co-sharer in 1867. The plaintiff was admittedly the owner of another two pies share; but he now sued the defendant to redeem the whole of the property still unredeemed, *viz.*, a one anna eight pies share of the original mortgage. The defendant objected that the plaintiff could only redeem his own two pies share, which had become separated from the rest. The plaintiff denied that the estate had been divided *Held*, that the plaintiff's claim being to redeem all that remained of the estate in the mortgagee's possession, the suit could not be maintained, unless all the other persons interested in the equity of redemption were before the Court either as co-plaintiffs or as defendants. Without their presence, the suit could not be properly disposed of, and the excuse, that the defendant did not take objection at the right time, had, under such circumstances, no validity. As owner of a two pies share, which by consent of all interested had become an estate wholly separated from the other parts of the original aggregate, the plaintiff would have been bound to set forth the transactions on which his right rested RAGHO SALVI *v.* BALKRISHNA SAKHARAM

I. L. R. 9 Bom. 128

127. ——— Partial redemption—*Beng. Reg. I of 1798, s. 5.* Where the contract between mortgagor and a mortgagee provides for the payment of the principal sum on a specified date, and for the payment in the meantime of interest thereon the mortgagor cannot have a partial redemption of the property under Regulation I of 1798, [illegible] the terms of a [illegible] pt as re- [illegible] gee con- [illegible] it, to be sent to allow the principal [illegible] paid off before the time fixed, he would be entitled, when agreeing to this, to make the payment of interest a condition of such redemption. BENODE MOYEE DOSSEE *v.* BENODE MOHINEE CHOWDHRAIN

20 W. R. 387

128. ——— *Property redeemable on payment of two separate amounts.* [illegible]

OOGRAH SINGH [illegible]

129. ——— *Purchase of portion of equity of redemption by mortgagee—Apportionment of mortgage-debt.* The plaintiffs in this suit were purchasers of the equity of redemption in a portion of certain mortgaged premises which were sold in lots, and they brought this suit against the mortgagees, who were also purchasers of the equity of redemption of several of the lots. They [illegible] parties to the [illegible] portion of the [illegible] eir own por- [illegible]

MORTGAGE—*contd.*

8 REDEMPTION—*contd*

(*b*) REDEMPTION OF PORTION OF PROPERTY—*contd.*

tion and the portion purchased by the purchasers other than the mortgagees, on payment into Court of a sum sufficient to cover the proportion of the mortgage-debt attributable to the said parcels The mode of applying the whole of the mortgage-debt between the different mouzahs of the mortgaged estate in such a case pointed out. AZMUT (AJIMUT) ALI KHAN *v* JOWAHIR SINGH
14 W. R. P. C. 17 · 13 Moo I A. 404

BEKON SINGH *v* DEEN DYAL LALL 24 W. R. 47

130 ——————— *Mortgage of one estate consisting of several villages—Purchase by mortgagee of part of equity of redemption* Where sixteen villages were included in one mortgage and the equity of redemption in one village was sold to the plaintiffs —*Held*, that they were entitled to sue the mortgagee, who had purchased the equity of redemption in twelve of the villages, for redemption of their own and three other villages; a previous suit for redemption of their one village

131 ——————— *Purchase of equity of redemption of part of village* The entire village was mortgaged to the defendants, who subse-

to represent, was a joint estate, the plaintiff, having established his right to one moiety by purchase, was entitled to redeem the whole, whether his title to the other moiety by heirship was proved or not. BITHAL NATH *v* TOOLSEE RAM . . 1 Agra 125

132 ——————— *Purchase of portion of equity of redemption* The equity of redemption in two mouzahs (the mortgage being joint) was sold in satisfaction of a decree by a third

of the mortgaged properties. MAHTAB SINGH *v.* MISREE LALL . . . . . 2 Agra 88

133 ——————— *Purchase of portion of equity of redemption* An entire mouzah had been mortgaged by way of usufructuary mortgage. The plaintiff subsequently purchased a four annas share from the heirs of some of the mortgagors, and sued for possession of his purchased share on the averment that the whole of the mortgage-debt and interest had been satisfied *Held*, that he was not precluded from suing on the ground that he claimed only a portion of the mortgaged property. LALLA DABEE PERSHAD *v.* BEHAREE LALL
3 Agra 33

134. ——————— *Suits heard together brought by co sharers of whole estate.* *A* granted a zur i-peshgi lease of certain lands to the defendants for a fixed term of years, which was to continue after the expiry of the term so long as the money advanced remained unpaid Shortly afterwards *A* evicted the defendants, and sold the land to *C* and *D* in the proportion of twelve annas and four annas The defendants sued all the three, and obtained a decree for possession and mesne profits. They never got back possession, but recovered the mesne profits from *A* On the expiry of the term of the lease, *C* and *D* each brought a suit to redeem his own share of the estate after payment into Court of the money advanced, in amounts proportionate to the share of the land purchased by each The two suits were heard together. *Held*, they were entitled to redeem WUZUROONNESSA *v.* SAEEDUN. JOYMUNGUL SINGH *v* SAEEDUN
B. L. R. Sup. Vol. 613 : 6 W. R. 240

135. ——————— *Deposit of proportionate share of debt—Purchase of portion of equity of redemption by mortgagee.* *R* mortgaged to *N* certain property of which *N* caused a moiety to be sold in execution of a money-decree against *R* and himself became the purchaser. The moiety was sold subject to *N*'s mortgage in satisfaction of another decree, and purchased by *L*. *N*, in exercise of

SAHOO *v.* LALAH AMEER CHAND
15 B. L. R. 303 : 24 W. R. 24

136. ——————— *Equity of redemption, attachment of—Payment of proportionate share of mortgage-debt.* *A*, the holder of a decree upon a mortgage-bond, attached in execution a one-third share of a certain mouzah, one of seventeen mouzahs included in the mortgage, and the equity of redemption in which one-third share had been purchased by *B*. *Held*, that, although as laid down in *Azimut Ali Khan* v. *Jowahir Sing*, 13

MORTGAGE—*contd.*

8. REDEMPTION—*contd.*

(*b*) REDEMPTION OF PORTION OF PROPERTY—*contd.*

Moo. I. A. 401, *B* would have been at liberty to insist that his one-third share should be burthened with no more than a proportionate amount of the original mortgage-debt, and might claim to redeem such share upon payment of that quota, yet, as he had not shown what that proportion was, nor paid it into Court, that *A* under the circumstances was entitled to enforce his attachment. HIRDY NARAIN *v.* ATTAOOLLAH

I. L. R. 4 Calc. 72 : 2 C. L. R. 580

137. ——— *Contribution—Suit for redemption of share of property sold in execution of decree for mortgage-debt.* *M*, *B*, and

R to secure a loan of R600, and on the same day, by a separate deed, they mortgaged mouzah D, and *M* mortgaged his share in mouzah A to *R*, to secure a loan of R1,600. On the 8th December 1875 *L* obtained a decree for the sale of the shares of *M* and

purchase-money was applied to satisfy *L*'s decree, and the balance of it was deposited in Court. Instead of applying to the Court to pay him this balance in execution of his decree dated the 18th April 1876, *R* attached and obtained payment of such

and became its purchaser. On the 20th July 1877 *R*, in execution of a decree for money against *M*, brought to sale his share in mouzah A and became its purchaser. *Held*, in a suit by *N* against *R* in which he claimed that the sum due by him under the two mortgages dated the 16th March 1870, and the decree dated the 18th April 1876, might be ascertained, and that, on payment of the amount so

third share in mouzah D exceeded the proportionate share of his liability on the two mortgages, he was entitled to recover one moiety of such excess

N's share at the rate of 12 per cent. per mensem; and further directed that, if such moiety, together with interest, were not paid within a certain fixed period, *N* would be at liberty to recover it by the sale of the share in mouzah A, or so much thereof as might be necessary to satisfy the debt. BHAGIRATH *v.* NAUBAT SINGH . I. L. R. 2 All. 115

138. ——— *Sale of equity of redemption of two parcels—Second mortgage of six parcels and redemption of one by mortgagor—Transfer of Property Act, s. 60—Redemption by purchaser of two parcels on payment of proportionate amount of debt decreed.* In 1873 *R* mortgaged to *S* seven parcels of land (items 1-7) for R300. In 1880 *M* purchased *R*'s rights in items 1 and 2. In 1881 *R* redeemed item 5 on payment of R30 and executed a second mortgage of the rest to *S* for R200. *Held*, that *M* was entitled to redeem items 1 and 2 on payment of a proportionate amount of the first mortgage debt. SUBRAMANYAN *v.* MANDAYAN . . . I. L. R. 9 Mad. 453

139. ——— *Breaking up security—Mortgagee allowing mortgagor to pay a portion of the mortgage debt and releasing part of the mortgaged property—Transfer of Property Act (IV of 1882), s. 60.* A mortgagee, by allowing his mortgagor to pay a portion of the mortgage-debt and releasing a proportionate part of the mort-

140. ——— *Subsequent mortgage of same land—Decree on first mortgage—Effect of sale in execution of some of mortgaged subject*

—Apportionment of mortgage-debt ... of which four ... iffs mortgaged to one *S* seven fields, ... In 1876 they were Survey Nos 22, 23, 40 and 41.

defendants, sold subject to ... The plaintiffs themselves purchased them at the sale. The plaintiffs now sued to redeem the remaining lands comprised in the mortgage of 1876, exclusive of those which had been sold in execution. *Held*, that they were entitled to redeem this part of the mortgaged property, as the mortgagees had themselves acquired the plaintiffs' (mortgagors') interest in the other part and so severed their claim under the mortgage. *Held*, also, that the plaintiffs were entitled to redeem on payment of such portion of the mortgage-debt as remained after deducting the portion of it to which the lands purchased by

MORTGAGE—*contd.*

8. REDEMPTION—*contd.*

(b) Redemption of Portion of Property—*contd*

defendants were liable. Pirjada Ahmadmiya Pirmaya v. Sha Kalidas Kanji

I. L. R. 21 Bom 544

141. ——— *Hindu law—Widow's estate—Mortgage by two co-widows—Sale of equity of redemption in execution of decree against one widow—Suit to redeem by other widow—Decree for redemption of moiety on payment of moiety of mortgage amount* A mortgage of ancestral estate having been made by *A* and *B*, two Hindu co-widows, the equity of redemption of the said estate was sold in execution of a decree for money against *B* only and purchased by the mortgagee. *Held*, that *A* was entitled to redeem only a moiety of the estate during the lifetime of *B*. Ariyaputri v. Alamelu . I. L. R. 11 Mad. 304

142. ——— *Transfer of Property Act (IV of 1882), s. 60—Effect of purchase by mortgagee of portion of the mortgaged property* The purchase of a part of the mortgaged property

for money or in execution of a decree obtained by the mortgagee himself upon a subsequent mortgage, although it is possible that under some circumstances such purchase may have the effect of extinguishing the mortgage. *Ahmad Wali v. Bakar Husain, All. Weekly Notes (1883) 91*, overruled *Azimut Ali Khan v. Jowahir Sing, 13 Moo I. A. 404; Nilakant Banerji v. Suresh Chandra Mullick, I L. R 12 Calc 414; Mahtab Singh v. Misree Lall, 2 Agra 88, Bitthul Nath v. Toolsee Ram, 1 Agra 125, Kesree v Seth Roshun Lal, 2 N W. 4; Kuray Mal v. Puran Mal, I. L. R. 2 All 565, Mahtab Rai v. Sant Lal, I. L R 5 All 276; Sumera Kuar v. Bhagwant Singh, All Weekly Notes (1895) 1; Chunna Lal v. Anandi Lal, I. L. R 19 All 196; Khwaja Bakhsh v. Imaman, All. Weekly Notes (1895) 210; Ballam Das v. Amar Raj, I. L R 12 All. 537*; and *Bisheshar Singh v. Laik Singh, I L. R. 5 All 257*, referred to. Nand Kishore v. Hari Raj Singh . . . I. L. R. 20 All. 23

143. ——— *Purchase by third parties of mortgagee's interest in portions of mortgaged property—Redemption and apportionment of liability of purchasers for the mortgage charge—Joinder of parties—Mortgage account—*

costs, on the ground that their claims to portions of the mortgaged property, under titles prior to, and independent of the mortgagee's title, could not be decided therein A decree was then made against the mortgagor, and on his subsequent failure to

In a

repre-

who

cluded from afterwards claiming to redeem; and (b) the proportion of mortgage charge for which

that the defendants, without any account being taken at all, should retain possession of the portion purchased as above stated, clear of the pro-

144 ——— *Right of one of several joint mortgagors to redeem the whole estate—Parties to a redemption suit* In the case of joint-family property, which, though held in certain shares by the several coparceners, is mortgaged as a whole and redeemable upon payment of

of the four sons of *P*, the owner of the remaining half share The plaintiffs were the owners, by pur-

purchased privately the shares in the equity of redemption belonging to Bala, the fifth son of *S*, and to Saya and Devji, two of the sons of Baba, the fourth son of *S*. Under these sales, they claimed to be owners of a four pies share in the takshim.

MORTGAGE—*contd.*

8. REDEMPTION—*contd.*

(*b*) REDEMPTION OF PORTION OF PROPERTY—*contd.*

village, though held in certain shares by the original mortgagors, was undivided family property, which was mortgaged as a whole and for an entire sum, the plaintiffs, as owners by purchase of a part of the equity of redemption, had a right to redeem the whole of the sixteen pies takshim; and this right could not be affected by the conduct of the defendants *post litem motam*, either by their purchase of a share in the equity of redemption pending the suit, or by the partial redemption allowed by them pending the appeal *Held*, also, that the defendants had no power to permit partial redemption, as before partition none of the co-sharers would redeem any particular share. NARO HARI BHAVE *v.* VITHALBHAT
I. L. R. 10 Bom. 648

SAKHARAM NARAYAN *v.* GOPAL LAKSHUMAN
I. L. R. 10 Bom. 656 note

ALIKHAN DAUDKHAN *v.* MAHOMADKHAN SHAM SHERKHAN DESMUKH I. L. R. 10 Bom. 658 note

145. ——————— *Sale by mortgagor of part of mortgaged property pending redemption suit—Sale by mortgagor of rest of mortgaged property after decree for redemption—Application by purchasers for execution of decree—Subsequent suit for redemption by one purchaser—Sale pendente lite.* One *M* sued the defendant *R* for partition The defendant pleaded a prior partition, and alleged that the property which *M* now

MORTGAGE—*contd.*

8 REDEMPTION—*contd.*

(*b*) REDEMPTION OF PORTION OF PROPERTY—*contd.*

(X of 1877). As such representative, he might have

date of the decree,—*i.e.*, in May 188[illegible] the right of iff could not, by any step, prevent the defendant as mortgagee against *M* from growing and perfecting itself during the six months allowed for redemption. RAMCHANDRA KOLATKAR *v.* MAHADAJI KOLATKAR . I. L. R. 9 Bom. 141

146. ——————— *Right to redeem* [illegible] *inheritance.* The plaint-

inheritance from her father and [illegible] The purchase-deed of 1863 notwithstanding money under the sale-deed represented personal debts of *M* and *N*, one of the brothers. The plaintiff did not claim as an heir of *M*, whose death [illegible] *M* did not profess in the [illegible] ter either as [illegible] ng for them [illegible] a minor at [illegible] *N*, being his the time, and *M* was not an [illegible] step-mother. Under Mahomedan law, she could not have disposed of her daughter's property as her guardian, and not being one of *N*'s heirs she could not deal with his estate on behalf of his real heirs. At the time of sale half the mortgage term had not expired, the mortgage-debt was not claimable at the time, and the sale with a view to its liquidation was unnecessary. Under these circumstances, the plaintiff's claim was decreed. IMAMAN *v.* LALTA BUKSH . 7 N. W. 343

147. ——————— *Redemption of a share of mortgaged property upon payment of proportionate debt—Parties—Transfer of Property Act (IV of 1882), s. 60—Interest.* Where a suit was brought upon a mortgage against the original mortgagor,

MORTGAGE—*contd*

8 REDEMPTION—*contd*

(*b*) Redemption of Portion of Property—*concld.*

and upon the latter's death all his heirs were not brought on the record and in execution of the decree thus obtained the mortgaged property was sold —*Held*, that, in a suit by the heirs not on the record, they were entitled to redeem their share of the mortgaged property upon payment of a proportionate share of the mortgage debt Surya Bibi v. Monindra Nath Roy

4 C. W. N. 507

148 ———— *Usufructuary mortgage followed by lease to mortgagor—Suit for redemption—Arrears of rent sought to be included in the mortgage debt—Diminution of security—Acquiescence of mortgagee in loss of part of the security* The day

that the two transactions must be treated as separate, and the mortgagor could not be compelled as a condition precedent to redemption of the mortgage, to pay off the charge created by the kabuliat. *Tajjo Bibi* v. *Bhagwan Prasad, I. L R. 16 All. 295*, referred to. At the time of the mortgage one of the mortgaged villages was the subject of a suit for pre-emption, which was ultimately successful and the village passed out of the hands of mortgagees. The mortgagees, however, made no effort to obtain any equivalent from the mortgagor, but remained in possession of the rest of the mortgaged property for some years, apparently satisfied with the security. *Held*, that the mortgagees were not under the circumstances entitled to claim anything from the mortgagor on redemption on account of the rents and profits of the village of which they had been so deprived. *Partab Bahadur Singh* v. *Gajadhar Bakhsh Singh, L R 29 I. A. 148, s.c. I. L. R. 24 All. 521*, referred to Khuda Bakhsh v. Alim-un-nissa (1905)

I. L. R. 27 All 313

149. ———— *Redemption, right of—Transfer of Property Act (IV of 1882), s 60—Mortgage—Effect of purchase by mortgagees of part*

MORTGAGE—*contd*

8 REDEMPTION—*contd*

(*c*) Redemption otherwise than on Expiry of Term.

150. ———— **Redemption after expiry of time**—*Mortgage becoming absolute on default of redemption—Security for repayment of loan* Where an instrument of mortgage, though in terms, it transfers an estate on failure to repay the mortgage

may in equity and good conscience redeem the property by paying off the principal debt and interest, though the stipulated time for payment has been allowed to pass by. Ramji bin Tukaram v Chinto Sakharam . . . . . . 1 Bom. 199

Muhammad valad Abdul Mulna v. Ibrahim valad Hasan . . 8 Bom A. C. 160

151

borrowed, and stipulates that on default the mortgagee shall be put into exclusive possession and enjoyment of the property, will not be treated

152. ———— *Mortgage for fixed term* *R* mortgaged certain land to *A* in 1844, stipulating that, if he (*R*) failed to pay a moiety of the mortgage-money within three years or wholly

had thereby lost all right to the property. Subsequently to 1847, the property changed hands.

also admitted, in a suit brought against him in 1850 by *A*, that he had sold the land to *A*. In a suit brought by *R* against *A* in 1867 to redeem the mortgaged property —*Held* (following the decision in *Ramji bin Tukaram* v. *Chinto Sakharam, 1 Bom. 199*), that *R* was entitled to redeem the property. Ramshet Bachashet v. Pandharinath

8 Bom. A. C. 236

See Krishnaji *alias* Babaji Keshav v. Ravji Sadashiv . . . . . . 9 Bom 79

153. ———— *Gahan lahan clause.* Since the decision of the case of *Ramji bin Tukaram* v. *Chinto Sakharam, 1 Bom. 199*, it has,

MORTGAGE—*contd.*

8. REDEMPTION—*contd.*

(c) REDEMPTION OTHERWISE THAN ON EXPIRY OF TERM—*contd.*

been the practice of the High Court, on its appellate

withstanding that such fixed time has expired. Such practice has proved beneficial, and should be adhered to. *Ramji bin Tukaram* v. *Chinto Sakharam, 1 Bom. 199*, and the cases decided in accordance with it, referred to and followed. SHANKARBHAI GULABBHAI *v.* KASSIBHAI VITHALBHAI

9 Bom. 69

154. ——————— *Mortgage with clause of conditional sale.* The plaintiff sought to redeem two mortgages executed by his father in 1839 in favour of the defendant. The mortgages contained gahan lahan clauses, in virtue whereof the defendant denied the plaintiff's right to redeem, and contended that the lands mortgaged had become his absolute property, which contention the lower Courts disallowed, holding the lands redeemable. *Held*, that the lower Courts were right in recognising the plaintiff's right to redeem as still in existence, the rule laid down in the case of *Ramji* v. *Chinto, 1 Bom. 199*, being in force in the Presidency of Bombay with regard to mortgages containing clauses of conditional sale. RAMCHANDRA BABA SATHE *v.* JANARDHAN APAJI . . I. L. R. 14 Bom. 19

155. ——————— *Mortgage with clause of conditional sale—Gahan lahan—Merger—Admissions in depositions or pleadings—Estop-*

specting other land, which deed mentioned the land in dispute as being in the possession and enjoyment of the same mortgagee as purchaser thereof. In 1866 the defendant-mortgagee brought a suit on the mortgage of 1854, as also on other mortgages, and claimed R721 as due upon the mortgage after

sale clause the mortgage did not subsist, and that the present suit was barred by the suit of 1866. The lower Courts held the plaintiff's claim to be too stale for admission, and the mortgage of 1854 to be merged in the decree of 1866, and rejected the claim. On appeal by the plaintiff to the High Court.—*Held*, reversing the decree of the lower Courts, that the mortgage in question still subsisted, regard being had to the rule in *Ramji* v. *Chinto, 1 Bom. 199*, which is still in force in the Presidency of Bombay

the plaintiffs were prevented from redeeming it. *Held*, that such understanding (being similar to an admission in a deposition or pleading) did not operate as an estoppel or prevent the mortgagors (plaintiffs) from redeeming their property. ABDUL RAHIM *v.* MADHAVRAV APAJI

. I. L. R. 14 Bom. 78

156. ——————— *Agreement in a subsequent deed to postpone redemption until pay-* ... contained in a

LEKAR . . . . I. L. R. ...

But *see* ABDUL HAK *v.* GULAM JILANI

I. L. R. 20 Bom. 677

and SARI *v.* MOTIRAM MAHADU.

I. L. R. 22 Bom. 375

157. ——————— *Conditional sale.* A mortgagor stipulated by an instrument in writing that if he failed to repay the sum lent on mortgage ... mortgaged was

lent had not been repaid ... LANA GAUNDAN *v.* PALANI GAUNDAN . 2 Mad. ...

158. ——————— *Usufructuary mortgage.* The plaintiff executed an usufructuary mortgage of certain land for a term of twenty-two years to the first defendant, for the considerations stated in a written instrument of mortgage, dated the 21st of January 1863. The mortgage instrument contained *a stipulation* that possession should be given to the plaintiff upon his paying *the principal* and interest due to the first defendant within two months from the date of the execution. *Held* that the plaintiff was entitled to redeem, although the amount of principal and interest had not been paid or tendered within two months. DORAPPA *v.* KUNDIKURI MALLIKARJUNUDU . 3 Mad. 363

159. ——————— *English law—Construction.* The decisions of the Sudder Court at Madras carried the doctrine of relief after the time named

MORTGAGE—*contd.*

8. REDEMPTION—*contd.*

(c) REDEMPTION OTHERWISE THAN ON EXPIRY OF TERM—*contd.*

in the conveyance so far as to say that wherever the security for money is an object of the transaction, no sale can become absolute. The High Court have followed the English rule, and have held the question one of construction—a limiting, however, for the purpose of the construction other documents and oral evidence. LAKSHMI CHELLIAH GARU *v.* SRIKRISHNA BHUPATI DEVU MAHARAJ GARU . . . . 7 Mad. 6

160. ———— Reasonable time—*Power of sale by mortgagor—Suit to remove attachment.* Claim by a mortgagee to remove an attachment, placed by a judgment-creditor of the mortgagor, on the ground that the entire ownership of the property had passed to him at the date of attachment. The mortgagee had never had possession of the mortgaged property, and by the stipulations of the deed the mortgagor had a power of sale after the expiration of the time fixed for the payment of the debt, and it was only on the failure to exercise this power that the proprietary title would pass to the mortgagee. *Held*, that, under a condition of this character, a reasonable time must be allowed for the exercise of the power of sale, and that the fact that no sale had taken place within

ant was only a mortgagee, and the suit to remove the attachment could not be maintained. KONER MANOHAR MAHAJAN AMBEKAR *v.* NARO HARI DASPUTRE . . . . 1 Bom. 167

161. ———— Zur-i-peshgi lease—*Redemption before expiry of time—Suit for redemption of zur-i-peshgi mortgage.* A mortgagor who has granted a zur-i peshgi lease can sue to recover possession of his lands before the expiry of the term fixed by the lease, on the ground that the mortgage-debt has been satisfied by the mortgagee's receipts while in possession. PUNJUM SINGH *v.* AMEENA KHATOOM . . . . 6 W. R. 6

162. ———— *Transfer of Property Act, ss. 60, 62 (a)—Mortgage with possession—Time for redemption of mortgage—Provi-*

that the suit should be dismissed. TIRUGNANA SAMBANDHA PANDARA SANNADHI *v.* NALLATAMBI I. L. R. 16 Mad. 486

163. ———— Hindu and English law—The same principle exists both in the English and the Hindu law that the right of the mortgagor to redeem does not, in the absence of any

164. ———— Mortgage for fixed period—*Act XXVIII of 1855.* *Held*, that a mortgage effected for a fixed period subsequent to Act XXVIII of 1855 coming into operation, is not redeemable until the period for which it was effected has expired, and that under the circumstances the mortgagor's remedy was to sue for the balance of the mortgage loan which had not been paid to them. MUN PEARY *v.* SHIVA DEEN . . 1 Agra 91

165. ———— *Cause of action—Mortgage for fixed term.* The general principle as to redemption and foreclosure is that, in the

would pay the debt, with interest, within ten years and redeem the mortgaged property. In a suit instituted on the 30th July 1877 for the redemption of the property the mortgagee contended that the time had not expired. *Held*, that the suit was unsustainable, because prematurely instituted, the mere use of the word "within" not being a sufficient indication of the intention of the parties that the mortgagor might redeem in a less period than ten years. VADJU *v.* VADJU . I. L. R. 5 Bom. 22

166. ———— *Transfer of Property Act (IV of 1882), ss. 60, 62—Mortgage containing covenant to repay "within" a given time—Mortgagee's right to foreclose.* Certain premises were mortgaged with possession in 1896, the mortgagor, in the instrument of mortgage,

ment of payment of mortgage-money is *primâ facie* intended for the benefit of the mortgagor; the parties to an instrument of mortgage may, how-

MORTGAGE—*contd.*

8. REDEMPTION—*contd.*

(c) REDEMPTION OTHERWISE THAN ON EXPIRY OF TERM—*contd.*

ever, by the language of their contract, show their intention that redemption may take place only at the end of a given term. The covenant as worded, so far from showing an intention to preclude the mortgagor from redeeming, reserved the liberty to redeem at pleasure. *Vadju* v. *Vadju, I. L. R. 5 Bom. 22*, and *Tirugnana Sambandha Pandara Sannadhi* v. *Nallatambi, I. L. R. 16 Mad. 486*, considered. ROSE AMMAL *v.* RAJARATHNAM AMMAL

I. L. R. 23 Mad. 33

167. ——— *Mortgage for fixed term.* A mortgage-deed, which was executed in March 1858, provided for the redemption of the mortgaged property after the expiration of fifteen

the time fixed for redemption in the mortgage-deed had already expired. *Held,* on special appeal, in reversal of the decree of the lower Court, that in 1867, when the suit was brought, the right even to redeem the mortgaged property as a whole had not accrued, and that therefore the action was premature LILA MORJI *v.* VASUDEV MORESHVAR GANPULE . . . . . . 11 Bom. 283

168. ——— *Mortgage for fixed term.* Where money was lent on mortgage without a stipulated rate of interest, and it was mutually agreed that the mortgagee was to retain possession for a given period precisely calculated, the stipulation was held to involve a condition that the property was not to be taken out of the hands of the mortgagee before the expiration of that time. SREEMUNT DUTT *v.* KRISHNANATH ROY

25 W. R. 10

169. ——— A mortgage-deed, dated the 15th March 1883, stipulated that the mortgagor would "pay the interest every year, and the principal in ten years;" that "the principal shall be paid at the promised time, and the interest every year," and that upon failure by the mortgagor to pay the principal and interest "at the stipulated period," the mortgagee should be at liberty to

MORTGAGE—*contd.*

8. REDEMPTION—*contd.*

(c) REDEMPTION OTHERWISE THAN ON EXPIRY OF TERM—*contd.*

expired, to redeem the property. *Vadju* v. *Vadju, I. L. R. 5 Bom. 22,* referred to. RAGHUBAR DAYAL *v.* BUDHU LAL . . . I. L. R. 8 All. 95

170. ——— Usufructuary mortgage—*Mortgagor entitled to redeem before expiration of term unless mortgagee can show that the terms binds mortgagor.* No such general rule of law exists in India as would preclude a mortgagor from redeeming a mortgage before the expiry of the term for which the mortgage was intended to be made unless the mortgagee succeeds in showing that by reason of the terms of the mortgage itself, the mortgagor is precluded from paying off the debt

creation of a term is by no means conclusive on the point. The term fixed for payment of a debt should be presumed to be a protection only for the debtor till a contrary intention is shown. BHAGWAT DAS *v.* PARSHAD SING . I. L. R. 10 All. 602

171. ——— *Usufructuary mortgage.* Plaintiff borrowed a sum of money for defendant, and executed what he called a "usu-

172. ——— *Usufructuary mortgage—Suit for redemption on deposit of balance due.* A executed an ikrar by way of mortgage, whereby it was stipulated that B, the mortgagee, was to remain in possession of the mortgaged premises for a period of eight years; that the amount due was to be paid off from the usufruct; and that, if at the expiry of that period any sum should remain due under the ikrar, A was to pay the same. In a suit for redemption brought before the expiry of the period mentioned in the ikrar on deposit of the amount due thereunder,—*Held,* that the suit would not lie. CHANDRA KUMAR BANERJEE *v.* ISWUR CHANDRA NEWGI

6 B. L. R. 563 : 14 W. R. 435

MORTGAGE—*contd.*

8. REDEMPTION—*contd.*

(c) REDEMPTION OTHERWISE THAN ON EXPIRY OF TERM—*contd.*

But *see* DINDOYAL SHAH *v.* GANESH MAHATUN 6 B. L. R. 56 note : 12 W. R. 528 note

which, however, was decided on the supposition that the mortgage was executed previously to Act XXVIII of 1855. SURJAN CHOWDHRY *v.* IMAM BANDI BEGUM . . . 6 B. L. R. 566 note 12 W. R. 527

173. ———— Mortgage for a term—*Intention of parties.* When the continuance of the enjoyment of property mortgaged for a prescribed period forms a material part of the contract, the mortgagee cannot be deprived of his right to enjoyment on the mere ground that the contract is one of mortgage. The creation of a term is not conclusive evidence that redemption should not take place before the end of the term. But where there was no agreement for payment of interest at an annual rate, but a lump sum equal to the principal was to be accepted as interest for the term, and a small balance of rent was to be paid at the end of the term when the land was returned, and, taking the net annual usufruct at a fixed sum, a term of years was created, during which the debt and interest were to be liquidated by that usufruct, the risk of seasons and payment of quit-rent falling on the mortgagee :—*Held*, that the basis of the contract was the enjoyment of the property by the mortgagee for the term fixed. SETRUCHERLA RAMABHADRA RAJU BAHADUR *v.* VAIRICHERLA SURIANARAYANA RAJU BAHADUR . . . I. L. R. 2 Mad. 314

174. ———— Dekkhan Agriculturists' Relief Act (XVII of 1879). The rule of law that the right to redeem is co-extensive with the

I. L. R. 6 Bom. 154

175. ———— *Dekkhan Agriculturists' Relief Act (XVII of 1879), ss. 15 (b) and 20—Instalment decree. Mortgagee in possession under the decree for a specified time—Right to redeem before the specified time.* Where under a decree passed in a redemption suit, brought

mortgagor. RAMCHANDRA RAGHUNATH KULKARNI *v.* KONDAJI . . . I. L. R. 22 Bom. 221

176. ———— Question of title—*Suit for redemption.* In a suit for redemption the mort-

177. ———— Redemption after expiry of time—*Period for redemption—Enlargement of time—Order refusing enlargement—Appeal—Civil Procedure Code (XIV of 1882), s. 244—Usufructuary mortgage—Foreclosure—Transfer of Property Act (IV of 1882), ss. 92 and 93.* In a suit for redemption of a usufructuary mortgage, the plaintiff, on 26th June, 1899, obtained a decree allowing six months for redemption. On the 14th November,

demption may be made after the prescribed time has expired. An order refusing to enlarge the time prescribed in a decree for redemption is appealable under s. 244 of the Civil Procedure Code. In cases of usufructuary mortgage, decrees for foreclosure should not be made. See ss. 92 and 93 of the Transfer of Property Act (IV of 1882). RANGO *v.* BHOMSHETTI (1901) . I. L. R. 26 Bom. 121

178. ———— *Death of mortgagee—Notice by executors of mortgagee to mortgagor to redeem within three months—Sale of mortgaged property by mortgagor in order to pay off mortgage debt—No probate obtained by executors, and sale, therefore, not completed—Mortgage debt not paid within period of notice—Negligence of executors—Interest on mortgage ceased to run on expiration of notice to redeem.* In 1898 the plaintiff mortgaged certain property to one Shapurji Sukhia for R30,000 with interest at 7½ *per cent. per annum*, the debt to be repayable in one year. Shapurji died in 1901, and the defendants were the executors of his will, which had been lodged for safe

MORTGAGE—*contd.*

8. REDEMPTION—*contd.*

(c) REDEMPTION OTHERWISE THAN ON EXPIRY OF TERM—*contd.*

custody with the Registrar of Assurances. On 8th January, 1902, the defendants requested the Registrar to lodge the will in the High Court in order that they might obtain probate of it It was duly lodged on the 24th January 1902, and was sent to the Translator's Office for translation. On the 3rd February, 1902, the defendants gave notice to plaintiff to pay them the debt due on the mortgage intimating at the same time that they had taken steps to obtain probate. The plaintiff, in order to

sale, and requested inspection of the deeds relating to the property. The sale, however, was not completed by the 14th April, 1902, in consequence (as the plaintiff alleged) of defendants not having obtained probate, and the purchasers (Haji Osman & Co.) gave notice to the plaintiff that the purchase money was lying idle and that they would charge interest thereon. The plaintiff informed the defendant of this on the 23rd April, 1902 It appeared that the will was obtained from the Translator's Office on the 9th April, 1902 The plaintiff filed this suit for redemption on the 4th June, 1902. The defendants applied for probate of the will on the 17th June, 1902. *Held,* that the plaintiff (mortgagor) was not liable to pay interest on the mortgage after the 3rd May, 1902, *i e.,* after the expiration of the three months mentioned in the defendant's notice of 3rd February, 1902 After the receipt of that notice the plaintiffs were at liberty to pay the amount demanded to the legal representatives of the mortgagee, and the legal representatives were bound to be ready and able to execute a good and valid reconveyance to the plaintiff of the mortgaged property. If the defendants had used due diligence after obtaining the translation of the will on the 9th April, they could have obtained probate and been in a position to reconvey. PANDURANG KRISHNAJI *v.* DADABHOY NOWROJI (1902) I. L. R. 26 Bom. 643

179. ——— Redemption before expiry of term—*Suit for redemption—Conditions postponing redemption whilst allowing the mortgagee under certain circumstances to realize the mortgage money before due date.* The right of redemption and the right of foreclosure or sale are not always and under all circumstances co-extensive. Hence where in a mortgage with possession for a term of 15 years there was a covenant on the part of the mortgagor to the effect that, if the property "be found to have been mortgaged or hypothecated or transferred to anyone, or if there should arise any cause which might be considered likely to affect the total or partial loss of the principal mortgage money and interest, the mortgagee shall have power to realize the entire mortgage money, with interest thereon at the rate of

MORTGAGE—*contd.*

8. REDEMPTION—*contd.*

(c) REDEMPTION OTHERWISE THAN ON EXPIRY OF TERM—*concld.*

R3-2-0 per cent. per mensem"—*Held,* that this

Jilani, I. L. R. 20 Bom. 6.., and *Sari* v. *Motiram, I. L. R. 22 Bom. 375,* referred to. BHAWANI *v.* SHEODIHAL (1904) . . I. L. R. 26 All. 479

tary interest in the mortgaged property—Foreclosure.

Ford, [1900] *1 Ch. 142,* referred to. The widow of a usufructuary mortgagee in possession made a gift of the mortgaged property to *A H.* The donee mortgaged part of the property, the subject of this gift to *P N,* purporting to mortgage the full proprietary interest in the property. *P N* took proceedings for foreclosure against *A H,* as absolute owner and obtained foreclosure and possession of the property. *Held,* on the finding that *P N* ... that ... the ... *N* ... the ... by original mortgagor, to the ... Art. 134 of the second Schedule to the Limitation Act (XV of 1877). *Ahamed Kutti* v. *Raman Nambudri, I. L. R. 25 Mad. 99;* and *Ram Chandra Vithal* v. *Sheikh Mohidin, I. L. R. 23 Bom 614,* distinguished; *Bhagwan Sahai* v. *Bhagwan Din, I. L. R. 9 All. 97; Radhanath Doss* v. *Gisborne & Co, 14 Moo. I A. 1; Yesu Ramji Kalnath* v. *Balkrishna Lakshman, I. L. R. 15 Bom. 583; Behari Lal* v. *Muhammad Muttaki, I. L. R. 20 All 482; Maluji* v. *Fakir Chand, I. L. R. 22 Bom. 225; Manavikraman Ettan Thamburan* v. *Ammu, I. L. R. 21 Mad 471,* and *Narayan* v. *Shri Ram Chandra, I. L. R. 27 Bom. 373,* referred to. HUSAINI KHANAM *v.* HUSAIN KHAN (1907) I. L. R. 29 All 471

(d) MODE OF REDEMPTION AND LIABILITY TO FORECLOSURE.

181. ——— Payment of mortgage-debt—*Tender or deposit of debt—Beng Reg XVII of 1806, s. 7.* Under s. 7, Regulation XVII of 1806, if a mortgagee has obtained possession at any time before a final foreclosure of the mortgage, the mortgagor's payment or tender of the principal sum due under the mortgage-debt saves his equity of

MORTGAGE—*contd*

8 REDEMPTION—*contd*

(*d*) MODE OF REDEMPTION AND LIABILITY TO FORECLOSURE—*contd*

redemption *Held*, that the section applies where the mortgagee has obtained a decree for possession and wasilat, whether he executes it or not SAKBIMAN DICHIT *v*. DHARAM NATH TEWARI 3 B L R A C 141

182 ——— *Tender of portion of mortgage-debt* A mortgagor cannot ask for a decree for possession without tendering the whole of the mortgage-debt JOY GOBIND ROY *alias* BHOJRAJ ROY *v* BUNDHOO SINGH 17 W R. 342

183 ——— *Tender by one of several mortgagors* A tender by one or more of several mortgagors is not such as a mortgagee is

184 ——— *Deposit in Court by mortgagor—Legal tender—Right to mesne profits* Where a mortgagor deposits the amount of the mortgage for the express purpose of preventing a foreclosure, he is entitled to wasilat, of which the mere fact of his having put in a petition, which refers to some other suit between him and the mortgagee, but does not prevent the latter from taking out the deposit, cannot deprive him Where a mortgagor is liable for only a portion of the mortgaged property, but pays in the whole amount to secure himself against his co sharers, he is entitled to wasilat for the whole DABI DUTT SINGH *v* GOBIND PERSHAD . . . 25 W R 259

185. ——— *Deposit of mortgage-money—Tender—Notice of deposit* A deposit of the mortgage-money by a mortgagor, accompanied by a protest against the validity of the mortgage itself and a threat to sue for its cancelment, imposes no condition upon the acceptance of the money so as to render the tender invalid A deposit being once duly made, the mortgagor's equity of

186 ——— *Suit by purchaser from mortgagor for redemption—Tender of mortgage-money.* A purchaser of the right of redemption of a mortgagor may sue without tender out of Court of the mortgage-debt to the mortgagee The tender of the money out of Court only affects the purchaser's right to recover his costs. DINONATH BUTOBYAL *v*. WOMACHURN ROY. 3 W R 128

187. ——— Time for payment—*Year of grace* The year of grace counts from the date of issue of notice of application for foreclosure, and not from the date of service of the notice GHAZEEOOD-DEEN *v* BHOOKUN DOOBEY 2 Agra 301

MORTGAGE—*contd.*

8 REDEMPTION—*contd.*

(*d*) MODE OF REDEMPTION AND LIABILITY TO FORECLOSURE—*contd*

188 ——— *Time for payment—Year of grace—Holiday—Beng Reg. XVII of 1806* The year of grace allowed to a mortgagor by Regulation XVII of 1806 to tender or deposit the amount due to the mortgagee includes authorized holidays, the mortgagor not being entitled to the deduction of any holidays which may occur when that year expires KUMOLA KANT MYTEE *v*. NARAINEE DOSSEE . . . 9 W. R. 583

189. ——— *Time for payment—Beng Reg XVII of 1806, s 8—Extension of time* A Judge has no discretion to extend the time allowed to a mortgagor under s. 8, Regulation XVII of 1806 MAHOMED GAZEE CHOWDHRY *v*. ABDOOL MAHOMED AMEEROODEEN 5 W. R. Mis. 31

190 ——— *Time for payment—Deposit tender of mortgage money* Where a mortgagee extended the time for payment to the 25th November, and the mortgagor was prevented

Court was open The mortgagor having the op-

DABEE RAWOOT *v* HERAMUN MUHATOON 8 W. R. 223

191. ——— *Time for payment—Tender of mortgage-money—Notice of deposit to mortgagee* Where a decree declared plaintiff's right to redeem a mortgage whenever within the month of Jeth they paid the mortgage money, but

plaintiffs should not only have paid the money into

192. ——— Right of purchaser to redeem usufructuary mortgage—*Limitation* A zur-i-peshgi lease, being nothing but a simple mortgage, may be cancelled on proof of discharge of the advance, with interest from the usufruct, or on payment of the money in cash. The purchaser of the proprietary rights in a zur-i-peshgi is not barred from suing to redeem, because he, or those through whom he claims, did not sue for an

MORTGAGE—*contd.*

8. REDEMPTION—*contd.*

(*d*) MODE OF REDEMPTION AND LIABILITY TO FORECLOSURE—*contd.*

account within twelve years from the expiry of the term, or from discharge of the debt by the usufruct. PULTUN SINGH *v.* RESHAL SINGH . 1 W. R. 7

NUND LALL *v.* BALUK . . . 2 Agra 122

193. ——— Tender of payment—*Bye-bil-wafas—Foreclosure—Beng. Reg. III of 1795, s. 14; Beng. Reg II of 1805, s. 3; and Beng Reg XVII of 1806, s. 8.* Bye-bil-wafas or kut-kobalas are redeemable like ordinary mortgages and subject to foreclosure. It cannot be laid down as a rule, universally true, that under s 14, Regulation III, 1793, a mortgagee's proceeding for a foreclosure under a mortgage of the class of bye-bil-wafa simply cannot be preferred after twelve years from the expiration of the time which the instrument [illegible]

those which had not the semblance even of such a character, and would establish a bar arising from simple occupation, and not from the laches of the demandant or of others before him. When a mortgagee not only seeks the assistance of a Court to give him possession of his pledge, but also to foreclose [illegible]

back the very money tendered, is not a valid tender. PRANNATH CHOWDHRY *v.* RAMRUTTON ROY 4 W. R. P. C. 37

S. C. PRANNATH ROY CHOWDRY *v.* ROOKEA BEGUM 7 Moo I. A. 323

194. ——— *Payment into Court of redemption-money—Costs.* It is sufficient to bar a foreclosure suit that the principal money [illegible] been paid in- [illegible] an extended [illegible] without costs incurred by the mortgagor in the matter of the mortgage ZALEM ROY *v.* DEB SHAHEE

Marsh. 167 : 1 Hay 373

195. ——— *Beng. Reg. XVII of 1806, s 8—Mode of payment.* The mortgagors of certain landed property not having paid the money due on the mortgage within the stipulated period, the mortgagees, considering it unnecessary to proceed under s. 8, Regulation XVII of 1806, i.e., without waiting to foreclose the mortgage, brought a suit, obtained a decree, and took possession. *Held*, that, as the mortgagees took possession before final foreclosure, the mortgagors were in a position to redeem, and might do so by payment of the advance made on the mortgage, whether such payment was made in cash or realized by the mortgagees from the usufruct of the estate ISHAN CHUNDER BANERJEE *v.* JUGGUT CHUNDER DOSS 13 W. R 44

196. ——— *Payment by* [illegible]

posit in Court entitling the borrower [illegible] ABDOOL HUQ *v.* MYAH BEWAH . W. R. 1864, 181

197. ——— *Acceptance of payment—Subsequent objection.* A mortgagee who once takes the mortgage-money as deposited by the mortgagor within time cannot afterwards sue for [illegible] deposit was made [illegible] it he had [illegible] information [illegible] from his agent. [illegible] HOSSEIN *v.* WOOSULOONISSA BIBEE . 6 W. R. 249

198. ——— *Payment into* [illegible] *legal tender* The [illegible] the [illegible] of [illegible] the [illegible] sale [illegible]

sion of certain objections made by the mortgagee disputing the amount due under the [illegible] into Court was [illegible] and that the [illegible] NUBGOPAL [illegible] DABEA

MOONJURBEE DABEA *v.* [illegible] Marsh. 45 : 1 Hay 76

S.C. GOLUCKMONEE DEBEA *v.* NUBGOPAL MOONJUREE DEBEA . . . . W. R. F. B 14

199. ——— *Beng. Reg XVII of 1806—Stipulated period—Notice.* In a suit by a mortgagee for possession after foreclosure proceedings under Regulation XVII of 1806, on the ground that the mortgagor had failed to pay the money within one year from the notice, the defence was that the notice had been issued before the lapse of the time stipulated for repayment. The period stipulated for the payment of the principal sum was 3rd July 1866; but the deed contained a proviso that, if the mortgagor paid the interest every half year during the continuance of the security, the mortgagee would not enforce his security until the 3rd January 1871. *Held*, that the time for redemption expired with the period stipulated for the payment of the principal sum, i.e., the 3rd July 1866.

MORTGAGE—*contd*

8 REDEMPTION—*contd*

(*d*) MODE OF REDEMPTION AND LIABILITY TO FORECLOSURE—*contd*

WOOMA CHURN CHOWDHRY *v.* BEHAREE LALL MOOKERJEE . . . 21 W. R 274

200. ——— *Beng Reg. XVII of 1806, ss. 7, 8—Tender of mortgage-money—Unconditional tender* Where, in a suit for fore-

JASODA KUAR . . . I. L. R 6 All 399

201. ——— *Mortgage prior to Beng Reg XVII of 1806—Beng Reg I of*

202. ——— Interest—*Deed without provision for interest—Payment only of principal money* When a deed of mortgage is silent as to interest, payment of the bare principal within the year of grace is sufficient to bar foreclosure. RADHANATH SEIN *v* BUNGO CHUNDER SEIN

W R. 1864, 157

203. ——— Interest, payment of—*Interest exceeding principal Held*, that the deposit of the principal due, and a sum equal to the principal by way of interest, was sufficient under the law applicable to the case, and that no sum

204. ——— *Mortgage not providing for interest—Usufruct—Payment only*

MORTGAGE—*contd*

8 REDEMPTION—*contd.*

(*d*) MODE OF REDEMPTION AND LIABILITY TO FORECLOSURE—*contd*

205. ——— *Payment within a year—Reg. XVIII of 1806, s. 7—Interest.* Where interest is not reserved by the mortgage-deed, but it provides for repayment of the principal only, a payment into Court within a year after the institution of a foreclosure suit of the principal only

206. ——— *Mortgage with condition that mortgagor should remain in possession until default in payment of interest—Relief from forfeiture.* The defendant mortgaged certain premises to the plaintiff by a deed of mortgage, which contained a condition that the mortgagor should remain in possession so long as the interest was regularly paid Default in payment of the

of rent, together with interest upon each instalment and costs, and three months' time was allowed to the mortgagor to make such payment. SITARAM DANDEKAR *v* GANESH GOKHALE

6 Bom. A. C 121

207. ——— *Interest, non-payment of—Right of assignee of mortgagee to foreclose in default of payment.* Where the mort-

208. ——— *Default in payment of interest—Action on covenant before princi-*

due and payable with a power of sale on such de-

MORTGAGE—*contd*

8. REDEMPTION—*contd.*

(*d*) MODE OF REDEMPTION AND LIABILITY TO FORECLOSURE—*contd.*

instalment of interest, but before the date on which the principal was payable, the plaintiff could only recover on either the covenant or the bond in respect of the interest unpaid. FOOL CHUND JOHURRY *v.* RAMKRISTO BOSE

1 Ind. Jur. N. S. 425

209. ——————— *Breach of condition in mortgage—Relief against forfeiture.* In November, 1873, *M* sued for the cancelment of a deed of usufructuary mortgage executed by her in Nov- [illegible]

annuity of R16 during the term of the mortgage (twenty years) and also after foreclosure, otherwise, on any failure, they would be liable to ejectment and to the forfeiture of the mortgage. No payments of annuity had been made, and each failure to pay was held to be a separate breach of the condition. *Held*, that, if there had not been so many successive breaches, and if the defendants had at any time brought into Court the arrears with interest or had offered to do so, the Courts below, although they could not have passed a decree for the money, might have withheld a decree for enforcing the forfeiture. SADHA *v.* BHAGWANI . 7 N W. 53

210. ——————— *Mortgage by conditional sale—Beng. Reg XVII of 1806, ss. 7 8—Redemption.* In the part of India where Bengal Regulation XVII of 1806 is in force, the right to redeem a mortgage by conditional sale depends entirely upon it, whatever may be the true construction of the terms of the condition in regard to payment of interest Within a year after notification of a petition for foreclosure a mortgagor deposited the principal debt, and interest for the last year of the mortgage term, which had expired. Interest for prior years of the term had not been paid; but this, according to the mortgagor's contention, was, by the terms of the condition, treated as a separate debt. *Held*, that as the mortgagor had not deposited the interest due on the sum lent, required, according to s. 7 of the Regulation, where, as here, the mortgagee had not obtained possession, and as the year of grace had expired, the conditional sale had become conclusive under s 8, involving the dismissal of the mortgagor's suit for redemption. MANSUR ALI KHAN *v.* SARJU PRASAD

I. L. R. 9 All. 20
L. R. 13 I. A. 113

211. ——————— *Conditional sale—Interest—Mesne profits—Foreclosure—Beng. Reg. XVII of 1806, s. 7.* A deed of conditional sale, after reciting that the vendor had received the sale-consideration (R199) and had put the vendee in such possession of the property as the vendor himself had, proceeded as follows: "I (vendor) shall not claim mesne profits, nor shall the vendee claim interest: in case the vendee does not obtain possession, he shall recover mesne profits for the period [illegible]

vendee did not get possession of the property for some years, and, on the expiry of the term, took proceedings under Regulation XVII of 1806 to foreclose. The legal representative of the vendor deposited the sale-consideration mentioned in the deed of conditional sale (R199) within the year of grace. In a suit by the vendee for possession of the property, the sale having been declared absolute, the question arose whether or not the legal representative of the vendor should have deposited, by way of interest, in order to prevent the sale from becoming absolute, in addition to the sale-consideration, the amount of mesne profits for the period the vendee was out of possession of the property. *Held* (SPANKIE, *J.*, dissenting), on the construction of the deed of conditional sale, that the deposit of the sale-consideration (R199) was sufficient for the redemption of the property. RAMESHAR SINGH *v.* KANHIA SAHU . . I. L. R. 3 All. 653

212. ——————— *Lease of mortgaged property by mortgagee to mortgagor—Intention of parties as to mode of payment and default—Remedies of mortgagee under mortgage.* On the 16th March, 1874, *L* gave *M* a mortgage on certain land for R24,000 for a term of ten years, by which it was provided, *inter alia*, that the mortgagee should take the profits of the land in lieu of interest; that the mortgagee should grant a lease of the land to the mortgagor, the latter paying the former the profits of the land every harvest in lieu of interest; that if the mortgagor failed to pay the mortgagee the profits of the land by the end of any [illegible] principal amount [illegible] ent [illegible] in such [illegible] to the case the mortgagee should [illegible] failed to pay the [illegible] year, the [illegible] of the lease [illegible] the rents [illegible] of interest thereof and apply the same [illegible] On the 21st March, 1874, *M* gave *L* a lease of the land, under which R1,980 was the sum agreed to be payable *annually* as profits in lieu of interest. In 1879 *M*, who had not been paid any profits, sought to enforce in the Revenue Courts the conditions as to entry on the land, but was successfully resisted by *L*'s widow. On the 16th January 1880, *M* sued *L*'s widow for interest on the principal amount of the mortgage at the rate of one per cent. calculated from the date of the mortgage to the date of suit, claiming the same by virtue of the provisions of the mortgage, on the ground that he had not been paid any profits. *Held*, that the mortgagee

MORTGAGE—*contd.*

8. REDEMPTION—*contd.*

(*d*) MODE OF REDEMPTION AND LIABILITY TO FORECLOSURE—*contd*

and lease transactions must be regarded as one and indivisible, and the questions at issue between the parties be dealt with *quâ* mortgagor and mortgagee, that so regarding such transactions and deal-

possession, but on the contrary had been resisted

rest, which related to the period during which the widow had been in possession and in receipt of the profits, that it should be recoverable from her personally. BHAGHELIN v. MATHURA PRASAD

I. L. R. 4 All 430

213. ———————— *Usufructuary mortgage—Interest, payment of—Beng Reg XXXIV of 1803, ss 9, 10—Act XXVIII of 1855—Act XIV of 1870—Transfer of Property Act (IV of 1882), ss. 2, 62* A deed of usufructuary mortgage executed in 1846, under which the mortgagee had obtained possession, contained the following conditions. "Until the mortgage-money is paid the mortgagee shall remain in possession of the

neither they nor their heirs shall have any right in the property" In 1884 a representative in title of one of the original mortgagors sued to redeem his share of the mortgaged property, upon the allegation that the principal amount and interest due

interest at the rate of 12 per cent per annum

struction of the deed was that it was arranged that the mortgagee should have possession of the property and enjoy the profits thereof, until the principal sum was paid, in lieu of interest. *Held*, that the provisions of ss 9 and 10 of Regulation XXXIV of 1803, which was in force when the deed of mortgage was executed, were not affected or abrogated by Act XXVIII of 1855 or Act XIV of 1870 or Act IV of 1882; that these provisions were

UL-LAH . . . . . I. L. R. 8 All 402

214. ———————— *Usufructuary mortgage—Interest—Waiver* By a deed of usufructuary mortgage dated in 1875, a sum of R30,000, with interest at R1 per cent. per mensem, was advanced on the security of certain property, for a period of ten years. The deed contained various provisions for securing the payment of interest to the mortgagee, and among these a provision that he should have possession of the property and take the profits on account of interest, the profits being fixed at a certain amount yearly, leaving an agreed balance of interest to be paid yearly in cash There was also a provision, that in the event of possession

years, during which no interest was paid. In November 1884 the mortgagee brought a suit against the mortgagors to recover the mortgage-money, claiming interest from the date of the mortgage-deed to the date of the suit at R1-6 per cent. per mensem *Held*, that the fair inference of fact from the circumstances above described was that the mortgagee waived the provisions for securing and recovering the interest, and that the transaction must be looked at as simply one of a loan for the specified period at the agreed rate, *i e*, R1 per cent. per mensem GANGA SAHAI *v* LACHMAN SINGH

I. L. R. 8 All. 194

215. ———————— *Interest—Suit for redemption—Transfer of Property Act, s. 84.*

for the original mortgagee In June, 1884, the mortgagor, proceeding under s 83 of the Transfer of Property Act, deposited in a Court the sum of R699, claiming the same to be adequate for redemption. The case was, however, struck off in consequence

MORTGAGE—*contd.*

8. REDEMPTION—*contd.*

(*d*) MODE OF REDEMPTION AND LIABILITY TO FORECLOSURE—*contd.*

of the pre-emptor's objection to receiving the deposit on the ground that it did not include the interest due on the mortgage. The deposit

August, 1884,

on account

.. uptor refused

to receive, *for the same* reason as before In a suit by the mortgagor for redemption of the mortgage, it was found that the amount deposited was all that was due on the mortgage on the 21st August, 1884 *Held*, that until the 23rd August, 1883, when the defendant enforced his pre-emptive decree by depositing the consideration for

defendant was not entitled to claim any interest on the mortgage money for the period

to the 23rd

proper person

for that period

and the Court

emption should

such interest

gage-money. *Asma Ali* v. *Mathura Kandu*, *I. L. R 5 All. 187*, referred to *Held*, with reference to s. 84 of the Transfer of Property Act (IV of 1882), that

money due on the mortgage DEO DAT *v.* RAM AUTAR . . . . . I. L. R 8 All. 502

216. ——————— *Mortgage by conditional sale—Interest—Foreclosure.* A deed of mortgage by conditional sale executed in 1872, giving the mortgagee possession, contained a stipulation that the principal money should be paid within ten years from the date of execution of the deed, and that, in default of such payment, the conditional sale should become absolute. It contained the following condition as to interest: "As to interest, it has been agreed that the mortgagee has no claim to interest and the mortgagor has none to profits." The mortgagee, however, did not obtain possession

property was

in execution

brought a su

and the heirs of the mortgagor, claiming the principal money with interest at 8 annas per cent per mensem. The defendants pleaded that the plaintiff was not entitled to claim interest. *Held*, that whatever claim the mortgagee

free from charge for interest to the purchaser. *Rameshur Singh* v. *Konahia Sahu*, *I. L. R. 3 All. 653*, referred to. ALLAH BAKHSH *v.* SADA SUKH

I. L. R. 8 All. 183

MORTGAGE—*contd.*

8. REDEMPTION—*contd.*

(*d*) MODE OF REDEMPTION AND LIABILITY TO FORECLOSURE—*contd.*

217. ——————— Covenant—*Usufructuary mortgage—Covenant by the mortgagor to pay the mortgagee arrears of rent due at the time of redemption—Payment by mortgagee of arrears of revenue —Right of mortgagee to reimbursement before redemption.* On the 27th August, 1883, *M* and *B* jointly executed two usufructuary mortgages for the sums of R3,000 and R5,000, respectively, in favour of the defendants. On the 24th March, 1886, the mortgagors executed another usufructuary mortgage in favour of the plaintiffs for R15,000, entitling them to possession of the property mortgaged. The second mortgagee instituted a suit to redeem the prior mortgages by depositing in Court the principal sum of R8,000 The defendants urged that a sum of R4,000 was due to them besides the principal

venue paid by the defendants, was due to them and decreed redemption of the property on condition of payment of the aforesaid sum Both the parties appealed. *Held*, that the items of arrears of rent were recoverable under the covenant contained in that behalf in the mortgage-deeds; as to the item for arrears of Government revenue, it was clear that, unless this revenue was duly paid, the whole estate might have been sold to realize it, thereby putting an end to all the rights of the

saved from sale for arrears of revenue could be redeemed. S 72 of the Transfer of Property Act only reproduces the rules of law which Courts of Justice in India have uniformly adopted. GIRDHAR LAL *v.* BHOLA NATH . I. L. R. 10 All. 611

218. ——————— *Redemption of mortgage—Interest claimed under terms of —Transfer of Property*

entitled to a decree for redemption, after the close of the second year, on showing that in the first half of the second year the principal

tender of the interest, of which payment was secured by the mortgage, an appeal was dismissed. HEWANCHAL SINGH *v.* JAWAHIR SINGH

I. L. R. 16 Calc. 307

219. ——————— Limitation—*Decree for redemption without proviso for foreclosure or payment*

MORTGAGE—*contd.*

8. REDEMPTION—*contd.*

(*d*) MODE OF REDEMPTION AND LIABILITY TO FORECLOSURE—*contd.*

within a fixed time—Effect of not executing decree for redemption A decree for redemption which does not provide for payment of the mortgage-debt, within a fixed time, or for foreclosure in case of default, operates of itself as a foreclosure decree, if not executed within three years. On 12th November, 1888, *A* obtained a decree for redemption on payment of a certain sum of money to *B* (the mortgagee) The decree contained no direction as to foreclosure, or as to the time within which the payment was to be made On 26th November, 1884 *B*, the mortgagee, sued to recover the mortgage-debt by sale of the property mortgaged On 8th April, 1885, *A* paid into Court the sum directed to be paid by the redemption decree *B* refused to accept the payment and insisted upon his right of sale. *Held*, that no time having been fixed by the decree for redemption, *A* had three years within which to execute the decree; and as he had paid the money within the three years, *A* was entitled to recover the property *Held*, also, that the decree for redemption would, if not executed within three years, operate as a foreclosure decree, and therefore effectually determine the rights under the mortgage both of the mortgagee and the mortgagor. MALOJI *v.* SAGAJI . . I. L. R. 13 Bom 567

220. — ——— *Decree for redemption—Absence of clause as to time of payment or foreclosure—Execution of the decree after three years—Darkhasts presented from time to time —Limitation Act (XV of 1877, Art 179)* Where a redemption decree contained no clause as to the time for payment of the mortgage-debt, or foreclosure in default of payment —*Held*, that the mortgagor could still, after the expiration of three years from the date of the decree, execute it by paying the

v. Sagaji, I L R. 13 Bom 567, disapproved of. NARAYAN GOVIND *v.* ANANDRAM KOJIRAM I. L. R. 16 Bom. 480

221.——— Mortgagee's costs—*Decree directing payment of mortgagee's costs on a certain*

pay the costs as directed. Thereupon the mortgagee applied in execution to have the property restored to his possession. The Subordinate Judge granted this application. The District Judge, in appeal, held that the decree did not provide for delivery of the property by the mortgagor to the mortgagee. He, however, directed the mortgagor to pay the mortgagee's costs with interest On

passed to the mortgagee. It was, therefore, not

I. L. R. 15 Bom. 644

222. ——— Default in payment—*Decree for redemption—Absence of clause for foreclosure on non-payment in three months—Default in payment in time allowed.* In a suit for redemption the mortgagors obtained a decree on 1st March, 1886, whereby they were directed to pay the mortgagee the sum of R649 within three months, whereupon they were to get possession of the mortgaged property. The decree contained no clause for foreclosure in the event of non-payment. On 19th

SANG *v.* ISHWARGAR BUDHAGAR I. L. R. 16 Bom. 243

223. ——— *Decree for redemption on payment of a certain amount, and on default, mortgagee to recover possession—Suit for an account by mortgagor—Right of suit.* A mortgagee having obtained possession of mortgaged

MORTGAGE—*contd.*

8. REDEMPTION—*contd.*

(*d*) MODE OF REDEMPTION AND LIABILITY TO FORECLOSURE—*concld.*

amount mentioned in the mortgage-decree. *Dattatraya Ravji* v. *Anaji Ramchandra, P. J. (1886) 237*, distinguished. RAMBHAT *v.* RAGHO KRISHNA DESHPANDE . . . I. L. R. 16 Bom. 656

TANI BAGAVAN *v.* HARI
I. L. R. 16 Bom. 659 note

224. ———— Transfer of Property Act (IV of 1882), s. 93—*Redemption decree—Time for and manner of redemption.* In a suit on a kanom or usufructuary mortgage brought by the mortgagor a decree was passed on 16th March, 1889, whereby it was only directed that on payment by the plaintiff of a certain sum within six months, the defendant should surrender the mortgage premises to him Against this decree an appeal was filed objecting both to the direction for surrender of the mortgaged premises and also to the sum fixed as the amount payable by the mortgagor. On 21st August, 1889, the appeal was withdrawn so far as concerned the first of these matters: as to [illegible]

mortgagees, and the mortgage premises were surrendered to the plaintiff On appeal by the mortgagees against this order —*Held*, that the appeal should be dismissed on the grounds that the mortgage had never obtained an order for sale under the Transfer of Property Act, s 93, and the mortgagor's equity of redemption had not become extinct, and that the necessity for a sale was obviated by payment before any order was made under that section KANARA KURUP *v.* GOVINDA KURUP . . . . I L. R. 16 Mad 214

225. ———— Future interest—*Decree for foreclosure giving future interest, effect of, as charging mortgaged property—Transfer of Property Act (IV of 1882), s. 86—Civil Procedure Code, s. 209.* Where in a decree for foreclosure interest subsequent to the decree was included in the amount made payable to the plaintiff, *Held*, that such future interest, supposing it could be properly [illegible]

[illegible]
I L. R. 16 All 269

See RAJ KUMAR *v.* BISHESHAR NATH
I L R 16 All 270

MORTGAGE—*contd.*

8 REDEMPTION—*contd.*

(*e*) INTEREST.

226. ———— *Redemption—Terms of redemption—Covenant by mortgagors to pay interest at 2 per cent.—Construction.* On the construction of a covenant in a deed of mortgage between Hindus that the mortgagors would on redemption pay interest "at the rate of 2 per cent," it was held by the Judicial Committee that the expression "2 per cent." meant "2 per cent per mensem." LEKHA SINGH *v.* CHAMPAT SINGH (1906)
I. L R 28 All 724

227. ———— *Mortgage—Decree, rate of interest in—Contract rate not compulsory after date fixed for redemption.* In suits on mort- [illegible]
g
c
r
India v. *Ateendrulayya, I. L R.* [illegible] lowed. SAMINATHAN CHETTIAR *v.* SWAMIAPPA NAICKER (1905) . . I L. R. 29 Mad 170

228. ———— *Rate fixed by Court in suit by prior mortgagee not binding in a subsequent suit by puisne mortgagee to redeem* When in a suit by a prior mortgagee a decree for sale is passed which fixes the rate of interest after the date for redemption the rate so fixed is not binding as between the prior mortgagee and a puisne mort- [illegible] to the suit In a [illegible] tion [illegible] ll be [illegible] rded [illegible] ce to [illegible] rcar [illegible] wed. [illegible], *11* *Gangadas* [illegible] *C. W. N. 403*, dissented from THENAPPA CHETTIAR *v.* MARIMUTHU NANDAN (1907)
I L R 31 Mad 258

(*f*) LIMITATION.

229. ———— *Limitation Act (XV of 1877), Sch II, Art. 179—Decree for redemption—Extension of time for payment of the mortgage amount—Execution.* In a suit for redemption of the mortgaged property the decree directed that, upon payment of the mortgage amount within six months from its date, the decree-holder should take possession of the mortgage property. The decree was affirmed on appeal on the 6th November, 1896 The decree-holder failed to pay the amount within the time fixed in the decree. The present application was made on the 15th October, 1902, to the Court to have the time extended for three months. The decree-holder's last application to execute the decree was made on the 21st April, 1897. *Held*, that the application was barred by limitation. Notwithstanding that time is granted to a mortgagor for payment, a decree for redemption such as that in the present case should be taken to be executable *from the passing of the decree* and is therefore governed by Art. 179, *Sch. II* of the

MORTGAGE—*contd.*

8 REDEMPTION—*contd*

(*f*) LIMITATION—*concld.*

Limitation Act *Rungiah Gounden v Nanappa Rou, I L R 26 Mad 780,* approved. ETYATI POOPARAMBIL BAVA v MATALAKAT KRISHNA MENON (1905) . . . . **I L R. 28 Mad 211**

230 ——————— *Stipulation for redemption within seven years—Suit for redemption—Limitation—Starting point* The plaintiffs' ancestor executed a sale-deed of certain property in favour of the defendant's ancestor who simultaneously executed an agreement to reconvey. The latter deed provided that if within a period of seven years (*andar miad sat sal*) the vendors paid to the vendee R300 which was the consideration for the sale, the vendee would reconvey the property *Held* that the transaction amounted to a mortgage by conditional sale, that the mortgagor had no right to redeem the mortgage before the expiry of seven years from the date of the mortgage, and that time did not begin to run until after seven years from the execution of the mortgage KALKA PRASAD v BHIKHAN DIN (1909) . **I L R 31 All 300**

(*g*) MISCELLANEOUS

231 ——————— **Interest**—*Interest on mortgage-debt—When interest ceases to run—Deposit by mortgagor under s. 83 of Transfer of Property Act (IV of 1882)—Duty of mortgagor making such deposit when mortgagee is a minor—Appointment of guardian ad litem—Transfer of Property Act (IV of 1882), ss. 84 and 103* On the 25th October, 1893, the plaintiff passed a mortgage deed to the defendant, which provided that in case of redemption the mortgagor should pay interest for the whole year in which such redemption should take place. On the 12th October, 1899, the mortgagor, with a view to redeem, deposited in Court, under s 84 of the Transfer of Property Act (IV of 1882), the sum of

necessary that a guardian *ad litem* should be appointed to receive notice of the deposit as required by s 83 Steps were accordingly taken to appoint the minor's mother, and, on the 18th November,

MORTGAGE—*contd.*

8 REDEMPTION—*contd*

(*g*) MISCELLANEOUS—*contd*

tional interest, holding that "on making the deposit the plaintiff (mortgagor) had done all that had to

additional interest The defendant (mortgagee) was a minor It was therefore requisite that a guardian *ad litem* should be appointed, both to receive service of the notice of deposit under s 83 and to take the deposit out of Court. It could not be said that the mortgagor (plaintiff) had

232 ——————— **Subsequent loan**—*Sale of equity of redemption—Further loan secured on same property after the sale—Purchaser of equity of redemption not bound to discharge subsequent loan before he can redeem—Transfer of Property Act (IV of 1882), s 80.* A mortgagor who has sold the equity

233. ——————— **Purchase from heir during administration suit**—*Rival mortgagees—Priority of title—Purchaser from Receiver in administration suit—Purchaser at sales in execution of mortgage decree—Transfer to benamidar, pendente lite—Transfer of Property Act (IV of 1882), ss. 52, 53.* When the estate of a deceased person is under administration by the Court or out of Court, a purchaser from a residuary legatee or heir buys subject to any disposition, which has been or may be made of the deceased's estate in due course of administration · the right of the residuary legatee or heir being only to share in the ultimate residue, which may remain for final distribution after all the liabilities of the estate, including the expenses of administration, have been satisfied As between the appellant and respondent, who were rival mortgagees of the property of a Muhammadan family, the Judicial Committee, reversing the decision of the High Court, upheld the title of the

MORTGAGE—*contd.*

8. REDEMPTIOF—*contd.*

(*g*) MISCELLANEOUS—*contd*

mortgage decree at sales, which took place pending the administration suit, in one case after the order for sale by the Court and in another after the actual sale by the Receiver in that suit. The shares of

that the appellant being, in execution of the decree in the mortgage suit, alone represented on each side of the record, could not rely on the sale effected in such circumstances in support of his title, or derive any advantage therefrom *Held*, also [without deciding whether such transfers could be avoided under s. 52 or 53 of the Transfer of Property Act (IV of 1882) in a properly constituted suit], that the appellant must be treated as the transferee for value of the entire equity of redemption, and that the respondent, therefore, had not made out any

234. ———— **Decree for redemption obtained before the mutiny**—*Possession of property remained with mortgagee, with whom it was settled and settlement confirmed by sanad—Effect of mutiny in Oudh—Payment of mortgage money—Delivery of possession delayed by notice of appeal by mortgager—Limitation of Suits Act (XIII of 1866)—Oudh Estates Act (I of 1869), s 6—Exclusion of mortgages from sanads—Subsequent suit for redemption—Civil Procedure Code, ss. 13 and 244* A usufructuary mortgage was executed in 1851 by the predecessor in title of the appellant in favour of the predecessor in title of the respondents, and in a suit for redemption of the mortgage the former had, shortly after the annexation of Oudh, obtained a decree allowing redemption on payment of the principal money only without interest Accordingly he paid the money into the Government treasury in April 1857, but did not get possession of the property as the mortgagee had given notice of appeal, on the question of interest, and in the mutiny which then took place the treasury was looted, so that the mortgagee never received the mortgage money. On the restoration of order the Government declined

property was settled with the mortgagee and his

MORTGAGE—*contd.*

8. REDEMPTION—*concld.*

(*g*) MISCELLANEOUS—*concld.*

moved by the passing of Acts XIII of 1866 and I of 1869, s. 6 of which latter Act provided, as to lands

principal money and such interest as the Court

broke out that under

them
held to
Code
it was
missal
having

suit brought in 1869, the app

cient to support the plea of *res judicata*. The fact that the suit was brought for the entire property mortgaged proved nothing To maintain the plea of *res judicata* it must appear from inspection of the record that the person whose interest it is sought to bind, was in some way a party to the suit. CHAUDHURI AHMAD BAKSH *v.* SETH RAGHUBAR DAYAL (1905) . . I. L. R. 28 All 1

9. FORECLOSURE.

See MORTGAGE—REDEMPTION.

(*a*) RIGHT TO FORECLOSURE.

1 ———— **Right in mortgage by conditional sale.** A mortgagee under an instrument creating a conditional sale has the right to foreclosure The decisions of the Sudder Court that no mortgagee could ever foreclose the mortgagor's

MORTGAGE—*contd*

9 FORECLOSURE—*contd*

(a) RIGHT TO FORECLOSURE—*contd*

equity of redemption overruled VENKATCHELLAM PILLAY v. TIRUMALA CHARY . 2 Mad 289

2. ———— — *Forfeiture of priority.* The power of foreclosure is incidental to

3 ———— Beng Reg XVII of 1806—*Agreement of parties.* *Held*, that a conditional sale may, by agreement and acts of the parties, become absolute without formal foreclosure proceedings taken under Regulation XVII of 1806. GOORDYAL v. HUNSKOONWER . 2 Agra 176

RUGHONATH DASS v RAM GOPAL . 5 N W 29

4. ———— *Title of purchaser by conditional sale.* The right of a purchaser by conditional sale, who has duly taken proceedings under Regulation XVII of 1806, becomes absolute on the expiry of the year of grace, and he is entitled to claim mesne profits from that date without bringing a suit for possession. JEORAKHUN SINGH v HOOKUM SINGH 3 Agra 358

5. ———— *Beng Reg XVII of 1806—Expiration of year of grace* On the

TAWAKKUL RAI v LACHMAN RAI. TAWAKKUL RAI v. SHEO GHULAM RAI . I. L R 6 All. 344

6. ———— *Right at expiration of year of grace—Suit to confirm title.* The title of a mortgagee is not complete upon the expiry

7. ———— *Agreement to pay amount to co-sharer or in default to forfeit share.* Where certain arbitrators, summoned by

the award, promised to pay principal and interest on a certain date; and also further agreed that, if they failed to pay on the specified day, their shares should thenceforward become his absolute property

foreclosure, was not maintainable. GHOSEE LALL v GAIND LALL . . . . 3 Agra 184

8. ———— *Beng. Reg. XXXIV of 1802—Mahomedan mortgagor.* In 1832

The obligation cast by Regulation XXXIV of 1802 upon a mortgagee to account for profits does not prevent a mortgage by way of conditional sale from becoming, after the period for redemption has

KARJUNUDU v. MALLIKARJUNUDU I L R 8 Mad 185

9 ———— *Parol conditional mortgage—Beng. Reg. XVII of 1806.* K made over to G, from whom he had borrowed certain

GOBARDHAN DAS v. GOKAL DAS I. L. R 2 All 633

10. ———— *Mortgage in English form.* A mortgage in the English form between Hindus of lands in the mofussil, outside Calcutta, has always been treated by the Courts as a mortgage by conditional sale. SHURNOMOYEE DASI v SRINATH DAS . I. L. R 12 Calc 614

11. ———— *Beng Reg XVII of 1806, s 7—Foreclosure of equity of redemption—"Stipulated period"* By a mortgage in the English form, the defendants conveyed certain

MORTGAGE—*contd.*

9. FORECLOSURE—*contd.*

(*a*) RIGHT TO FORECLOSURE—*contd.*

mortgaged premises. *Held*, that the suit was not maintainable Regulation XVII of 1806 applied to this mortgage; and, under that Regulation, the mortgagee could not apply for foreclosure until the time agreed upon for repayment by the mortgagor,—that is, the "stipulated period" referred to in s. 7;— ... year's grace ... reclosure ... *v.* NAND ... R 389

s.c. SHOROSHEE BALA DABEE *v.* NUND LAL SEN 13 W. R. 364

12. ———— *Beng Reg. XVII of 1806, s. 8—Conditional sale.* An instrument of conditional sale provided that the conditional vendor should retain possession of the property to which it related, paying interest on the principal sum lent annually at twelve per cent., and should repay the principal sum lent within seven years; ...

absolute Default having been made in the payment of interest annually as stipulated, the conditional vendee, *the term of seven years not having* expired, took proceedings to foreclose, in pursuance of the condition contained in the fourth clause of the deed, and the conditional sale was declared absolute. The conditional vendee then sued for possession of the property. *Held*, that the fifth clause of the deed did not dispense with the necessity of complying with the provisions of s. 8 of Regulation XVII of 1806 and was compatible with them, and on or after the expiry of the stipulated period application for the foreclosure of the mortgage and rendering the conditional sale absolute in the manner prescribed by that Regulation might and must be made; that the condition contained in the fourth clause of the deed in effect defeated and violated the provi- ...

principal sum lent were irregular, and the sale could only be rendered conclusive in the manner prescribed by that Regulation in pursuance of the fifth clause of the deed, and that accordingly such suit was not maintainable. IMDAD HUSAIN *v.* MANNU LAL . . . I L R. 3 All. 509

13. ———— *Beng. Reg. XVII of 1806, s. 8—Stipulated period—Mortgage by* ...

MORTGAGE—*contd.*

9. FORECLOSURE—*contd.*

(*a*) RIGHT TO FORECLOSURE—*contd*

under the strict terms of the mortgage the mortgagee might be entitled to foreclose at an earlier period *Sarasibala Debi* v. *Nand Lal Sen*, 5 *B. L. R. 389*, and *Imdad Husain* v. *Mannu Lal, I L. R. 3 All. 509*, referred to. KUBRA BIBI *v.* WAJID KHAN I. L. R. 16 All 59

14. ———— *Beng. Reg. XVII of 1806, s. 8—Mortgage by conditional sale—Meaning of stipulated period—Petition for foreclosure prematurely filed—Continuance of right to redeem —Construction of clause accelerating payment.* Under s 8 of Bengal Regulation XVII of 1806, the right of the mortgagee by conditional sale ... until the ...

land should be reconveyed to the mortgagor ... deed also contained a covenant *that, upon any* default in payment of the interest half-yearly, the whole principal and interest should become due. Upon such default made the mortgagee filed his petition, under s 8, for foreclosure, before the three years had passed; and payment not having been made during the year of grace, the mortgagor's objection was disregarded by the Court, and the conditional sale treated by the mortgage as having become conclusive. *Held*, that the covenant accelerating, for other purposes, the time at which the principal ... provision for the ...

determining what was to be regarded ... lated period" which remained as stated in the proviso. Thus the petition had been prematurely filed. The 8th section of the Regulation had not been called into operation, and the right to redeem remained. *Sarasibala Debi* v. *Nand Lal Sen*, 5 *B. L. R. 389*, *13 W. R. 364*, and *Wooma Churn Chowdhry*, v. *Beharee Lall Mookerjee*, 21 *W. R.* 271, referred to and approved. KISHORI MOHUN ROY *v.* GANGA BAHU DEBI . I L R. 23 Calc 228 L R 23 I A 183

15. ———— Rights of mortgagee—*Clause for recovery of mortgage-money before expiry of term.* *M*, a Hindu widow, executed a deed of usufructuary mortgage in *J*'s favour, the property hypothecated being the separate property of her husband in which she had only a life-interest. On *J* applying for mutation of names, *B* objected that he was in proprietary possession under a deed of gift executed by *M*, and the objection was allowed. In virtue of a clause in the deed of mortgage, that in case any demand was made in respect of the rest

MORTGAGE—*contd.*

9 FORECLOSURE—*contd.*

(a) Right to Foreclosure—*contd*

of the property within the mortgage term the mortgagee was entitled to sue for the mortgage-money notwithstanding the term had not expired, *J* sued to recover the money by the sale of the hypothecated property. *B* in addition to an objection to the

but invalid as against the reversioner. *Quære* Whether, on reference to that ruling, there was any such danger or weakness in *J's* title so as to entitle him to enforce the mortgage-debt before the expiry of the term. Bulaki Singh v Jai Kishen Das

7 N W 203

16. ———————— *Extension of term of grace after notice of foreclosure* A mortgagee, under a conditional sale, caused notice of foreclosure to be issued, and subsequently by an agreement securing certain advantages to him he extended the term of grace The terms of that agreement not having been complied with, the mortgagee was held to be entitled to revert to the foreclosure proceedings before instituted Lall Dhur Rai v. Ganput Rai . . 1 N W Ed 1873, 81

17. ———————— *Agreement between mortgagor and mortgagee—Breach by mortgagor—Right of mortgagee to fall back on mortgage rights* The mortgagee of certain shares of

The mortgagee agreed to relinquish h s claim on the

18. ———————— *Compromise during proceedings—Intention of parties.* A mortgage-debt not having been pa d off at due date

become absolute. *Held,* that it was not the intention of the parties to substitute a new contract for the one under which the notice of foreclosure issued or that the proceedings should be allowed to drop. Goonomonee Dossia v Parbutty Dossia

10 W. R. 326

19 ———————— *Usufructuary mortgage—Position of mortgagee in possession.* Where, in proceedings held before the issue of Circular Order of 22nd July 1813, a mortgagor had the opportunity in a Court competent to decide the matter, to contest, as against the mortgagee, all questions of fact necessary to give a good and absolute title to the mortgagees, and, though called upon, did not show that the mortgage was a bad one, but admitted that the mortgagees were not paid off, and that an extension of the year of grace

20. ———————— *Agreement for fresh consideration, between mortgagee and third person for release of property from mortgagee—*

MORTGAGE—*contd.*

9. FORECLOSURE—*contd.*

(a) RIGHT TO FORECLOSURE—*contd.*

avoidance of the mortgagee's claim to bring to sale the property referred to therein. *Nash* v. *Armstrong, 30 L. J. C. P. 286*, referred to. GURDIAL MAL v. JAUHRI MAL . . I L R. 7 All. 820

21. ———— Effect of foreclosure—*Purchaser from mortgagor.* Foreclosure proceedings in the Supreme Court as to mofussil property, to which a purchaser from the mortgagor is not made a party, cannot affect that purchaser. BRAJANATH KUNDU CHOWDRY v. KHILAT CHUNDRA GHOSE . . . . . . 8 B L R 104
14 Moo I. A 144: 16 W R. P. C 33

s.c. in Court below KHELUT CHUNDER GHOSE v. TARA CHAND KOONDOO CHOWDHRY
6 W R 269

22. ———— *Foreclosure, effect of—Deed of conditional sale.* Until foreclosure, the vendee, under a bond of conditional sale, holds the lands, the subject of the bond, only as security for the money lent. *Semble* The effect of foreclosure is to put an end to the original conditional sale and to make the property *ab initio* the immoveable property of the person who advanced the money. SHAM NARAIN SINGH v ROGHOOBUR DYAL . I. L R 3 Calc 508: 1 C L. R 343

23. ———— *Effect of foreclosure—Sale for arrears of revenue—Fraud of mortgagee—Act I of 1845.* The effect of a foreclosure decree in the Supreme Court in a mortgage suit between Hindus is equivalent to a decree establishing proprietary right in the mofussil Courts, in similar suits on the like instruments. The mortgagee in possession and another having sought to deprive the mortgagor of his title to redeem by means of a secret purchase of the mort- [illegible]

[illegible] for redemption and for possession instituted many years after the sale for arrears was not barred by s. 24 of Act I of 1845. If a mortgagee in possession fraudulently allows the Government revenue to fall into arrears with a view to the land being put up for sale and his buying it in for himself, and he does in fact become the purchaser of it at the Government sale for arrears, such a purchase will not defeat the equity of redemption. NAZIR ALI KHAN v. OJOODHYARAM KHAN
5 W R P. C 83: 10 Moo. I A. 540

24. ———— Usufructuary mortgage—*Profits paying the interest—Suit by mortgagee to recover mortgage-money after time for redemption.* Certain property was mortgaged for a term of years, and possession given to the mortgagee. The mortgagor covenanted in the mortgage-deed that he would redeem the property after the term had expired, and that the mortgagee should take the profits in lieu of interest until redemption.

MORTGAGE—*contd.*

9. FORECLOSURE—*contd*

(a) RIGHT TO FORECLOSURE—*contd.*

After the expiry of the term, the mortgagee sued to recover the mortgage-money. *Held*, that the mortgage was security for the repayment of the mortgage-money after the term had expired, and that [illegible]

DEEDAR BUKSH . . . 5 N. W. 128

DYA RAM v. JWALA NATH . 5 N. W. Ap. 2

25. ———— Suit for possession—*Covenant to pay—Conditional sale—Damages, measure of —Costs.* Two out of several co-sharers mortgaged as their own, by way of conditional sale, [illegible] The mort- [illegible]

ACHARJEE v. GOBIND SAHOO
I. L. R. 9 Calc. 234: 11 C. L. R. 355

26. ———— Partial foreclosure—*Foreclosure in respect of share of property* Where several parties have an interest in a mortgage, it is not competent for one of them to foreclose in respect of his fractional share. A party suing for [illegible] property (after its [illegible] ent made [illegible] r) on the [illegible] mortgage ground that he had an interest in [illegible] and in the funds advanced by the mortgagees, must show that the mortgagor had notice of such interest. BHORA ROY v. ABILACK ROY . 10 W. R. 476

27. ———— *Joint mortgagors—Foreclosure of portion of property—Suit for possession of portion of property after foreclosure.* Where the whole of a mortgage-debt was due to the persons claiming under the mortgage jointly and not severally, and a person entitled only to one moiety of the debt foreclosed the mortgage as to that moiety, and sued the different mortgagors for possession of a moiety of their interests in the mortgaged property, in virtue of the mortgage and foreclosure:—*Held*, that the foreclosure was invalid and the suit was not maintainable. BISHAN DIAL v. MANNI RAM I L. R. 1 All. 297

28. ———— *Foreclosure of portion of joint property* Where a mortgage of an estate is a joint one and there is no specification in it that any individual share or portion of a share of such estate is charged with the repayment of any defined proportion of the mortgage-money, but the

MORTGAGE—*contd.*

9. FORECLOSURE—*contd.*

(*a*) RIGHT TO FORECLOSURE—*contd.*

whole estate is made responsible for the mortgage-money, it is not competent for the mortgagee to treat a sum paid by one of the mortgagors as made

ings, exempted the person and share of the mortgagor so paying and proceeded only against the

29. ———————— *Joint mortgage by conditional sale of two villages—Sale of the equity of redemption—Foreclosure in respect of one village.* B mortgaged by conditional sale two villages to *L* for a certain sum. He subsequently sold one village to *L* and the other to *S* *L* having foreclosed the mortgage in respect of the village sold to *S* for a proportionate amount of the mortgage-money, sued *S* for possession of that village *Held*, that the suit was maintainable. *Chandika Singh v. Pohkar Singh, I. L. R. 2 All 906*, distinguished.
BISHESHAR SINGH *v.* LAIK SINGH
I. L. R. 5 All 257

30 ———————— *Purchaser of share of mortgaged property.* A mortgagee sold part of the mortgaged property and then foreclosed, his purchaser being no party to the foreclosure proceedings. The mortgagee and purchaser afterwards sued for recovery of possession of the mortgaged property after foreclosure. *Held*, that the purchaser

the mortgagee and anybody claiming under him.
RAJ CHANDRA PODDER *v.* MANORAMA
3 B. L. R. Ap. 148 : 12 W. R 353

31. ———————— *Merger—Foreclosure proceedings on the first of two mortgages of the same property to the same mortgagee.* On the 26th of March 1872 *A* mortgaged to *B* certain

v. KAMINI SOONDURI CHOWDHRAIN
I. L. R. 4 Calc. 475 : 3 C. L. R. 184

32. ———————— *Second mortgage of the same property to the same person—Foreclosure decree on the first mortgage—Second suit on second mortgage—Practice—Foreclosure,*

RASMONEE DEBEA *v.* PRANKISHEN DAS
7 W. R. P. C. 66

s.c. RAS MUNI DIBIAH *v.* PRAN KISHEN DAS
4 Moo I. A. 392

PROSONNO COOMAR ROY *v.* HARAN CHUNDER CHATTERJEE . . . . 5 C. L. R. 599

34. ——— Foreclosure of property partly in Calcutta and partly in mofussil—

MORTGAGE—*contd.*

9. FORECLOSURE—*contd.*

(a) RIGHT TO FORECLOSURE—*contd.*

*Beng. Reg. XVII of 180*7. The High Court, in a suit for foreclosure of property partly in Calcutta and partly in the mofussil, has no power to follow the procedure prescribed by Regulation XVII of 1806, which relates to the foreclosure of property in the mofussil; but it is bound to see that the defendant is not, by reason of the suit being brought in the

35. ———— Foreclosure of property situated partly in Oudh and partly in the North-Western Provinces—*Beng. Reg. XVII*

and render the conditional sale conclusive in respect of the whole property, and that Court granted such application —*Held*, with reference to the ruling of the Privy Council in *Ras Muni Dibiah* v. *Pran Kishen Das, 4 Moo I. A 392*, that, where mortgaged property is situated in two districts, an order of foreclosure relating to the whole property may be obtained in the Court of either district, that the

36. ———— Mortgage by conditional sale—*Prior and puisne mortgagees—Payment by puisne mortgagee, defendant in prior mortgagee's suit for foreclosure, of amount due on the prior mortgage—Application by such puisne mortgagee for an order absolute for foreclosure—Application refused—Separate suit by puisne mortgagee for foreclosure Transfer of Property Act (IV of 1882), s 74—Civil Procedure Code, s. 244.* In July, 1889, one Fateh Chand executed a mortgage by conditional sale of a certain village in favour of Bansidhar and Kunj Bihari Lal In October, 1889, Fateh Chand executed a second mortgage of the same village, also by way of conditional sale, in favour of Bansidhar and Anant Ram In October, 1891, Anant Ram transferred his interest in the second mortgage to Gaya Prasad. In September, 1893, Bansidhar and Kunj Bihar instituted a suit for foreclosure of their mortgage. To that suit Raj Kumar, the son of the original mortgagor, and Gaya Prasad, were made defendants. On the same date Gaya Prasad institu-

MORTGAGE—*contd*

9 FORECLOSURE—*contd.*

(a) RIGHT TO FORECLOSURE—*contd.*

time allowed for redemption was extended from time to time, and ultimately, on the 3rd of January, 1896, Gaya Prasad paid into Court the sum which was due to the mortgagees on the mortgage of July, 1889, which sum was drawn out by the mortgagees. Subsequently to this payment into Court, Gaya

application was refused on the ground that Gaya Prasad was only entitled to bring a suit for foreclosure, and "had not acquired the status of a decree-holder," and that, while he was defendant, he could not execute the decree as a decree-holder and

37. ———— Stay of proceedings—*Foreclosure decree—Transfer of Property Act (IV of 1882), ss. 86, 87.* S. 87 of the Transfer of Property Act does not allow the Court to postpone

CHATTERJEE (190-)

38. ———— Decree for foreclosure—*Mortgage-bond—Validity—Payment of part of consideration.* A mortgage-bond does not cease to be enforceable merely because a part only of the money mentioned in the bond has been advanced. When it was not shown that the mortgagor had cancelled the contract or had the power to cancel it: *Held*, that the mortgagee was entitled to a decree for foreclosure upon the footing of the money actually advanced. *Minakshi Sundrum Pillai* v. *Ayyathorai, I. L. R. 13 Mad. 136*, distinguished. BAJRANGI SAHAI v. UDIT NARAIN SINGH (1906) 10 C. W. N. 933

39. ———— Lis pendens—*Transfer of Property Act, ss. 52, 86 and 87—Suit for foreclosure—Suit not terminated until decree absolute.* A

MORTGAGE—*contd*

9 FORECLOSURE—*contd*

(*a*) RIGHT TO FORECLOSURE—*contd*

suit for foreclosure of a mortgage is not terminated until the passing of the decree absolute A

Bellamy v *Sabine, 1 DeG & J 566*, referred to. PARSOTAM NARAIN v CHHEDA LAL (1906)
I L R 29 All 76

40.———— Suit to set aside foreclosure decree and order absolute—*Fraud—Suit for foreclosure—Order absolute obtained before the expiry of time by concealing facts—Taking advantage of mistake of Court—Maintainability.* Where a suit for foreclosure was compromised the mortgagee agreeing to give the mortgagor 6 months' time to pay up the amount found due, but the Court by mistake passed a decree *nisi* allowing only three months' time, and the mortgagee taking advantage of the mistake and without drawing the Court's attention to the terms of the compromise petition obtained an order absolute before the six months expired *Held*, in a suit to set aside the foreclosure decree and order absolute, that the facts amounted to fraud on the part of the mortgagee, and the decree should be set aside BAISHNAB CHARAN LAHA v BASANTA KUMAR PAIN (1908) . . . . 13 C W N. 300

(*b*) DEMAND AND NOTICE OF FORECLOSURE

42. ———— Demand for payment of mortgage-debt—*Power of a minor to take a mortgage—Beng Reg XVII of 1806, s 8* A

I. L. R. 5 All. 406

MORTGAGE—*contd*

9 FORECLOSURE—*contd.*

(*b*) DEMAND AND NOTICE OF FORECLOSURE—*contd.*

43 ———— *Beng Reg XVII of 1806 s 8.* S 8 of Regulation XVII of 1806 contemplates a previous demand of payment of the mortgage-money, and non-compliance therewith

LAL . . . . . I. L. R. 5 All. 9

44 ———— Notice of foreclosure—*Issue of notification—Beng Reg. XVII of 1806, ss 7 and 8* A mortgagee's "application" for foreclosure, as the term is used in s 7, Regulation XVII of 1806, means the whole transaction contemplated in s 8, ending with the notification to the mortgagor, thus the year of grace for payment,

notification is signed and sealed, but the date of its issue by the Court The purwannah is first issued when it is handed to the peon for delivery. SUROOP CHUNDER NAG v. BONOMALEE PUNDIT
9 W. R. 116

45. ———— *Beng Reg. XVII of 1806—Form of notification to mortgagor.* In order to obtain a decree for foreclosure against a

come conclusive. BHEEKUN KHAN v BECHUN KHAN . . . . . . 3 N. W. 35

SANTEE RAM JANA v. MODOO MYTEE
20 W. R. 363

47. ———— *Service of notice—On whom to be served* The only person on whom effectual service of notice of foreclosure can be made is the person really interested in protecting the estate. KALEE KOOMAR DUTT v. PRAN KISHOREE CHOWDHRAIN . . . . 22 W. R. 168

48. ———— *Right to notice—Beng. Reg. XVII of 1806, s. 8—Purchaser of equity of redemption.* The purchaser of the equity of redemption is not entitled to notice in a foreclo-

MORTGAGE—*contd.*

9 FORECLOSURE—*contd.*

(*b*) DEMAND AND NOTICE OF FORECLOSURE—*contd.*

sure suit especially if the purchase has not been made until after the institution of the suit. GOOROOPERSAUD JANAH *v.* BIPROPERSAUD BERRAH Marsh. 292: 2 Hay 152

KURMOFOOL *v.* BISSESSUR SINGH . Marsh. 337

S.C. BISSESSUR SINGH *v.* KURMOFOOL 2 Hay 408

See KISHEN BULLUBH MUHTA *v.* BELASOO COMMUR . . . . 3 W. R. 230

Where, however, the Judges (BAYLEY and PHEAR, JJ.) differed, the former holding notice was not necessary.

See BISSONATH SINGH *v.* BROJONATH DOSS 6 W. R. 230

49. ——— *Right to notice —Purchaser from mortgagor.* A purchaser from a mortgagor, as one of his legal representatives, is entitled to notice of foreclosure. MADHUB THAKOOR *v.* JHOONUCK LALL DOSS . 12 W. R. 105

MITTERJEET SINGH *v* MOOKH LALL SINGH 25 W. R. 139

50. ——— *Right to notice —Purchaser from mortgagor—Legal representative—Beng. Reg. XIIV of 1806, s. 8.* The purchaser from a mortgagor is his legal representative; and when the mortgagee takes out foreclosure proceedings, the notice enjoined by s. 8, Regulation XVII of 1806, must be served on such purchaser if it is used after the sale; fresh notice to the purchaser would not be necessary if the sale took place after notice to the mortgagor. ACHUMBIT MISSER *v.* LALLA NUND RAM . . . 11 W. R. 544

51. ——— *Right to notice—Transferees in possession.* Transferees in possession are entitled to notice of foreclosure. TAZUN BIBEE *v.* SHIB CHUNDER DHUR . . 19 W. R. 170

52. ——— *Assignee of mortgagor—Beng. Reg. XVII of 1806, s. 8—Legal representative.* A purchaser of the rights and [illegible]

53. ——— *Right to notice—Beng. Reg. XVII of 1806, s 8—Conditional sale—Purchaser—Second mortgagee—Legal representative.* Where land which has been conditionally sold is subsequently mortgaged, the second mortgagee, [illegible]

SINGH . . . . I. L. R. 1 All. 499

54. ——— *Right to notice —"Legal representative" of mortgagor—Beng. Reg. XVII of 1806, s 8.* The holder of a decree for [illegible]

I. L. R. 3 All. 210

55. ——— *Right to notice —Purchaser of mortgagor's interest.* Where a person mortgages his property by deed of conditional [illegible]

SINGH . . . . I. L. R. [illegible]

56. ——— *Right to notice —Assignee of mortgagor—Beng Reg. XVII of 1806, s. 8.* Under s. 8, Regulation XVII of 1806, a mortgagee is bound to serve notice of foreclosure [illegible] whether such as- [illegible]

57. ——— *Right to notice —Assignee of mortgagor—Beng. Reg. XVII of 1806, s. 8.* The assignee of a mortgagor, though purchaser of only a portion of the mortgaged property, is his "legal representative" within the meaning of s. 8, Regulation XVII of 1806, and as such entitled to notice of foreclosure. SHEO GOLAM SINGH *v.* RAMROOP SINGH 15 B. L. R. 34 note: 23 W. R. 25

58. ——— *Right to redeem —Mokuraridar—Beng Reg XVII of 1806, s. 8.* The holder of a maurasi mokurari pottah under the mortgagor is not a "representative" within the meaning of s. 8 of Regulation XVII of 1806, and is therefore not entitled to notice of foreclosure under that section. *Lalla Doorga Pershad v. Lalli Luchmun Sahoy, 17 W. R. 272,* followed. SHITOLI CHURN DEY *v.* MOHIP NARAIN SINGH I. L. R. 9 Calc. 613: 13 C. L. R. 119

59. ——— *Beng Reg. XVII of 1806.* A second mortgagee under a mortgage-bond is entitled to notice of foreclosure under

MORTGAGE—*contd*

9. FORECLOSURE—*contd*

(*b*) DEMAND AND NOTICE OF FORECLOSURE—*contd.*

Regulation XVII of 1806 NUDYAR CHAND CHUCKERBUTTY *v.* ROOP DOSS BANERJEE
22 W. R. 475

60. ——— ——————— Right to notice —*Second mortgagee—Prior foreclosure of a second mortgage—Legal representative—Beng Reg XVII of 1806, s. 8* In the case of the prior foreclosure of a subsequent mortgage,—*Quære* Whether the second mortgagee is the mortgagor's legal representative for the purpose of the notice of foreclosure under s. 8, Regulation XVII of 1806 When the first mortgagee had no knowledge or cognizance of the second mortgage, or of the foreclosure proceedings taken under it, the second

61. ——— ——————— Right to notice —*Purchaser from mortgagee* Property in the

under the power of sale and purchased by *R*. Previously to the sale, *T* had foreclosed. In a suit for

MUTTY CHOWDRAIN *v* PREMCHAND NEOGEE
15 B. L. R. 28 : 23 W. R. 96

MOHUN LALL SOOKUL *v* GOLUCK CHUNDER DUTT
1 W. R. P. C. 19 : 10 Moo I. A. 1

62. ——————————— *Sufficiency of notice—Foreclosure of share of mortgaged property.* Two persons jointly held a mortgage, each having an equal share in it. The equity of redemption subsequently became vested solely in one of these per-

sufficient, and that the foreclosure proceedings were not bad, although they related only to a part and not to the whole of the mortgaged property. HUNOOMANPERSAUD SAHOO *v.* KALEEPERSAUD SAHOO . . . . . W. R. 1864, 285

63. ——————————— *Sufficiency of notice—Effect of service of second notice of foreclosure* Where the notice of foreclosure was duly

causing a fresh notice to be served on the purchaser. The notice having been duly served on the mortgagor, his right and interest were subsequently sold in execution, and the mortgagee caused a second notice to be served on the purchaser. The foreclosure took place after the expiry of a year from the first, but within a year from the date of second notice. *Held*, under the circumstances of the case, that, as the second notice was merely for greater caution to bring to the knowledge of purchaser that notice had already been issued, and did not supersede the first notice, the foreclosure proceedings were regular, and the suit for possession was maintainable ZEMIN ALI *v.* HOSSEIN ALI
2 Agra, Pt. II, 187

64. ——————— Fresh notice—*Allowance of time by mortgagee beyond year of grace.* A mortgagee, having issued notice of foreclosure on the mortgagor, allowed him six months' time in which to redeem, shortly before the expiry of the year of grace The mortgagor died, and the mortgagee sued to recover the property *Held*, that fresh notice of foreclosure on the legal representative of the mortgagor was not necessary, the requirements of the law in the issue of the notice and the expiry of the year of grace having been complied with BAZLOOR RAHIM *v* ABDULLAH
2 B. L. R. S. N. 5 : 10 W. R. 359

65. ——————————— *Extension of time for payment—Fresh Notice.* Where a mortgage

necessary to be recorded as occurring within the year of grace. ABBAS ALY *v* NUND COOMAR GHOSE
7 W. R. 123

67. ——————————— *Service of notice —Proof of service—Beng. Reg. XVII of 1806, s 8.*

of proof that a copy of such application was served with the purwannah of the Judge :—*Held* that such failure of proof was fatal to the plaintiff's suit to recover possession of the mortgaged premises after the expiration of the year of grace. When the plaintiff's second mortgagees, who had foreclosed their mortgagor's equity of redemption, sued for possession of the mortgaged property, and alleged that their mortgagor's equity of redemption had

MORTGAGE—*contd.*

9. FORECLOSURE—*contd.*

(b) DEMAND AND NOTICE OF FORECLOSURE—*contd.*

been finally foreclosed by the first mortgagee after due proceedings and expiry of the year of grace without redemption, and that they were therefore entitled to absolute possession, and failed on the ground that notice of foreclosure had not been duly served —*Held*, they were not entitled to a decree as mortgagees for possession, subject to their accounting to the mortgagors, that being relief different from that prayed for in their plaint BANK OF HINDUSTAN, CHINA, AND JAPAN *v.* SHOROSHIBALA DEBEE . . . . I. L. R 2 Calc. 311

68. ——————— *Service of notice —Proof of service—Beng. Reg. XVII of 1806, s 8.* The notice of foreclosure under s. 8, Regulation XVII of 1806, is not merely a preliminary proceeding leading up to a judgment of foreclosure to be subsequently pronounced in Court. It not only fixes the date from which the period during which the mortgagor is to retain the right to redeem is to be computed, but it is of itself the operative act in the foreclosure proceeding The service of the notice therefore should be evidenced by the clearest proof, and should be in all cases, if not personal, at least such as to leave no doubt in the mind of the Court that the notice itself must have reached the hands or come to the knowledge of the mortgagors. EUSUF ALI *v* AZUMTOONISSA W. R 1864, 49

69. ——————— *Service of notice —Proof of service* The regulation as to service of a notice of foreclosure does not provide for any mode of service in substitution for personal service, though in some cases it has been held that personal service is not absolutely necessary, but to justify resort to any other mode of service it must be shown that in spite of efforts made for that purpose the notice cannot for some reason be personally served A copy of the report of the Nazir of the Civil Court, copies of the depositions of witnesses not taken in the [illegible]

70. ——————— *Service of notice —Mode of service.* Where notice of foreclosure issues, and the serving officer finds that the mortgagor is not at home, it is sufficient if he affixes the notice on the door of the mortgagor's house, personal notice on the mortgagor not being essential. SOORJOO KANT BANNERJEE *v.* KRISTO KISHORE PODDAR . . . . 14 W. R. 423

71. ——————— *Service of notice —Mode of service—Sufficiency of service—Beng. Reg. XVII of 1806, s. 8.* Where notice of foreclosure was shown to have been [illegible]

in the order if it had accompanied the notice, and no such mention was made, the Court refused to make such presumption. DENONATH GANGOOLY *v* NURSING PROSHAD DASS . 14 B. L. R. 87 22 W. R. 90

72. ——————— *Service of notice —Mode of service—Beng. Reg. XVII of 1806—* [illegible]

[illegible] under Act XL of 1858, service of the foreclosure upon the minor and his mother will be deemed sufficient service DABEE PERSHAD *v.* MAN KHAN . . . 2 N. W. 444

73. ——————— *Service of notice —* [illegible] *Beng. Reg. XVII of 1806* [illegible]

s c. RAS MUNI DIBIAH *v* PRANKISHEN DAS 4 Moo I. A 392

74 ——————— *Service of notice* [illegible] ing that [illegible] AB ALI [illegible] KHAN . . . [illegible] R 230

75. ——————— *Service of notice —Sufficiency of service* Where the defendant [illegible] foreclosure, and the [illegible] ed all know- [illegible] report of the [illegible] fore another peon in the formal [illegible] Court was inadmissible as evidence in the case, and the acquiescence of one mortgagor was not binding on the other Transferees in possession are entitled to have notice of foreclosure TAZUN BIBEE *v.* SHIB CHUNDER DHUR . 19 W. R 170

76. ——————— *Service of notice —Proof of service—Suit by conditional vendee for* [illegible] conditional vendee [illegible] of notice [illegible] ative, it is [illegible] vice inde- [illegible] proceed- [illegible] Agra 172

77. ——————— *Service of notice —Fresh notice, necessity of—Purchase from mortgagor after notice served.* Where the mortgagor sells his equity of redemption after foreclosure proceedings had been applied for and notices duly

MORTGAGE—*contd*

9 FORECLOSURE—*contd*

(b) DEMAND AND NOTICE OF FORECLOSURE—*contd*

[illegible]

is entitled to redeem. JYRAM GIR *v.* KRISHAN KISHORE CHUND . 3 Agra 307

78. ——————— *Service of notice—Proof of service—Beng Reg XVII of 1806, s 8.* The condition of foreclosure required by s 8, Regulation XVII of 1806, is that the mortgagor should be furnished with a copy of the petition referred to in the section, and should have a notification from the Judge in order that he may, within a year from the time of such notice, redeem the property. In an action brought to recover possession as upon a foreclosure, it is essential for the plaintiff to satisfy the Court that the above condition has been complied with. In such a case, the service of the notice must be established by evidence The [illegible]

or the issuing of it by the Judge, but from the time of service. Where there are several mortga- [illegible]

of any part of it. *Quære* Whether there may not be cases of mortgages of separate shares, in which by proceedings properly framed foreclosure may take place in respect of some of such shares only. The mortgagee, when he seeks to foreclose, must discover and serve notice on those who are the then owners of the estate NORENDER NARAIN SINGH *v.* DWARKALAL MUNDUR . I. L. R. 3 Calc 397
1 C. L. R. 369 : L. R. 5 I A. 18

79. ——————— *Sufficiency of notice—Reg. XVII of 1806, s. 8—Service of copy of petition and of purwannah.* The provisions of s 8 [illegible]

MORTGAGE—*contd*

9 FORECLOSURE—*contd*

(b) DEMAND AND NOTICE OF FORECLOSURE—*contd.*

signed by the Judge, was essential; and that the mortgag[illegible] regular[illegible] appeal [illegible]

80. ——————— *Beng Reg. XVII of 1806, s. 8—Procedure—Mortgage by conditional sale—Demand of payment—Purwannah—"Official signature."* In proceedings for foreclosure of a mortgage under Bengal Regulation XVII of 1806, it is not necessary that the fact that a [illegible]

was so made A purwannah issued under the [illegible]

KUBBA BIBI *v.* WAJID KHAN . I L R. 16 All 59

81. ——————— *Sufficiency of notice—Mortgage by conditional sale—Suit for possession of mortgaged property—Beng Reg. XVII of 1806, s 8—Conditions precedent—Demand for payment of mortgage-money—Proof of service of notice—Proof of notice being signed by the Judge—Proof of forwarding copy of application with notice—Transfer of Property Act (IV* [illegible]

alleged to have been foreclosed under Regulation [illegible]

MORTGAGE—*contd.*

9. FORECLOSURE—*contd.*

(*b*) DEMAND AND NOTICE OF FORECLOSURE—*contd.*

as he would be entitled to by that Act, would be to countenance an entire change in the nature and character of the suit as it was originally instituted, and that this was a course not sanctioned by the law. SITLA BAKHSH *v.* LALTA PRASAD

I. L. R. 8 All. 388

82. ———————— *Sufficiency of notice—Foreclosure proceedings under Reg. XVII of 1805, and subsequent procedure under Transfer of Property Act—Mortgage—Conditional sale—Suit for possession on foreclosure—Beng. Reg. XVII of 1806, ss. 7, 8—Transfer of Property Act (IV of 1882), ss. 2, cl. (c), and 86.* The procedure laid down in the Transfer of Property Act may be applied to the case of foreclosure of a mortgage executed before the Act came into operation, provided it be so applied as not to affect the rights saved by s. 2, cl. (c), of the Act. Where therefore under the provisions of Regulation XVII of 1806 notice of foreclosure had been served on a mortgagor by conditional sale, the

who had purchased the mortgaged property at an execution-sale and obtained possession before the commencement of the foreclosure proceedings and the necessary notice had not been served upon

I. L. R. 11 Calc. 582

83. ———————— *Reg. XVII of 1806, s. 8—Provision as to the year of grace—Extension of time by mutual agreement—Transfer of Property Act, s. 2, cl. (c).* The year of grace allowed by s. 8, Regulation XVII of 1806, is a matter of procedure, which it was open to the parties to extend by mutual agreement without prejudice to the proceedings already had under the section, and upon the expiration of such extended period the mortgagee acquired an immediate right to have a decree declaring the property to be his absolutely. The right so acquired by the mortgagee while the Regulation was in force is a right which falls within the meaning of cl. (c), s. 2 of the Transfer of Property Act. Proceedings under s. 8

possession in pursuance thereof after the passing of the Transfer of Property Act. *Held*, that the mortgagee was entitled to a decree such as he would have had if the Regulation had been still in force. BAIJ NATH PERSHAD NARAIN SINGH *v.* MOHESWARI PERSHAD NARAIN SINGH . I. L. R. 14 Calc. 451

84. ———————— *Conditional sale—Reg. XVII of 1805, s. 8—Transfer of Property Act (IV of 1882), s. 2, cl. (c), and ss. 86, 87—Procedure.* A suit was brought on the 24th January 1885, by a mortgagee upon a mortgage by conditional

1881, and the mortgage-money was repayable on the 13th May 1881. On the 9th July 1881 the mortgagee caused a notice to be served on the mortgagor in compliance with the provisions of ss. 7 and 8 of Regulation XVII of 1806. The year of grace expired on the 10th July 1882. It was

and 87 of that Act, and not by the procedure prescribed by Regulation XVII of 1806. *Held*,

of Property Act. MOHABIR

SINGH *v.* GUNGADHUR PERSHAD NARAIN SINGH

I. L. R. 14 Calc. 599

85. ———————— *Suit for foreclosure—Conditional sale—Reg. XVII of 1806, s. 8—Transfer of Property Act (IV of 1882), s. 2—General Clauses Consolidation Act (I of 1868), s. 6—"Proceedings."* In a suit for foreclosure under a deed of conditional sale, where the due date of the deed expired, and notice of foreclosure was served while Regulation XVII of 1806 was in force, but before the expiration of the year of grace that Regulation had been repealed by the Transfer of Property Act:—*Held*, following *Mohabir Pershad Narain Singh v. Gungadhur Pershad Narain Singh*, *I. L. R. 14 Calc. 599*, that proceedings for foreclosure having been commenced under the Regulation, those proceedings were saved by s. 6 of the General Clauses Consolidation Act (I of 1868). The "Proceedings"

MORTGAGE—contd

9. FORECLOSURE—contd.

(b) Demand and Notice of Foreclosure—contd

referred to in that section are not necessarily judicial proceedings only, but ministerial proceedings, as in the present case, the service of notice of foreclosure. Umesh Chunder Das v. Chunchun Ojha
I L R 15 Calc. 357

86. ——— Sufficiency of notice—Mortgage by agent. Where a mortgage was made by the lambardar for himself and as agent for other sharers, it was held necessary to issue notice of foreclosure both to the lambardar and his co-sharers Punchum Singh v Mungle Singh
2 Agra, Pt. II, 207

87 ——— Omission to give notice, effect of. Omission to give notice to the mortgagor or his representative is sufficient to vitiate the whole of the foreclosure proceedings Khukroo Misrain v. Jhoomuck Lall Dass . 15 W. R 263

88. ——— Irregularity in foreclosure proceedings—Beng Reg XVII of 1806, s 8. The omission of the Court to send with a notice of foreclosure a copy of the mortgagee's petition as required by s. 8, Regulation XVII of 1806, was held to be not such an irregularity as made void the foreclosure in a case where, subsequent to the

W. R. 1864, 36

89. ——— Beng Reg XVII of 1806, s. 7—Notice of foreclosure not signed by Judge—Invalidity of foreclosure proceedings. A notice issued under Regulation XVII of 1806 which does not bear the signature of the District

I. L R. 4 All. 278

90. ——— Form of notice—Omission to sign and seal by Judge A notice of foreclosure, bearing the seal of the Court issuing it, but signed only by a Moonsarim, is not a sufficient compliance with the law, which requires that the notice be given under the seal and official signature of the Judge. Seith Hur Lall v Manickpal
3 N W. 176

91. ——— Beng Reg. XVII of 1806. A notice of foreclosure signed by the serishtadar of the Judge's Court and bearing the seal

I L. R. 13 Calc. 50

92. ——— Sufficiency of notice—Beng. Reg. XVII of 1806, s. 8—Notice not signed by Judge. Held, that, where the notice of foreclosure under s. 8 of Regulation XVII of

93 ——— Transfer of Property Act (IV of 1882), s. 87—Question arising as to the order absolute for foreclosure—Notice S 87 of the Transfer of Property Act does not require that any notice should be given to the judgment-debtor before the order absolute for foreclosure is made. Tara Pado Ghose v Kamini Dassi (1901)
I. L R. 29 Calc 644

10. ACCOUNTS.

1 ——— Claim for account—Suit on mortgage payable on demand Where a mortgage-debt is payable on demand, the mortgagee ought to sue, not for interest only, but for an account and payment of what remains due on the mortgage for principal and interest up to the filing of the plaint Annapa v Ganpati . . I L R 5 Bom. 181

2. ——— Suit for account—Suit by mortgagor—Redemption Ordinarily, a suit for an account upon a mortgage cannot be maintained by a mortgagor unless he asks for redemption also. Hari v. Lakshman . I. L R 5 Bom. 614
See Shankarapa v Danapa
I. L R. 5 Bom. 604

3 ——— Obligation to ...

4. ——— Mode of taking account—

Monowar Ali . . . . W. R 1864, 109

5. ——— Form of account—Mortgagee in possession. A mortgagee in possession should keep an account independent of the batwara accounts, which may be used as a test of the accuracy of the accounts filed by the parties. The mortgagee's account must be prepared by himself or by his own agent, and must comprise the gross receipts realized from the tenantry, and the account

MORTGAGE—*contd.*

10. ACCOUNTS—*contd.*

must be full and complete. RAM KISSEN SINGH v. KUNDUN LALL . . W. R. 1864, 177

6. ———— *Suit by second mortgagee against mortgagor and third mortgagee.* In a suit by a second mortgagee against his mortgagor and a third mortgagee, asking for an account and sale, the Court directed an account to be taken, not only of what was due to the plaintiff, but also of what was due to the third mortgagee. AUHINDRO BHOOSUN CHATTERJEE v. CHUNNOOLALL JOHURRY I. L. R. 5 Calc. 101

7. ———— Liability to account—*Duty of mortgagee of share of estate.* It is the duty of a mortgagee of a fractional share of an estate held in joint tenancy to see that he receives out of the estate all that the mortgagor ought to have received; not only that all assets are realized and brought to account, but that the expenses are regulated with care. ALI REZA v. TARASOONDEREE 2 W. R. 150

8. ———— *Mortgagee in constructive possession—Duty of mortgagee.* Held, that an usufructuary mortgagee in possession is

the mortgagee

profits if

mortgagor.

9. ———— *Waiver of right to account by mortgagor—Usury laws, repeal of—Contract as to profits of estate.* A mortgagor may give his usufructuary mortgagee the power to sue him personally, or to sell the land, or both, at any moment. Since the repeal of the usury laws a mortgagor and mortgagee may make what contract they please with reference to the profits of the mortgaged estate, and the mortgagor may by contract deprive himself of the right to compel the mortgagee in possession to account for the profits. MUNNOO LAL v. REET BHOOBUN SINGH 6 W. R. 283

10. ———— *Usufructuary mortgage—Redemption—Interest—Beng. Reg. XV of 1793, ss. 3, 4, 10, 11—Stat. 13 Geo. III, c. 63, s. 30—Act XXVIII of 1855, s. 7—Novation of contract—Recital of mortgage.* J, the usufructuary mortgagee for R1,250 of certain land, of one-ninth of which he had purchased the equity of re-

mortgagee, and R750 of the land he held as proprietor. By the instrument of mortgage it was provided that the mortgagee should take all the profits in lieu of interests, and the mortgage should

MORTGAGE—*contd.*

10. ACCOUNTS—*contd.*

of 1793, for possession of the land, on the ground that the mortgage had been redeemed, as the principal money and interest at twelve per cent. had been received out of the profits, and claimed an account. *N* set up as a defence that the provisions of that Regulation were not applicable, as after its repeal by Act XXVIII of 1855, the mortgagor had agreed not to claim an account. This

to an account. *Held*, also, that the be calculated on eight-ninths only of the land. Observations by STUART, *C.J.*, on Regulation XV of 1793 and Stat. 13 Geo. III, c. 63. *Shah Makhan Lal v. Srikrishna Singh, 2 B. L. R. P. C. 44*, and *Badriprasad v. Murlidhar, I. L. R. 2 All. 593*, referred to. MAHTAB KUAR v. COLLECTOR OF SHAHJAHANPUR . . I. L. R. 5 All. 419

11. ———— *Usufructuary mortgage—Reservation of huk ajiri.* When a deed is essentially in the nature of a usufructuary mortgage, the reservation of *huk ajiri*, which was held to be not in the nature of rent, to the proprietor, and any other arrangement between him and his lessee cannot alter the essential character of the deed, nor relieve the mortgagee from the liability of rendering an account. HYDER BUKSH v. HOSSEIN BUKSH . . . 4 W. R. 103

See FUZLOOL RUHMAN v. ALI KUREEM 5 W. R. 163

12. ———— Right to an account—*Suit for redemption—Usufructuary mortgage.* In a redemption under the old law, for the possession of land, the subject of an usufructuary mortgage, the plaintiff is entitled to an account, even though the terms of the original agreement exempt the defendant from his liability to an account, and although the principal sum advanced is very small. DOORGA DABEE v. ISSUR CHUNDER CHATTERJEE 10 W. R. 367

PUNJUM SINGH v. AMEENA KHATOON 6 W. R. 6

13. ———— *Right of purchaser for mortgagor to an account.* The fact that a purchaser of the equity of redemption received a certain sum for payment to the mortgagee does not preclude him from claiming from the mortgagee an account of the income of the mortgaged property. JAFREE BEGUM v. GUNGA RAM . . 3 Agra 91

14. ———— *Right of mortgagor to call on mortgagee to file account—Beng. Reg. XV of 1793—Beng. Reg. I of 1798.* A mortgagor who has recovered possession of the mortgaged property by the deposit of the principal sum lent under Regulation I of 1798 is, in a suit subsequently

MORTGAGE—*contd*

10 ACCOUNTS—*contd*

brought by him for the adjustment of accounts

15. ———— Production of accounts—*Beng Reg. XV of 1793, s 11* Under s 11 of

16. ———— *Beng Reg I of 1798, s 3* In a suit for foreclosure brought by a mortgagee under a bye-bil-wafa, or conditional bill of sale, it is not incumbent on the mortgagee to produce his accounts; the language of s 3 of Regulation I of 1798 pointing to an adjustment of accounts in the event of accounting becoming necessary, in which case the lender is to account. FORBES *v.* AMEEROONISSA BEGUM
1 Ind. Jur. N. S. 117: 5 W R. P. C. 47
10 Moo. I A 340

17. ———— Objection to items in accounts—*Jamabandi papers—Beng Reg IX of 1833*

ALI *v.* GOLAB CHOWDHREE . . 3 Agra 314

18. ———— Mode of filing accounts—*Conditional decree—Reconveyance, power of Court for.* In a suit for redemption of mortgaged property it was held (by BAYLEY, J.) that the law only requires

Held (by BAYLEY, J.), to be a rule of law which had been followed in practice, and which this Court must follow, that no redemption can be decreed in

19. ———— Nature and form of account—*Beng Reg. I of 1798, s. 3—Estate papers* In a suit for possession of mortgaged lands on the allegation of satisfaction of mortgage from the

MORTGAGE—*contd*

10 ACCOUNTS—*contd.*

usufruct, the mortgagee is bound to furnish an account of the *boná fide* proceeds of the estate while in his possession Toujees, mehal melanee papers jaidars, and jumma-wasil-baki papers are not *per se* such an account within the meaning of s 3, Regulation I of 1798, but may corroborate such account GOLUCK CHUNDER DUTT *v* MOHUN LALL SOOKUL.
5 W. R. 271

RAM LOCHUN PATUK *v* KUNHYA LALL
6 W. R. 84

20. ———— *Beng Reg. XV*

21 ———— Proof of accounts—*Beng Reg XV of 1793, s 11—Co-sharers—Nature of proof* Mortgagees in actual possession should under s 11, Regulation XV of 1793, be examined as to

co-sharers has a competent knowledge of the facts, his deposition is sufficient to prove the truth of the accounts. RAM PHUL PANDEY *v* WAHED ALI KHAN . . 14 W. R. 66

22 ———— *Interest on sum due—Beng Reg XV of 1793, s. 10.* The assignee of the mortgagor's rights in certain properties of which a zur-i peshgi lease for twenty-four years

s 10 of Regulation XV of 1793, the lessee was entitled to simple interest at 12 per cent. on the money found due. *Held,* further, that under s. 11 of the Regulation it was sufficient for the lessee to tender accounts showing the collections and disbursements and to swear to their correctness, and that it was

23. ———— *Decision on in-*

GOLUCK CHUNDER DUTT
1 W. R. P. C. 19: 10 Moo. I. A 1

24. ———— *Onus of proof—Income-tax papers.* Where the accounts of a mort-

MORTGAGE—*contd.*

10. ACCOUNTS—*contd.*

must be full and complete. RAM KISSEN SINGH v. KUNDUN LALL . . W. R. 1864, 177

6. ———— *Suit by second mortgagee against mortgagor and third mortgagee.* In a suit by a second mortgagee against his mortgagor and a third mortgagee, asking for an account and sale, the Court directed an account to be taken, not only of what was due to the plaintiff, but also of what was due to the third mortgagee. AUHINDRO BHOOSUN CHATTERJEE v. CHUNNOOLALL JOHURRY I. L. R. 5 Calc. 101

7. ———— Liability to account—*Duty of mortgagee of share of estate.* It is the duty of a mortgagee of a fractional share of an estate held in joint tenancy to see that he receives out of the estate all that the mortgagor ought to have received; not only that all assets are realized and brought to account, but that the expenses are regulated with care. ALI REZA v. TARASOONDEREE 2 W. R. 150

8. ———— *Mortgagee in constructive possession—Duty of mortgagee. Held*, that an usufructuary mortgagee in possession is liable to account for the profits, whether such possession be by himself or by his agent, and that the suit should not be dismissed merely because the mortgagee refused to give the account, but that the Court should give proper directions for the mort- [illegible]

9. ———— *Waiver of right to account by mortgagor—Usury laws, repeal of—Contract as to profits of estate.* A mortgagor may give his usufructuary mortgagee the power to sue him personally, or to sell the land, or both, at any moment. Since the repeal of the usury laws a mortgagor and mortgagee may make what contract they please with reference to the profits of the mortgaged estate, and the mortgagor may by contract deprive himself of the right to compel the mortgagee in possession to account for the profits MUNNOO LAL v. REET BHOOBUN SINGH 6 W. R. 283

10. ———— *Usufructuary mortgage—Redemption—Interest—Beng. Reg. XV of 1793, ss 3, 4, 10, 11—Stat 13 Geo. III, c 63, s. 30—Act XXVIII of 1855, s. 7—Novation of contract—Recital of mortgage J*, the usufructuary mortgagee for R1,250 of certain land, of one-ninth of which he had purchased the equity of redemption in 1854, gave a usufructuary mortgage of the land to *N* for R2,700, of which R1,950 represented the mortgage-money of the land he held as mortgagee, and R750 of the land he held as proprietor. By the instrument of mortgage it was provided that the mortgagee should take all the profits in lieu of interests, and the mortgage should be redeemable on payment by the mortgagor of the principal money. In 1880 *F*, the representative of the original mortgagor in respect of eight-ninths of the land, sued, with reference to Regulation XV of 1793, for possession of the land, on the ground that the mortgage had been redeemed, as the principal money and interest at twelve per cent. had been received out of the profits, and claimed an account. *N* set up as a defence that the provisions of that Regulation were not applicable, as [illegible]

recital of the mortgage, and therefore *F* was entitled to an account. *Held*, also, that the account should be calculated on eight-ninths only of the land. Observations by STUART, *C J.*, on Regulation XV of 1793 and Stat. 13 Geo. III, c. 63 *Shah Makhan Lal v. Srikrishna Singh*, 2 *B L. R P. C. 44*, and *Badriprasad v. Murlidhar, I. L. R 2 All. 593*, referred to. MAHTAB KUAR v. COLLECTOR OF SHAHJAHANPUR . . I. L. R. 5 All 419

11. ———— *Usufructuary* [illegible] When a deed [illegible] uary mortgage [illegible] h was *held* [illegible] proprietor, [illegible] m and his [illegible] ter of the [illegible] e liability [illegible] BUKSH v. HOSSEIN BUKSH . . . [illegible] W. R. 103

See FUZLOOL RUHMAN v. ALI KUREEM 5 W. R. 183

12. ———— Right to an account—*Suit for redemption—Usufructuary mortgage.* In a redemption under the old law, for the possession of land, the subject of an usufructuary mortgage, the plaintiff is entitled to an account, even though the terms of the original agreement exempt the defendant from his liability to an account, and although the principal sum advanced is very small. DOORGA DABEE v. ISSUR CHUNDER CHATTERJEE 10 W. R. 387

PUNJUM SINGH v. AMEENA KHATOON 6 W. R 6

13. ———— *Right of purchaser for mortgagor to an account.* The fact that a purchaser of the equity of redemption received a certain sum for payment to the mortgagee does not preclude him from claiming from the mortgagee an account of the income of the mortgaged property JAFREE BEGUM v. GUNGA RAM . . 3 Agra 61

14. ———— *Right of mortgagor to call on mortgagee to file account—Beng Reg XV of 1793—Beng. Reg. I of 1798* A mortgagor who has recovered possession of the mortgaged property by the deposit of the principal sum lent under Regulation I of 1798 is, in a suit subsequently

MORTGAGE—*contd*

10 ACCOUNTS—*contd*

brought by him for the adjustment of accounts during the period the mortgagee was in possession, entitled to force the defendant to file his accounts and swear to them according to the provisions of Regulation XV of 1793 TUFUZZOOL HOSSEIN v MAHOMED HOSSEIN . 2 Hay 17

15. ———— Production of accounts—*Beng Reg XV of 1793, s 11* Under s 11 of Regulation XV of 1793 ...

... 1 Hay 154

16. ———— *Beng Reg I of 1798, s 3* In a suit for foreclosure brought by a mortgagee under a bye-bil-wafa, or conditional bill of sale, it is not incumbent on the mortgagee to produce his accounts; the language of s. 3 of Regulation I of 1798 pointing to an adjustment of accounts in the event of accounting becoming necessary, in which case the lender is to account. FORBES v. AMEEROONISSA BEGUM

1 Ind Jur. N. S 117 : 5 W R. P C. 47
10 Moo. I A 340

17. ———— Objection to items in accounts—*Jamabandi papers—Beng Reg. IX of 1833.* A mortgagor is not precluded from question-...

... at the time the papers were filed TAIG ALI v GOLAB CHOWDHREE . . 3 Agra 314

18. ———— Mode of filing accounts—*Conditional decree—Reconveyance, power of Court for.* In a suit for redemption of mortgaged property it was held (by BAYLEY, J.) that the law only requires that the mortgagee's ...

must follow, that no redemption can be decreed in such a suit as long as there is any balance found due *Held* (by PHEAR, J), that plaintiff ought to ...

19. ———— Nature and form of account—*Beng Reg. I of 1798, s 3—Estate papers* In a suit for possession of mortgaged lands on the allegation of satisfaction of mortgage from the

MORTGAGE—*contd*

10 ACCOUNTS—*contd.*

...

GOLUCK CHUNDER DUTT v. MOHUN LALL SOOKUL. 5 W. R. 271

RAM LOCHUN PATUK v. KUNHYA LALL 6 W. R. 84

20. ———— *Beng Reg. XV of 1793, s 11* To enable a ...

RAM CHUND SAHOO . . 5 W. R. 53

21 ———— *Reg XV of* ... Mortgagees ...

co-sharers has a competent knowledge of the facts, his deposition is sufficient to prove the truth of the accounts RAM PHUL PANDEY v WAHED ALI KHAN . . . 14 W. R. 66

22 ———— *Interest on sum due—Beng Reg XV of 1793, s. 10.* The assignee of the mortgagor's rights in certain properties of ...

Sreekishen Singh, 12 Moo I. A 157, that, under s. 10 of Regulation XV of 1793, the lessee was entitled to simple interest at 12 per cent on the money found due. *Held*, further, that under s. 11 of the Regulation it was sufficient for the lessee to tender ...

the original accounts on which the accounts tendered were prepared. TASADUK HOSSAIN v. BENI SINGH . . . 13 C L R. 128

23. ———— *Decision on insufficient proof* The Zillah Courts, in coming to a conclusion as to the state of the mortgage accounts ...

1 W. R. P. C. 19 : 12 Moo. I. A ...

24. ———— ... *Income-tax papers.* Where the ...

MORTGAGE—*contd.*

10. ACCOUNTS—*contd.*

gagee who has been in possession are being taken, his income-tax papers are inadmissible as evidence in his favour, though they may be used against him. It

[illegible]

therefore be taken as true. GHOLAM NUZUF *v.* EMANUM . . . . . 9 W. R. 275

25. —————— *Usufructuary mortgage—Mesne profits* In the case of an usufructuary mortgage executed prior to Act XXVIII of [illegible]

during his possession. On the failure of the mortgagee in this respect, the mortgagor is expected to adduce some proof to justify a decree in his favour for redemption, as well as for mesne profits. HASHUM ALI *v.* RAMDHAREE SINGH . . 7 W. R 89

26. ———— Mode of taking accounts—*—Mortgagee in possession.* As to the mode of taking accounts when the defendant is mortgagee in possession HUNOOMAN PERSHAD PANDEY *v.* MUNDRAJ KOONWEREE

18 W. R. 81 note : 6 Moo. I. A. 393

27. —————— *Mortgagee in possession.* Mode of taking account when the mortgagee was in possession of the estates as mortgagee and also as lessee under a lease. HUNOOMAN PERSAUD PANDAY *v.* MUNRAJ KOONWEREE

6 Moo. I. A. 393
18 W. R. 81 note

28. —————— *Arrangement by some of the mortgagors and the mortgagee.* Where [illegible]

RAM KANTH ROY CHOWDHRY *v.* KALEE MOHUN MOOKERJEE . . . . . 22 W. R. 310

29. —————— *Mortgage-debt —Apportionment by mortgagors—Mortgagee's acquiescence—Liability according to shares.* Mort- [illegible]

gagors in paying off their respective shares of the mortgage-debt without there being a special direction to that effect from those mortgagors, he was entitled to recover the remainder of that debt from the share of the mortgagor co-sharer by whom it was due. MAHADAJI HARI LIMAYE *v.* GANPATSHET DHONDSHET . . . I. L. R. 15 Bom. 257

30. —————— *Government revenue—Annual rests—Surplus receipts—Wrongful payments by mortgagee—Transfer of Property Act, IV of 1882, s. 76 (c) and (h).* By the terms of an usufructuary mortgage it was provided that the annual profits of the mortgaged property should be taken to be a certain amount; that out of this ... the revenue should be paid annually by the [illegible]

the mortgaged property and a surplus was ... sued the original mortgagor and the mortgagee for possession by redemption of the mortgaged property and for surplus profits, or for possession of the ... of any sum which ... s to the suit ... redeemed in 1877 by the original mortgagor, ... he suit was therefore not maintainable. *Held*, (i) that, assuming that such redemption had taken place, that fact ... rights arising out ... ich redemp ... rtgagor and ... as therefore the mortgagee, and such ... plaintiff was en- ... enue ... f the ... g the ... nual ... h be ... perly ... inst ... 303

31. —————— *Civil Procedure Code, s. 111—Transfer of Property Act (IV of 1882), ss. 2, 76—Set-off—Waste by mortgagee in possession—Possession after date fixed for payment—Interest.* In a suit in 1888 to recover principal and interest due on a usufructuary mortgage executed on 15th June 1870, which contained a covenant for repayment of the secured debt on 5th June 1878, the defendant pleaded and proved that the mortgagee had permitted certain buildings on the mortgage premises to fall into a ruinous condition, and it appeared that the mortgagee had

MORTGAGE—*contd*

10 ACCOUNTS—*contd*

remained in possession after June 1878 —*Held*, (i) that the defendant was entitled to have the amount of the loss occasioned by the plaintiff's failure to make repairs brought into the mortgage account under the Transfer of Property Act, s 76, and a separate suit by him for that amount was not necessary, (ii) that the profits derived by the mortgagee after the date fixed for repayment should be regarded as having been enjoyed in lieu of interest. SHIVA DEVI v JARU HEGGADE

I L. R 15 Mad 290

32. ——— ——— *Equity of redemption—Charge created by mortgagors—Power of executors—Property subject to a trust.* R died [illegible]

[illegible]

became entitled to his property. In consequence of some alleged mismanagement on the part of *A*, *M* and *S* filed a bill in the late Supreme Court and obtained a decree ordering the Master of the Court to take an account of the rents and profits which had come into the hands of *P's* executors. While these accounts were being taken, *A* died, [illegible]

[illegible]

grandsons, who took it subject to payment—(i) of such of the legacies as remained unpaid under *R's* will, and (ii) of what might be due by *A* to *P's* estate. After *A's* death, the above suit in equity was revived against his executors The said executors borrowed money from one Mackintosh on the security of a bond and a mortgage of certain property which he obtained (including the Tumlook property) by an indenture, which recited that the said executors were still accountable in respect of the [illegible]

[illegible]

foreclosure and commenced another suit against *M* which was compromised, and a decree made [illegible]

[illegible]

MORTGAGE—*contd*

10 ACCOUNTS—*contd.*

that it was subject to a trust in his own favour for the payment of his own debt. MANOMATHO NATH DEY v. GREENDER CHUNDER GHOSE

24 W. R. 366

33. ——— *Suit for possession of property mortgaged by zur i-peshgi—Form of suit* Directions as to the nature of accounts to be taken in a suit for possession of property the subject of a zur-i-peshgi mortgage, and as to the form of suit of such a case SUIEEDUN v ZUHOOR HOSSEIN

W. R. 1864, 44

34. ——— *Interest—Beng. Reg XV of 1793, s 10—Suit for redemption.* Where a mortgage-deed stipulates for interest at 9 per cent, but other and collateral deeds, forming part of the same transaction, provide for further [illegible]

[illegible]

relieved from the consequences of his actual contract. The mortgagee may retain his pledge until he has received out of it his debt with interest at 12 per cent, the maximum allowed by s. 10 of Regulation XV of 1793 In a suit for redemption, on the ground that the debt has been satisfied with [illegible]

[illegible]

his time The nature of the accounts which a mortgagor may call for from the mortgagee, explained The mortgagee need not personally attest the accounts, if he has no personal knowledge of them. Presumptions against mortgagees for non-production of accounts must have reasonable limits and not be mere conjectures or based on in exact data MAKHANLAL v SRIKRISHNA SINGH

2 B. L R P. C. 44: 11 W. R. P. C. 19
12 Moo I. A. 157

35 ——— *Suit for redemption against mortgagee in possession—Account—Evidence* In a mortgage suit, where the defendant admitted that he was in possession of the property [illegible]

[illegible]

income derived from the land since he (mortgagee) had been in possession. In taking the account of a mortgage, it lies upon the mortgagee to prove

MORTGAGE—*contd.*

10 ACCOUNTS—*contd.*

what is due from the mortgagor in respect of principal and interest. GANGA MULIK *v.* BAYAJI

I. L. R. 6 Bom. 669

36. ———————— *Confiscation of mortgagee's rights—Suit for redemption—Account.* A mortgagee's rights, being confiscated by Government for rebellion, were given to defendants. *Held*, on plaintiff's claim of redemption, that the defendants must account for excess of profits over interest in the years when they were in possession. MAHOMED SALAMUT HOSSEIN *v.* SOOKH DAYEE

2 Agra 116

37. ———————— *Decree in mortgage suit giving mortgagee possession in default of payment of mortgage-debt—Relation between mortgagor and mortgagee—Mortgagee in possession under decree—Decree for possession in mortgage suit, effect of* The plaintiff mortgaged certain land to the defendant in 1864 In 1874 the defendant (mortgagee) obtained a decree against the plaintiff upon the mortgage, ordering the plaintiff to pay the defendant the sum of R40; in default of payment, the defendant (mortgagee) to take possession of the land until the said sum should be paid. *In pursuance of the said decree, the defendant took* possession. The plaintiff brought the present suit to redeem the said land, alleging that the amount of the mortgage-debt had been fully liquidated out of the surplus profits of the land. *Held*, that the defendant (mortgagee) was not liable to account to the plaintiff for such profits. Under the former decree, the defendant was entitled to take possession, and retain it with the attendant benefits until the plaintiff should pay a definite sum which he had never paid The defendant held under the said decree a complete title to the land until such payment was made. NAVLU *v* RAGHU

I. L. R. 8 Bom. 303

38. ———————— *Mortgagee in possession—Liability to account for profits, and to what extent* A mortgagee in possession of the mortgaged land, who, instead of letting it to raiyats and realizing the rents in the ordinary way, cultivates it himself, is not responsible or liable to account for the whole of the profits arising to him by farming the land, but only for such profits as he would have realized had he let it to a tenant, or as the mortgagor would have realized had he let it. RUGHOONATH ROY *v.* BARAIK GEEREEDHAREE SINGH

7 W. R. 244

39. ———————— *Mortgagee's charges—Mortgagee in possession, duty of—Cultivation Held*, that a mortgagee in possession of land was bound to cultivate the best crop which it was ordinarily capable of yielding GIRJOJI BHIKAJI SONAR *v.* KESHAVERA RAVJI PATIL HENGE . . . . . . 2 Bom. 211

40. ———————— *Suit for redemption of zur-i-peshgi mortgage—Balance which might have been recovered by mortgagee.* Under the terms of a zur-i-peshgi mortgage:—*Held*, that the mortgagee was not entitled to demand the payment of so much of the balances as had become irrecoverable by reason of his own laches, but that he was entitled to retain possession of the mortgaged estate till the balances recoverable at the time of the commencement of the redemption suit were paid by the mortgagor. RAM PERSHAD *v* KISHNA

3 Agra 146

41. ———————— *Mortgagee's charges—Obligation of mortgagee in possession to repair.* A mortgagee in possession of mortgaged premises is bound to keep them in necessary repair, and is at liberty to charge for the same with interest. JOGENDRONATH MULLICK *v* RAJ NARAIN PALOOYE

9 W. R 489

42. ———————— *Allowances to mortgagee—Suit for redemption—Costs of repairs.* In a redemption suit a mortgagee is entitled to credit for reasonable costs of repairs, if he renders an account of rents and profits. LAKSHMAN BHISAJI SIRSEKAR *v.* HARI DINKAR DESAI

I. L. R. 4 Bom. 584

43. ———————— *Allowances to mortgagee—Conditional sale—Expense of repairs.* [illegible] certain property which [illegible]

less upon payment of the sum [illegible] though such sum amounted to more [illegible]

44. ———————— *Allowances to mortgagee—Expenses of improvements and repairs* Though a mortgagee without any agreement is not [illegible] with all sums which [illegible] or the im- [illegible] hether such [illegible] in pursu- [illegible] not legally [illegible] the mort- [illegible] will also [illegible] may him- [illegible] be liable for any expenditure [illegible] self have sanctioned. AMEEROOLLAH *v* RAM DOSS . . . . 2 Agra 197

RAGHO BAGAJI *v* ANAJI MAVAJI PATIL

5 Bom. A. C. 118

45. ———————— *Allowance for improvements and repairs.* Claims made by a mortgagee in respect of money laid out in improvement after the expiry of the day fixed for repayment must depend on an equitable consideration of all the circumstances of the case. The English rule should

MORTGAGE—*contd*

10 ACCOUNTS—*contd*

be adopted under which the mortgagee is only allowed to claim for such outlay as has been required in order to keep the mortgaged premises in a good state of repair and to protect title RAMJI BIN TUKARAM *v* CHINTO SAKHARAM 1 Bom. 199

46. ———————— *Directions for account—Mortgagee in possession—Buildings and improvements, allowance for* The rule of Courts of [illegible]

[illegible]

buildings erected, or permanent improvements made by him upon the mortgage premises ANANDRAV *v* RAVJI . . . . 2 Bom 214

47. ———————— *Costs of improvements on property—Transfer of Property Act (IV of 1882), s. 63—Right of prior mortgagee to add to the amount secured by his mortgage outlay incurred by him in the preservation of the property mortgaged.* Where a mortgagee of agricultural land had, with the consent of his mortgagors, spent money in repairing a well on the property which had been rendered useless from natural causes, [illegible]

[illegible] I. L. R. [illegible]

48. ———————— *Compound interest on money spent to protect property—Interest on money expended on improvements on pro*[illegible]

[illegible]

KISHORI MOHUN ROY *v.* GANGA BAHU DEBI
I. L. R 23 Calc. 228
L R 22 I A. 183

49. ———————— *Right of mortgagee in possession to execute repairs—Cost of improvements on redemption—Transfer of Property Act, s 72.* Transfer of Property Act, s. 72 (*b*), does not permit a mortgagee in possession to effect improvements. Consequently in a suit for redemption the costs of such improvements cannot be legally charged against the mortgagor seeking to redeem. ARUNACHELLA CHETTI *v.* SITHAYI AMMAL
I. L. R. 19 Mad. 327

50. ———————— *Value of improvements on redemption depreciation of, between decree and date of redemption.* A decree for the redemption of a kanam in Malabar was passed in

MORTGAGE—*contd.*

10 ACCOUNTS—*contd.*

December 1894 when there were on the land improvements in the form of trees, etc , to the value of R1,429 Within the six months limited by the decree for redemption, the mortgagor applied for execution, and it appeared that the value of improvements had diminished by the loss of trees of [illegible]

[illegible] I. L. R. 20 Mad. 124

51. [illegible]
gaged [illegible]
—Rig[illegible]
of, on [illegible]
then [illegible]
a decree for sale without joining as defendant *C*, of whose mortgage he had notice; *D*, the son of the decree-holder, became the purchaser in execution and improved the land at a considerable cost. *C* now sued the sons and representatives of *A* and *B* (both deceased) on his mortgage, and sought a decree for sale. *Held*, that the purchaser was not entitled to allowances for improvements RANGAYYA CHETTIAR *v* PARTHASARATHI NAICKAR
I. L R 20 Mad. 120

52 ———————— *Account of redemption of a mortgage—Appropriation of payments—Set-off of rents and profits—Expenditure on improvements—Interest—Transfer of Property Act (IV of 1882), s 76—Lower Burma Courts Act (XI of 1889), s 4* That an account should have been [illegible]

[illegible]

the mortgagee in each year were set off year by year against the amount expended by the mortgagor in that year for improvement and management, or their total was deducted at the end of possession from the sum expended by him. The balance of his expenditure had, in fact, exceeded in each year that of his receipts and carried only simple interest. The mortgage-debt decreed bore compound interest. *Held*, that the account need not be taken on the principle that the mortgagee should give credit for his receipts, first, in reduction of that debt, which was most burdensome to the debtor. There was no obligation to pay off the compound interest debt before the other. Whether the improvements and the expenditure were reasonable, were questions of fact on which two Courts had concurred; and there was no ground for interference with their [illegible]

[illegible]

paid, and in the account could not be allowed, such allowance not having been decreed. But the cost

MORTGAGE—*contd.*

10. ACCOUNTS—*contd.*

of this manager's being separately maintained during the father's life could be allowed. For the period after the father's death, as the son became mortgagee himself, such cost of maintenance could not be allowed. KADIR MOIDIN v. NEPEAN I. L. R. 26 Calc. 1
L. R. 25 I. A. 241
2 C. W. N. 665

53. ——— *Suit for redemption—Mortgagee in possession.* A mortgagee in possession is liable to account for profits arising from trees planted by himself on the mortgagor's land. A mortgagee in personal possession is, in the absence of any special contract to the contrary, ... with a fair occupation rent, in the case ... y him for the ... trade or busi- ... nally occupied or cultivated by him, either with a fair occupation rent or with the actual net profits realized from the use of the land. In ascertaining what those profits are, with which the mortgagee ought to be credited in reduction of his mortgage-debt with interest thereon, the mortgagee ought to be credited for his ... from the land and a ...

... 12 Bom. 88
DIKSHIT

54. ——— *Improvements and accretions, right to—Fruit trees.* The holder ...

... 10 Bom. 509
DARKU TUKARAM

55. ——— *Village mortgaged without specifying boundaries—Accretions to village—Rights of parties on redemption or foreclosure.* Where a village, without specification of ...

56. ——— *Expenses of revenue survey. Held,* that a mortgagee in possession was entitled to be allowed for expenses incurred in connection with the revenue survey of the land mortgaged to him. BAPUSA BIN SADASHIV v. RAMJI BIN GOPALJI . . 2 Bom. 220

57. ——— *Mortgagee in possession—Payment by mortgagee of assessment*

MORTGAGE—*contd.*

10. ACCOUNTS—*contd.*

payable by mortgagor—Right of mortgagee to tack amount so paid to mortgage-debt. Where a mortgagee in possession pays the assessment on the mortgaged land which was payable by the mortgagor, he has a right to tack on the amount so paid to his mortgage-debt. KAMAYA NAIK v. DEVAPA RUDRA NAIK . . I. L. R. 23 Bom. 440

58. ——— *Transfer of Property Act (IV of 1882), s. 72—Mortgagee compelled to pay Government revenue which should have been paid by the mortgagor—Remedies of the* ... mortgagee has been compelled ...

the mortgagor separately to recover ... and paid. If, however, he has sued separately and obtained a decree against his mortgagor, he cannot ... the mortgage-debt; his ...
... AD HASAN
... 0 All. 401

59. ——— *Mortgagee, obligation of—Expenses incurred in protecting title—Stipulations not creating fresh obligations.* Under the ordinary law of mortgage, the mortgagor is bound, so long as the equity of redemption remains with him, to indemnify the estate against expenses incurred in protecting the title. So that where a mortgage-bond contains stipulations under which the mortgagor engages to repay to the mortgagee any costs he may incur in suits brought against him by the mortgagor's co-sharers, and also any debts charged upon the mortgaged property which the mortgagee may pay, the stipulation do not create any fresh obligation. DAMODAR GUNGADHAR v. VAMANRAV LAKSHMAN . I. L. R. 9 Bom. 455

60. ——— *Right of purchaser of equity of redemption to set off sums paid in reduction of mortgage.* The only payments which purchasers of the equity of redemption can claim to deduct from the mortgage-debt are sums actually received by the mortgagee in reduction thereof, not money owed by the mortgagee to the mortgagor on some other account. TARINEE KANT BHUTTACHARJEE v. GANODA SOONDUREE DEBEE 24 W. R. 460

61. ——— *Suit by purchaser of equity of redemption—Costs of a redemption suit—Compensation to mortgagee.* The plaintiffs sued as purchasers of the equity of redemption from *S*, a Hindu widow, to redeem a mortgage-deed executed by her husband *B*. The mortgage-deed was held by *P*. that a portion of the mortgaged land was held from a third party not as owner, but as mortgagee, but she *S* was alive when the suit was instituted. The plaintiff died after the settlement of issues. The plaintiffs then filed a supplementary claim to succeed as *B*'s next heir. The defendants (the sons of the mortgagee) contended that the plaintiff could not redeem, because the sale by *S* was invalid. They also claimed compensation for loss of the rents and pro-

MORTGAGE—*contd.*

10. ACCOUNTS—*contd.*

fits of a portion of the mortgaged property redeemed from *B* by the original owner The Subordinate Judge allowed the plaintiff's claim On appeal, the District Judge confirmed his decree, being of opinion that the sale was valid as against the defendants, because there were no collateral heirs. On appeal to the High Court —*Held*, that the defendants were not entitled to any compensation on account of the redemption of a portion of the mortgaged property by the original owner, because they were aware that the mortgage to *B* was liable to be redeemed, and they (defendants) took such a precarious security at their own risk. In a redemption suit the defendant (mortgagee) is ordinarily entitled to his costs, unless he has refused a tender of the amount due to him, or has so misconducted himself in the course of the suit as to induce the Court to subject him to a penalty. DHONDO RAMCHANDRA *v.* BALKRISHNA GOBIND

I. L. R. 8 Bom. 190

62. ———— *Costs incurred by mortgagee—Transfer of Property Act (IV of 1882), s. 72.* Land, having been mortgaged to the defendant, was let by him for rent to the mortgagor. The rent fell into arrear, and the mortgagee sued and obtained a decree for the rent in arrear and for possession. Subsequently after the mortgagor's death, her heir, the present plaintiff, unsuccessfully resisted

DEARY . . . I. L. R. 21 Mad. 54

63. ———— *Interest—Proof of accounts—Failure to keep or omission to produce accounts* In seeking to have the account taken and to have it ascertained whether the mortgagee has by means of the usufructuary mortgage obtained

64. ———— *Usury laws—Beng Reg. XXXIV of 1803—Obligation on mortgagee to file accounts.* In a mortgage dated in 1852 of malikana fixed for the period of settlement, it was

MORTGAGE—*contd.*

10. ACCOUNTS—*contd.*

agreed that the mortgagee should collect the village jumma, pay the Government demand, and take the malikana, of which part was to be received by him as

PRASAD *v.* MURLI DHAR . I. L R 2 All. 593
L. R 7 I. A. 51

65 ———— *Mortgagee in possession—Interest—Beng Reg XV of 1793.*

10 B. L. R. 360 : 17 W. R. 262
14 Moo. I. A. 443

66. ———— *Interest on collections by mortgagee—Commission on amount col-*

MORTGAGE—*contd.*

10. ACCOUNTS—*contd.*

cent, unless there is any express stipulation to the contrary, or it is shown to be unreasonable. ROGHONATH v. LUCHMUN SINGH . 1 Agra 132

67. ———— *Redemption after expiry of time and under new interpretation of law—Improvements.* Where under the old law of mortgage by which the mortgagee after the expiry of the time for redemption acquired a proprietary right in the property, there was an absolute delivery of possession to the mortgagee, and the mortgagor afterwards stood by and allowed the property to be sold as unincumbered, the Court, in allowing the mortgagor after twenty years to have redemption of the property under the new interpretation of the law of mortgage, yet considered that, under the peculiar circumstances of this case, the Court would not be justified in calling upon the mortgagee to furnish accounts of the rents and profits on the one hand, and of the principal and interest on the other. Interest on the value of improvements made since the time the property came into the hands of *A* disallowed. RAMSHET BACHASHET v. PANDHARINATH . . . 8 Bom. A. C. 236

68. ———— *Suit by mortgagor for possession under usufructuary mortgage.* In a suit to recover possession of land with surplus collections by redemption of a mortgage created by [illegible]

was a balance in favour of the mortgagee, and that therefore plaintiff was not entitled to a decree for re-entry, the Court (following *Kullyan Dass* v. *Seo Nundun Purshad Singh, 18 W. R. 65*) determined to declare the state of the account between the parties upto the end of the year to which the evidence extended. PERLADH SINGH BAHADOOR v. BROUGHTON

24 W. R. 275

69. [illegible]

SINGH ROY v. BHUGOBUTTY DOSSEE . 1 W. R. 133

70. ———— *Interest—Mode of calculation.* There is no law restricting a mortgagee [illegible]

DOORGA CHURN PAHAREE v. CHUTOORBHOOJ DOSS . . . . . . 5 W. R. 200

71. ———— *Suit for redemption—Interest—Amount of interest allowed to mortgagee—Transfer of Property Act (IV of 1882), s. 58.* In 1882 the plaintiffs sued to redeem a mortgage effected in 1833. The Court of first instance allowed the mortgagee interest from the date of the bond. The Appellate Court reduced the interest awarded to the period of six years. *Held*, reversing the decision of the lower Appellate Court, that the mortgagee was entitled to claim interest from the date of the bond up to the date of the decree. *Hari Mahadaji Savaskar* v. *Balambhat Raghunath Khare, I. L. R. 9 Bom. 233*, referred to. No provision of limitation is made by the Limitation Act for the payment of interest on the sum due to the mortgagee. In s. 58 of the Transfer of Property Act the mortgage-money is interpreted to include the interest due, and no time to the payment of interest is fixed. *Prabhakar Chintaman Dikshit* v. *Pandurang Vinayak Dikshit, 12 Bom. 88*, followed. DAUDBHAI RAMBHAI v. DAUDBHAI ALLIBHAI . I. L. R. 14 Bom. 113

72. ———— *Mortgage transactions before Act XXVIII of 1855—Bom. Reg* [illegible]

and of rents and profits on the other [illegible] directed, the arrears of interest must be limited to six years. VITHAL MAHUDEB v. DAND VALAD MAHOMMED HOSSAIN . . 6 Bom. A. C. 90

73. ———— *Provision for payment of interest out of usufruct.* Where the usufruct of mortgaged property was to be enjoyed in lieu of interest, the fact of the mortgagees having had possession was *held* to be no ground for the inference that any portion of the debt, save the interest, was paid off from the usufruct. BAMA SUNDUREE DOSSEE v. BAMA SUNDUREE DOSSEE 10 W. R. 301

74. ———— Mortgage with decree for account and sale—*Withdrawal of execution-proceedings—Principle on which accounts are to be taken.* A mortgagee, who has obtained a decree for an account and sale, is not entitled to withdraw from the taking of accounts in his execution proceedings when those accounts appear to be going against him. DOOLEE CHAND v. OMDA KHANUM *alias* BABU SHUBIBU

I. L. R. 6 Calc. 377: 7 C. L. R. 375

75. ———— Right to re-open accounts—*Suit by mortgagor for possession under usufructuary mortgage.* In a suit to recover possession of land in the possession of the mortgagee under a usufructuary mortgage (which is in reality a suit between the mortgagor and mortgagee for an adjustment of the account between them), if upon taking an account it appears that the mortgagee has

MORTGAGE—*contd.*

10. ACCOUNTS—*contd*

been fully satisfied, the mortgagor is not only en-

and *see* Roy Dinkur Dyal v. Sheo Golam Singh 22 W. R. 172

and Lutafut Hosein v. Chowdhry Mahomed Moonem . . . . . 22 W. R. 269

76. ——— Realization by mortgagee of sum in excess—*Interest—Usufructuary mortgage.* Where a mortgagee under a usufructuary

77. ——— *Suit for account and redemption—Form of decree.* In a suit for

Janoji . . . . I. L. R. 7 Bom. 185

78. ——— *Suit for redemption of two distinct mortgages—Right to separate accounts—Dekkhan Agriculturists' Relief Act (XVII of 1879), s. 13—Mode of taking accounts.* By two separate mortgages certain land were mortgaged in 1830 by the plaintiff's father to the defendant. In 1882 the plaintiff as an agriculturist brought the present suit for redemption of the lands comprised in both mortgages *Held*, that

(mortgagor) by the defendant (mortgagee), and

MORTGAGE—*contd.*

10. ACCOUNTS—*contd.*

7 Bom. 185, the plaintiff had no legal claim to

ing the claim of the defendant to the Rs. due on the other mortgage. The plaintiff as an agriculturist mortgagor was enabled to free his land from both the mortgages on the favourable terms provided by the Dekkhan

Baba Sathe v. Janardan Apaji I. L. R. 14 Bom. 19

79. ——— Binding effect of account—*Mortgagor and Mortgagee—Puisne mortgagee.*

Sankana Kalana v Virupakshapa Ganeshapa I. L. R. 7 Bom. 146

80. ——— *Assignee of mortgagee—Suit for redemption.* In India, as in England, a mortgagee may transfer his rights to a

81. ——— Error in account—*Ground for reforming account—Wrong statement of account—Agreement to pay mortgage-debt by instalments.*

I. L. R. 3 Calc. 602 : 2 C. L. R. 156 L. R 5 I. A. 78

82. ——— *Mortgagee in possession—Redemption—Mode of taking accounts.* A mortgagor seeking to redeem must prove how much of the debt and interest has been repaid. The duty of a mortgagee in possession is to keep a full, true and accurate account of the actual receipts and disbursements In taking accounts between a mortgagor and mortgagee, the Judge must decide as to the accuracy or otherwise of the accounts presented to him by the parties, and it

MORTGAGE—*contd.*

10. ACCOUNTS—*concld.*

83. ——————— *Usufructuary mortgage—Redemption—Payment of the amount found due on taking accounts* S. 13 of the Dekkhan Agriculturists' Relief Act (XVII of 1879) is imperative and the amount due in a suit for redemption of a usufructuary mortgage, in which the provisions of s. 12 of the Act have been complied with, is the amount which is found to be due upon taking accounts in the manner provided by s 13 DADABHAI v. DADABHAI (1908)
I. L. R. 32 Bom. 516

11 DISCHARGE OF MORTGAGE

——— **Death of mortgagee**—*Heirs of mortgagee—Payment of mortgage-debt to one of the heirs.* Where property is mortgaged to a person who subsequently dies leaving two or more heirs jointly entitled to his estate, payment made by the mortgagor of the amount due on the mortgage, to one of those heirs, without the concurrence of the rest, does not amount to a valid discharge to the mortgagor. SITARAM APAJI KODE v SHRIDHAR ANANT PRABHU (1903) **I. L. R. 27 Bom. 292**

12. PRIORITY

1. ——————— *Mortgage—Priority—Mortgage by Receiver under an order of Court—Mortgage for preservation of property—Previous mortgage to pay off putni rent.* Where a mortgage is executed by a Receiver under an order of Court directing that such mortgage should constitute a first charge, it takes priority over any other mortgage of earlier date. GIRIDHARI LAL RAY v DHIRENDRA KRISTO MUKERJEE (1906)
I. L. R. 34 Calc. 427

2. ——————— *Priority* When two mortgages are executed on the same day, that which was executed first takes priority and evidence may be given to ascertain which was in fact executed first Where this cannot be ascertained the mortgagees would take as joint tenants or tenants in common. *Hopgood* v. *Ernest, 3 De. J & S 116,* followed RAM RATAN SAHU v. BISHUN CHAND (1907) . . **11 C. W. N. 732**

13. MISCELLANEOUS.

1. ——————— *Mortgagor and the second mortgagee given opportunity to redeem—Purchase in execution by the mortgagor—Second mortgagee's lien upon the property—Suit by second mortgagee—Question whether the purchaser a benamidar of the mortgagor, if can be done into—Paramount title, claim of—Necessary party—Right of a person made a party defendant to urge in appeal that he was not a proper party* The mortgagor purchasing the mortgaged property in execution of a mortgage-decree made in the suit of a prior mortgagee in which mortgagor and the second mortgagee were made defendants and given an opportunity to redeem the prior mortgage acquires the property

MORTGAGE—*contd.*

13. MISCELLANEOUS—*contd*

subject to the second mortgage. The question whether the purchaser of a property at a sale free from the second mortgage in execution of the mortgage-decree made in favour of the prior mortgagee, is a *benamidar* of the mortgagor or not does not relate to conflicting titles to the property as between the mortgagor and a person claiming a [illegible] that arises [illegible] party to the suit. [illegible] himself to be made a proper party to a suit allows himself to be made a party defendant without any objection and an issue relating to him is raised and decided in the suit, he cannot change front and insist in the Appellate Court that an error has occurred in making him a party and that the issue was not triable in the action BHAJU CHOWDHURY v. CHUNI LAL MARWARI (1906)
11 C. W. N. 284

2. ——————— *Transfer of Property Act (IV of 1882) s. 85—Suit on mortgage—Parties—Notice—Person not known to be interested and not made a party, if bound—Representation of debtor's estate by adult heirs only—Suit to redeem brought after sale—Limitation—Limitation Act (XV of 1877), Sch II, Art. 12 (a)* In a suit to enforce a mortgage, the mortgagee made one only of two persons who represented the estate of the mortgagor a party dependent not having notice of the existence of the other *Held*, that the latter was bound by the decree obtained by the mortgagee and his interest passed at the sale held in execution of the decree *Ram Nath Ray* v. *Luchman Ray, I L R. 21 All 194, Lala Suraj Prosad* v. *Golab Chand, I. L R 28 Calc 517, Shivram* v. *Genu, I L. R. 6 Bom. 515,* relied on *Assamathem Nissa Bibee* v. *Roy Luchmipat Singh, I. L R 4 Calc. 142 ; Jafri Begam* v. *Amir Muhammed Khan, I. L R. 7 All 822 ; Luchmipat Singh* v. *Land Mortgage Bank of India, I. L. R. 14 Calc. 464,* referred to. That for the purpose of the suit the estate of the mortgagor was [illegible] represented as the person who was sued [illegible] mortgaged property, [illegible]

[illegible] UDDIN, J.—A suit by [illegible] had been sold [illegible] mortgage after the property had been sold [illegible] could not succeed without the sale being set aside and not having been instituted within one year of his attaining majority was barred under Art 12 (a) of Sch. II of the Limitation Act. RAM TARAN GOSWAMI v. RAMESWAR MALIA (1907)
11 C. W. N. 1078

3. ——————— *Mortgage—Property mortgaged not at date of execution belonging to the mortgagor—Effect of subsequent acquisition of such property by the mortgagor.* The plaintiff in a pre-emption suit, in order to procure funds for the prosecution of his suit, executed a mortgage comprising certain property of which he was the owner

MORTGAGE—*contd.*

13. MISCELLANEOUS—*contd.*

and also the property the subject-matter of the suit for pre-emption. The suit for pre-emption was successful. *Held*, that the mortgage took effect as regards the property the subject of the pre-emption suit from the time when the plaintiff mortgagor obtained possession by virtue of his decree in the suit. *Holroyd* v *Marshall, 10 H L 210; Collyer* v. *Isaacs, 19 Ch D 342;* and *Bansidhar* v. *Sant Lal, I. L. R. 10 All. 133,* referred to. GAYA DIN v. KASHI GIR (1906) . I. L. R 29 All. 163

4. ———— Court-fee—*Decree for redemption of mortgage—Appeal on the*

upon the total amount of the decree under appeal. *Nepal Rai* v. *Debi Prasad, I L R 27 All. 447,* and *Reference under Court-Fees Act, 1870, I. L. R 29 Mad. 3 7,* followed MAHADEO PRASAD v GORAKH PRASAD (1908) . I. L. R. 30 All. 547

5. ———— *Execution of decree—Attachment—Mortgage—Right of mortgagor in respect of money promised, but not paid.* Where

attachment and sale under s 266 of the Code of Civil Procedure. *The South African Territories Company, Limited* v *Wallington,* [1898] *A. C 309,* referred to. PHUL CHAND v. CHAND MAL (1908) I. L. R 30 All. 252

6. ———— *Transfer of Property Act (IV of 1882), s. 85—Mortgage suit—*

mortgagee instituted a suit on his mortgage making

other heirs of the purchaser not having been made parties: *Held,* that the suit could not be dismissed on the ground of defect of parties, unless it was found that the plaintiff was aware at the date of the suit, of the interest of these persons in the mortgaged property. *Held,* further, that the proper procedure was to add these heirs as parties, and if it appeared that at the date of the suit the plaintiff was not aware of their interest in the property, to ascertain what proportion of the debt

MORTGAGE—*contd.*

13. MISCELLANEOUS—*contd.*

referred to. BASIRUDDIN BISWAS v DEBENDRO NATH BISWAS (1908) . . 12 C. W. N. 911

7. ———— *Compromise in course of mutation proceedings purporting to vary the terms of a registered deed. Held,* that a com-

instrument of mortgage *Nur Ali* v. *Imaman,*

JJ SADAR-UD-DIN AHMAD v. CHAJJU (1908) I. L. R. 31 All. 13

8. ———— *Partition-suit, decree in, if binds previous mortgagee—Mortgage of entire property and not of a share—Estoppel—Mutuality essential—Person not bound by judgment, if may rely on findings in it* A person claiming under a mortgage not purporting to be a mortgage of an undivided share of some property is not bound by the result of a subsequent partition suit to which

(1908) . . . . . 13 C. W. N. 281

9. ———— *Land Acquisition Act (I of 1894), s 16—Declaration—Mortgage executed after—Mortgagee's remedy—Lien on compensation-money.* Where after declaration made by Government for the acquisition of property under the Land Acquisition Act the owner executed a mortgage: *Held,* that the mortgagee could execute the decree obtained on his mortgage under s. 88 of the Transfer of Property Act by attaching the compensation-money in the hands of the Collector, and a further decree under s. 90 of the Act is not necessary for the purpose. The mortgage lien was transferred to the compensation-money into which the property was converted. *Basa Mal* v. *Tajammal Husain, I. L. R. 18 All. 78, 79,* dissented from. JOTONI CHOWDHURANI v. AMOR KRISHNA SAHA (1904) . 13 C. W. N. 350

10. ———— *Land Acquisition Act (I of 1894), s. 16—Declaration—Mortgage created after possession taken—Validity—Transfer*

MORTGAGE—*concld*

13. MISCELLANEOUS—*concld.*

of lien to compensation-money. An owner of property cannot create a valid mortgage upon it after declaration has been issued by Government for its acquisition under the Land Acquisition Act and possession taken by the Collector in pursuance thereof There is no lien on the mortgaged property to be transferred to the compensation-money. *Joloni Choudhurani* v. *Amar Krishna Saha, 13 C. W. N. 350,* explained. AMAR CHANDRA KUNDU *v.* RAM SUNDAR SAHA (1909) . 13 C. W. N. 357

MORTGAGE BOND.

See ATTESTATION I. L. R. 33 Calc. 881

See CIVIL PROCEDURE CODE, 1882, s. 257A. I. L. R. 31 Bom. 552

See TRANSFER OF PROPERTY ACT, 1882, ss. 83, 84 . I. L. R. 36 Calc. 840

MORTGAGE-DEBT.

———— apportionment of—

See CONTRIBUTION, SUIT FOR—PAYMENT OF JOINT DEBT BY ONE DEBTOR. 3 B. L. R. A. C. 357

See MORTGAGE—ACCOUNTS. I. L. R. 15 Bom 257

See MORTGAGE—MARSHALLING.

See MORTGAGE—REDEMPTION—REDEMPTION OF PORTION OF PROPERTY.
13 Moo. I A. 404
24 W. R. 47
15 B. L. R. 303
I. L R. 4 Calc. 72
I. L. R. 9 Mad. 453
I. L. R. 17 All. 63
I. L. R. 21 Bom. 544

See TRANSFER OF PROPERTY ACT, s. 82.
I. L. R. 18 Calc. 320
I. L. R. 14 Mad. 71
I. L. R. 19 All. 545

———— contribution—

See TRANSFER OF PROPERTY ACT, s. 82. 6 C. W. N. 683

———— omission to set up mortgage bond—

See RES JUDICATA—MATTERS IN ISSUE. I. L. R. 24 All. 429

———— payment of portion of—

See LIMITATION ACT, 1877, ART. 146 (1871, ART. 149). I. L. R. 4 Calc. 283

See MORTGAGE—REDEMPTION—REDEMPTION OF PORTION OF PROPERTY.

———— payment of, to one of the heirs of mortgagee—

See MORTGAGE—DISCHARGE OF MORTGAGE . . I. L. R. 27 Bom 292

MORTGAGE DECREE.

See BENGAL TENANCY ACT, s 167. 13 C. W. N. 412

See COSTS, LIABILITY FOR. I. L. R 30 Mad. 464

See HINDU LAW—JOINT FAMILY. I. L. R 28 All. 182

See TRANSFER OF PROPERTY ACT, s 90. I. L. R. 31 Bom. 244

———— appeal from, after alteration of decree—

See SALE . . I. L. R. 36 Calc. 336

MORTGAGE-DEED.

See TRANSFER OF PROPERTY ACT, 1882, s. 59 . . I. L. R. 33 Bom. 44

MORTGAGE LIEN.

———— *Collusive decree—Fraud—Landlord and tenant—Sale for arrears of rent—Right of suit.* When a landlord, in collusion [illegible] decree for rent and in [illegible]

DAS (1905) . . . [illegible]

MORTGAGE SUIT.

See MORTGAGE.

See PRACTICE

MORTGAGED PROPERTY.

See MORTGAGE.

See SALE IN EXECUTION OF DECREE

———— decree against—

See DECREE—CONSTRUCTION OF DECREE—MORTGAGE.

See DECREE—FORM OF DECREE—MORTGAGE.

———— out of jurisdiction—

See JURISDICTION—SUITS FOR LAND—GENERAL CASES—FORECLOSURE.

See JURISDICTION—SUITS FOR LAND—GENERAL CASES—LIEN.

See JURISDICTION—SUITS FOR LAND—GENERAL CASES—REDEMPTION.
I. L. R 1 All. 431
1 Ind. Jur. N. S. 319

MORTGAGEE. . I. L R. 34 Calc. 150

See DECREE

See MORTGAGE.

See TRANSFER OF PROPERTY ACT, s. 55. I. L. R. 30 Mad. 353

MORTGAGEE—*contd.*

——— acknowledgment by—

See LIMITATION ACT, S 19—ACKNOWLEDGMENT OF OTHER RIGHTS.

——— in possession—

See MORTGAGE—ACCOUNTS.

See MORTGAGE—POSSESSION UNDER MORTGAGE.

——— lien of—

See SALE FOR ARREARS OF REVENUE—DEPOSIT TO STAY SALE
I. L. R. 30 Calc. 794

——— possession to—

See SALE . . I. L. R. 36 Calc. 336

——— rent due to—

See BENGAL TENANCY ACT, s. 60.
5 C. W. N. 482

——— rights of—

See ACTIONABLE CLAIM.
I. L. R. 30 Mad. 235

1. ——— Money-decree—*Transfer of Property Act (IV of 1882), s. 99—Money decree obtained by mortgagee against mortgagor—Transfer of the decree—Assignee bound by the provisions of s. 99.* The transferee of a money decree obtained by a mortgagee against his mortgagor is bound by the restriction imposed upon the mortgagee by s. 99 of the Transfer of Property Act (IV of 1882) He [illegible]

2. ——— Adverse possession—*Transfer of Property Act (IV of 1882), s. 6 (d).* A mortgagee [illegible] by [illegible] to [illegible] 32 [illegible] HAN v. PARBATI (1907) . I. L. R 29 All. 640

MORTGAGOR AND MORTGAGEE.

See EQUITY OF REDEMPTION.

See LEASE—CONSTRUCTION OF.
6 C W. N. 372

See MORTGAGE.

See PARTIES TO CONVEYANCE.
12 B. L. R. Ap. 7

See SURETY—ENFORCEMENT OF SECURITY.
I. L R. 30 Calc. 1060

1. ——— *Mortgage by* [illegible]

MORTGAGOR AND MORTGAGEE—*contd*

left to his four elder sons certain immoveable property subject to a charge of R30,000 in favour of his widow and four younger sons, and made his four elder sons executors and residuary legatees of his will directing them to carry on the business. After their father's death the elder sons in the course of their business transactions became indebted to the Bank of Bombay in respect of advances by the Bank, to secure which, on 13th September 1890 (two of the younger sons being then minors), the elder sons deposited with the Bank by way of equitable mortgage certain title-deeds relating to the property charged by the will; and on 12th January 1899 executed a mortgage of the same property in favour of the Bank for R52,000 without stating the charge upon it In one of the documents of title deposited with the Bank the title of the mortgagors was indicated, and had the Bank investigated the title (which they did not do) they would have been put upon inquiry and would have become aware of the charge created on the property by the will The younger sons only became aware of the transaction in June 1903 when the Bank advertised the property for sale under their mortgage. In a suit brought by [illegible]

with the mortgagors not as executors but as persons pledging their own property for their own debts, and under the circumstances took no better title than that which their debtors really had in the capacity in which they were dealt with, namely, residuary legatees. *In re Queale's Estate, Ir. L. R 17 Ch D 361 at p 368,* followed. *Held,* also, that the plaintiffs being legatees the Bank took the property subject to the charge upon it created by the will. Distinction drawn between the creditors and legatees in such a case: Spence's "Equitable Jurisdiction," Vol. II, page 376, referred to. By the terms of the will the legacy was to be made up and paid within six years after the testator's death which period expired [illegible]

parties were unaffected by that circumstance. BANK OF BOMBAY v. SULEMAN SOMJI (1908)
I. L R. 33 Bom. 1

MORTMAIN, STATUTES OF—

See WILL—CONSTRUCTION. 14 B. L. R. 442

MOSQUE.

See MAHOMEDAN LAW—ENDOWMENT.

See MAHOMEDAN LAW—MOSQUE

See MAHOMEDAN LAW—WORSHIP. I. L. R. 35 Calc. 294

——— management of—

See MAHOMEDAN LAW—ENDOWMENT. I. L. R. 18 Bom. 401

MOTHER.

See HINDU LAW—ALIENATION—ALIENATION BY MOTHER.

See HINDU LAW—GUARDIAN—POWERS OF GUARDIANS.

See HINDU LAW—GUARDIAN—RIGHT OF GUARDIANSHIP . I. L. R. 5 Calc. 43
7 W. R. 73
3 W. R. 194

See HINDU LAW—INHERITANCE—SPECIAL HEIRS—FEMALES—MOTHER.

See MAHOMEDAN LAW—GUARDIAN. I. L. R. 29 Calc. 473

——— power of—

See GUARDIAN—DUTIES AND POWERS OF GUARDIANS.

——— share of, on partition—

See HINDU LAW—PARTITION. 11 C. W. N. 239; 698

——— unchastity of—

See HINDU LAW—WIDOW—DISQUALIFICATIONS—UNCHASTITY.

MOTIONS.

See PRACTICE—CIVIL CASES—REPORT OF REGISTRAR . I. L. R. 28 Calc. 272

——— obtaining decree on—

See PRACTICE—CIVIL CASES—MOTIONS I. L. R. 26 Bom. 76

——— taking further evidence on—

See PRACTICE—CIVIL CASES—MOTIONS.

MOULMEIN, JUDGE OF—

See JURISDICTION—ADMIRALTY AND VICE-ADMIRALTY JURISDICTION. 24 W. R. 50

MOVEABLE PROPERTY.

See ATTACHMENT—ATTACHMENT BEFORE JUDGMENT . I. L. R. 16 All. 186

See CRIMINAL BREACH OF TRUST. I. L. R. 23 Calc. 372

MOVEABLE PROPERTY—*concld.*

See HINDU LAW—WIDOW. I. L. R. 32 Bom. 59

See LETTERS PATENT, CL. 12. I. L. R. 28 Mad. 216; 487

See MAHOMEDAN LAW—ENDOWMENT I. L. R. 24 All 190

See PERPETUITIES. I. L. R. 20 Bom. 511

See REGISTRATION ACT, 1877, s. 3. 3 Agra 157
3 B. L. R. A. C. 194

See REGISTRATION ACT, 1877, s. 17. I. L. R. 10 All. 20

See SMALL CAUSE COURT, MOFUSSIL—JURISDICTION—MOVEABLE PROPERTY.

See SMALL CAUSE COURT, PRESIDENCY TOWNS—JURISDICTION—MOVEABLE PROPERTY.

See THEFT . I. L. R. 10 Mad 255
I. L. R. 15 Bom 702
I. L. R. 36 Calc. 758

——— execution of warrant against—

See EXECUTION OF DECREE—MODE OF EXECUTION GENERALLY AND POWERS OF OFFICERS IN EXECUTION 5 B. L. R. Ap. 27: 13 W. R. 339

See SMALL CAUSE COURT, MOFUSSIL—PRACTICE AND PROCEDURE—EXECUTION OF DECREE.

MOWRA FLOWERS.

——— possession of, for distillation—

See BOMBAY ABKARI ACT, 1878, s. 43, CL. (*f*) . . I. L. R. 9 Bom. 556

MUAFIDAR.

See NORTH-WESTERN PROVINCES RENT ACT, s. 93 . . I. L. R. 26 All. 78

MUCHILIKA.

See CIVIL PROCEDURE CODE, 1882, s. 43 I. L. R. 27 Mad. 116

MUKADDAM.

See HINDU LAW—WIDOW. I. L. R. 30 All. 490

MUKADDAMI TENURE

See TENURE—MUKADDAMI TENURE.

MUKHTEAR.

See MOOKTEAR.

MUKTAD CEREMONIES

1. ——— *Trusts to perform Muktad ceremonies, validity of—Tenets of Zoroastrian faith—Nature and meaning of Muktad Ceremonies—Ceremonies tending towards the advancement*

MUKTAD CEREMONIES—*concld.*

ment of religion—Practice—How far decision by single Judge binding on his successors Trusts and bequests of lands or money for the purpose of devoting the incomes thereof in perpetuity for the purpose of performing Muktad, Baj, Yejushni, and other like ceremonies, are valid "charitable"

tad ceremonies during the Farvardigan days is enjoined by the Scriptures of the Zoroastrian religion. The performance of the Muktad ceremonies is a *religious duty* imposed on the Zoroastrians by the proved tenets of the religion they profess The

towards the advancement of the religion promulgated by the Persian Prophet Zoroaster and there can be no doubt that the performance of these ceremonies is an act of Divine Worship in its highest and truest sense The monies paid to the priests for the performance of the Muktad ceremonies forms a good portion of their ordinary income The priests make a higher income during the Farvardigan days than they do during any other period of the year, and the Muktad ceremonies

mance of the Muktad ceremonies confers public

Great Creator. A Judge sitting on the original

MULAGENI CHIT.

See TRANSFER OF PROPERTY ACT, s. 114
I. L. R. 28 Mad. 389

MULRAIYAT

——— *Incidents of a mulraiyati tenure—Right to split up such a tenure—*

transferring his tenure, must be exercised in re-

to part with a portion and retain the remainder. Therefore a person who purchases only a portion of the tenure acquires no right as *mulraiyat* and is liable to be evicted by the *mustaqir* of the village in the absence of a finding that he has a right as an ordinary raiyat. DARBARI PANJIARA *v* BENI RAI (1905) . . . **I. L. R 32 Calc 1014**

MULTIFARIOUSNESS

See ADMINISTRATION . **15 B L R 298**
I. L. R. 26 Calc. 891
3 C W. N. 670

See APPELLATE COURT—OBJECTIONS TAKEN FOR FIRST TIME ON APPEAL—SPECIAL CASES—MISJOINDER

See CIVIL PROCEDURE CODE 1882, ss 10, 19 . . **I. L R. 30 All. 560**

See CIVIL PROCEDURE CODE, 1882, s 45
I. L. R 29 All. 267

See JOINDER OF CAUSES OF ACTION.

See MALABAR LAW—JOINT FAMILY.
I. L R 15 Mad. 19

See PLAINT—FORM AND CONTENTS OF PLAINT—CAUSE OF ACTION.
6 C. W. N. 585

See RELINQUISHMENT OF, OR OMISSION TO SUE FOR, PORTION OF CLAIM
14 B. L. R 418 note

See RENT, SUIT FOR . **5 C. W. N. 880**

See SPECIAL OR SECOND APPEAL—OTHER ERRORS OF LAW OR PROCEDURE—MULTIFARIOUSNESS.

See SPECIFIC RELIEF ACT, s. 27.
I. L. R. 1 All. 555

——— dismissal of suit for—

See RES JUDICATA—JUDGMENTS ON PRELIMINARY POINTS . **13 B. L. R. Ap. 37**

1. ——— **Misjoinder of causes of action**—*Different causes of action against different parties.* When a plaint discloses different causes of action against different parties, it is bad in law, and the suit is not maintainable. SARAT SOONDERY DEBI *v.* SURJUKANT ACHARJI CHOWDHRY . **2 B. L. R. Ap. 53: 11 W. R. 397**

MULTIFARIOUSNESS—*contd.*

MOTEE LALL *v.* BHOOP SINGH
2 Ind. Jur. N. S. 245

S C. MOTEE LALL *v.* RANEE . 8 W. R. 64

2. ———————— *Causes of action accruing against parties separately—Rejection of plaint.* A plaint against several defendants for causes of action which have accrued against each of them separately, and in respect of which they are not jointly concerned, should be rejected RAJARAM TEWAR *v.* LUCHMUN PRASAD
B. L. R Sup Vol. 731: 2 Ind. Jur. N. S. 216
8 W. R. 15

PANCH COWREE MAHTOON *v.* KALEE CHURN.
9 W. R. 490

PEGOO JAN *v.* MULLICK WAIZOODDEEN
18 W. R. 464

3. ———————— *Separate claims against separate parties.* A suit against five defendants including claims of the most miscellaneous

... was in any case entitled to a decision on one of his claims, and further held that the suit was not

...

dismissed by the first Court. MANIRUDDIN AHMED *v.* RAM CHAND . . 2 B. L. R. A. C. 341

RAM DOYAL DUTT *v.* RAM DOOLAL DEB
11 W. R. 273

4. ———————— *Distinct causes of* ...

...

price of timber against defendants who purchased each one pair of timber from the plaintiff separately from the other. BAROO SIRCAR *v.* MASSIM MUNDUL
21 W. R. 206

5. ———————— *Suit to set aside alienation by guardian to different alienees.* Several causes of action against different defendants cannot be joined in one suit; therefore where a suit was brought to set aside several transactions entered into by a guardian with different persons, and no relief was sought against the guardian, it was *held* that the suit was bad by reason of misjoinder. MATA PERSHAD *v.* BHUGMANEE
1 N. W. 75: Ed. 1873, 128

See RUTTA BEEBEE *v.* DUMREE LAL
2 N. W. 153

LOOLOO SINGH *v.* RAJENDUR LAHA.
8 W. R. 364

GOLAM MUSTAFA KHAN *v.* SHEO SOONDUREE BURMONEE . . . . . 10 W. R. 187

HURRO MONEE DOSSEE *v.* ONOOKOOL CHUNDER MOOKERJEE . . . . 8 W. R. 461

MULTIFARIOUSNESS—*contd.*

6. ———————— *Suit to set aside separate alienations.* A suit to set aside two sale transactions of different dates and made to different vendees will be dismissed for misjoinder. BANEE KRISHUN *v.* KOONDUN LALL . 2 N. W. 221

7. ———————— *Joinder of causes of action—Claim against different portions of property.* Where the plaintiff claims to recover possession of two distinct portions of a property from which he has been dispossessed at different periods and under different circumstances, and claims them under the same title and from the same party, there is no impropriety in the two claims being joined in one suit. JUNOKEE CHOWDHRANEE *v.* DWARKANATH CHOWDHRY . . . 1 Hay 555

8. ———————— *Separate alienations of property—One suit against several alienees* A suit brought against a number of alienees of a deceased member of an undivided family, for the re-...

... the ... ible ... nce ... on. ... lar ... dance of discordant ...

NAPAI ...

9. ———————— *Suit by members* ... A ...

(1) for the removal of the ... declaration that defendants Nos. 2 to 8, the senior ... of succession ...

... the plaint was amended by the order of the ... striking out items 2 and 5 of the prayer, and finally the plaintiffs further amended the plaint and sued only for a declaration that the alienations in question were invalid. *Held*, that the suit was not bad for multifariousness. *Vasudeva Shanbhaga v. Kuleadi Narnapai, 7 Mad. 290,* considered. MAHOMED *v.* KRISHNAN . I. L. R. 11 Mad. 106

10. ———————— *Civil Procedure Code, s. 45—Suit for declaration that alienations were not binding—Malabar law—Suit by junior members of tarwad.* Suit by some of the junior members of a Malabar tarwad against the karnavan and certain other members of the tarwad and certain persons to whom some of the tarwad property had been alienated by the karnavan, for a declaration that the alienations were not binding on the tarwad. *Held*, that the suit was not bad for multifariousness. *Vasudeva Shanbhaga v. Kuleadi Narnapai, 7 Mad. 290,* followed. ABDUL *v.* AYAGA I. L. R. 12 Mad. 234

MULTIFARIOUSNESS—*contd.*

11. ——————— *Misjoinder of*

fide. *Held*, that the suit was bad for misjoinder of causes of action, and was properly dismissed. RAM NARAIN DUTT *v.* ANNODA PROSAD JASHI **I. L. R. 14 Calc. 681**

12. ——————— *Misjoinder of parties—Civil Procedure Code, 1882, ss. 28, 31, 373, and 378—Error not affecting merits of suit—Withdrawal of suit—Meaning of "cause of action."* Where a plaintiff, alleging himself to be entitled on the death of a Hindu widow to the possession of certain immoveable property upon the death of

withdraw his suit as against two out of the three sets of defendants with liberty to bring a fresh suit on the same cause of action *Vasudeva Shanbhaga v. Kuleadi Narnapai, 7 Mad. 290 ; Banee Krishun v. Koondun Lal, 2 N. W. 221 ; Koondun Lal v. Himmut Singh, 3 N. W. 86 ; Narsingh Das v. Mangal Dubey, I. L. R. 5 All. 163 ; Kachar Bhoj Vaija v. Bai Rathore, I L. R. 7 Bom. 289 ; Sudhendu Mohan Roy v. Durga Das, I. L R. 14 Calc. 435 ;* and *Ram Narain Dut v. Annoda Prosad Joshi, I. L R 14 Calc. 681*, referred to. GANESHI LAL *v.* KHAIRATI SINGH . . **I. L. R. 16 All. 279**

13. ——————— *Civil Procedure Code, 1882, ss 31, 45, and 53—Return of plaint.* The term "cause of action" as used in ss 31 and

MULTIFARIOUSNESS—*contd*

is necessary to prove each fact, but every fact which is necessary to be proved. Where three plaintiffs

plaintiffs —*Held*, that the suit so framed was bad for

2 W. R 219, *Prem Shook v. Bheekoo, 3 Agra 242 ; Cook v. Gill, L R 8 C. P. 107*, *Read v Brown, L. R 22 Q B. D. 128*, *Smurthwaite v. Hannay, [1894] A. C. 494 ; Chand Kour v Partab Singh, I. L. R. 16 Calc. 98 · L R 15 I A 156*, *Murti v. Bhola Ram, I. L. R 16 All 165*, *Nusserwanji Merwanji Panday v. Gordon, I. L R. 6 Bom 266; Ramanuja v. Devanayaka, I. L. R 8 Mad 361 ;* and *Ram Sewak Singh v. Nalched Singh, I. L. R. 4 All. 261*, referred to. SALIMA BIBI *v* MUHAMMAD . . **I. L. R. 18 All. 131**

14. ——————— *Suit by one plaintiff claiming by inheritance and another claiming as assignee from the first—Civil Procedure Code, ss. 31, 45, and 53* Where two plaintiffs joined in a suit for recovery of immoveable property, the one claiming a title by inheritance and the other a title by assignment from the first plaintiff, it was *held* that the suit was bad for misjoinder of causes of action. *Salima Bibi v. Muhammad, I. L. R 18 All. 131*, followed. RAHIM BAKSH *v.* AMIRAN BIBI **I. L. R. 18 All. 219**

15. ——————— *Misjoinder of parties—Civil Procedure Code, s. 53—Suit to set aside deed in fraud of creditors—Amendment of plaint. Held*, that several creditors, to each of

cause of action of each separate creditor not being the same as that of the others RAJJO KUAR *v.* DEBI DIAL . . . **I. L. R. 18 All. 432**

16. ——————— *Suit for ejectment—Suit against several defendants—Parties, joinder of* In a suit for ejectment against several defendants who set up various titles to different

joinder of causes of action. ISHAN CHUNDER HAZRA *v* RAMESWAR MONDOL . **I. L. R. 24 Calc. 831**

DHAPI *v.* BARHAM DEO PERSHAD **4 C. W. N. 297**

17. ——————— *Joinder of several plaintiffs in respect of separate causes of action—Contribution, suit for—Civil Procedure Code, 1882, s 578—Irregularity affecting merits.* The plaintiffs,

MULTIFARIOUSNESS—*contd.*

who were husband and wife, brought a suit to recover a certain sum of money, part of which was alleged to have been paid by plaintiff No. 1, who was a co-sharer with the defendants in two patnis to save the patnis from being sold for arrears of rent; and the remainder by plaintiff No. 2, who alleged that she had a subordinate miras talukh under the two patnis granted to her by plaintiff No. 1, and that the sale would have resulted in the can-

by reason of its involving the misjoinder of plaintiffs with different causes of action This objection had been raised in the written statement, and the Court was asked to raise an issue on the point. In answer to this contention, it was urged by the appellants that, as the respondents went to trial upon the merits, it was not open to them to urge any objection like this to the frame of the suit on appeal *Held*, that the suit was bad for misjoinder of plaintiffs, as the suit of plaintiff No. 2 ought properly to have been brought against all the holders of the patnis, including plaintiff No. 1, and not merely against the defendants in the suit. *Held*, further, that it was open to the respondents to raise the objection as to misjoinder in appeal *Tarinee Churn Ghose* v. *Hunsman Jha, 20 W. R. 240*, distinguished. *Smurthwaite* v. *Hannay*, [*1894*] *A C. 94*, referred to. MOHIMA CHANDRA ROY CHOWDHRY *v.* ATUL CHANDRA CHAKRAVARTI CHOWDHRY . . . I. L. R. 24 Calc. 540

18. ——— *Suit against different alienees.* Where a plaintiff sued to recover an estate in possession of several persons, who held, not collectively, but in different portions by virtue of several auction and private sales and mortgages :—*Held*, that the Court of first instance should have dismissed the plaint for misjoinder, leaving the plaintiff to bring separate suits in respect of the several pieces of property in possession of each defendant or set of defendants. TEWAREE RAGHOONATH SAHAI *v.* MAHOMED NAZEER 4 N. W. 108

19. ——— *Suit for portions of property in different hands* The auction-purchaser of a taluk seeking to obtain possession against the former proprietors, many of whom are cultivators holding separate possession of specific portions and having their houses on the land, must sue them specially for those portions to which they lay claim. He cannot sue the whole community in the aggregate for all the lands of the village. RAMCHUNDER PAUI *v.* OMORA CHURN DEB 16 W. R. 155

20. ——— *Suit for mesne profits in respect of several estates.* Plaintiff,

severally in possession of the several estates constituting the talukh for mesne profits during their

MULTIFARIOUSNESS—*contd.*

wrongful possession. *Held*, that, there being no common liability, the suit must be dismissed for misjoinder. KOONDUN LAL *v.* HIMMUT SINGH 3 N. W. 86

21. ——— *Suit by son against several purchasers to set aside sale by father.* In a suit by a son against a father and certain purchasers to obtain a declaratory decree in respect of certain property, the fact of each purchaser being concerned only in a portion of the case does not render the suit multifarious. KANTH NARAIN SINGH *v.* PREM LALL PAUREY . 3 W. R. 102

22. ——— *Suit against several alienees of property* Plaintiff alleged that, his father having died while he was a young child, during his minority his father's widows (defendants 1, 2, and 3) aliened the whole of the estate, in portions, to different people at different times. He therefore brought this suit against all the alienees to recover the estate as a whole. *The District* ... at the Judge ... action, the ... to which the

23. ——— *Civil Procedure Code, 1882, s. 45—Hindu law—Suit for partition—Alienees made parties to suit* Where a suit ... alier ... diffe ... for ... Code of Civil Procedure, ... in respect of each alienation SUBRAMANIYA *v.* SADASIVA . . . . I. L. R. 8 Mad. 75

24. ——— *Suit to recover property sold in execution of decree.* Certain properties were sold to *A* by private contract. Subsequently the properties were attached in execution of a decree against *A's* vendors and sold in execution to various purchasers. *A* instituted a suit against his vendors, the decree-holders, and the purchasers, to set aside the execution sale. *Held*, that the suit was not defective by reason of misjoinder of causes of action. *Rajaram Tewari* v. *Luchmun Prasad, B. L. R Sup. Vol. 173: 8 W. R. 15*, distinguished. HARANUND MOZOOMDAR *v.* PROSUNNO CHUNDER BISWAS I. L. R. 9 Calc. 763: 12 C. L. R. 556

25. ——— *Suit against several alienees of property.* In a suit to have certain properties declared liable for the amount of certain decrees, plaintiff's case being that the properties were those of his judgment-debtor, and had passed,

MULTIFARIOUSNESS—*contd*

in fact, to his admitted representative—the other defendants being men of straw, fraudulently set up as ostensible purchasers :—*Held*, that plaintiff had

26. ———————— *Suit to set aside*

CHUNDER PAUL *v.* MOTHOOR MOHUN PAUL CHOWDHEY . . . . . . 4 W. R. 109

C purchased two of the mehals, and *D* purchased one of the mehals In a suit brought by *B* against *A*, *C*, and *D*, to set aside the sales on the ground of irregularity —*Held*, the suit was bad for multifariousness, and must be dismissed. IMRIT NATH JHA *v.* ROY DHUNPUT SINGH

9 B. L R 241: 18 W. R. 288

28. ———————— *Suit for possession of different portions of property after ejectment.* In a suit to recover possession on the ground of dispossession by all the defendants in consequence of certain Act X decisions —*Held*, that there was but one cause of action, and that the fact that the defendants each claimed to hold portions of the property under different titles could not make the suit bad for misjoinder ACKJOO BIBEE *v* LALLAH RAM CHUNDER LALL SAHAI 23 W. R 400

29. ———————— *Suit for declaration that lands were wukf—Defendants holding under distinct titles* In a suit instituted for a declaration of the Court, under s 15 of Act VIII of 1859, that certain lands and premises in Calcutta were wukf lands, under a certain towliatnamah executed by the ancestor of the plaintiff, the authenticity of which was admitted, and that the defendants who were in possession might be restrained by injunction from recovering the rents of, or intermeddling with, the said lands or premises, and that it might be referred to the Court in cham-

were alleged to have arisen at various times within the last twelve years, and were distinct as to the several defendants who held by different titles On objection having been taken to the frame of the suit, the Court held that it was informal, as their was a joinder in one suit of several distinct causes of action, and no grounds were disclosed for relief

MULTIFARIOUSNESS—*contd*

strangers, there is no common cause against them and they must be turned out by action of ejectment against each separately MUZHUR HOSSAIN *v.* DINOBUNDHO SEN Bourke O. C. 8 : Cor. 94

30 ———————— *Held*, that there was no misjoinder of different causes in a suit including plaintiff's whole claim, where his cause of action was that the Revenue Commissioners had taken possession of his lands and given it in pottah to other people *In the matter of* RUTNESSUR DASS . . . . . . 14 W. R. 381

31 ———————— *Suit to enforce the right of pre-emption—Civil Procedure Code,*

defendants and causes of action, and the suit had been properly dismissed on that ground. BHAGWATI PRASAD GIR *v* BINDESHRI GIR

I. L. R. 6 All. 106

32 ———————— *Civil Procedure Code, 1877, s. 45—Pre-emption, suit for—Irregularity not affecting merits or jurisdiction* The sons of *R* and of *K* and of *S* possessed proprietary rights in two mehals of a certain mouzah. *P* possessed proprietary rights in one of those mehals In April 1879 the sons of *R* sold their proprietary rights in both mehals to *G* In August 1879 the sons of *K* sold their proprietary rights in both mehals to *G* Later in the same month the sons of *S* sold their proprietary rights in both mehals to *N* *G* sued *N* to enforce a right of pre emption in respect of the sale to the latter, and obtained a decree. *P* then sued to enforce a right of pre-emption in respect of the three sales mentioned above, so far as they related to the mehal of which he was a co-sharer, joining as defendants *G* and *N* and the vendors to them. *G* alone objected in the Court of first instance to the frame of the suit That Court overruled the objection and gave *P* a decree. The lower Appellate Court reversed this decree on the ground of misjoinder *Held*, that in respect of *G* there was no misjoinder but that, in respect of the other defendants, there was misjoinder of both causes of action and parties KALLAN SINGH *v* GUR DAYAL . . I. L. R. 4 All. 163

33. ———————— *Civil Procedure Code, ss. 26, 45* The judgment of the majority of the Full Bench in *Narsingh Dass* v *Mungal Dubey, I L R 5 All 163*, except in its general observations as to the provisions of the Civil Procedure Code relating to joinder of parties and causes of actions, proceeded upon and had reference to the special circumstances of the case and to the allegations made by the plaintiff in his plaint, and was not intended to be carried further In a suit for possession

MULTIFARIOUSNESS—*contd.*

of immoveable property part of which had been usufructuarily mortgaged by defendant No. 1 to defendant No. 2, the plaintiff alleged that the first defendant had no title to make such a mortgage, while both defendants maintained such title. *Held*, that, inasmuch as the title of defendant No. 2 was derived from defendant No. 1, and stood or fell with the failure or success of the plaintiff's [illegible] ot two causes [illegible] gement of the [illegible] 1, and hence [illegible] of causes of action. INDAR KUMAR *v.* GUR PRASAD

I. L. R. 11 All. 33

34. ——————— *Suit against several defendants for possession—Dispossession under forged document.* A suit in which the plaintiff alleged that the defendants (including raiyats against whom he had been unsuccessful in the Collector's Court) had, in combination, fraudulently availed themselves of a fabricated jamabandi paper as evidence to support certain mokurrari claims, and had thereby ousted him from the full enjoyment of his milkiat right, was *held* to be simple in its character and not multifarious. GUJADHUR PERSHAD NARAIN SINGH *v.* SAHEB ROY . . . . 19 W R. 203

[illegible] a declaration could rightfully be asked for only in a separate suit against each separate occupant. SAHEB ROY *v.* GUJADHUR PERSHAD NARAIN SINGH

22 W. R. 221

35. ——————— *Joint trespassers.* At an auction-sale for arrears of rent, on the 11th July 1885, plaintiffs purchased a tenure which, on the zamindar's serishta, stood in the name of one Sheikh Miajan, and proceeded to take steps to obtain possession, but were resisted by the defend[illegible] claimed [illegible] he tenure [illegible] but this suit was finally dismissed in June 1878, on the ground that all the persons who were claimants of [illegible] omed as [illegible] brought [illegible] To this [illegible] distinct defences, some alleging one defence and some another, and so on. The Subordinate Judge dismissed the suit for multifariousness. *Held*, that there was no multifariousness, the plaintiff's claim being to recover possession against persons who were alleged to be joint trespassers. OMUR ALI *v.* WEYLAYET ALI . . . . 4 C. L. R. 455

36. ——————— *Civil Procedure Code, 1882, s. 28—Suit for declaratory decree—Specific Relief Act (I of 1877), s. 42.* The plaintiffs, having obtained a decree for the possession of certain lands and having received formal possession thereof, brought a suit against eighty-six persons

MULTIFARIOUSNESS—*contd.*

holding distinct and separate tenures in those lands [illegible] away an Ameen who went to measure the lands on behalf of the plaintiffs, and thereby preventing the plaintiffs from exercising their proprietary rights; that the plaintiffs brought suits for rent [illegible] and thereby preventing us exercising our proprietary [illegible] of the land in suit and not allow[illegible] and [illegible] praye[illegible] right and declaring the defendants to be their tenants. *Held*, that there was but one and the same cause of action against all the defendants,—*viz.*, a combination to keep the plaintiffs out of the enjoyment of the property they had purchased; and that the suit was not multifarious within s. 28 of the Civil Procedure Code. LOKE NATH SURMA *v.* KESHAB RAM DOSS . I. L. R. 13 Calc. 147

37. ——————— *"Multifarious" suit—Civil Procedure Code (Act X of 1877), ss. 28, 45.* Defendant No. 1, the tenant of certain land [illegible] November 1877 sold his [illegible] of defendant No. 2, defendant [illegible] against whom however, defendant No. 1 had ob[illegible] thereupon instituted a charge [illegible] against the latter. This criminal proceeding was pending when, on the 14th September 1878, defendant No. 1 obtained a second order for defendant No. 2's ejectment. Under this order he obtained possession of the land, and also of the crop planted by defendant No. 2 which he sold to defendant No. 3 on the 22nd September 1878. On the 25th of the same month the plaintiff's charge of criminal trespass against defendant No. 2 was dismissed, on the ground that defendant No. 1 was in possession, and the plaintiff had never obtained possession under his purchase. Defendant No. 1 subsequently let the land to defendant No. 4. The plaintiff, alleging that three causes of action had accrued to him,—*viz.*, (1) on the 12th

MULTIFARIOUSNESS—*contd.*

November 1877, the date of the sale to him ; (ii) on the 30th March 1878, when defendant No. 1 applied a second time for the ejectment of defendant No. 2 ; and (iii) on the 22nd September 1878, when defendant No. 1 took possession of the land,—sued defendants Nos. 1, 2, 3, and 4, claiming (i) possession of the land as against them all ; (ii) mesne profits by way of damages for the year 1285 Fasli (September 1877—September 1878) as

[illegible]

of first instance had properly rejected the plaint, the suit being open to the objection that different causes of action against different defendants separately had been joined, for which procedure no sanction was to be found in the Code of Civil Procedure. NARSINGH DAS *v*. MANGAL DUBEY

I. L. R. 5 All. 163

38. ——————— *Suit for possession and mesne profits—Civil Procedure Code, s 45* In a suit on title in which the recovery of im-

[illegible]

39. ——————— *Detention in jail —Suit by thirteen persons jointly for damages for detention—Plaint taken off the file—Separate causes of action—Practice—Act XIV of 1882, s 26* Thirteen persons who had been committed to jail

[illegible]

I. L. R. [illegible]

40. ——————— *Suit on foreign judgment against members of a firm against some of whom only the judgment was obtained.* A obtained a decree against *B* and *C* in Ceylon, and, having

[illegible]

the foreign judgment, the suit was bad for misjoinder. LAKSHMANAN CHETTI *v*. KARUPPAN CHETTI

I. L. R. 6 Mad. 273

MULTIFARIOUSNESS—*contd.*

41. ——————— *Suit for share of zamindari cesses realized by auction-sale in execution of decree—Joinder of causes of action—*

[illegible]

land subject to a village custom whereby a proprietary due of the above amount was payable to the zamindar of the said land *Held*, by the Division Bench, that the claim was not bad for misjoinder, as the due was payable out of the sale-proceeds taken out of Court by the decree-holders. NANKU *v*. BOARD OF REVENUE

I. L. R. 1 All. 444

42. ——————— *Suit for sale-proceeds after rateable distribution* In execution of a

[illegible]

PROSAD KUNDU *v*. RAM RATAN SIRCAR

I. L. R. 13 Calc. 159

43. ——————— *Separate liability of defendants for rent* In a suit to recover rent from defendants, with whom engagements had been entered into separately, plaintiff obtained a decree making each of them liable for the whole sum claimed *Held*, that there was a misjoinder of the defendants, and that the decree was wrong in law ; but if the first Court had made each defendant liable in proportion to the rent he had engaged to pay, the objection of misjoinder would not have been allowed to prevail JUMOONA DOSS *v* POOKHUR SINGH . . . . . 22 W. R. 133

44. ——————— *Suit for rent—Purchaser of portion of tenure—Civil Procedure Code, 1882, s 28* Although a purchaser of a portion of a tenure is not personally liable for the rent falling due before the date of purchase, a suit

[illegible]

45. ——————— *Suit for contribution* The plaintiff was compelled to pay the whole costs of a suit in which there was a misjoinder of causes of action, and which resulted in his and his co-defendants being charged with costs relating to causes of action with which they had no

MULTIFARIOUSNESS—*contd.*

concern. The plaintiff sued, after deducting R71 as his own proper share to recover the balance from his co-defendants. The plea of misjoinder was allowed. BENI RAM *v.* HIDAYAT HOSSEIN

7 N. W. 82

46. ———— *Suit for contribution.* In a suit against *A K* for contribution of moneys paid in satisfaction of two decrees under which the present plaintiffs and defendants were jointly liable, and one of which decrees was founded on an ikrar executed by the parties to the present suit and by one, *F*, not a party, who was expressly excluded from liability in the decree last mentioned, the Judge, considering that *F* was liable under the ikrar, but not liable under the bond on which the other decree was founded, decided that there were two distinct causes of action, and dis-

KUREEM . . . . . . 25 W. R. 41

47. ———— *Parties—Suit for contribution.* The purchaser of a share in a mort-

he cannot claim from the other mortgagors collectively the whole amount paid by him. HIRA CHAND *v.* ABDAL . . I L. R. 1 All. 455

See RUJAPUT RAI *v.* MAHOMED ALI KHAN

5 N. W. 215

48. ———— *Joinder of parties—Contribution, suit for.* Where the owner of two villages sold under a decree obtained upon a mortgage, claims contribution proportionately against the owners of the other properties included in the mortgage, and does not claim from them all collectively one lump sum as contribution, he may

303, referred to. He may also bring a single suit in respect of the two sales, and is not bound to bring a separate suit in respect of each sale. IBN HUSAIN *v.* RAMDAI . . . I. L. R. 12 All. 110

49. ———— *Institution of suit to redeem, pending a suit by plaintiff to establish his title as representative of the mortgagee.*

sees to *H*. These 5 biswas were in the defendants' possession. The plaintiffs sued to recover possession of them, alleging that the mortgage had

MULTIFARIOUSNESS—*contd.*

been redeemed out of the usufruct, and that they

in suit as proprietors, having acquired *D's* rights by private purchase in 1847, and *H's* rights similarly in 1851. They also pleaded that, inasmuch

could not be maintained on the basis of the alleged sale to them, they were nevertheless entitled to

have been necessary to determine

prove their title as purchasers ... share, they could not obtain possession of the share on the ground that it was mortgaged jointly with the shares they already held, and with the share of *D*, for, according to their own allegation, the mortgage-debt had been redeemed, and there was no longer any common liability which they were required to discharge. MOHUN LALL *v.* JUGHUN LALL

6 N. W. 248

50. ———— *Form of suit—Joinder of defendants—Joinder of causes of action—Civil Procedure Code, 1882, s. 28.* *A* leased cer-

who, under ... rents of the lands from the commencement ... year 1291 Fasli (17th September 1883). When some of the instalments of the rent for the year 1291 Fasli became due, *D* applied for payment thereof to *B*, who informed him that he had paid the whole of the rent for the year 1291 in advance to *A* on the 21st May 1883. *D* then sued *A* and *B* for the rent due, praying a decree for rent against *B*, and in the alternative for a decree against *A* if it should turn out that *B's* allegation of payment was correct. The lower Courts found that *B* had paid *A* in good faith, and they dismissed the suit as against him. They also dismissed the suit as against *A* on the ground that the claims against *A* and *B* could not be joined in one suit. On appeal to the High Court:—*Held*, that the frame of the

MULTIFARIOUSNESS—*contd.*

suit was unobjectionable, and that on the facts found by the lower Courts *D* was entitled to a decree against *A*. MADAN MOHUN LALL *v* HOLLOWAY
I. L. R. 12 Calc. 555

51. ———— *Suit for money on contract for money deposited on kistbandi, and for cancellation of kistbandi.* There is no misjoinder of causes of action in a suit for money contracted to be paid, and for the cancellation of a kistbandi, and for money deposited on the kistbandi Combined causes of action may be brought in the Court which has jurisdiction to the full amount of such combined causes of action KINNOO MONEE DEBIA *v.* SHOHORAM SIRKAR . 3 W. R. 128

BROJO KISHORE CHOWDHRANI *v.* KHEMA SOONDAREE DOSSEE . . . . 7 W. R. 409

52 ———— *Suit for declaration of right to redeem and for damages* A plaintiff cannot bring, in one suit, a claim for a declaration of his right to redeem, and also a claim to a declaration of his right to damages KESHAREE LALL *v.* GOVINDRAM . . . . 4 N. W 70

53 ———— *Claims for arrears of rent and to remove cloud on title.* A claim for rent in arrear and a claim to remove clouds on the title to demise raised by the tenant are not objectionable on the ground of multifariousness, and may therefore be included in the same plaint. RAJENDUR KISHWUR SINGH *v.* SHEOPURSHUN MISSUR
1 Ind Jur. N. S. 273: 5 W. R P. C 65
10 Moo. I A 438

54 ———— *Suit on hundis—Persons parties to hundi in separate capacities.* Where the payee of a hundi, in a suit to recover the amount of the same made four persons defendants,—viz, the drawer and the acceptor of the [illegible]
10 W R [illegible]

55 ———— *Suit for partition and to eject raiyats* In a suit for partition of the joint inam lands of a Hindu family, it was not disputed that the plaintiffs were entitled to the share which they claimed, but they joined as defendants a number of cultivating raiyats whom they sought to eject. The raiyats pleaded that the suit was bad for multifariousness *Held*, that the raiyats were improperly joined as defendants in the suit SAMINADA PILLAI *v* SUBBA REDDIAR
I L R. 1 Mad 333

56 ———— *Suit for misappropriation and breach of contract against two defendants.* Plaintiffs, members of a pagoda com- [illegible]

MULTIFARIOUSNESS—*contd*

trance of the pagoda in question, paying to the [illegible]

terms of the said agreement a sum of R6,500 was due, of which only R2,019-14-0 were credited in the accounts of the pagoda, that first and second defendants, when required to account for the balance, informed the plaintiffs that they had paid to the [illegible]

The Court of first instance decreed against third defendant alone On appeal the Civil Judge [illegible]

that the suit was not multifarious, that the third defendant was properly included in the suit as a defendant, and did not appear to have been prejudiced in his defence by the course of the proceedings ARUNACHELLA TEVAR *v.* VENKATASAMI NAIK
7 Mad 123

57 ———— *Civil Procedure Code (Act X of 1877), s 45* The plaintiffs sued for a declaration that the several alienations made by defendant No 1 (a Hindu widow) to the other defendants were void, and that they, the plaintiffs, were entitled to the several properties after her [illegible]

where there has been such a misjoinder of causes of action, discussed KACHAR BHOJ VAIJA *v* BAI RATHORE . I L R 7 Bom 289

58 ———— *Property situated in different districts—Civil Procedure Code, 1877, ss 25, 31* *A*, *B*, *C*, and *D* were the proprietors of a 2 annas 13 gundas share in mouzah E, and [illegible] mouzah F, [illegible] On 19th Sep- [illegible] 4 pie share [illegible] 1872 *A*, *B*, *C*, and *D* mortgaged their shares in E and F, together with property in the district of Tirhoot, to the plaintiff On the 24th March 1873 *A* mortgaged his share in E and F to *J* On the 13th November 1874 *A* and *B* mortgaged their shares in E to *K*. On the 25th March 1874 *J* obtained a [illegible]

MULTIFARIOUSNESS—*contd.*

he had already purchased the interest of *A*, and on the objection being allowed, *M* brought a suit

mortgage a surplus of R7,664 remained After the institution of the first suit and before *L*'s purchase, the plaintiff instituted a suit upon his mortgage in the Tirhoot Court without having obtained leave to include that portion of the mortgaged property situate in the Bhaugulpore district. On the 17th July 1874 a decree was made in this suit. On the 17th January 1877 *K* obtained a decree on his mortgage, and the shares of *A* and *B* in E were sold and purchased on the 3rd September 1877 by *N*. The plaintiff had his decree transferred for execution to the Bhaugulpore Court, and he attached the surplus sale-proceeds and a 1 anna 9 gundas share in E. This attachment was withdrawn on the objection of *L*, who drew out the surplus sale-proceeds The share purchased by *N* was also released from attachment. The plaintiff now sued *L*, *N*, and the mortgagors for a declaration that his decree of the 17th July 1874 affected the E property,

by reason of multifariousness. BUNGSEE SINGH *v.* SOODIST LALL

I. L. R. 7 Calc. 739 : 10 C. L. R. 263

59. ——————— *Civil Procedure Code, s. 26.* S. 26 of the Code of Civil Procedure does not authorize the joinder of plaintiffs with antagonistic claims arising out of distinct causes of action. Where one of two widows of a deceased Hindu and her adopted son sued as co-plaintiffs claiming in the alternative either to recover the whole family estate for the latter, if the adoption was valid, or if the adoption was invalid, one-half of the estate for the former —*Held*, that the suit was bad for misjoinder. LINGAMMAL *v.* CHINNA VENKATAMMAL . . I. L. R. 6 Mad. 239

60. ——————— *Suit for maintenance and marriage expenses—Misjoinder of parties.* A Hindu widow, with her two daughters as co-plaintiffs, sued the son of her deceased husband by

allowance, and R540 to the widow as arrears of maintenance, and R1,000 for the marriage expenses of the daughters. *Held*, that, inasmuch as the mother was the natural guardian of the two other plaintiffs, and it was proper for them to reside with and be provided for by her, and the common maintenance was, so to speak, a joint matter, the suit was not, at any rate at the stage of appeal, open to objection on the ground of misjoinder of parties and causes of action; nor, looking at the peculiar circumstances of this family, which made

MULTIFARIOUSNESS—*contd.*

the mother the most natural and proper person to arrange the marriages of the two minor plaintiffs, was the prayer for marriage expenses improperly added. TULSHA *v.* GOPAL RAI

I. L. R. 6 All. 632

61. ——————— *Joinder—Civil Procedure Code, 1877, ss. 28, 31, and 45—Alternative relief—Parties.* In a suit instituted against six different parties, the plaintiff prayed for khas possession of a four-anna share in a certain lot, or in the alternative, for a decree for arrears of rent against the defendants or such of the defendants as should on inquiry appear to be respectively liable. It appeared that the plaintiff had been kept out of possession by one only of the six defendants, and that, if he was entitled to a decree for arrears of rent, another of the defendants was liable for a portion only of such arrears. *Held* that the suit was not improperly framed; that there was no objection to the prayer for alternative relief; and that the suit should not have been dismissed for misjoinder. JANOKINATH MOOKERJEE *v.* RAM RUNJUN CHUCKERBUTTY . I. L. R. 4 Calc. 949

62. ——————— *Civil Procedure Code, 1882, ss. 32, 45, and 46—Adding parties—Striking off parties—Causes of action, joinder or severance of—Non joinder or misjoinder of parties—Practice—Procedure.* *C* sued *P* to recover posses-

laintiff

ir pos-

eir ap-

he suit.

h their

plaint-

right, and time was allowed in order the plaintiff might put in a counter-statement. Before the case came on again. the Subordinate Judge had been

of opinion that the

fendant

appel-

subject

lants), were different, and of different suits. He accordingly dismissed the appellants from the suit under s. 45 of the Civil Procedure Code (XIV of 1882), and ordered that they should bear their own costs. *Held*, on appeal to the High Court, that the order dismissing the appellants from the suit should be reserved and that s. 45 did not apply. When the parties concerned, though in different relation, in a particular litigation are all before the Court, and their cases have been stated, the Court, if it finds the several causes as between plaintiff and the several defendants cannot properly or conveniently be tried together, should deal with them separately as sub-suits under the title and number of the principal suit from which they spring. The dismissal of defendants added without objection, or the addition of whom has been submitted to, is not contemplated, and would tend to further needless expense. The power given by s. 45 does not extend to an order

MULTIFARIOUSNESS—*contd.*

for the dismissal of defendants, and that a fresh suit should be brought against them. Such an order would not be one for the "separate disposal" of the several causes of action, it would be an order preventing the disposal of them in the suit before the Court. S. 45 is meant to apply to cases in which questions arise as to the joinder or severance of several causes of action against the same defendant. For non-joinder or misjoinder of parties provision is made in s. 32 and the plaintiff

I. L. R. 8 Bom. 616

63. ———————— *Civil Procedure Code, 1882, ss. 278-283—Attachment of same property in execution of decrees obtained by different creditors—Claim made in one suit to attached property under s. 278—Order made under s. 281—Suit by claimant to establish right—All attaching creditors made defendants to suit—Civil Procedure Code, 1882, s. 28.* The first and second defendants obtained a decree in suit No. 1548 of 1897 against *R*, described as the owner of the Wahalan Mills, and attached property on the mill premises. Twelve other creditors also brought twelve other similar suits and obtained decrees against other persons who were also described as owners of the Wahalan Mills, and attached the same property. In suit No. 1548 of 1897, *R. M.* (the present plaintiff), under s. 278 of the Civil Procedure Code (Act XIV of 1882) claimed the property. His claim was disallowed, and he was ordered to bring a suit under s. 283. No claim or order was made in the case of the other twelve suits. *R. M.* now sued in pursuance of the above order to recover his property, and he included as defendants not merely those (defendants Nos. 1 and 2) who had been plaintiffs in suit No. 1548 of 1897, but also those who had been plaintiffs in the twelve other suits, and who had attached the pro-

was in respect of the same matter and therefore fulfilled the requirements of s. 28 of the Civil Procedure Code, 1882. RAGHUNATH MUKUND *v.* SAROSH KAMA . . I. L. R. 23 Bom. 266

64. ———————— *Civil Procedure Code, s. 31—Suit for removal of trustees and for money decree.* Suit by certain dikshadars or hereditary trustees of the Chitambaram temple against

repair of certain shrines. *Held*, that the suit was not bad for misjoinder of causes of action. NATESA *v.* GANAPATI . . I. L. R. 14 Mad. 103

65. ———————— *Misjoinder of parties—Suit for partition and to set aside order disallowing objection to attachment—Civil Procedure Code, 1882, s. 283—Right of suit—Superintendence of High Court.* There is nothing in the words of s. 283 of the Code of Civil Procedure (Act XIV of 1882) to limit the party unsuccessful in the attachment proceedings to a suit for a mere

is at liberty

onsequential

l, *B*, and *C*

In execu-

. the family

property was attached. Thereupon *A* intervened and objected to the attachment so far as his own share was concerned. The objection was disallow-

a partition of the whole family property. In this suit he impleaded not only his co-sharers, *B* and *C*, but also *D*, the auction-purchaser, and *E*, a mortgagee of *B*'s share in the joint property. The

not bad either for misjoinder of parties or for misjoinder of causes of action. Treating the suit as one for partition, the auction-purchaser *D* and the mortgagee *E* were proper and even necessary parties.

SADU BIN BAGHU *v.* RAM BIN GOVIND

I. L. R. 16 Bom. 608

66. ———————— *Suit for partition of property of deceased by his heirs.* Two

MULTIFARIOUSNESS—*contd.*

of action. If the suits were viewed substantially as suits against trespassers, the plaintiffs, as tenants in common, were competent to sue together in respect of what was thus a common injury to them. If, on the other hand, the suits were suits for partition, the plaintiffs were *a fortiori* entitled to join ASSAM *v.* PATHUMMA

I. L. R. 22 Mad. 494

67. ——— *Complaint of dealings by executors as act of mal-administration added to claim in administration suit.* Where the suit is one to administer the assets of a deceased person, and in the claim various dealings by the executors of the estate are complained of as acts of mal administration and sought to be redressed such dealings do not constitute separate causes of action, and such a suit is not multifarious. NISTARINI DASSI *v.* NUNDO LALL BOSE

I L. R 26 Calc. 891
3 C. W N. 670

68 ——— *When objection* ... [illegible]

DOYAL DUTT *v.* RAMDOOLAL DEB 11 W R. 273

69. ——— Misjoinder of parties and causes of action—*Civil Procedure Code (Act XIV of 1882), ss. 28 and 45—Suit by a purchaser of property for possession against a person who dispossessed him, as also against the vendor for the return of the purchase money, whether maintainable* On a suit brought by the plaintiff for recovery of possession of land against defendant No 1 (the person by whom the plaintiff was dispossessed) ... [illegible]

defendant No. 2 in case the plaintiff's claim against defendant No. 1 failed; the defence was that the suit was bad for misjoinder of parties and causes ... [illegible]

70. ——— *Joinder of parties* ... [illegible] *of necessary parties* A plaintiff can sue to establish his own rights only and has no right to obtain an adjudication of the claims of any defendants, unless such adjudication be neces-

MULTIFARIOUSNESS—*contd*

... [illegible]

over the separate creditors, was not maintainable. WOOPENDRA NARAIN SEN *v.* AGHORE NATH CHATTERJEE (1905) . . . 9 C. W. N. 498

MUNICIPAL ACTS.

See BENGAL MUNICIPAL ACT.

See BOMBAY CITY MUNICIPAL ACT

See BOMBAY DISTRICT MUNICIPAL ACT (*BOM. ACT VI OF 1873*);
(„ „ II OF 1884);
(„ „ III OF 1901)

See CALCUTTA MUNICIPAL ACT.

See CALCUTTA MUNICIPAL CONSOLIDATION ACT.

See MADRAS CITY MUNICIPAL ACT.

See MADRAS DISTRICT MUNICIPALITIES ACT

See NORTH-WESTERN PROVINCES AND OUDH MUNICIPALITIES ACT

MUNICIPAL BOARD.

See ACT XV OF 1883, s 40.

See AGRA AND OUDH MUNICIPALITIES ACT (I OF 1900).
I. L. R 28 All. 199; 600

See MUNICIPAL COMMISSIONERS

See MUNICIPAL COMMITTEE

——— control over—

See JURISDICTION OF CIVIL COURT—MUNICIPAL BODIES . 19 W. R. 309

——— power of—

See N.-W. P. AND OUDH MUNICIPALITIES ACT, 1883, s. 55 I. L. R 19 All. 313

——— restriction on power of, to make by-laws—

See NORTH-WESTERN PROVINCES AND OUDH MUNICIPALITIES ACT (N. AND O. *Act I of 1900*), s. 128.
I. L. R. 24 All. 439

——— secretary of—

See STAMP ACT, SCH. I, ART. 22.
I. L. R. 19 All. 293

MUNICIPAL COMMISSIONERS

See BOMBAY CITY MUNICIPAL ACT (BOM ACT III OF 1888), ss 231, 471
I L R 29 Bom 35

See COLLECTOR I L R 1 Bom 628

See MAGISTRATE, JURISDICTION OF—SPECIAL ACTS—ACT XXVI OF 1850
5 Bom Cr 10
8 Bom Cr 39

See MUNICIPAL BOARD

See MUNICIPAL CORPORATION

See PUBLIC SERVANT . 4 Bom A C 93
5 Bom Cr 33

See RULES MADE UNDER ACTS.
8 Bom Cr 39

———— appeal against assessment by—

See JURISDICTION OF CIVIL COURT—MUNICIPAL BODIES . I L R. 1 Calc. 409

———— effect of vesting street in—

See PUBLIC ROAD, HIGHWAY, STREET OR THOROUGHFARE
I L R 25 Mad 635

———— election of—

See CALCUTTA MUNICIPAL CONSOLIDATION ACT, s 31
I L R. 19 Calc 192; 195 note; 198
I L R 22 Calc 717

See JURISDICTION OF CIVIL COURT—MUNICIPAL BODIES I L R 24 Calc. 107

———— notice of suit against—

See APPELLATE COURT—OBJECTIONS TAKEN FOR FIRST TIME ON APPEAL—SPECIAL CASES—NOTICE OF SUIT.
I L R 1 All 269

See BENGAL MUNICIPAL ACT, 1864, ss. 77, 81 . . . . 7 W. R. 92
9 W R. 279 ; 562

See MADRAS TOWNS IMPROVEMENT ACT, 1871, s 168 . I L R. 2 Mad. 124

See NOTICE OF SUIT.

———— order of District Judge as to—

See SUPERINTENDENCE OF HIGH COURT—CIVIL PROCEDURE CODE, 1882, s 622.
I L R. 21 Bom. 279

———— power to administer oath—

See BENGAL MUNICIPAL ACT, 1864, s 6.
19 W. R 309

———— power to close or divert public highway—

See BENGAL MUNICIPAL ACT, 1864.
I. L R. 2 Calc. 425

MUNICIPAL COMMISSIONERS—*contd.*

———— power to institute criminal proceedings—

See BENGAL MUNICIPAL ACT, 1864, s. 133.
I. L R. 22 Calc. 131

———— suit against—

See BENGAL MUNICIPAL ACT, 1864, ss. 77, 87 . . . . 7 W. R 92
5 B L R Ap 50
I L R 6 Calc. 8

See RES JUDICATA—JUDGMENT ON PRELIMINARY POINTS . 5 B L R. Ap 50

See RIGHT OF SUIT—MUNICIPAL OFFICERS, SUITS AGAINST.

1 ———— Liability of Commissioners for negligence or misconduct—*Beng Act III of 1864* Municipal Commissioners under Bengal [illegible]

their authority or if they are guilty of negligence or misconduct in doing that which they are empowered to do, then they render themselves personally liable to an action There is no special law extending to members of Municipalities which protects them so long as they act *bonâ fide* SOONDER LALL *v* BAILLIE . . 24 W R. 287

2 ———— Liability of Corporation for breach of statutory duty—*Calcutta Municipality Act (Beng Act IV of 1876), ss 189, 191, 213, 252—Obstruction in public way—Damages.* Under s 189 of Bengal Act IV of 1876, the roads [illegible]

[illegible] sioners on opening up the roads, and persons to [illegible]

[illegible] was granted on the usual condition that a contractor licensed to do such works by the Municipality [illegible]

MUNICIPAL COMMISSIONERS—*concld.*

The road was open, but was left unfenced and insufficiently lighted at night. The plaintiff, in driving along this road after dusk, drove into the hole and was badly injured, and sued the Corporation, the contractor, and the Secretary of State for damages. *Held* by the Court of first instance (i) that the Secretary of State was not liable, because he came within the established rule that one who employs another to do what is perfectly legal must be presumed to employ that other to do this in a legal way; (ii) that the Corporation, who had a statutory obligation imposed upon them to repair and maintain the roads, were liable to the plaintiff *for a breach of their statutory duty*; that where there is a dangerous obstruction, *a fortiori* where such dangerous obstruction results from a permission accorded by the Commissioners, they are to be held liable for damage caused by it; (iii) that the contractor also was liable. *Held*, on appeal, that the fact that the Commissioners gave permission to another person to open up the road, although for a perfectly proper purpose, would not relieve them from their statutory duty under s. 191 of Bengal Act IV of 1876 CORPORATION OF TOWN OF CALCUTTA *v.* ANDERSON . I. L. R. 10 Calc 445

3. ———— Commissioner acting as Magistrate, power of—*Procedure—Proceeding against absent party.* A Municipal Commissioner, [illegible]

MUNICIPAL COMMISSIONERS OF SERAMPORE
24 W. R. Cr. 25

4. ———— Editor of newspaper—*Trial of case on which he has written strong opinion in newspaper.* The High Court declined to interfere under s. 296, Act X of 1872, with the order of a Municipal Commissioner, who was the editor of a newspaper, who had, prior to the disposal of the case, made [illegible] newspaper [illegible] there was [illegible] would have [illegible] refused to sit as one of the Commissioners in the case. QUEEN *v.* TARINEE CHURN BOSE.
21 W. R. Cr. 31

MUNICIPAL COMMITTEE.

See RIGHT OF SUIT—MUNICIPAL OFFICERS, SUITS AGAINST.

See RIGHT OF SUIT—OBSTRUCTION TO PUBLIC HIGHWAY I. L. R. 1 All. 557

MUNICIPAL CORPORATION.

See CALCUTTA MUNICIPAL CONSOLIDATION ACT (II OF 1888), ss. 247, 250, 427.
I. L. R. 30 Calc. 317

See MUNICIPAL BOARD.

See MUNICIPAL COMMISSIONERS.

MUNICIPAL CORPORATION—*concld.*

See SANCTION FOR PROSECUTION—WHERE SANCTION IS NECESSARY OR OTHERWISE.
I. L. R. 3 Calc. 758

———— extension of time of prosecution by—

See PROSECUTION.
I. L. R. 34 Calc. 909

MUNICIPAL COURTS.

———— jurisdiction of—

See ACT OF STATE.

MUNICIPAL DEBENTURES.

———— Agreement to exchange land for debentures—*Quit-rent—Liability for interest on debentures.* The Port Canning Municipal Commissioners invited loans on debentures convertible into leasehold titles to lands in the town. *The* [illegible]

correspondence commenced between the parties with the object of effecting the conversion, in which [illegible]

[illegible] agreed to this and asked the Company to [illegible] the lots which they would receive in commutation. A selection was made, but not in accordance with the contract: the lots selected being of more value than the debentures. The Commissioners then proposed that the Company should return the debentures, and pay quit rent upon the additional lots. This was not accepted, but the matter was left in an imperfect state The Port Canning Land Company subsequently brought an action against the Port Canning Municipality for two years' interest on the debentures. *Held*, that the non-acceptance of the proposal as to the additional lots [illegible] agreement to exchange [illegible] ts; and that [illegible] de involving [illegible] erest. PORT [illegible] I L. A. 124

MUNICIPAL ELECTION.

See BOMBAY DISTRICT MUNICIPAL ACT (BOM. III OF 1901).
I. L. R. 30 Bom. 409

See ELECTION.

MUNICIPAL ELECTION—*contd.*

See CALCUTTA MUNICIPAL CONSOLIDATION ACT, s 31
I. L. R. 19 Calc. 192, 195 note, 198
I. L. R. 22 Calc. 717

See JURISDICTION OF CIVIL COURT—MUNICIPAL BODIES I. L. R. 24 Calc 107

See MUNICIPALITY I. L. R. 31 Bom. 37

MUNICIPAL INSPECTOR.

See PUBLIC SERVANT.
I. L. R 13 Mad. 131

MUNICIPAL NOTICE.

See NOTICE OF SUIT

MUNICIPAL OFFICERS.

See JURISDICTION OF CIVIL COURT—MUNICIPAL BODIES

See RIGHT OF SUIT—MUNICIPAL OFFICERS, SUITS AGAINST

—— complaints by—

See COURT FEES ACT, 1870, s. 19
I. L. R. 16 Mad. 423

MUNICIPAL TAX.

See BOMBAY MUNICIPAL ACT, 1865, s 2.
9 Bom. 217

See TAX.

MUNICIPALITY.

See BOMBAY DISTRICT MUNICIPAL ACT
[I. L R. 30 Bom 409

See CALCUTTA, BENGAL, MADRAS AND BOMBAY MUNICIPAL ACTS.

See MUNICIPAL BOARD

See MUNICIPAL COMMISSIONERS.

—— Chairman of—

See HIGH COURT, JURISDICTION OF—CALCUTTA—CIVIL.
I L. R. 17 Calc 329
I. L. R. 21 All. 348

See MAGISTRATE, JURISDICTION OF—GENERAL JURISDICTION.
I. L R. 23 Calc. 44

See NEGLIGENCE.
I. L. R. 33 Bom 393

See PENAL CODE, ss 21, 186.
I. L. R. 33 Bom 213

—— suit against—

See JURISDICTION OF CIVIL COURT—MUNICIPAL BODIES.

See PARTIES—PARTIES TO SUITS—GOVERNMENT . I. L R 15 Mad. 292

See RIGHT OF SUIT—MUNICIPAL OFFICERS, SUITS AGAINST.

MUNICIPALITY—*contd.*

—— suit by—

See LIMITATION ACT, 1877, ART 149.
I. L R. 19 Mad. 154

1. —— *Election of Councillor—Bye-election—Officer appointed to receive nomination* [illegible] *nomin* [illegible] *clarati* [illegible] cillor [illegible]

[illegible] officer appointed to receive the nomination papers [illegible]

The plaintiff thereupon brought a suit against the [illegible]

plaintiff was not entitled to an injunction, but it awarded to him damages to the extent of R150 [illegible]

a suit and that no such malice was proved. *Held,* [illegible]

2. ——*Surat City, Municipality—Rules framed in the year 1905, Rules 1 (2),* [illegible]

had made in the year 1905, they were entitled to cut off the water-connection with the plaintiff's house because he allowed the water to run to waste, inasmuch as it was used by families of tenants, who were not of the family of the plaintiff.

MUNICIPALITY—*concld.*

Held, that under the rules framed by the Surat City Municipality in the year 1905, so long as the plaintiff occupied a house not inhabited by more than [illegible] , that [illegible] " in [illegible] struc- [illegible] " in rule 1 (2) The definition of " domestic purposes " meant nothing more or less than legitimate household purposes. The user for legitimate household purposes by more than one family in the house was not waste within the meaning of the definition. SURAT CITY MUNICIPALITY *v.* TYABJI (1908)
I. L. R. 32 Bom. 460

MUNSIF.

See BENGAL TENANCY ACT (VIII OF 1885), s. 153 . **I. L. R. 35 Calc. 547**

See JURISDICTION
I. L. R. 31 Calc. 1057

See MAGISTRATE, JURISDICTION OF—WITHDRAWAL OF CASES.
I. L. R. 15 Mad. 94

See PROVINCIAL SMALL CAUSE COURTS ACT (IX OF 1887), s. 32.
12 C. W. N. 167

See WITNESS—CIVIL CASES—PERSON COMPETENT OR NOT TO BE WITNESS.
6 Mad. Ap. 42

——— **dismissal of—**

See ENGLISH COMMITTEE OF HIGH COURT.
10 B. L. R. 79, 80, 82 note

——— **jurisdiction of—**

See EXECUTION OF DECREE—TRANSFER OF DECREE FOR EXECUTION AND POWER OF COURT, ETC . **23 W. R. 233**
2 C. L. R. 334
I. L. R. 7 Mad. 397
I. L. R. 12 Calc. 307
I. L. R. 15 Calc. 365
I. L. R. 17 Mad. 309
I. L. R. 22 Calc. 764
I. L. R. 25 Calc. 315

See PUBLIC SERVANT . **4 Bom. A. C. 93**

See RENT, SUIT FOR—BY WHAT COURT TRIABLE . **I. L. R. 30 Calc. 453**

See RES JUDICATA—COMPETENT COURT—GENERAL CASES.

See SALE IN EXECUTION OF DECREE—INVALID SALES—WANT OF JURISDICTION.

See SMALL CAUSE COURT, MOFUSSIL—JURISDICTION—GENERAL CASES.
4 Mad. 334
5 Mad. 45; 287
I. L. R. 13 Mad. 145

MUNSIF—*contd.*

See SUBORDINATE JUDGE, JURISDICTION OF
I. L. R. 7 All. 230
I. L. R. 14 All. 348
I. L. R. 17 Calc. 155
I. L. R. 14 Mad. 163

See TRANSFER OF CIVIL CASE—GENERAL CASES . . . 13 W. R. 399
6 Mad. 18
25 W. R. 219
I. L. R. 8 Mad. 500
I. L. R. 13 All. 324

See VALUATION OF SUIT—SUITS.

1. ——— **Execution proceedings before Act XVI of 1868**—*Suit pending on abolition of office.* Where execution had been issued by [illegible] Munsif, who succeeded to the jurisdiction of the Sudder Ameen, had power to take up the case and issue execution proceedings. SREENATH BANERJEE *v.* PURRUM SOOKH CHUNDEE . 25 W. R. 105

2. ——— **Suit pending when Act XVI of 1868 came into operation**—A suit, of which the subject-matter did not exceed in amount or [illegible] after Act XVI of [illegible] local [illegible] trict. BUNGSHEE BUDDEN DEY *v.* JARIVEL CHUNDER DEY . . . . . 14 W. R. 375

3. ——— **Appeal pending when Act XVI of 1868 came into operation**—*Execution of decree—Act XVI of 1868, s. 12.* At the time of [illegible] which abolished the [illegible] was pending [illegible] executed by [illegible] the appeal [illegible] proceedings [illegible] Court of trial [illegible] Court was the only Court which had jurisdiction to execute the decree. GOBIND SINGH *v.* MUNNO RAM DOSS . . . 19 W. R. 414

4. ——— **Suit against public servant for acts done by him officially.** A Munsif had not jurisdiction to try an action brought against a public servant for acts done by him in his official capacity. *Semble*—The only judicial officers having jurisdiction to try such cases would be the Judge or Assistant Judge of the district in which the suit arose. VALLABHRAM JAGJIVAN *v.* WOODHOUSE . . . . 1 Bom. 144

5. ——— **Suit for rent**—*Dekkan Agriculturists' Relief Act, XVII of 1879—Village Munsif.* A Village Munsif has no jurisdiction to try a suit for rent under the Dekkan Agriculturists' Relief Act XVII of 1879. VITHAL RAMCHANDRA *v.* GANGARAM VITHOJI . . . . I. L. R. 5 Bom. 180

MUNSIF—*contd*

6. ——— **Order enforcing award as to determination of rent.** A Munsif has no jurisdiction to entertain an application and pass an order on the enforcement of an arbitration award relating to the determination of rent When a Munsif acts without jurisdiction, the question may be the subject of an appeal to the Appellate Court of the district ALTAF HOSSEIN *v.* GRISH CHUNDER ROY . . . 15 W. R. 556

7. ——— **Suit for dissolution of partnership**—*Jurisdiction—Arbitration—Finality of decree in accordance with award* A suit for dis-

suit, instituted in the Court of a Munsif The matters in difference in the suit were eventually referred to arbitration under Ch XXXVII of the Code of Civil Procedure, and an award was made declaring the plaintiff entitled to recover a certain sum from the defendant. Judgment and a decree were given in accordance with the award. *Held*, that, the award notwithstanding, the question whether the

8. ——— **District Munsif**—*Villages under attachment for breach of duty by karnam—Fine.* A District Munsif's Court has not authority to inflict fines on karnams of villages which are under attachment by that Court for breach of duty on the karnam's part RAMAKISTNAM *v.* RAGAVACHARI

I. L. R. 3 Mad. 406

9. ——— **Power to take voluntary depositions**—*Application to restore appeal* A Munsif has no power to take voluntary depositions, *e g*, the deposition of a party to show his ill-

10. ——— **Power to transfer suit**—*Mad Reg IV of 181 , s 26—Village Munsif—Jurisdiction* In a suit under Regulation IV of

11. ——— **Attachment and sale of land**—*Mad. Reg IV of 1816, s. 30—Village Munsif—Decree—Execution* Immoveable property can be attached and sold in execution of a decree of a village Munsif under the provisions of s. 30 of Regulation IV of 1816. RAMASAMI CHETTI *v.* ANGAPPA CHETTI . . . I. L. R. 7 Mad. 220

MUNSIF—*contd.*

12 ——— **Power of Village Munsif to administer oath to witness**—*Mad. Reg IV of 1816—Criminal Procedure Code, s 195—Sanction for prosecution of witness for perjury by Village Munsif* V was tried and convicted under s 193 of the Penal Code for giving false evidence before the Court of a Village Munsif in a suit in which V was defendant The Village Munsif sanctioned the prosecution of V under s 195 of the Code of Criminal Procedure On appeal, the Sessions Judge acquitted V on the grounds that a Village Munsif had no power to administer an oath to V (the case not being one in which either party was willing to allow the cause to be settled by the oath of the other) and because s. 195 of the Code of Criminal Procedure did not apply. *Held*, that both objections to the conviction were bad in law. QUEEN-EMPRESS *v.* VENKAYYA

I. L. R. 11 Mad. 375

13. ——— **Village Munsifs**—*Criminal Procedure Code, ss. 1, 480, 482—Contempt of Court* Ss. 480 482 of the Code of Criminal Procedure do not apply to Village Munsifs QUEEN-EMPRESS *v.* VENKATASAMI

I. L. R. 15 Mad. 131

14 ——— *Madras Village Courts Act* (*Mad Act I of 1889*), *s. 13* (*3*)—*"Land," meaning of—Suit for rent of house.* In Madras Act I of 1889, s 13, proviso 3, the word "land" includes land covered by a house, and consequently a suit for house-rent, unless due under a written contract signed by the defendant, is not cognizable in a Village Munsif's Court NARAYANAMMA *v.* KAMAKSHAMMA . . . I. L R. 20 Mad. 21

15. ——— *Village Munsif's* ... *of 1889.* ... cate Act ... RASIBI

I. L. R. 21 Mad. 115

16 ——— **Suit for share of annual allowance**—*Question of title.* In an action brought to recover a third share of arrears of varshasan or annual allowance paid by the Gaikwar of Baroda to the defendant, and in which the plaintiff alleged that he was entitled to a third share —*Held*, that such an action can be maintained in a Munsiff's

17. ———

18. ——— *Suit on mortgage bond mortgaging sayer compensation—Mahikana—*

MUNSIF—*contd.*

Interest in immoveable property—Civil Procedure Code, s. 16—Beng Reg. XXVII of 1793. A mortgaged at Calcutta to *B* his *sayer* compensation payable at the General Treasury at Calcutta in respect of a certain hât within the Diamond Harbour sub-division. In a suit to enforce the mortgage-bond in the Court of the Munsif of Diamond Harbour :—*Held,* that *sayer* compensation did not partake of the nature of malikana, that it was not [illegible]

distinguished. SURENDRO PROSAD BHUTTACHARJI *v.* KEDAR NATH BHATTACHARJI

I. L. R. 19 Calc. 8

19. ——— Suit for redemption of usufructuary mortgage—*Question of title.* Where the question in dispute in a suit for redemption of a usufructuary mortgage is not only whether the property has been redeemed out of the usufruct, but whether the property and the right to redeem belongs to the plaintiff, and the value of the property exceeds R1,000, such suit is not cognizable by a Munsif KALIAN DAS *v.* NAWAL SINGH

I. L. R. 1 All. 620

[illegible]

Munsif's Court to recover several parcels of land from the defendant, plaintiff alleged that defendant held a valid mortgage of R206 on two parcels which he offered to redeem. As to the other parcels, he alleged that, if any charges had been created in defendant's favour over them by his predecessor in title, such charges were invalid. The suit, as valued by the plaintiff, was within the pecuniary limit of the Munsif's jurisdiction Defendant pleaded that he held a mortgage for R3,000 over the land, and therefore the Munsif's Court had no jurisdiction to try the suit. The Munsif tried the question of the validity of the defendant's mortgage, and decreed possession to plaintiff on payment of R906 due on account of mortgages and R1,647-11-9 on account of improvements. On appeal, the District Judge held that the Munsif had no jurisdiction, reversed the decree, and ordered the plaint to be returned to be presented in the proper Court. *Held,* that the Munsif's Court had jurisdiction. CHANDU *v.* KOMBI . I. L R. 9 Mad. 208

21. ——— Suit regarding minors—[illegible]

23 W. R. 340

HARASUNDARI BAISTABI *v.* JAYADURGA BAISTABI

4 B. L. R. Ap. 36 : 13 W. R. 112

22. ———*Act IX of 18[illegible]1—Civil Procedure Code, ss. 1[illegible], 15—Parent and child—Suit for recovery of minor by parent.* Act IX of 1861 does not debar a District Munsif's Court from entertaining a suit by a Hindu father to recover possession of his minor son alleged to be illegally detained by the defendant. KRISHNA *v.* READE

I. L. R. 9 Mad. 31

23. ——— Suit for dismissal of a zamindari karnam—*Mad. Reg. XXV of 1802, s. 11—Mad. Reg. XXIX of 1802, ss. 5, 7, 10, 1[illegible], 18.* A suit by a zamindar for the dismissal of a zamindari karnam cannot be entertained by a District Munsif. The subordinate Court, and the District Court where there is no subordinate Court, is the tribunal that has taken the place of the Court of Adawlut of 1802. VENKATANARASIMHA *v.* SURYANARAYANA . I. L. R. 12 Mad. 188

24. ——— Suit for office of karnam—*Mad. Reg. XXIX of 1802, s 7—District Court,* [illegible]

damages, was brought in the Court of the [illegible] Munsif. *Held,* that it was properly so brought. JAGANNATHA PILLAI *v.* SUBBARAYA PILLAI

I. L. R. 22 Mad. 340

25. ——— Suit to recover share of inheritance—*Madras Civil Courts Act (III of 1873), s. 12—Subject matter of suit.* The plaintiff sued to be declared an heir to a deceased Mahomedan and to recover her share of the inheritance, the share claimed being less than R2,500, while the value of the whole estate exceeded that amount. *Held,* that the suit was within the jurisdiction of a District Munsif. KHANSA BIBI *v.* SYED ABBA

I. L. R 11 Mad. 140

26. ——— Suit for partition and mesne profits—*Madras Civil Courts Act, 1873—Civil Procedure Code, s 511.* N sued *S* and others for partition of a share of certain land, and claimed mesne profits from other defendants who were [illegible]

presentation in the [illegible] that the [illegible] against [illegible], as the [illegible] tain the [illegible] Munsif's Court had no [illegible] suit for partition, it could make no decree for mesne profits NAGAMMA *v.* SUBBA

I. L. R. 11 Mad. 197

27. ——— Suit for share of undivided property—*Madras Civil Courts Act (Mad Act III of 1873), s. 12—Suits Valuation Act (VII of 1887), s. 8.* Persons entitled to a share in certain lands of a village only part of which was held in severalty, executed a mortgage of part of the lands due to their share. The mortgage contained a description of the land comprised therein by paimash

MUNSIF—*contd.*

numbers and admeasurement The mortgaged property was brought to sale in execution of a mortgage-decree, and was purchased by the present [illegible]

and not that of the entire property. The defendants were the mortgagors and the other persons interested in the land, their respective shares not having been ascertained and demarcated *Held*, that the suit was within the jurisdiction of a District Munsif. CHAKRAPANI ASARI *v.* NARASINGA RAU I. L. R. 19 Mad. 56

28 ——— **Remedy by ordinary suit barred**—*Madras Forest Act, 1882, s 10—Proce-* [illegible]

29. ——— **Mad. Act IV of 1863**—*Small Cause Court Judge—Act XI of 1865* A District [illegible]

4 Mad. 149

30. ——— Madras Act IV of 1863 did not take away the former jurisdiction [illegible]

[illegible] Mad. 82

31. ——— *Suit for money paid for use of undivided brother* Plaintiff sued for R31-2-3½, money paid for the use of defendant, his undivided brother. The defence was that [illegible]

KATTAPERUMAL PILLAI *v* PANCHANADAM PILLAI 3 Mad. 338

32 ——— **Suit against Government**—*Small Cause Court Act, XI of 1865, s. 9.* A Munsif has jurisdiction to try a suit against Government which, but for s 9, Act XI of 1865, would be cognizable by a Court of Small Causes KOMALOODEEN SHEIKH *v.* COLLECTOR OF MIDNAPORE 11 W. R. 233

33 ——— **Suit cognizable in Small Cause Court**—*Defendant residing out of jurisdiction* A Munsif has no jurisdiction as a Small Cause Court to take cognizance of a suit against defendants not resident within his jurisdiction ANONYMOUS . . . 3 Mad. Ap. 24

Correcting, as to this point, MAGAM TIMMAYA *v.* TANGATTUR KANDAPPA . . 2 Mad. 82

34. ——— **Suit cognizable in Small Cause Court, but erroneously dismissed there** A plaint was rejected by a Court of Small Causes on the ground that that Court had no jurisdiction. It was then filed in the Court of a District Munsif, who decreed for the plaintiff. On appeal to the Principal Sudder Ameen, it was objected that [illegible]

Cause Court did not warrant the institution of the suit in the District Munsif's Court; and that the Principal Sudder Ameen rightly concluded that the suit ought to be dismissed. PANAPPA MUDALI *v.* SRINIVASA MUDALI . . . 3 Mad. 86

35. ——— **Jurisdiction where Small Cause Court exists**—*Civil Procedure Code,* [illegible]

instituted in the Court of the Munsif exercising Small Cause Court powers. DWARKANATH DUTT *v.* BHATHEE HAWALDAR. CHUNDOO VISTEE *v.* SODAGUR VISTEE . . . 22 W. R. 457

36. ——— **Power of Munsif sitting as Small Cause Court to transfer case to Munsif's Court** When a District Munsif has jurisdiction to try a suit as a Small Cause Court Judge, he cannot transfer it to the District Munsif's Court on any ground of expendiency. BODI RAMAYYA *v* PERMA JANAKIRAMUDU . 5 Mad. 172

37. ——— **Jurisdiction of Small Cause** [illegible]

damages for use and occupation—Code of Civil Procedure, 1882, ss 646A and 646B In a suit for [illegible]

MUNSIF—*contd.*

presented to the Munsif, he tried the suit, and

Court Judge was regularly made, and the Munsif had therefore jurisdiction to entertain the plaint. *Semble*:—Having regard to the provisions of ss 646A

the Provincial Small Cause Courts Act had not expressly conferred jurisdiction upon the Munsif. MAHAMAYA DASYA *v.* NITYA HARI DAS BAIRAGI
I. L. R. 23 Calc 425

38. ———— **Suit which may be filed in more than one of several Courts**—*Civil Procedure Code, 1882, s. 17—Provincial Small Cause Courts Act (IX of 1887), s. 16—Choice of forum* Where a suit may be filed in more than one of several Courts, it is a general principle of law that the plaintiff may select the forum in which to bring the suit. Where a plaintiff sued in a District Munsif's Court, having jurisdiction at the place where the money due under a contract was to be paid, there being no Small Cause Court having jurisdiction at such place:—*Held*, that the jurisdiction of the District Munsif was not ousted by the fact that there was in existence at the date of suit a Small Cause Court having jurisdiction at the place where the contract was made. RATNAGIRI PILLAI *v.* VAVA RAVUTHAN . . I L R. 19 Mad. 477

39. ———— **Jurisdiction to execute decree passed by him in Small Cause Court**

200 in
ution,
with-
, that
application for execution must be made to the Court in which the Small Cause Court's jurisdiction vested at the date of the application. ZAMINDAR OF VALLUR AND GUDUR *v.* ADINARAYUDU
I. L. R. 19 Mad. 445

40. ———— **Interpleader suit**—*Civil Procedure Code, 1882, ss. 470 and 622—Claim for compensation awarded under Land Acquisition Act—Provincial Small Cause Court Act (XI of 1887)—Superintendence of High Court.* Land having been compulsorily acquired under the Land Acquisition Act for the purpose of the East Coast Railway, the compensation was fixed at R468. A conflict having arisen as to the right to receive the compensation, and the District Court having declined to determine it under the Land Acquisition

MUNSIF—*contd.*

Act, s. 15, an interpleader suit was instituted on

remedy was by way of second appeal, the petition for revision was not admissible. TIRUPATI RAJU *v.* VISSAM RAJU . . I. L. R 20 Mad. 155

41. ———— **Suit brought for amount in**

declare certain land liable to be sold in execution of a decree for more than R2,500, the defendants pleaded that the Court had no jurisdiction. The Munsif allowed the plaintiff to amend the plaint

within the pecuniary ju...
ANNAJI RAU *v.* RAMA KURUP I. L. R 10 Mad 152

42. ———— **Decree passed in a restored suit pending appeal against order of restoration**—*Civil Procedure Code, ss 98, 97* A suit ... neither party ap... s dismissed. ... de an order ... ved for the restoring ... plaintiff The defendant in the meanwhile appealed to the District Court against the order of restoration, and after the date of the decree the District Court made an order allowing the defendant's appeal. The plaintiff appealed to the High Court, and the order of the District Court was reversed, and the order of restoration upheld. *Held*, that the Munsif's decree was not passed without jurisdiction ALWAR *v* SESHAMMAL
I. L. R. 10 Mad. 290

43. ———— **District Munsifs**—*Suit for declaration of title to paid offices—Withdrawal of claim to some of the offices—Office still claimed involving the right to the others.* In a suit to declare title to four paid offices in a temple, the plaintiffs asked that the issues with regard to three of them should not be tried, but on cross-examination asserted right to them. *Held*, that the plaintiffs were not shown to have relinquished their claim on the three offices for the purposes of the suit. On findings that the fourth office carried with it the right to the other three, and that the united value of the four offices exceeded the jurisdiction of the District Munsif:—*Held*, that the District Munsif had no jurisdiction to entertain the suit, and that the plaint

MUNSIF—contd

should be returned fr presentation in the proper Court SUNDRA v SUBBA . I. L. R. 10 Mad 371

44 — — **Suit for declaration that property is liable to sale in execution of decree** -*Valuation of suit* In a suit to have it declared that certain property valued at R400 was liable to sale in execution of the plaintiff's decree for R1,500 —*Held*, that in this case the value of the property determined the jurisdiction, that it was immaterial that the amount of the decree was higher than the limit of the Munsif's jurisdiction, and that the case was therefore triable by the Munsif *Gulzari Lal v Jadaun Rai, I L R 2 All 799*, distinguished DURGA PRASAD v RACHLA KUAR . . . I. L R 9 All 140

45. ——— **Attached property, suit to establish right to**—*Bengal Civil Courts Act (VI of 1871), s 20—Value of the subject-matter in dispute—Civil Procedure Code (Act XIV of 1882), s 283—Valuation of suit* A Munsif has jurisdiction to try a suit brought under s 283 of the Civil Procedure Code to test the question whether a property which has been attached in executoin is

I. L. R. 11 Mad. 301

47. ——— **Decree containing order for ascertainment of mesne profits from date of suit to date of recovery of possession**

claimed, but the plaint prayed that such mesne profits from date of suit to recovery of possession, as might be ascertained in execution of decree, should be awarded to the plaintiff The Munsif gave a decree in accordance with the prayer of the plaint The plaintiff then asked that the mesne profits might be assessed, and in his petition he roughly etimated them at R595, and thereupon it was held both by the Munsif, and on appeal by the District Judge, that the Munsif had no jurisdiction, as he could not give a decree for more than R1,000 *Held*, on appeal to the High Court, that the Munsif had jurisdiction to ascertain the mesne profits, and to give effect to the order made in his decree in the suit, notwithstanding that the amount of such mesne profits, when added to the value of the suit, might come to a sum in excess of the pecuniary jurisdiction of his Court. RAMESWAR MAHTON v DILU MAHTON . I. L. R. 21 Calc 550

48 ——— **Power of District Munsif** ... *s' Act (Mad.* ... Munsif has no ... Village Mun- ... n only revise ... the grounds ... Courts Act

I. L R 21 Mad. 363

49 ——— **Power of District Munsif on revision**—*Village Courts Act (Madras Act I of 1889), s 73—Revision by District Munsif of Village Courts'* ... *a defendant to* ... *and sale unde* ... *setting aside* ... *Village Munsif—Legality of order* By s 73 of the Madras Village Courts Act, 1889, the District

attachment and declared them to be void, and ordered the Village Munsif to refund the money he had recovered from the defendants *Held*, that

MUNSIF—*concld.*

R100, had, on his file on the regular side of his Court, suits of a small cause nature for amounts between R100 and R200, some of which were partly tried. His small cause jurisdiction was then extended to R200, whereupon he transferred the cases in question to his small cause file, and tried and disposed of them as small causes *Held*, that the transfer and trial were not in accordance with law. HARI KAMAYYA *v.* HARI VENKAYYA (1903)
I. L. R. 26 Mad. 212

MURALI.

See HINDU LAW—INHERITANCE.
I. L. R. 31 Bom. 495

MURDER.

See ABETMENT—MURDER.

See ATTEMPT TO COMMIT OFFENCE
4 Bom. Cr. 17
8 Bom. C 164
I. L. R. 15 Bom. 194
I. L. R 14 All. 38
I. L R. 20 All. 143

See CRIMINAL PROCEDURE S. CODES, 376 (1872, s. 288) I. L. R. 1 Bom. 639

See CULPABLE HOMICIDE.

See DACOITY . I. L. R. 16 All. 437
I. L. R. 17 All. 86

See EVIDENCE—CRIMINAL CASES—CONSIDERATION OF, AND MODE OF DEALING WITH, EVIDENCE
I. L. R. 13 Mad. 426
6 C. W. N. 921

See INSANITY . I. L R. 28 Calc. 613
I. L. R. 29 Calc. 493
I. L. R. 34 Calc. 68

See *JURISDICTION OF CRIMINAL COURT*—OFFENCES COMMITTED ONLY PARTLY IN ONE DISTRICT—MURDER.
*I. L R. 2 All. 218
I. L. R. 10 Bom. 258, 263

See MEDICAL JURISPRUDENCE.
13 C. W. N. 622

See PENAL CODE, SS. 300—304.

See PENAL CODE (ACT XLV OF 1860), ss. 302, 325, 328.
I. L. R. 30 All. 568

See SENTENCE—CAPITAL SENTENCE.

See UNLAWFUL ASSEMBLY.

See VERDICT OF JURY—GENERAL CASES.
1 W. R. Cr. 50
21 W. R Cr. 1
I. L. R. 20 Bom. 215

——— abetment of —

See JURISDICTION OF CRIMINAL COURT—*OFFENCES COMMITTED ONLY PARTLY IN* ONE DISTRICT—ABETMENT.
I. L. R. 19 Bom. 105

1. ——— Motive, proof of. The evidence as to the motives with which a prisoner commits an

MURDER—*contd.*

offence should be *of the strictest kind.* QUEEN *v.* ZAHIR . . . . 10 W. R. Cr. 11

2. ——— Motive or ill-will, proof of. Proof of motive or previous ill-will is not necessary to sustain a conviction for murder in a case where a person is coolly and barbarously put to death. QUEEN *v.* JAICHAND MUNDLE 7 W. R. Cr. 60

3. ——— Absence of premeditation—*Culpable homicide.* The absence of premeditation will not reduce a crime from murder to culpable homicide not amounting to murder. QUEEN *v.* MAHOMED ELIM . . . 3 W. R. Cr. 40

4. ——— Suffering death by consent—*Penal Code, s. 300, excep 5.* In a case of a wife

[illegible]

in exculpation of a prisoner's guilt QUEEN *v.* ANUNTO KURNAGAT . . 6 W. R. C 57

5. ——— Grievous hurt, murder arising from—*Inseparable acts.* In order to convict a person of murder arising *out of grevious* hurt, it is indispensable that the death should be clearly and directly connected with the *act of violence.* QUEEN *v.* MAHOMED HOSSEIN
W. R. 1864 *Cr. 31*

6. ——— *Act by* which death is caused occurring in dacoity—*Penal Code, s. 300.* If the act by which death is caused *does not in itself* constitute the crime of murder, it does not constitute murder because it is coupled with dacoity. QUEEN *v.* RAM COOMAR CHUNG
1 Ind. Jur. O. S. 108

7 ——— Murder in committing [illegible]

8. ——— Culpable homicide—*Distinction between it and murder.* Culpable homicide and murder distinguished. QUEEN *v.* GORACHAND GOPE . 5 W. R Cr. 45
B. L. R. Sup. Vol. 443: 5 W. R Cr. 45
1 Ind. Jur. N. S. 177

9. ——— Grave and sudden provocation—*Actual intention to kill.* Under the Penal Code, no constructive but an actual intention to [illegible] to murder. Thus [illegible]

weapon, [illegible] deceased which caused [illegible] assault upon the deceased which caused death, the offence committed was held to have been culpable homicide not amounting to murder. QUEEN *v.* GOREEBOOLLAH . . 5 W. R. Cr. 42

10. ——— *Grievous hurt* A man who, by a single blow with a deadly weapon killed another man who, at dead of night, was co-

MURDER—*contd*

tering his room for the purpose of having criminal intercourse with his wife, was held guilty not of murder, but of causing grievous hurt on a grave and sudden provocation. QUEEN v. CHULLUNDEE PORAMANICK . . . . 3 W. R. Cr. 55

11. ———————— *Culpable homi-* [illegible]

had passed away, and there was time to cool, it is murder QUEEN v YASIN SHEIKH

4 B. L R A. Cr 6 12 W. R. Cr 68

12. ———————— *Culpable homicide not amounting to murder—Penal Code, ss 300, excep. 1, 302, 304* Upon the trial of a person charged with the murder of his wife, it was proved that the accused had entertained well-founded suspicions that his wife had formed a criminal intimacy with another person; that one night the deceased, thinking that her husband was asleep, stealthily left his side; that the accused took up an axe and followed her, found her in conversation [illegible]

I. L. R. 8 All. 622

13. ———————— *Culpable homicide—Penal Code (Act XLV of 1860), ss 299, 300.* In deciding the question whether culpable homicide amounts to murder, it would be erroneous to convict the prisoner of murder simply because there is nothing to bring an accused person under any of the exceptions, reducing the offence to one not amounting to murder, and it is the duty of the Court to consider, in the first place, whether the element or elements which constitute the offence of murder, as defined in s. 300, exist PASPUT GOPE v. RAM BHAJAN OJHA . . . 1 C. W. N. 545

[illegible]

MURDER—*contd.*

provocation. *Queen-Empress* v. *Damarua, All. Weekly Notes (1885), 197,* and *Queen-Empress* v. *Mohan, I L R. 8 All 622,* referred to QUEEN-EMPRESS v. LOCHAN. I. L R 8 All. 635

15. ———— Absence of intention to kill —*Indication of intention by acts* It is not murder if a person kills another without intending to take his life, and if the acts done were not such as conclusively indicated an intention to cause such injury as was likely to cause death QUEEN v SOLIM

5 W. R. Cr. 41

16. ———— Intention to kill another person. Where an accused killed *A*, whom he [illegible]

5 W. R. Cr. 75

17. ———— Absence of proof of com- [illegible]

prisoners had the common intention to inflict injury likely to cause death, they could not be convicted of murder. QUEEN-EMPRESS v. DUMA BAIDYA . . . I. L. R 19 Mad. 483

18. ———— Exposure of child—*Penal Code, s. 317—Remote cause of death. Held,* that where, from the circumstances, it appeared that a child had been exposed by the prisoner died, but [illegible]

10 W. R. Cr. 52

19. ———— Neglect of child—*Culpable homicide—Death from starvation.* Where it ap- [illegible]

which the prisoner committed was murder, and not simply culpable homicide not amounting to murder. QUEEN v. GANGA SINGH . 5 N. W. 44

20. ———— Excess of right of private [illegible]

21. ———— Right of private defence—*House-breaking by night.* Prisoner found deceased

MURDER—*contd.*

in act of house-breaking by night in his house, and killed him with a kodali which he had called for, as he admitted, for that purpose. He was convicted of murder, and sentenced to death by the Sessions Judge. The sentence being referred to the High Court for confirmation, it was held that the prisoner had been legally convicted of murder, that he had intentionally done to the deceased more harm than was necessary for any purpose of defence, and that not whilst deprived of power of self-control. But the sentence was mitigated to transportation for life, than which, it was held, no less sentence could be legally passed. The Judge, however, in a letter to Government, suggested the mitigation of the punishment, which was accordingly reduced to imprisonment for six months. REG. *v.* DURWAN GEER. 1 Ind. Jur. N. S. 253 : 5 W. R. Cr. 73

See QUEEN *v.* FUKEERA CHAMAR
6 W. R. Cr. 50

22. ——— Death from blow in a fight. A conviction for murder was held to be wrong in a case where a prisoner, taking advantage of an incident which occurred in what till then had been a fair fight, struck his opponent and knocked him over, thereby causing his death QUEEN *v.* KEWAL DOSAD . . . . . W. R. 1864 Cr. 36

23. ——— Fatal blow after quarrel—*Penal Code, s. 300, cls (2) and (3).* Two persons met each other in a drunken state and commenced a quarrel, during which they became grossly abusive to each other. This lasted for about half an hour, when one of them ran to his own house, distant 30 yards from the spot, and came back with a heavy pestle, with which he struck the other a violent blow on the left temple, as the latter was rising, or had just risen from the ground, causing instant death. *Held*, that the act was done with the intention of causing such bodily injury as was likely to cause death, and also with the knowledge that such act was likely to cause death, and that the offence committed was murder within the provisions of cls. (2) and (3), s. 300, Penal Code. QUEEN *v.* DASSER BHOOYAN . . . . 8 W. R. Cr. 71

24. ——— Blow with knowledge of likelihood to cause death—*Absence of intention to kill* When a Judge acquits a prisoner of

ble homicide not amounting to murder. QUEEN *v.* SOBEEL MAHEE . . . . 5 W. R. Cr. 32

25. ——— Beating with knowledge of likelihood to cause death. *Held*, by the majority, that, when four men beat another at intervals so severely as to cause death, they must be presumed to have known that by such acts they were likely to cause death, and that, when such acts were done without any grave or sudden provocation, or sudden fight or quarrel, the offence was murder and was not reduced to culpable homicide not amounting to murder by the absence of intention to cause death. QUEEN *v.* POOSHOO
4 W. R. Cr. 33

MURDER—*contd.*

26. ——— Blow struck by order of another person—*Death by beating* Where a blow is struck by *A* in the presence of and by the order of *B*, both are principals in the transaction; and where two persons join in beating a man and he dies, it is not necessary to ascertain exactly what the effect of each blow was QUEEN *v.* MAHOMED ASGAR . . . . 23 W. R. Cr. 11

QUEEN *v.* GOUR CHUNDER DAS
24 W. R. Cr. 5

27. ——— Presumption from conse-

probably did not see how his blows were directed,

being an unpremeditated act of reckless violence rather than an act done with the knowledge or intention which is essential to constitute murder. BEJADHUR RAI *v.* EMPRESS . 2 C. L. R. 211

28. ——— Conspiracy to kill—*Penal Code, s. 302.* *L. C. K.* and *D* conspired to kill *S.*

SINGH

29. ——— Knowledge of likelihood to death—*Penal Code s. 300, cl. 4, and s. 311.*

30. ——— Death caused by snake charmers—*Culpable homicide.* Certain snake-charmers, by professing themselves able to cure snake-bites, induced several persons to let themselves be bitten by a poisonous snake. From the effect of the bite, three of these persons died. *Held*, that the offence was murder under cls. 2 and 3 of

MURDER—*contd.*

s 300 of the Penal Code, unless it could be brought within the 5th exception to that section. If the prisoners, really believing themselves to have the powers they professed to have, induced the deceased to consent to take the risk of death, the offence would be culpable homicide not amounting to murder. QUEEN v PUNAI FATTAMA

3 B L R. A. Cr. 25 : 12 W. R Cr. 7

31 ——————— *Penal Code, ss 304, 304A—Culpable homicide—Causing death by negligence* A snake-charmer exhibited in public a venomous snake, whose fangs he knew had not been extracted; and to show his own skill and dexterity, but without any intention to cause harm to any one, placed the snake on the head of one of the spectators, the spectator tried to push off the snake, was bitten, and died in consequence *Held*, that the snake-charmer was guilty, under s 304 of the Penal Code, of culpable homicide not amounting to murder, and not merely of causing death by negligence, an offence punishable under s. 304A. EMPRESS v. GONESH DOOLEY

I. L. R. 5 Calc. 351 : 4 C. L. R. 580

32. ——— **Running amuck**—*Punishment.* Where a quiet, peaceable man, suddenly,

33. ——— **Presumption of death.** In a

34. ——— **Sacrifice of son by father**—Curious case of murder where a father sacrificed his son, because wealth had not accompanied its birth, and afterwards cut his own throat as a protest against his duty's injustice QUEEN v BISHENDHAREE KAHAR . . . 7 W. R. Cr. 100

35 ——— **Charge of murder where no body is found**—*Penal Code, s 302—"Corpus delicti."* The mere fact that the body of the murdered person has not been found is not a ground for refusing to convict the accused person of the murder. EMPRESS v BHAGIRATH. I. L R. 3 All. 383

36. ——————— Although, under some circumstances, a charge of murder may be sustained, when the body of the person said to have been murdered is not forthcoming, still, when that

37. ——— **Conviction of murder where body is not found**—*Sentence of death* A Judge was held to have exercised a proper discretion in not passing sentence of death in a case in which the dead body was not found. QUEEN v. BUDDEROODEEN . . . 11 W. R. Cr. 20

MURDER—*contd*

38 ——— . Grave and sudden . . .
cation—
cide not a
XLV of
ceased *H* lived in the house of the accused *A* *H* contracted an intimacy with *L*, the wife of *A*, in consequence of which he was turned out of the house. Subsequently, on a certain night *H*, at the invitation of *L*, went to the house of *A*, and

sufficient to cause grave and sudden provocation to *A* and his relatives within the meaning of s.

s 304 of the Penal Code, and sentence reduced ABALU DAS v KING-EMPEROR (1901)

I. L R 28 Calc. 571
s c. 5 C. W. N. 708

39. ——— **Circumstantial evidence** *Penal Code (Act XLV of 1860), s 302—Proof of offence—Conviction of one of two persons, when uncertain who fired the fatal shot, in the absence of common intention—Penal Code, ss. 34 and 119—Evidence, mode of sifting and weighing—Dividing, witnesses into classes and accepting evidence of one class and rejecting that of another—Presumption of innocence—Probabilities, consideration of—Duty of prosecution to examine all important witnesses and produce all available evidence.* Where the Sessions Judge in a trial on a charge of gun-shot murder against *N*, found that *N* and another person *L* were seen immediately after the report of the gun at the scene of occurrence each with a gun in his hand, but he did not find which of them fired the fatal

MURDER—*concld.*

lities. The piecemeal examination of the testimony of individual witnesses without a broad view of the facts, circumstances and probabilities of a case generally leads to a failure of justice, especially in a case where most of the witnesses are drawn from a class of persons whose testimony is frequently unconvincing and not unfrequently unreliable. Even if witnesses in a case do not break down in cross-examination or contradict each other, yet if

[illegible]

who were in one way or other intimately connected with the transaction or the occurrence and the state of things immediately after, gives rise to the irresistible inference that if they were examined they would not have corroborated the prosecution story. NIBARAN CHANDRA ROY *v.* KING-EMPEROR (1907) . . . 11 C. W. N. 1085

MUSCAT ORDER IN COUNCIL.

——— November 4th, 1867—

See HIGH COURT, JURISDICTION OF—BOMBAY—CRIMINAL.
I. L. R. 24 Bom. 471

MUSHAA, LAW OF.

See DEBTOR AND CREDITOR.
I. L. R. 26 Bom. 577

See MAHOMEDAN LAW—GIFT.
L. R. 34 I. A. 167
I. L. R. 35 Calc. 1
I. L. R. 30 All. 309

MUSICAL FESTIVAL.

See EASEMENT . I. L. R. 36 Calc. 615

MUSTAGIR.

See MULBAIYAT . I. L. R. 32 Calc. 1014

MUTARAFA.

See TAX . . I. L. R. 9 Mad. 14

MUTATION.

——— of name on payment of salami—

See LANDLORD AND TENANT.
12 C. W. N. 589

MUTATION OF NAMES.

See MORTGAGE . I. L. R. 31 All. 13

MUTINY ACT.

——— s. 99—

See ATTACHMENT—SUBJECTS OF ATTACHMENT—SALARY . I. L. R. 1 All. 730

See SMALL CAUSE COURT, MOFUSSIL—JURISDICTION—MILITARY MEN.
2 B. L. R. S N. 3; 7
6 Mad. 83

MUTINY ACT—*concld*

——— s. 101—

See JURISDICTION OF CRIMINAL COURT—EUROPEAN BRITISH SUBJECTS.
I. L. R. 5 Calc. 124

——— s. 103—

See SMALL CAUSE COURT, MOFUSSIL—JURISDICTION—MILITARY MEN.
2 Mad. 389

MUTT.

See MATH.

See HINDU LAW—ENDOWMENT.

See RELIGIOUS ENDOWMENT.
I. L. R. 27 Mad. 435

——— Head of—*Power to bind mutt property—Income of mutt in the hands of successor liable for debts properly contracted.* The position of the head of a mutt in reference to the mutt is analogous to that of the manager of an infant heir. ... *See I. R.* ... ted ... the ... passed against his successor charging the income of the mutt, a decree in respect of su... mutt property though such debts were not expressly charged on the income of the mutt. DAIVASIKAMANI ROUTHAN ANDARASANNIDHI *v.* NOOR MAHOMED (1907) . . . I. L. R. 31 Mad. 47

MUTUAL ACCOUNTS OR DEALINGS.

See LIMITATION ACT, 1877 SCH II, ART. 85.

MUTUAL ASSURANCE SOCIETY.

See COMPANY—FORMATION AND REGISTRATION . I. L. R. 17 Calc. 786

MUTUAL BENEFIT SOCIETY.

1. ——— Power of majority to alter rules—*Payment of pensions in England—Adjustment of payments in accordance with rate of exchange—Interest of subscriber to Society.* The U. S. F. P. Fund, a Society established, as stated in rule 2 of the Rules of the Society, "to provide for the maintenance of the widows and children of those who shall subscribe to it upon the terms and conditions specified below, or upon such others as may be determined upon by the subscribers or by a majority of them," had, prior to 1850, passed a rule (33) that "widows, being incumbents on the Fund, shall be paid their pensions at any place they may desire, subject to the usual charges of remittance; the pensions of children, being incumbents on the Fund, shall also be so paid and on the same condition." The subscriptions were then, and continued to be, paid in rupees, and the pensions were calculated in rupees according to certain tables. On being admitted, a subscriber had to "promise and engage to submit to, and abide by the rules and bye laws of the Institution" (rule 22), and by rule 37 had to "pay a fee equal to ten

per cent on the amount of monthly pension insured" Rule 60 gave power to alter any existing [illegible]

which provided that "incumbents on the Fund shall [illegible] Europ- rupee [illegible] verse on remittances from India to England, a rule was passed, which provided that "incumbents on the Fund shall be paid their annuities in India in full, and those residing in Europe at the rate of [illegible]

Europe at the fixed rate of two shillings to the rupee." Exchange continuing to decline, on the 22nd May 1880, the Society, by the votes of 553 against 505 of the subscribers, passed the following rule "Annuities already due, or becoming due before the 1st May 1880, on risks accepted before the 1st July 1876, shall be payable to incumbents [illegible]

member of the Society, who was admitted as a subscriber for the benefit of his widow in November 1871, for the benefit of his son in September 1873, and for the benefit of his daughter in November 1874 He commenced to pay an increased subscription for the benefit of his son in September 1878. He was not one of the majority who voted in favour of the rule of the 22nd May 1880, though he attended the meeting of subscribers. He died on the 25th June 1880, having up to that time duly paid his subscription to the Fund. In a suit in which the plaintiffs, who were residing in England, claimed to be paid their pensions at the rate of two shillings in the rupee:—*Held*, that *F* had no vested interest at the time of the passing of the rule of the 22nd May 1880; that the plaintiffs were, with respect to their pensions, bound by the terms of that rule which a majority of the subscribers had full powers [illegible]

to correction under rule 60 by a majority of the subscribers. The Society being one for the equal benefit of all subscribers, even if rule 60 did not give power to adjust payments in accordance with the rate of exchange, such a power might be implied for the purpose of continuing the business of the Association. FALLE *v* MACEWEN

I. L. R. 7 Calc. 1: 8 C. L. R. 577

2. ———— Madras Civil Service Annuity Fund—*Refund of excess subscriptions, right to.* The Madras Civil Service Annuity Fund [illegible]

[illegible] service. The annuities were to be provided for by subscriptions of the Civil Servants to that Fund [illegible]

in such practice, precluded the Company from disputing the right of the subscriber to repayment of the surplus of his subscriptions in excess of the [illegible]

4 W. R. P. C. 10: 7 Moo I. A 361

3. ———— Rules of Benefit Society—*Power to alter rules* The Bombay Uncovenanted Service Family Pension Fund was a voluntary society established in 1850 Its object was to provide pensions for the widows of its members. One of its rules provided that the rules of the society were subject to such additions and alterations as might from time to time be sanctioned by the general body of subscribers, and by the form of application for admission as a member each applicant promised and engaged to abide by the rules of the society. The plaintiff became a member in 1875. At that time one of the rules (which had been passed in 1871) provided that the pensions of widows resident in Europe should be payable to them at the rate of 2*s.* per rupee. On the 20th July 1895 the society passed a new rule which provided that all pensions due or becoming due after the 31st July 1895 should be paid to incumberts residing in Europe or the colonies at the market rate of exchange on the day of remittance. The plaintiff contended that the society was not competent to alter the rule passed in 1871 by which he had been induced to join the society, and he prayed for a declaration that his wife, if and when she became a widow, would be entitled to have her pension paid at par. *Held*, dismissing the suit, that the society was competent to alter its rules and that the plaintiff was bound by such altered rules The contract with the plaintiff was that his widow, if he left one, should receive such pension as the rules prescribed, and that the rules were liable to alteration by a majority at a general

MUTUAL BENEFIT SOCIETY—*concld.*

meeting to which he would be subject so long as he remained a member. STEVENS *v.* BEDFORD
I. L. R. 22 Bom. 451

MUTUAL CREDIT.

See INSOLVENT ACT, s. 39.
I. L. R. 18 Calc. 146

MUTUALITY.

See MINOR . I. L. R. 34 Calc. 163

——— in contract—

See CONTRACT ACT, s. 27.
13 C. W. N. 388

MUTWALLI.

See LANDLORD AND TENANT.
8 C. W. N. 889; 895

See MAHOMEDAN LAW—ENDOWMENT

See MATWALI.

See PARTIES. I. L. R. 35 Calc. 182

——— suit to remove—

See ACT XX OF 1863, s. 18.
15 B. L. R. 718

MYSORE.

——— jurisdiction of Justice of the Peace in—

See FOREIGN JURISDICTION ACT, 1879, ss. 4, 6 AND 8 I. L. R. 6 Mad. 607

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